Criminal Justice Ethics: Theory and Practice

Marko Nikolić

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CRIMINAL JUSTICE ETHICS: THEORY AND PRACTICE

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About the Editor

Marko Nikolić

Marko obtained his Master's degree from University of Belgrade - Faculty of Law in 2014. He specialized in Criminal Law, Family Law and Environmental Law. He spent his Master year studying about international child abduction. He is currently employed in Ministry of Defense's Legal Department

Contents

List of Contributors

Steve Mccartney
Director & ChairBering Media Inc.Toronto, Canada Area

Rick Parent
Associate Director, Police Studies Centre Associate Professor, School of Criminology, Simon Fraser University

Nicola Lacey
Departments of Law and Social Policy and Gender Institute, London School of Economics

Hanna Pickard
Departments of Law and Social Policy and Gender Institute, London School of Economics

Jane Fielding
Department of Sociology, University of Surrey, Guildford, Surrey GU2 7XH, UK

Nigel Fielding
Department of Sociology, University of Surrey, Guildford, Surrey GU2 7XH, UK

Charles D. Phillips
Department of Health Policy and Management, School of Public Health, Health Science Center, Texas A&M University, College Station, TX 77843-1266, USA

Obioma Nwaiwu,
Department of Health Policy and Management, School of Public Health, Health Science Center, Texas A&M University, College Station, TX 77843-1266, USA

Szu-hsuan Lin
Department of Health Policy and Management, School of Public Health, Health Science Center, Texas A&M University, College Station, TX 77843-1266, USA

Rachel Edwards
Department of Health Policy and Management, School of Public Health, Health Science Center, Texas A&M University, College Station, TX 77843-1266, USA

Sara Imanpour
Department of Health Policy and Management, School of Public Health, Health Science Center, Texas A&M University, College Station, TX 77843-1266, USA

Robert Ohsfeldt
Department of Health Policy and Management, School of Public Health, Health Science Center, Texas A&M University, College Station, TX 77843-1266, USA

Martin Maximino
United Nations Regional Centre for Peace, Disarmament and Development United Nations, Peru

Jasper Edward Nyaura
Department of Peace Security and Social Studies, Faculty of Arts and Social Sciences, Egerton University, , Njoro, Nakuru County, Kenya

Margaret Njeri Ngugi
Department of Peace Security and Social Studies, Faculty of Arts and Social Sciences, Egerton University, , Njoro, Nakuru County, Kenya

Jeannine A. Gailey
Department of Sociology and Anthropology, Texas Christian University TCU, P.O. Box 298710, Fort Worth, TX 76129, USA

John J Sloan III
Professor of Criminal Justice and Sociology , University of Alabama at Birmingham

Judy Eaton
Wilfrid Laurier University, Brantford, Ontario, Canada

Nicole Asquith
University of Western Sydney

Felicitas Hesselmann
Institute for Research Information and Quality Assurance, Schützenstraße 6a, 10117 Berlin, Germany; E-Mails: hesselmann@forschungsinfo.de (F.H.); wienefoet@forschungsinfo.de (V.W.)

Verena Wienefoet
Institute for Research Information and Quality Assurance, Schützenstraße 6a, 10117 Berlin, Germany; E-Mails: hesselmann@forschungsinfo.de (F.H.); wienefoet@forschungsinfo.de (V.W.)

Martin Reinhart
Institute for Research Information and Quality Assurance, Schützenstraße 6a, 10117 Berlin, Germany; E-Mails: hesselmann@forschungsinfo.de (F.H.); wienefoet@forschungsinfo.de (V.W.)
Humboldt-Universität zu Berlin, Institut für Sozialwissenschaften, Unter den Linden 6, 10099 Berlin, Germany

Marvin E. Wolfgang
A. Turk, Legal, Polemical, and Empirical Definitions of Criminality (paper presented at the Conference on Ethics, Public Policy and Criminal Justice, Center for the Study of Values, University of Delaware, Newark, Delaware, Oct. 23, 1980).

Mafia Fanon Wikia

Quentin Bushon
Angelo State University

Ingrid Amalia Havnes
Division of Mental Health and Addiction, Oslo University Hospital, PO Box 4956, Oslo, Nydalen 0424, Norway.
SERAF - Norwegian Centre for Addiction Research, University of Oslo, PO Box 1039, Oslo, Blindern 0315, Norway.

Thomas Clausen
SERAF - Norwegian Centre for Addiction Research, University of Oslo, PO Box 1039, Oslo, Blindern 0315, Norway

Christina Brux
Institute of Health and Society, University of Oslo, PO Box 1130, Oslo, Blindern 0318, Norway.

Anne-Lise Middelthon
Institute of Health and Society, University of Oslo, PO Box 1130, Oslo, Blindern 0318, Norway.

Ngozi Sydney-Agbor
Department of Psychology, Imo State University, Owerri, Nigeria

Barnabas Ekpere Nwankwo
Department of Psychology, Caritas University, Enugu, Nigeria

Manasseh N. Iroegbu
Department of Psychology, University of Uyo, Uyo, Nigeria

Ezuruike Wisdom
Department of Psychology, Imo State University, Owerri, Nigeria

Fred Lewsey

Devika Prasad
Prasad has a bachelor's degree in political science, and a master's in Comparative Legal Studies from the School of Oriental and African Studies of the University of London.

Chad Posick
Assistant Professor of Criminal Justice, Georgia Southern University

Kanna Hayashi
Urban Health Research Initiative, British Columbia Centre for Excellence in HIV/AIDS, St. Paul's Hospital, 608-1081 Burrard Street, Vancouver, BC V6Z 1Y6, Canada
Interdisciplinary Studies Graduate Program, University of British Columbia, Green Commons, 6201 Cecil Green Park Road, Vancouver, BC V6T 1Z1, Canada

Lianping Ti1
School of Population & Public Health, University of British Columbia, 2206 East Mall, Vancouver, BC V6T 1Z3, Canada

Joanne Csete
Global Drug Policy Program, Open Society Foundations, 7th Floor Millbank Tower, 21-24 Millbank, London SW1P 4QP, United Kingdom

Karyn Kaplan
Mitsampan Harm Reduction Center / Thai AIDS Treatment Action Group, 18/89 Vipawadee Rd., soi 40 Chatuchak, Bangkok 10900, Thailand

Paisan Suwannawong
Mitsampan Harm Reduction Center / Thai AIDS Treatment Action Group, 18/89 Vipawadee Rd., soi 40 Chatuchak, Bangkok 10900, Thailand

Evan Wood
Urban Health Research Initiative, British Columbia Centre for Excellence in HIV/AIDS, St. Paul's Hospital, 608-
Faculty of Medicine, University of British Columbia, 317-2194 Health Sciences Mall, Vancouver, BC V6T 1Z3, Canad

Thomas Kerr
Urban Health Research Initiative, British Columbia Centre for Excellence in HIV/AIDS, St. Paul's Hospital, 608-
Faculty of Medicine, University of British Columbia, 317-2194 Health Sciences Mall, Vancouver, BC V6T 1Z3, Canada

Preface

Ethics give us system of moral principles. Many people tend to equate ethics with their feelings. But being ethical is clearly not a matter of following one's feelings. Being ethical is also not the same as following the law. Law is often opposite to what is ethical, as history showed us many times. Ethics refers to well-founded standards of right and wrong. Ethics is important for all participants in the legal system and for those who struggle for justice. Immoral person cannot apply the law because that person essentially does not understand it. But it is not so easy, great wisdom and objectivity is required so one would be able to say that he is an ethical and moral judge, even harder is when we are talking about whole legal system(s). In the beginning we will start from the foundation, and get acquainted with the most important ethical systems, from the Greek Virtue ethics to the modern Feminist ethics and Egoism on the other hand. Connection of Ethics and religion is also very important, and researcher needs to understand it well before entering the world of philosophy and moral. First next step is understanding the Natural law and Social Contract Theory and then we can start revealing the complex world of ethical and moral dilemmas. In Chapter 2. we will ask the question of what you will do when being endangered or hurt. Do you blame or do you forgive? Where to draw the line between vengeance and forgiveness, the two opposite worlds. We will try the ethic "outsider" viewpoint in Chapter 3. The ability to take this attitude will make many hidden facts obvious. We may in the future be able to predict the crime risk and stop growing victimization rates. Chapter 4. is here for us to stop and think for a while. Is enabling weapons to citizens and making it available while being concerned with crime rates ethical move of legal authorities? Community-oriented policing strategies and new approaches to ensure public safety are always welcome in aspiration to make moral society driven by moral principles. Because of this we are dealing with new approaches for the police but also considering for new rules and codes of ethics in Chapters 5-8. Constantly advancing civilization is entering new areas and new fields of operation. Are existing rules universal and sufficient? Culture of honor might be responsible for higher crime rates. Chapters 9 and 10 will be dealing with this theme. How is this correlating to what we know about crime and ethics so far? In any case, ethical norms must be seen on both sides of the bars. Of course we did not forget the third party involved in the process beside police and inmates- legal scientist. We will read more about the ethical side of their work in Chapters 11 and 12. We will separately address the greatest moral affliction of every system itself- systematic corruption. Corruption exists in every society, and under every system, incurable, but we must strive to find out which factors executes any influence on it. Whether a person would be harder to give in to corruption in a richer society? More religious? In that with stricter laws? Or commonly accepted state rules in the population? Chapter 14. shed some light on one more controversial subject. Although many will think that false confessions are happening only in movies, this is much more often phenomena. At least some percentage of these are people who are choosing to go to jail because of some moral reason, some personal ethic. Chapter 15 is not getting much easier, it deals with morality and drug abuse. While Chapter 16 will show that earlier discussed corruption is present in reach and poor parts of the world equally, only the forms are sometime different. Because inner principles are obviously not enough, or so it seems at the present, many countries are resorting to the real observer: body cameras worn by police officers. Following, article 19, is focusing mainly on police accountability, it is describing how entrenched democratic policing is in the countries of the region, and also highlights strategies to better solidify democratic policing in Commonwealth Pacific - Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. We will finish with 3 Chapters about importance of understanding between police and communities and the most obvious examples of unethical behavior of police officers: police brutality and racially biased behavior. I hope that among the readers there will be future police officers who will always have moral laws on their mind as much as the written rules.

Editor
Marko Nikolić

CHAPTER 1 ETHICS IN LAW ENFORCEMENT

[1]Steve Mccartney and Rick Parent[2]

[1]Director & ChairBering Media Inc.Toronto, Canada Area

[2]Associate Director, Police Studies Centre Associate Professor, School of Criminology, Simon Fraser University

1. ETHICAL BEHAVIOUR

The Importance of Ethical Behaviour

For citizens, even forthose of us with no aspirations in a careerin law enforcement, morality and integrity are important characteristics to demonstrate. We instinctively know that it is good to be moral and act with integrity, but by coming to an understanding of the reasons for morality and integrity, we will be motivated to champion such behaviour. Among the reasons to be moral and integral, regardless of occupation are to:

- Make society better. When we help make society better, we are rewarded with also making better own lives and the lives of our families and friends. Without moral conduct, society would be a miserable place.
- Treat everyone equally. Equality is a cornerstone of most Western democracies, where all individuals are afforded the same rights. This is not possible without the majority of citizens behaving in a moral manner.
- Secure meaningful employment. Often employers will look at a person' past behaviour as a predictor of future behaviour. Someone who has a history of immoral behaviour will have difficulty securing employment in a meaningful job, as that person may not be trusted.
- Succeed at business. If you are employed in an occupation in which there you must rely on others, your moral conduct will determine the degree of goodwill that you receive from others. Businesses that have a checkered moral history are typically viewed with caution and are unlikely to attract new customers through word of mouth, and therefore are unlikely to prosper. This is especially the case where social media makes customer reviews readily accessible.
- Lessen stress. When we make immoral decisions, we tend to feel uncomfortable and concerned about our decision making. Making the right moral decision, or taking a principled perspective on an issue, reduces stress.

Ultimately, ethics is important not so that "we can understand" philosophically, but rather so we can "improve how we live" (Lafollette, 2007). By being moral, we enrich our lives and the lives of those around us. It's especially important to live a moral life when we are young, as it is helpful to exercise and practise these concepts before being confronted with more complex issues. Lafollette (2007) theorizes that ethics is like most everything else that we strive to be good at; it requires practice and effort. Practising and making an effort to make moral decisions throughout life will pay dividends when we are faced with serious moral dilemmas. Furthermore, having insight into "…historical, political, economic, sociological and

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psychological insights…" (Lafollette, 2007, p.7) allows us, as decision makers, to make more informed decisions, which will likely result in moral decisions. In sum, the practice of being moral, allows us to work on these skills, so when we are faced with real situations that impact others, we are ready Lafollette (2007) also emphasizes the need to understand and develop our virtues. Knowing that we ought to behave in a certain way, yet missing an opportunity to exercise moral behaviour, is an indication of the need to "sharpen moral vision." For example we know that we ought to stay in good physical shape but often do not. This illustrates the need to be mindful of a virtue (in this case perseverance) that is important and must be developed. If, as people aspiring to become law enforcement officers, we develop the virtue of perseverance by staying in shape, we are more likely to hone that skill when we are working in law enforcement. We will be able to draw on that virtue when needed for even more serious situations, not only in law enforcement, but in other challenges that we may face in life. Ethics is also important for those citizens who do not aspire to work in law enforcement. Successful business leaders often say that treating people morally is a very important aspect in obtaining success. A person's reputation is of key importance for a business leader, and if a person's reputation is damaged by poor ethical conduct, the business will also suffer. The same is true in all walks of life. Where ethics are taken seriously, and people strive to make ethical decisions and actions, personal and professional success follows. Critics may argue that this attitude is self-serving and that some individuals act ethically only for their own selfinterest to be successful or happy. Critics would add that this is not the right reason to be ethical, and therefore is not being truly ethical. A counter argument may be that the action itself can be regarded as ethical, regardless of the reason for taking the action. This perspective focuses more on the end result rather than the means to the end.

Ethics and the Pursuit of a Law Enforcement Career

Without a doubt, the most important attributes of an individual applying for a job in law enforcement are the applicant's integrity and moral behaviour. In order to be a law enforcement officer, individuals must demonstrate a life lived morally. Of course, in some instances, an applicant may have on occasion been involved in isolated immoral activities. This is often understandable; however, law enforcement employers will not hire an applicant if they detect a demonstrated pattern of immoral behaviour. Recruiters and the agencies they work for may differ in the specific number of illegal or immoral acts they will allow an applicant to have committed before hiring that person, they all agree that it is very few. Some law enforcement agencies, in hiring climates where they have numerous applicants to consider, have the ability to be very selective and may choose only those applicants who have not demonstrated any moral lapses. The moral history of an applicant is closely scrutinized by law enforcement agencies through background checks, polygraphs, detailed interviews, and integrity questionnaires. Each of these methods are used to root out applicants who may have exhibited poor moral choices in their past. Right or wrong, law enforcement agencies view past performance as a predictor of future moral performance. Predicting an applicant's future moral conduct is largely based on the common acceptance of the slippery slope theory of ethics. According to this theory, applicants who exhibit minor moral infractions are viewed as likely to progress to more serious immoral behaviour. Punch (2009) describes the slippery slope as being small deviant acts that become increasingly easy and lead to participation in larger, more serious acts. Punch (2009) refers to the slippery slope as a "ladder" in which corruption is the end result, after a series of immoral steps. Punch (2009) also describes the journey of some police officers as they travel from being moral civilians to immoral police officers. This often occurs because indoctrination into the police culture can negatively affect police recruits' ethical behaviour and have disastrous consequences (Souryal, 2011). Punch (2009), in describing this journey into the police subculture, states that the result is the slippery slope during which immoral decisions start as minor breaches of organizational or occupational rules and evolve into major corruption. Accordingly, Punch infers that even those applicants who have taken part in minor immoral activities would likely progress to serious immoral behaviours. Punch (2009) refers to qualitative research, illustrating how the slippery slope theory may have played a role in the corruption case of Bob Leuci of the New York Police Department (NYPD). In this instance, Leuci joined the NYPD and was determined to remain straight, but slipped into corruption in a desire to fit into the police culture. Eventually, he became involved in serious corruption, resulting in his being fired, charged, and criminally convicted. Contrary to proponents of this perspective, Prenzler (2009) argues that the notion of slippery slope has been incorporated into the police subculture not because the theory is valid but rather as a way to keep young officers from committing even minor ethical or moral infractions. Lafolette (2007) also rejects the theory, arguing that proponents of the slippery slope argument are imposing a general structure in which the cause of immoral activity can be traced back to even morally permissible activity. He breaks down the argument into a formula, asserting the following: Action x is prima facie (or believed to be) morally permissible

If we do action x, then through small analogous steps circumstance y will probably follow Circumstance y is immoral Therefore x is immoral

Lafollette (2007) asserts that the above argument leads to unrealistic and unlikely conclusions because it assumes that all slopes move are downward toward immoral behaviour, and never considers that a slope could be upward, toward more moral behaviour. We should be prepared to consider that individuals who act immorally may regret their actions and decide to act more morally, or at the very least, cease their immoral practices. Essentially, Lafollette (2007) argues that we can learn from minor bad behaviours, regret the immoral behaviour through guilt or empathy, and strive to improve orreform. Thus, he argues, a person who commits fraud forthe first time and laterregrets the act will change his or her behaviour and not commit fraud in the future. What the person learns is that the feelings of guilt are not worth the gains made from fraud. Caless (2008) enlarges Lafollette's critique with his observation that absolutists, viewing minor moral breaches in black or white terms, further promote the slippery slope theory. Caless (2008) questions the assumption that everyone is susceptible to corruption, and, as a result, minor immoral breaches must inevitably lead to major ones. He argues that if the slippery slope argument is to be accepted, then all officers who have ever received even a free cup of coffee will eventually perform major immoral actions. The slippery slope theory also proposes that corrupt individuals who have entered law enforcement are more likely to engage in future criminal activity whether they have that first free cup of coffee or not. Coleman (2004) responds to this argument by suggesting that if only a few officers slide into immoral behaviour as a result of receiving a gratuity, then all officers should be denied such opportunities. Police corruption is so serious that it should be prevented at all levels, even if this means banning all gratuities.

As Employees in Law Enforcement Agencies

Democratic countries walk a fine line between the anarchy and civil violence of collapsed states and the suppressive citizen controls exerted by highly authoritarian regimes. It is through the commitment of the police to the citizenry, their capacity to control crime, and their ability to act according to the rules they enforce—that they are also not above the law—that democracy survives (Caldero and Crank , 2004, p.17) Inevitably this question arises: "why is it so important to be a moral law enforcement employee?" There are several reasons why people employed in law enforcement are required to be moral and to have sound moral values. Ironically, morals can at times be a hard sell to law enforcement officers, who, when dealing with exigent situations in which they are concerned not only for their safety but for the safety of all citizens, consider that the manner or means of how safety is achieved is not as important as the end result of achieving that safety. In other words, for officers who are dealing with their own personal personal safety as well as the safety of others, may consider the notion of philosophizing about the right thing to do as not being overly important. However, law enforcement careers come with a number of duties and responsibilities for which moral behaviour is mandatory. The primary ones include discretion, power, and public service.

- Discretion. Discretion in law enforcement is necessary in order to efficiently manage call loads and to mediate minor incidents. Law enforcement personnel have enormous discretionary power throughout every rank, regardless of seniority, and are given great freedom to make operational decisions from the moment they start on the job. Discretion in law enforcement includes whom to arrest, whom to investigate, whom talk to, and whom to interview. More importantly, in these decisions officers have the power to deprive people of their freedom (Pollock, 2014). It is critical that law enforcement officials possess moral character so that the enormous decisions they must make are balanced and fair.
- Power. Because law enforcement officers exercise much discretion they also wield great power. They have the power to arrest, detain, search, seize, and question. The government grants officers these powers so they can enforce laws and maintain the peace. We live in a country in which due process protects civilians from the abuse of government agents and in which certain freedoms are expected. Thus, we expect law enforcement officers to use their discretion with due process in mind (Pollock, 2010).
- Public service. The state employs law enforcement officers to carry out the state's mandate: enforcing the law and keeping the peace. The trust the state places in law enforcement and other public officials to carry out this duty in a responsible fashion is called public trust. Public trust ensures that those tasked with these duties will not abuse their power. Public trust also ensures that all public officials will be held to a higher standard than those they serve. The ultimate test of public trust is that law enforcement officials "walk the talk" or "practise what they preach," and that they never engage in behaviour that, if performed by others, would be considered to break the law (Pollock, 2010).

It is important that employees of all government agencies possess and display a sense of justice in which all individuals are treated fairly. "Justice," as defined by Rawls (1999), means that all citizens are treated equally and fairly regardless of, among otherthings, their class, social position, intelligence, orstrength. Rawls (1999) emphasizes that there is no greater need in government than for its social institutions to act with justice as the primary goal. For the police, this notion takes on even more importance, as the police are the most visible representatives of government at the street level, and the high level of discretion they exercise makes this notion of justice all the more critical (Lipsky, 1980). In order to achieve justice, police agencies must use their moral and ethical discretion at all times or they risk losing legitimacy, trust, and confidence. Without ethical conduct, police lose legitimacy, and without legitimacy, the police are ill equipped to carry out their duties (Punch, 2009). One of the main characteristics sought by police recruiters in individuals applying to become police officers is that they possess positive ethics and moral values, which are reflective of society's expectations (Ellwanger, 2012). In pursuing moral behaviour within policing, recruitment and training are utilized respectively in an attempt to ferret out immoral applicants who are dishonourable and do not exhibit integrity. This is done through extensive background checks during recruitment and later, and moral principles are reinforced through scenario training. Police officers are trained and educated as recruits so that they will be able to cope with the peculiarities of being a police officer in an ethical fashion (Allen, Mhlanga, and Khan, 2006; Braswell, McCarthy, and McCarthy, 2012; Renkema, 2007).

REFERENCES

1. Allen, J., Mhlanga, B. and Khan, E. (2006). Education, training and ethical dilemmas: responses of riminal justice practitioners regarding professional and ethical issues. Professional Issues in Criminal Justice 1(1). Retrieved from:http://www.picj.org/docs/issue1/PICJ%20Number1.pdf#page=14 .
2. Braswell, M., McCarthy, B., and McCarthy B. (2012). Justice, Crime and Ethics (7th ed). Burlington, Massachusetts:Elsevier.
3. Caldero, M. and Crank, J. (2004). Police Ethics: The Corruption of Noble Cause (2nd ed). Mathew Bender and Company.
4. Caless, B. (2008). Corruption in the Police: The Reality of the 'Dark Side'. The Police Journal, 81(1), 3–24.
5. doi:10.1350/pojo.2008.81.1.389. Retrieved from: http://heinonline.org.ezproxy.lib.le.ac.uk/HOL/Page?handle=hein.journals/policejl81&id=5&collection

=journals&index=journals/policejl.

6. Coleman, S. (2004). When police should say 'no!' to gratuities. Criminal Justice Ethics, 23(1), 33–44. doi:10.1080/ 0731129x.2004.9992159. Retrieved from: http://heinonline.org.ezproxy.lib.le.ac.uk/HOL/Page?handle=hein.journals/crimjeth23&id=33&collection=journals&index=journals/crimjeth.
7. Ellwanger, S. (2012). How police officers learn ethics. In M. Braswell (Ed.), M. C. Braswell, B. R. McCarthy, & B. J.
8. McCarthy, Justice, crime, and ethics (7th ed.). Newark, NJ: Anderson Publishing Company OH.
9. Lafollette, H. (2007). The Practice of Ethics. Malden, ME: Blackwell Publishing.
10. Lipsky, M. (1980). Street-Level Bureaucracy: Dilemmas of the Individual in Public Services. New York: Russell Sage Foundation.
11. Pollock, J. M. (2010). Ethical dilemmas and decisions in criminal justice. United States: Wadsworth Publishing Company.
12. Prenzler, T. (2009). Police Corruption: Preventing Misconduct and Maintaining Integrity. Boca Raton, Florida: CRC Press.
13. Punch, M. (2009). Police Corruption: Deviance Accountability and Reform in Policing. Portland, Oregon: Willan Publishing.
14. Rawls, J. (1999). A Theory of Justice. Cambridge: Harvard University Press.
15. Renkema, C. (2007). Police Academy Assessment Centre. New Westminster, British Columbia: Justice Institute of British Columbia.
16. Souryal, S. (2011). Ethics in Criminal Justice: In Search of the Truth (5th Edition). Burlington, Maine: Elsevier.

2. ETHICAL SYSTEMS

Major Ethical Systems

When learning how to resolve ethical dilemmas, it is important to be able to articulate a justifiable rationale for why we believe one decision seems right and another seems wrong. Having a basic understanding of the major ethical theories will help us toward an ethical resolution learning how to articulate and justify the decision.

At times, some of the ethical theories may seem overly philosophical for our purposes; we may even wonder why we should study theories that were sometimes developed centuries ago when we are primarily dealing with present-day issues. In other instances, some of the ethical theories may seem overbearing. The theories we look at here, however, are important to help us understand why the decisions we make, or someone else makes, are ethical or unethical.

For example, a decision may be made that appears on the surface to be unethical, but when we are aware of the philosophical system used in the decision making, we can then understand the root of the decision and, at the very least, see its intended morality. This allows us to view ethical issues from different perspectives and assists us in making informed decisions.

This book is concerned primarily with normative ethics and understanding only the common normative ethical theories. By dissecting the normative theories of ethics, we can have a clear understanding on the moral decisions we ought to make, or the reason some people make the decisions they do. Ethical theories will be examined only briefly as the focus of this book is contemporary ethical issues facing law enforcement. The descriptions of the following ethical theories are very basic and address only the points required for a basic understanding in a law enforcement context. Examples of how a theory may relate to and assist law enforcement are included.

Overview of Ethical Theories

There are three categories of ethical theories:

1. Normative ethics
2. Meta ethics
3. Applied ethics

Normative theories tell us not only what we ought to do, but also why we do things that in some instances may appear counterintuitive to what we think an ethical decision would be. Such theories are often called ethical systems because they provide a system that allows people to determine ethical actions that individuals should take (Pollock, 2007). Evans and Macmillan (2014, p.27) define normative ethics as "theories of ethics that are concerned with the norms, standards or criteria that define principles of ethical behaviour." The most common examples of normative ethical theories are utilitarianism, Kantian duty-based ethics (deontology), and divine command theory, which are described later in this chapter. These systems are used by individuals to make decisions when confronted with ethical dilemmas.

Meta-ethics does not address how we ought to behave; rather, meta-ethics is related more to the study of ethical theory itself. Here the interest is in evaluating moral and ethical theories and systems. For example, moral relativism is a meta-ethical theory because it interprets discussions around ethics; a question asked within moral relativism is "is ethics culturally relative?" Evans and Macmillan (2014, p.27) define meta-ethics as "theories of ethics concerned with the moral concepts, theories, and the meaning of moral language. Pollock (2007, p.6) further defines meta-ethics as "a discipline that investigates the meaning of ethical systems and whether they are relative or are universal, and are self-constructed or are independent of human creation."

For the purposes of this book, meta-ethics will relate to the way we look at and understand normative ethical theories. More concisely, meta-ethics concerns an interpretation and evaluation of the language used within normative ethical theories.

Applied ethics describes how we apply normative theories to specific issues, usually related to work or belonging to an organization; for example, policies and procedures of organizations or ethical codes of outlaw bikers versus ethical codes of police officers. Evans and Macmillan (2014, p.27) define applied ethics as "theories of ethics concerned with the application of normative ethics to particular ethical issues." An example is knowing and practising the code of ethics for BC

Corrections as an employee of BC Corrections or following the British Columbia Police Code of Ethics as a police officer.

With the overview of the three categories of ethical theories we will further analyze each ethical theory or system.

The normative ethical theories that are briefly covered in this chapter are:

- Utilitarianism
- Deontology
- Virtue ethics
- Ethics of care
- Egoism
- Religion or divine command theory
- Natural Law
- Social contract theory
- Rawls's theory of justice
- Moral relativism

Utilitarian Ethics

Utilitarian ethics is a normative ethical system that is primarily concerned with the consequences of ethical decisions; therefore it can be described as a teleological theory or consequentialist theory, which are essentially the same thing, both having a notion that the consequence of the act is the most important determinant of the act being moral or not. Teleological reasoning takes into consideration that the ethical decision is dependent upon the consequences ("ends") of the actions. In teleological reasoning, a person will do the right thing if the *consequences* of his or her actions are good. Additionally, if an action by a person was an act that was "not good," but the consequences turned out to be "good," under some theories of teleological reasoning, the act may be deemed a good ethical act. This is also referred to as "consequentialist moral reasoning," where we locate morality in the consequences of our actions.

As a result of the consequentialist nature of utilitarianism, the means to get to the ethical decision ("end") are secondary; the end result is that which must be considered before determining the morality of the decision.

Jeremy Bentham (1748-1832) developed the principles of utility by defining it as a measure of maximizing pleasure while minimizing pain. Bentham wrote that everyone prefers pleasure over pain. It is with this belief that utilitarian moral principles are founded (Sandel, 2010). In developing the theory of utilitarianism, Bentham may have meant pleasure as in "happiness" and pain as in "sadness"; however, Bentham's rendering of utilitarianism sounded hedonistic, as if sensuality was the measure Bentham associated with pleasure (Hinman, 2013).

John Stuart Mill reconsidered the principles of utilitarianism and suggested that pleasure should not merely refer to sensual pleasure but also to mental pleasure, such as music, literature, and friendship. Mill sought to make intellectual pleasures preferable to sensual ones.

Hinman (2013) suggests there are four principle differences between pleasure and happiness:

1. Happiness is related to the mind, whereas pleasure is related to the body (for example sexual pleasure, eating, drinking)
2. Pleasure is of shorter duration than happiness. Happiness is long-term, focusing on the satisfaction of living well, or achieving life goals.
3. Happiness may encompass pleasure and pain.
4. There is an evaluative element in happiness versus pleasure.

There are two formulations of utilitarianism: act utilitarianism and rule utilitarianism. Act utilitarianism concerns the consequences of the first instance, where the utility of that act is all that is regarded.

The second formulation of utilitarianism, rule utilitarianism, concerns the consequences of the majority of people following a certain rule that is immoral, which would be negative. With rule utilitarianism, to determine the ethics of an act, the questions to ask are "What would happen if there was a universal rule that condones this action?" and "Would such a rule promote the consequences that would best serve a moral society?" Rule utilitarianism operates as a check and balance for utilitarian principles, assuring that decisions that may be utilitarian in principle are qualified with the notion of universality, asking "what would the result be if everyone followed a rule that allowed this act?"

The best way to illustrate consequentialist theory is through an implausible story proposed by Michael Sandel (2010).

Imagine you are the driver of a trolley car train and are speeding along. As you are heading to the work yard, you realize the brakes don't work. Ahead you see five workers on the track. They are busy jack hammering and do not see you approach. You as the driver have the ability to determine where the train goes by switching the tracks to another track. However that track has one worker, who is also oblivious to your approach. By physically switching the tracks, you will save five, but your actions will kill the lone worker.

The moral dilemma is such that we are required to determine what the consequences or the end result should be. The questions you need to ask are:

What action would you take?

Are the end results, or the consequences of your actions, important?

What action would a Rule Utilitarian take?

What action would an Act Utilitarian take?

Q. How can utilitarian theory assist law enforcement in moral dilemmas?

Law enforcement officers possess a great deal of discretion that must be exercised by all officers of every rank, regardless of their experience. When exercising this discretion, officers will be confronted on a daily basis with issues that are complex, and may not be covered in the agency's policy and most certainly would not have been covered in their formal education or police academy or other training. Law enforcement officers also are required to make exigent decisions, without the ability to consult with senior officers or policy and procedures. In some instances, when confronted with decisions, officers may want to rely on utilitarianism to make an ethical decision that is defensible when scrutinized in the future. For example, an officer tasked with policing a large pro-marijuana protest group may observe a person within the group selling marijuana. Legally, the officer has the duty to charge that person with trafficking in a controlled substance under the Controlled Drug and Substance Act, a serious indictable offence. However, from a utilitarian position, the officer may elect not to arrest and charge the suspect for two reasons:

1. The act of not arresting would make more pro-marijuana group happier compared to the number of people would be unhappy with that decision. We can reasonably say that society at large is becoming more relaxed about marijuana use, and the movement to legalize marijuana is strong and getting stronger. Perhaps the officer would recognize this, and make his or her decision accordingly. If the drug being trafficked was crack cocaine, then the officer would likely adjust the decision. (If the drug was a more lethal drug, that could cause death, the officer would be compelled by duty to arrest the suspect in order to prevent harm.)
2. If the arrest is made for trafficking , the consequence would likely be a serious violent confrontation with the large pro-marijuana group. The arrest by the police would not make the majority of these individuals happy. As a result, while arresting the trafficker may be the duty of the officer, the officer may come to the conclusion that the consequences of making an arrest are likely to be negative. Therefore by using discretion, the officer is utilizing utilitarian principles in his or her decision making.

From a rule utilitarianism perspective, the officer should consider what the consequences would be if there were a rule that everyone was allowed to smoke and sell marijuana. If the officer believes that society would be well served by this rule, then the officer should allow the sale to continue. Should the officer believe the rule would be detrimental to society, the officer should consider this as well, and at least consider making the arrest.

The Problems with Utilitarianism

Like all normative theories of ethics, utilitarianism cannot address all of the ethical dilemmas we face. Sometimes using utilitarian principles may be harmful to a group of people or to an individual. Some of the major problems with utilitarian consequentialist ethics include the following:

- **Measuring happiness is difficult**. Happiness is subjective and as a result is open to interpretation. Is happiness in winning a million dollars more significant than the happiness a person experiences when told by a doctor that he has a clean bill of health? Likewise, does the value of happiness increase with time, or with importance? If someone won a million dollars, would this be measured as "the most possible happy," as the million dollars will hopefully last for a long time? Conversely, a person received a clean bill of health after a routine checkup can be regarded as more important news; however this person is likely to forget this good news within days. So when we look at the happiness that is caused by these two events, we need to ask ourselves, "what makes us the most happy?"
- **Utilitarian ethics is concerned about the consequences of our actions, regardless of the action itself.** However, it can be difficult to know what the consequences of our actions will be because of the variables that we do not control. For example, a police officer may believe that writing tickets at an intersection will create a safe intersection environment for everyone. However, it is difficult to determine for sure that this will be the outcome. Unintended consequences may instead occur. Suppose, for example, that while the officer is writing a ticket at the intersection, a fatal accident occurs due to the officer disrupting the traffic. In this instance, the unintended consequences could not have been predicted, especially if the officer acted in a safe manner while writing the ticket. The unintended consequences may be viewed as immoral by utilitarian standards because of the end result. People who maintain this logic are referred to as Actual Consequentialists because actual consequences are what determine if the act was right or wrong. However, some consequentialists would rightly take into consideration the fact that the fatal accident could not have possibly been foreseen, and therefore the act itself was still moral in spite of the unforeseen negative consequences. This appears to be a more logical approach to consequentialism as it incorporates a mental element (*mens rea*) in determining if the act was moral.
- **Desired ethical consequences that actually result from our actions do not always happen immediately**. If the desired consequences of our actions do not occur immediately, how long must we wait for those good consequences to develop before we can say the action was ethical? Likewise, how long are we to wait to deem the consequences as positive or negative? For example, in a correctional institute, a warden who believes that weapons are being made in an inmate job program may cancel the program. The warden may decide to cancel the program due to the inability of staff to ensure that the making of weapons does not occur. The warden's decision is ultimately based on ethics and a desire to ensure the well-being of corrections staff and inmates. However, the inmates may view this decision as punitive as the prohibited weapons are being made by only some inmates. In analyzing the ethics of the decision by the warden, the question would have to be asked, "how much time would have to expire before we could determine this was an ethical action versus a punitive one?"
- **Happiness should not be the only consequence or goal that matters in some ethical dilemmas**. Some goals of the ethical decision, such as human rights, may matter more than the consequences of the action. For example, consider a detective who is investigating a series of sexual assaults has located evidence which is not admissible in court but clearly demonstrates that a suspect is guilty of the crimes. The detective realizes that the suspect is likely to recommit the crime, and therefore decides to plant false forensic evidence on the suspect to implicate him. While this action may result in positive consequences (and the greater happiness for the greater number of people), the actions are wrong

and cannot be condoned. By removing the notions of justice, fairness, and basic human rights owed the suspect, the actions are immoral and unethical; they are actions that will eventually erode confidence in police. The consequences, from a utilitarian perspective, should not outweigh the notion of justice. In this way, utilitarianism can provide an excuse for those who commit wrongs for noble reasons. On the other hand, utilitarians may argue that the actions are actually not utilitarian because the long-term effects may have an opposite effect: less happiness for the greater number of people should lawful investigations not be trusted by society. This is an example of rule utilitarianism, where we can look at the benefits of having a rule that allows such actions (planning evidence) by law enforcement officers that would not promote the most happiness overall.

- **When utilitarian decisions benefit the majority at the expense of the minority, the minority's rights may not be taken into account.** Utilitarian principles often run contrary to individual's rights, and at times are the antithesis to concepts of modern justice theories. When we are tempted to make a decision that will positively impact the majority, we must also consider the negative impact on the minority. In the example above, the detective who plants false forensic evidence on a suspect may feel that the maximum happiness to the majority of people makes the action ethical. However, the investigator is not respecting the rights of the individual suspect. Much the same way, when crime reduction policies, such as sex offender registries, allegedly promote community safety, offenders' rights are ignored due to the loss of privacy. This is especially so, given that studies indicate such registries are often ineffective and do little to protect the community (Petrunik, 2002; Vess, 2008).

Deontology

Probably the most complex of all the ethical systems we look at here is Kantian logic, which is a deontological theory. The word *deontology* comes from the Greek word *deon,* meaning "obligation" or "duty." It is an ethical system primarily concerned with one's duty. It is also known as ethical formalism or absolutism.

Deontology was formulated by Immanuel Kant (1724-1804). Kant believed that the end result is not of primary importance; rather, the real importance is in determining the moral intent of a decision or action itself. Kant would assess the morality of one's action and disregard the consequences. He further believed that we have duties that are imperative and that these duties must never be abandoned, regardless of the anticipated outcome. These duties, according to Kant, are absolute and must be applied to everyone equally.

The notion of duty is important to law enforcement officers who are bound by law to perform their duty. A duty is something we are required to execute, regardless of whether we want to or not. The duty may have a personal or professional negative consequence attached to it, but as it is a requirement or obligation, it is absolute and/or imperative.

Kant distinguished two types of duties: conditional or hypothetical imperatives and categorical imperatives.

A hypothetical imperative is a duty that is necessary to accomplish a specific goal. It is something that we do to achieve an end. Banks (2013) uses the example of the duty of a student to study hard in order to get good grades. In law enforcement, we may look at the hypothetical duty of a patrol officer to write as many search warrants as possible to be considered for a detective job.

A categorical imperative is an unconditional rule or duty. Regardless of the impact on you that the decision may cause, the duty remains the same and must be done. In this way, the act is unrelated to the end result; it is a duty regardless of the outcome. One example in law enforcement is a domestic assault policy that imposes a duty on a police officer to charge a spouse with an assault if evidence exists. This is a duty regardless of the outcome or the wishes of the officer. The duty in this case is policy written by the British Columbia Attorney General's office. The categorical imperative does not only have to be written policy; a police officer who stops a violator may have a duty to write the ticket if certain conditions of the violator stop warrant it, such as the danger of the activity and the driving history of the driver. There is much to say about the categorical imperative for law enforcement; however, for the purposes of this book, we will concentrate on only a portion.

Within the categorical imperative, Kant (2006) states that "…every rational being, exists as an end in himself, not merely as a means." Kant is saying that we should never use people to attain our desired end result; that we should treat everyone with respect regardless of the outcome. O'Neil (1986) uses an example in which a person deliberately makes a promise to another person without ever intending to honour that promise. In this sense, the person who is being deceived cannot consent because the rule, or maxim, of the first person is not known. In a law enforcement context, a police investigator who promises a witness that she will not have to testify against someone if she gives a statement would not be respecting that person and would be using her as a means to an end. An officer would know that this is not a promise that should be made as it is ultimately up to Crown counsel to determine who testifies and who does not. Kant would argue that the promise is using the witness as means to an end, and therefore not ethical. A law enforcement officer must decide whether to follow a consequentialist perspective, in which the consequences of his or her actions are more important, or a Kantian perspective in which the witness ought not to be used as a means to the effective ends.

Coercion is also a way in which Kant would suggest that respect is not shown. Given the powers that law enforcement officers yield, coercion is a tactic that, while perhaps producing an effective end to an investigation, would be wrong in Kant's view regardless of the outcome because the coercion did not allow the other party to consent to the act. Kant's conclusion is the following maxim: *"*Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end…" (Kant, 2006, p.50)

Q. How can deontological theory assist law enforcement in moral dilemmas?

Universality. Kant suggests that we should consider the implications of our actions as if they were universal. If we are considering not paying transit fares by jumping over the turnstiles, we should consider the implications if all transit users did not pay. In a law enforcement context, we should consider the ramifications of our actions. For example, a lead investigator may consider misleading the media in order to trick a suspect into making a mistake and exposing himself. When the investigator applies the universality rule (i.e., the spectre of all investigators lying to the media universally), it allows the investigator to consider the negative ramifications of the action, even if the lie was made with the intentions of bringing out a moral consequence. This is comparable to rule utilitarianism, in which the universal application of actions should be considered.

The importance of duty. Law enforcement officers are required at times to fulfill their duty no matter what the personal costs. When confronted with a duty that they may not want to perform, the officers should consider that they agreed to perform duties when they swore their oath. These duties must be performed by someone, and when this duty falls to them, they must do their duty. For example, a patrol officer who does not want to criminally charge an acquaintance must consider her duty and the oath that she took when she joined the agency. The caveat to duty is that the duty must be done in good faith; that is, the duty should not be performed if the officer is aware that there is a lack of morality in the duty. It is often said among experienced police officers, "you are paid not for what you do, but for what you might have to do." This maxim refers to dangerous duty that you may not want to do, but are paid to do, and ought to do.

Law enforcement officers facing a dilemma in which rule utilitarianism and Kantian logic are at odds should further understand that the choice between the two schools of thought will yield different outcomes, and that the two schools of thought will help the officer understand the options and how to rationalize the decision made. It is not easy to know what option to choose, but officers should take into account the stakeholders involved, including witnesses, suspects, society, the agency and of course themselves.

Respect: Kant believed that a person should never be treated as a means to an end. The moral decision that a person makes must not in any way take advantage of a person. An example is lying to a person to gain "something" in return, even if the "something" is good or a conclusion that will assist and help people. An example in a law enforcement context would be an investigator using an informant to obtain information on another suspect, while offering the informant the chance to remove a charge, when the investigator knows that this will not happen.

Virtue Ethics

Virtue ethics has its historical background in ancient Greece and was primarily developed by Aristotle. For the purposes of law enforcement, the major foundation in virtue ethics is the idea that if you are a good person, you will do good things, and to be good, you must do good (Pollock, 2007). In essence, we do not do good things because of an analysis of the end result or of an equation to decide how many people to help versus harm. Rather, we do the right thing, or good thing, because of our good character as demonstrated throughout our life. Therefore, the good act is an automatic response requiring little thought. However, when faced with complex ethical dilemmas, the person who has demonstrated a life of good character will show good character, using temperance and intellect. The real question for Aristotle was not, "what should I do?" but rather "what type of person ought I be?" When our answer is that we ought to be a virtuous person, we are likely to act in a virtuous manner, and therefore in an ethical manner.

Aristotle also spoke of flourishing in life, or living in a state of well-being. He used the word *eudaimonia* (from the Greek *eu, "*good," and *daimon,* "spirit;" commonly translated as "happiness" or "welfare," but more accurately as "human flourishing") to express the state of well-being and living a flourishing life. Within this context, Aristotle concentrated on virtues and vices. Virtues are strengths of a person's character that promote flourishing and well-being (Hinman, 2013). Conversely, vices are character flaws that impede flourishing and limit one's sense of well-being.

Hinman (2013) writes of different types of virtues that Aristotle proposed:

- Executive virtues are examples of "strength of will," such as courage and perseverance.
- Moral virtues are related to moral goodness. Examples are compassion, generosity, truthfulness, and good temper.
- Intellectual virtues are related to the ability to consider options. Examples are wittiness, wisdom, and understanding.

When we look at some of these virtues collectively, we can see that they project attributes that we want law enforcement personnel to possess. In a law enforcement context, society has expectations of officers who:

- **Are courageous**. Officers who are willing to put themselves in harm's way, in order to enforce the law, to protect people and property and to prevent crime.
- **Demonstrate perseverance**. Officers who are not easily deterred from doing the right thing or investigating crimes.
- **Exhibit compassion.** Officers who are able to empathize and sympathize with lawbreakers and victims and who understand that situations are complex and that everyone deserves respect.
- **Act with generosity.** Officers who offer themselves off duty by volunteering and who try to better the lives of others through community service.
- **Show truthfulness.** Officers who are trustworthy and who can be counted on to speak the truth, even when the truth is embarrassing, or results in a not-guilty decision in a case that is important to the officer.
- **Display good temper.** Officers who, when confronted with difficult situations, stay calm and who are able to withstand pressure to react physically or verbally.

The virtues listed above are attractive to law enforcement agencies, and people who demonstrate these virtues are those who law enforcement agencies and all other branches of public service want. Vichio suggests a list of core virtues that law enforcement personnel should possess (Fitch, 2014). They include:

- **Prudence.** Officers with the ability to decide the correct action to take when rules and policy are not present.
- **Trust.** Officers with the ability to be relied upon for truth. This must exist between officers and civilians, officers themselves, and officers and the courts.
- **Effacement of self-interests.** Officers who do not abuse their position of authority or gain favouritisms due to their position.
- **Courage.** Officers who place themselves in danger intellectually and physically. Officers who are not afraid of testifying in court and/or making arrests in tense and intimidating settings.
- **Intellectual honesty.** Officers who act while weighing what they learned in training and whose actions reflect their training and their academic abilities.
- **Justice.** Officers who treat everyone fairly, regardless of personal biases, and who act toward individuals as if looking through a veil of neutrality.
- **Responsibility.** Officers who understand what is right and that there are other courses of actions, but have the intent to do right. Officers who can be counted upon to keep oaths, and to be accountable.

The Center for American and International Law identifies what they term the Six Pillars of Character. They created these pillars with the assistance of 30 national leaders and ethicists. The six pillars that they identified as being the most important characteristics of an ethical police officer are:

1. **Trustworthiness.** Includes integrity, promise-keeping, and loyalty.
2. **Respect**. Treating everyone with respect, regardless of any biases or provocations.
3. **Responsibility**. Includes accountability, pursuit of excellence, and self-restraint.
4. **Justice and fairness**. Includes equity and demonstrating due process.
5. **Caring**. Showing concern for others. Showing consideration for decisions that affect others.
6. **Civic virtue and citizenship**. Being socially conscious. Demonstrating concern for one's community.

Q. How can virtue ethics assist law enforcement in moral dilemmas?

As mentioned previously, law enforcement agencies place a great emphasis on good behaviour of their officers. One way to ensure a strong likelihood of good behaviour is to hire those who have moral character that reflect the values of the agency. In clearly identifying these characteristics, agencies are likely to attract those who also identify with these characteristics.

- Virtue ethics, at its core, is also simplistic, having two tenets that are important for law enforcement. There is no need to measure consequences or the morality of the action. Simply, the task is to be good and do good acts. If officers are good, they will act in a virtuous manner.
- There is a need to practise virtue. By practising being virtuous, you will become virtuous in difficult situations automatically. Given this view, it is critical for law enforcement agencies to ensure that applicants wanting to join the agency have practised being virtuous to the point where it has become a habit. Applicants who have practised the virtues listed above will be officers who demonstrate those virtues by habit.

Ethics of Care

Also known as feminist ethics, ethics of care is primarily concerned with caring for others. This has evolved from the need to care for those who cannot care for themselves, such as infants. It is a system that assists us in our relations with other people and thereby strengthens how we positively interact with people. The concept of ethics of care is consistent with many peace-keeping and peace-making roles within law enforcement (Braswell and Gold from Pollock, 2007). Officers routinely find themselves refereeing non-assault domestic and civil arguments while attempting to bring a peaceful resolution to the conflict. Ethics of care is, at times, an important perspective for law enforcement officers when they see a person in need and decide to perform an act of care or kindness. Officers who perform a caring act are, according to ethics of care, acting out of compassion rather from a sense of duty; it is within this context that ethics of care can be a reminder to law enforcement officers that often an ethical solution may be to make peace through consensus and understanding, rather than resolve issues formally through charges.

Ethics of care also supports the notion that issues should be resolved with compassion while building human relationships. In this way, a person should strive to build relationships with the community or individuals. With individuals, the building of rapport is critical to providing compassion to those in crisis and/or need.

Q. How can ethics of care theory assist law enforcement in moral dilemmas?

Building rapport with members of the community is an important aspect of community policing. This enables officers to identify issues and to deal with them with compassion. For example, an officer who builds rapport with students in a high school may become aware of a bullying situation. It is with compassion that the officer will be pushed to action to resolve this issue. Or an officer who is called to a grocery store to arrest a mentally ill street person who is stealing food may, instead of arresting the suspect, find an alternative route, such as connecting the suspect with a social service agency, or arranging for a social worker to help the person finda home.

Law enforcement officers should attempt, where possible, to address such issues with compassion and respect for all the parties involved.

Egoism

Unlike other theories that prescribe how we ought to behave, egoism is a descriptive principle (Pollock, 2007) that does not tell us necessarily how we ought to behave, but rather why we behave the way we do. It infers that the person who acts in an egotistical manner does so because it is natural to act in this way, and therefore it is a moral action unto itself.

According to the tenets of egoism, the core reason that someone does any action is self-serving by bringing happiness or some other benefit to him- or herself. If someone performs an action that appears to be altruistic, the action was likely performed to give the actor gratification in some way. This may come in many forms; for example in the form of positive media attention, or just feeling good about oneself.

The following example may illustrate how a heroic act by law enforcement officers may be viewed differently through the lens of egoism. On June 10, 2014, Vancouver police detectives witnessed a shooting on the seawall in Yaletown. A gunfight ensued in which the suspect was able to escape via bicycle. Armed and reloaded, the suspect pedalled away and was followed by one of the detectives. The suspect fired at the pursuing detective, narrowly missing her. The detective pursued the suspect while being shot at until other police officers arrived who shot the suspect in an exchange of gunfire.

Most people would look at this case and believe that the detective was selflessly trying to apprehend a dangerous suspect before anyone else was shot. While this may be true, proponents of egoism would suggest that the detective acted in her own self-interest because capturing the suspect would satisfy her happiness, that she wanted media attention, or that she thought her actions would look good to her colleagues, thereby making her happy. This is a cynical view of her actions, but may help us understand why some people act in a way that puts them in danger.

Another way to demonstrate egoism is to place yourself in a situation in which you see someone who requires help. Suppose you decide that not assisting would cause you to feel guilty, thereby troubling you. As a response, you assist the person. From an outsider's perspective, you were acting selflessly and in the interest of the person who was requiring assistance. The end result of your actions, though, was twofold:

- Your actions assisted the person in need.
- Your actions made you feel good, allowing you to rid yourself of that troubling feeling resulting from guilt.

Q. How can egoism assist law enforcement in moral dilemmas?

Egoism does not suggest that police officers should act in their own self-interest; certainly this would not be appropriate for law enforcement personnel. Where egoism may help is to better understand why people do things that may appear selfish. This may help us develop empathy for the suspects that appear to be selfish and allow us to better understand that their actions are driven by egoism. Egoism may also assist us in understanding the motives of others, allowing us to look at these motives with more skeptically than we would otherwise.

Egoism can also provide explanations of misconduct among law enforcement officers. Officers who abuse the trust placed on them by society and abuse their authority could be said to be acting in an egoistic state (Souryal, 2011). In this sense, law enforcement officers are acting in their own self-interest and not in the interest of their agency, the individual citizen who was the target of and officer, and society in general. Ultimately, the end result of bad behaviour by law enforcement personnel, according to Souryal (2011, p.275), is "arguably feeding one's ego."

In a broader sense, ethical egoists may also view everything we do as an extension of a desire to live at peace in a society that respects all; every positive action we take is actually selfish activity, so that we can make a better society to live in. In this way, egoists can be positive in their actions making what are apparent good and ethical decisions. However proponents of the egoist theory would suggest that the decisions are at their root self-serving, and therefore egoist in nature.

Criticisms of Egoism

Egoism is an attempt at explaining how we naturally behave with our own interests as a central focus, and that we ought to behave in this way. However, it is an overly cynical perspective on how humans behave. There are plenty of examples of selfless acts that are committed every day and go without notice. While it is true that many donations are made and good deeds done with the expectation that positive publicity will be generated for the giver, this does not necessarily mean that the giver's sole purpose is to gain publicity. It is possible that publicity is a by-product of giving. Furthermore, while it is in the interests of people to make decisions that will better society, there is no evidence that everyone makes these decisions based on self-interest (Rachels, 2006). If these decisions were universalized, then the world would be a markedly poorer place to live in.

Religion or Divine Command Theory

Religion is often considered the most widely used system to make ethical decisions and to conduct moral reasoning (Pollock, 2007). Throughout the world, people rely on a variety of religions to help them determine the most ethical action to take. While divine command theory is widely used throughout the world, there are differences: the application of the theory may differ from religion to religion, and it may differ within each religion.

One of the basic tenets for divine command theory is to use God as the source for all principles. In this way, to rely upon divine command theory, a person must believe that there is a willful and rational god that has provided the direction toward an ethical outcome. It is from God's commands that actions are determined to be right or wrong and, because of this, divine command theory provides an objective assessment of what is ethical or moral. However, there is ambiguity in the way in which some scripture is interpreted.

According to Pollock (2007), there are four assumptions of divine command theory:

1. There is a god.
2. God commands and forbids certain acts.
3. An action is right if God commands it.
4. People ascertain what God commands or forbids.

Divine command theory also provides an explanation of why ethics and morality are so important. In religions, good acts are rewarded in the afterlife, while bad acts condemn the perpetrator to an everlasting punishment. What essentially makes religion such an incredibly powerful ethical system is that there is the spectre of a potentially eternal punishment in the afterlife (Pollock, 2007). This notion of eventual punishment reinforces in its followers the necessity to make ethical decisions based on the commands of their god.

Barry (1985, as cited in Pollock, 2007) describes that understanding God's will is done in three ways:

1. Through individual conscience
2. By religious authorities
4. Through holy scripture

Q. How can divine command theory assist law enforcement in moral dilemmas?

It is important for law enforcement officers who do not practise religion to be cognizant of the importance of religion with believers. As religions provide the most commonly used ethical systems in the world, law enforcement personnel, regardless of their own beliefs, must be aware that not only will some officers refer to scripture, so too will members of the public. It is at times difficult for non-believing officers to understand the power of religion and the importance of its meaning to believers. Non-believers must be cognizant of situations in which, to them, decisions based on divine command theory may seem odd or unethical, but are ethical to the believer. This does not mean that the law does not apply, but that care must be taken to act with empathy when dealing with these situations.

Generally, for officers who believe in God, a source of comfort may be present when facing death or other traumatic events that non-believers may not experience. Officers dealing with death may find comfort in the belief that those who die may be in a better place, that their soul is eternal, and that death may mean that the soul goes to heaven. Believing that death is not the end, but a new beginning, may help officers who practise religion deal with pain and suffering.

Officers are routinely involved in circumstances in which situations appear to be unfair and where innocent bystanders are victimized with tragic outcomes. Officers who believe in God are also able to look at these situations and find comfort in the belief that God has a plan for everyone, even those who have been unfairly victimized. These officers can draw strength from their belief that the apparently random victimization wasn't so random, and that God was acting in a way that, while hard to explain, is planned for some reason only known to God.

Specifically, divine command theory can offer officers a written or prescribed direction to morality. Officers who are faced with a situation in which their values clash with society may fall back on divine command theory for direction in grey areas. An officer who is surrounded with unethical activity by officers, other criminal justice workers, and people on the street may be able to withstand pressure to join in the immoral practice with the belief that God commands moral behaviour toward everyone and prohibits such things as theft through corruption.

Officers could also use divine command theory to reaffirm in their own minds what is right, even when the Criminal Code or other legislation is unclear on a particular issue. By officers asking themselves what would God command or prohibit, they may be able to make a decision that they can justify.

Finally, officers who believe that God is always good would therefore believe that all of God's commands and prohibitions are good. By interpreting scripture, following the directions of religious authority, or making individual interpretations of God's command and prohibitions, officers are therefore able to do good, understanding that ultimately it is God's commands that they follow, and therefore their actions are good.

Criticisms of Divine Command Theory

While religion may be the most common ethical system employed, it has many issues that can be problematic if used as a moral guideline for law enforcement officers. For law enforcement officers in a pluralistic society, who are entrenched in religious doctrine and make ethical decisions based on that religious doctrine, their ethical decisions will not be acceptable with numerous segments of the society that they are sworn to treat equally. While decisions based on religious doctrine may be satisfactory for a law enforcement officer in his or her personal life, they can create difficulties in the workplace. An example is a law enforcement officer who refuses to enforce a court order to clear a group of Christians protesting abortion. The Christian officer may take offecse to such an order, in spite of the court's ruling and society's general acceptance of abortion.

Specifically, in a criminal justice context, Rawls (2005) viewed religion in public life as something that was out of place and that should, instead, be a private affair. Our religious and personal morals should be put aside when doing the business of the public. It is important, according to Rawls, that workers in government institutions not demonstrate their religious affiliations because we all receive benefits from living in a pluralistic society and that, as a result, we ought to withhold our religious and personal morals to ensure equality.

Other criticisms of divine command theory include:

- Religious scriptures are generally ancient and are hard to interpret against the complexities of today's society. As a result, religion as an ethical system does not provide specific ethical guidance to specific ethical dilemmas. Scriptures are ambiguous and are generally broad in nature.
- There are many religions in the world, with each possessing different prescriptions for morality. Religions have different gods from one another that are worshipped. Does the god a person chooses make a difference? Can you pray to the "wrong" god, or no god?
- Science has no evidence of the existence of God. Without a belief in the existence of God, divine command theory loses its authority among a large portion of the population who base their lives on science and empiricism.
- If we do believe in God, "who" determines what the commands are is not absolutely known or agreed upon. Within religious sects, arguments about who interprets commands is commonly a schism that separates factions.
- Those who believe in God can interpret the commands in their own way, thereby creating different interpretations to the solutions sought for ethical dilemmas; consequently, there can be confusion about what exactly is God's will.

- Contradictions in scripture are confusing. On one side there is mention of the sanctity for life, but there are interpretations that are cited by fundamentalists that provide allowances to cause death to other humans. The most commonly used example of this is in the Quran, in which one passage reads that infidels are to be caught and slayed, but another preaches that Allah loves transgressors. Interestingly, the first verse, it is argued by Muslims, is taken out of context, and refers to Muslims providing self-defence. Interpretations as to what constitutes self-defence further complicates when this verse should be enacted. Should an infidel, in the eyes of a fundamentalist, be slayed for what the fundamentalist deems as an insult, and therefore an attack?
- The notion that the might or power of God should be the basis of our ethical decisions indicates that the morality of the decision is based upon the fear of God's might and power. If this is so, then is the decision really an ethical decision, or is it coerced?
- If God is omnipotent, and is also the basis of morality:
    - How can we rationalize the suffering of innocent children in developing countries?
    - Is this God's plan to allow this to happen? If it is, how can we call this moral?

Natural Law

Natural law was espoused by Saint Thomas Aquinas, who viewed the world as being created by God and understood that humans are rational beings capable of using their intellect to comprehend the world. By extension, God enabled humans to reason in a natural way to make ethical choices. Aquinas viewed the first principle of natural law as: "good is to be done and promoted, and evil is to be avoided" (White, 2006, p.29). Simply put, natural law asserts that what is good is natural, and what is natural is good. Unlike Thomas Hobbes' cynical view in the social contract theory 0see next section), Aquinas viewed humans as being naturally inclined to do good rather than evil.

Because of the natural inclination toward doing good, Aquinas viewed morality as a universal set of rights and wrongs that are shared across cultures. He delineated two basic human inclinations:

- To preserve one's own life
- To preserve the human species

Followers of natural law would suggest that the decision is moral if it furthers human life or preserves one's own life. Should the decision go against human life or preserving your own life, the decision is immoral.

Q. How can natural law assist law enforcement in moral dilemmas?

Natural law can reaffirm in officers the importance of their job, that being to preserve their own life and the human species. Officers could be reminded that property is not as important as life and that their sole function should be public safety, rather than the protection of property, which is one of the common law duties of police officers.

Officers could also use natural law as a reminder of the importance to preserve their own lives when confronted with dangerous situations, and that is natural to want to protect oneself.

Criticisms of Natural Law

A problem inherent in natural law is defining what is natural. A proponent of natural law may deduce that homosexuality is unnatural because it does not preserve the human species. However, biologists have documented many different species that engage in homosexual behaviour. Many people consider homosexual behaviour as unnatural; however, it is seen among a variety of animal species, therefore the case for this being a natural activity is strong (Fereydooni, 2014).

Social Contract Theory

Social contract theory is another descriptive theory about society and the relationship between rules and laws, and why society needs them. Thomas Hobbes (1588-1689) proposed that a society without rules and laws to govern our actions would be a dreadful place to live. Hobbes described a society without rules as living in a "state of nature." In such a state, people would act on their own accord, without any responsibility to their community. Life in a state of nature would be Darwinian, where the strongest survive and the weak perish. A society, in Hobbes' state of nature, would be without the comforts and necessities that we take for granted in modern western society. The society would have:

- No place for commerce
- Little or no culture
- No knowledge
- No leisure
- No security and continual fear
- No arts
- Little language

Social contract theory is a cynical, but possibly realistic, view of humanity without rules and people to enforce the rules. An example of a society in a state of nature can at times be observed when a society is plunged into chaos due a catastrophic event. This may occur in because of a war, such as happened in Rwanda, or by cause of a natural disaster, such as what happened in New Orleans in the aftermath of Hurricane Katrina. In both of these examples a segment of society devolved from a country in which the rule of law was practised to a community in a state of nature. Rules and laws were forgotten and brute force dictated who would survive. Unfortunately, without laws and rules, and people to enforce those laws and rules, society devolves into a state of nature.

In general, even without the calamities of natural disasters and war, Hobbes assumed people would strive for more wealth and power in what could be described as a "dog eat dog" society, where, he believed, people will do whatever is required to survive in a state of nature, where rules and laws are non-existent. This would mean that people will act in "wicked" ways to survive, including attacking others before they are attacked themselves. With rules in place, people feel protected against attack.

In a state-of-nature society, the strongest would control others that are weak. Society would have no rules or laws forbidding or discouraging unethical or immoral behaviour. People would be forced to be solely self-interested in order to survive and prone to fight over possession of scarce goods (scarce because of the lack of commerce).

For Hobbes, the solution is a social contract in which society comes to a collective understanding — a social contract — that it is in everyone's interest to enforce rules that ensure safety and security for everyone, even the weakest. Thus, the social contract can deliver society from a state of nature to a flourishing society in which even the weak can survive. The degree to which society protects the weak may vari; however, in our society, we agree to the contract and need the contract to ensure security for all.

The social contract is unwritten, and is inherited at birth. It dictates that we will not break laws or certain moral codes and, in exchange, we reap the benefits of our society, namely security, survival, education and other necessities needed to live.

According to Pollock (2007), there are five main reasons that laws are required in society:

1. The harm principle: to prevent the serious physical assault against others that would be victimized.
2. The offence principle: to prevent behaviour that would offend those who might otherwise be victimized.
3. Legal paternalism: to prevent harm against everyone in general with regulations.
4. Legal moralism: to preventing immoral activities such as prostitution and gambling.
5. Benefit to others: to prevent actions that are detrimental to a segment of the population.

Problems with the social contract theory include the following:

- It gives government too much power to make laws under the guise of protecting the public. Specifically, governments may use the cloak of the social contract to invoke the fear of a state of nature to warrant laws that are intrusive.
- From the time that we are born, we do not knowingly agree to a contract and therefore do not consent to the contract. An outflow of this thought is a movement entitled the "Sovereign Citizens" or "Freemen of the Land." The FBI identifies these movements as individual citizens who reject government control and "the government operates outside of its jurisdiction. Because of this belief, they do not recognize federal, state, or local laws, policies, or regulations." (US Department of Justice, 2010). The FBI considers these movements as domestic terrorist threats (FBI, 2011).
- If we do accept the contract and wish to abide by it, we may not fully understand what our part of the contract is or ought to be.
- Contracts can be unfair for some. For example, the poor do not get the same benefits of the contract.

Q. How can social contract theory assist law enforcement in moral dilemmas?

While social contract theory does not tell people how they ought to behave, it does provide a basis to understand why society has implemented rules, regulations, and laws. If not for the social contract theory, our understanding of the need for these rules would be limited.

Specifically for law enforcement, social contract theory is important to justify the power that law enforcement can exert over the population as a whole (Evans and MacMillan, 2014). The power imbalance, held by law enforcement, is part of the contract that society has agreed upon in exchange for security. Where the contract can be problematic is when the power used by law enforcement exceeds what is expected by society under the contract.

Rawls' Theory of Justice

John Rawls (1921-2002) was a contemporary philosopher who studied theories surrounding justice. His theories are not focused on helping individuals cope with ethical dilemmas; rather they address general concepts that consider how the criminal justice system ought to behave and function in a liberal democracy. It is for this reason that it important that all law enforcement personnel be aware of Rawls' theories of justice or at least have a general understanding of the major concepts that he puts forth.

Rawls' theory is oriented toward liberalism and forms the basis for what law enforcement, and the criminal justice system, should strive for in a pluralistic and liberal society. Borrowing from some concepts of social contract theory, Rawls envisions a society in which the principles of justice are founded in a social contract. However, Rawls identifies problems with the social contract that do not allow fairness and equality to exist among members of society and therefore proposes a social contract which is negotiated behind a "veil of ignorance." Here the negotiating participants have no idea what their race, gender, education, health, sexual orientation, and other characteristics are so that the social contract is fair. Ultimately, Rawls argues that the primary concern of justice is fairness, and within this paradigm Rawls identifies two principles:

- "Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others" (Rawls, 2006, p.63). Rawls goes further by allowing each person to engage in activities, as long as he or she does not infringe on the rights of others.
- "Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage (b) attached to positions and offices open to all…" (Rawls, 2006, p.63). Likewise, everyone should share in the wealth of society and everyone should receive benefits from the distribution of wealth. Rawls does not argue that everyone should be paid the same, but rather that everyone should have benefit from a fair income and have access to those jobs that pay more.

These principles should be adhered to, according to Rawls, to ensure that disadvantages are neutralized and everyone receives the same benefits of justice.

Rawls further addresses ethics in the individual, though this is not the central tenet of his theory, and is somewhat of a general statement of how moral people should behave (Banks, 2013).

Moral Relativism

The principles of morality can be viewed as either relativist or absolutist (Souryal, 2011). Moral relativism refers to the differences in morality from culture to culture. A moral relativist's perspective would state that what is moral in one culture may not be moral in another culture, depending upon the culture. This is important for police officers to understand in a pluralistic society in which many cultures and religions make up the community where the police officer works. It is important for officers to appreciate that what may be immoral in a traditional Canadian sense may not be moral to members of a culture traditionally found outside of Canada. In realizing this, officers may be able to withhold judgment, or at the very least empathize with the members from that community for what in the officer's perspective may be an immoral act.

Morality in policing is, in most cases, relativistic since police officers are prone to accept moral standards that allow them to achieve goals within the police subculture, often at times contrary to the morals within mainstream society (Catlin and Maupin, 2002). It is moral relativism that enables police officers to accept lying to suspects in interviews in order to gain confessions, or to witnesses to gain compliance. In this instance, an officer may believe that lying is not morally permissible in certain circumstances, but is permissible in other situations. Another example in which a moral relativist perspective may assist an officer is in understanding circumstances surrounding physical punishment of children who misbehave. A culture may maintain that physical puinishment is morally permissible, even though in Canada the same punishment may be in violation of the Criminal Code. It is helpful for officers to understand this while investigating these offences, so that they can build rapport and empathize with suspects, and use moral relativity as a theme in interviews to alleviate the guilt the suspect may feel.

Contrary to relativism, moral absolutism refers to the belief that morality is the same throughout all cultures; that what is right in one culture is right in all cultures and what is wrong in one culture is wrong in every culture. Here, the immoral act is always wrong, no matter the culture, because there are universal rules governing morality. Police officers who are absolutists would reject lying, relying instead on a deontological perspective in which the consequences of the lie do not matter.

Moral relativism is a meta-ethical theory because it seeks to understand whether morality is the same in different cultures. Proponents of moral relativism do not observe universal rules governing moral conduct; rather, moral rules are contingent on at least one of:

- Personality (McDonald, 2010)
- Culture (McDonald, 2010)
- Situations (Catlin and Maupin, 2010).

The difficulty with applying relativism to the police culture is that it does not take into account the diversity of individuals that make up the police culture (Westmarland, 2008). One of the initiatives of community policing is that police agencies now recruit from a wide range of ethnic and cultural backgrounds (Barlow and Barlow, 2009; Kalunta-Crumpton, 2009). This diversity within law enforcement is reflected by the wide array of attitudes that police have toward various issues and the change that has occurred within policing (Newburn and Reiner, 2007). The ability of cultural norms to change is ever-present, and norms can and do change to reflect the values of other cultures (Groarke, 2011). Ultimately, cultural relativism reflects the notion that what is right is permissible in the culture the actor is within and that moral principles are not universal (McDonald, 2010). Within the policing context, the moral underpinnings of members of the police subculture are often in step with the morals of mainstream society, but at times they are not.

REFERENCES

1. Aquinas, Saint Thomas, (2006). The Natural Law. In White, J.E. (ed.) *Contemporary Moral Problems* (pp. 27-30). Belmont CA., Thomas Wadworth.
2. Banks, C. (2013). *Criminal Justice Ethics.* Thousand Oaks, CA: Sage Publishing.
3. Barlow, D. and Barlow, M. (2009). Community policing in the United States: social control through image management in D. Wisler and I. Onwudiwe (eds) *Community Policing: International Patterns and Comparative Perspectives,* Boca Raton, Florida: CRC Press, 167-188.
4. Catlin, D. and Maupin, J. (2002). Ethical orientations of state police recruits and one year experienced officers. *Journal of Criminal Justice* 30: 491-498. Retrived from:http://www.sciencedirect.com.ezproxy.lib.le.ac.uk/science?_ob=MiamiImageURL&_cid=271758&_user=1
5. Evans and MacMillan (2014). *Ethical Issues in Criminal Justice and Public Safety*. (4th ed). Edmond Montgomery Publications, Toronto.
6. FBI (2011). *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement, September, 2011,* Retrieved from: *http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/September-2011-leb.pdf.*
7. Fereydooni, A. (2014). Do Animals Exhibit Homosexuality? *Yale Scientific* (2012) Retrieved from:http://www.yalescientific.org/2012/03/do-animals-exhibit-homosexuality/
8. Fitch, B., (2014). *Law enforcement ethics: classic and contemporary issues.* Thousand Oaks, Ca., Sage Publishing.
9. Groarke, L. (2011). *Moral Reasoning: Rediscovering the Ethical Tradition,* Don Mills, Ontario: Oxford University Press.
10. Hinman, L. (2013). *Ethics: a pluralistic approach to moral theory*. Wadsworth Publishing Co.
11. Kalunta-Crumton, A. (2009). Patterns of community policing in Great Britain' in D. Wisler and I. Onwudiwe (eds) *Community Policing: International Patterns and Comparative Perspectives,* Boca Raton, Florida: CRC Press, 149-166.

12. Kant, E. (2006). The Categorical Imperative. In J. White (Ed.) *Contemporary Moral Problems* (pp. 14-50). Belmont CA. Thomson Wadsworth.

13. Petrunik, M. (2002). Managing Unacceptable Risk: Sex Offenders, Community Response,and Social Policy in the United States and Canada. *International Journal of Offender Therapy and Comparative Criminology*, 46(4): 483-511. Retrieved from: http://ijo.sagepub.com/content/46/4/483.refs.html

14. Pollock, J. (2007). *Ethical Dilemmas and Decisions in Criminal Justice.* Belmont, California: Wadsworth Cengage Learning.

15. McDonald, G. (2010). 'Ethical relativism vs absolutism: research implications'. *European Business Review*22(4): 446-464.

16. Newburn T. and Reiner, R. (2007). 'Policing and the Police' in M. Maguire, R. Morgan and R. Reiner. *The Oxford Handbook of Criminology* (4th ed). Oxford: Oxford University Press, 910-952.

17. O'Neill, O. (1986). From *Matters of Life and Death*, ed. Tom Regan, McGraw-Hill Publishing Company. Excerpted in *Contemporary Moral Problems*, ed. James E. White Copyright 1994, West Publishing Company.

18. Rachels, J. (2006). Egoism and Moral Skepticism. In J. White (Ed.) *Contemporary Moral Problems* (pp. 10-18.). Belmont CA. Thomson Wadsworth.

19. Rawls, J. (2005). *Political Liberalism*, New York, NY: Columbia University Press.

20. Rawls, J., (2006). A Theory of Justice. In White, J.E. (ed.) *Contemporary Moral Problems (*pp. 60-66). Belmont CA., Thomas Wadworth.

21. Sandel, M. (2010). *Justice: What is the Right Thing to Do?* Farrar, Straus and Giroux, New York.

22. Souryal, S. (2011). *Ethics in Criminal Justice: In Search of the Truth* (5th Edition), Burlington, Maine: Elsevier.

23. U.S. Department of Justice, Federal Bureau of Investigation, Domestic Terrorism Operations Unit and Domestic Terrorism Analysis Unit, *Sovereign Citizen Danger to Law Enforcement* (Washington, DC, 2010).

24. Vess, J. (2008). Sex Offender Risk Assessment: Consideration of Human Rights In Community Protection Legislation. *Legal* and *Criminological Psychology* 13, p.245–256.

25. Westmarland, L. (2008). Police cultures in T. Newburn (ed) *Handbook of Policing*, Collumpton, UK: Willan Publishing, 253-280.

3 .ETHICAL DILEMMAS AND THE PROCESS OF EFFECTIVE RESOLUTION

Ethical Dilemmas

When we are confronted with a problem or an issue for which we are required to make a difficult decision, we face a dilemma. The decision may be difficult because there are at least two competing values we are forced to choose between. For example, we may want to purchase an expensive product, but we may have to decide between an expensive, higher-quality product and a cheaper, inferior product. Our decision will involve balancing the values between saving money and purchasing a product that may perform better and last longer. The decision is often difficult, and sometimes we make the wrong decision with the best of intentions of making the right decision.

In order to solve ethical dilemmas, we must be aware of what values we consider important. Pollock (2010, p.13) defines values as unverifiable "elements of desirability, worth and importance." They are unverifiable because they are not capable of being scientifically proven and may vary from person to person. Evans and MacMillan (2014) define values as opinions and beliefs that we decide are beneficial or important. Before we address how we can solve ethical dilemmas, we need to understand what values are and why they are so important.

Values

Values are what guide an agency and its employees. Law enforcement agencies will have differing values depending on their function. An agency that investigates wildlife infractions may possess different values from correctional services.

Let's take a look at various law enforcement agencies and the values they identify as being important on their websites.

Canadian Border Services Agency (CBSA)

Integrity

- We exercise our authority in an honest, open and fair manner.
- We accept responsibility for our actions in order to build and maintain a reputation of trustworthiness and accountability.

Respect

- We serve the public interest through non-partisan support of our Minister.
- We show the utmost appreciation for the dignity, diversity and worth of all people and uphold the *Canadian Charter of Rights and Freedoms*.
- We develop and sustain mutual trust with our colleagues.

Professionalism

- We employ public resources wisely and properly.
- We provide efficient, competent and excellent service.
- We set high standards of achievement and accountability both individually and collectively.

BC Corrections

Integrity

- Taking responsibility for our actions
- Understanding how our actions can affect others

Courage

- Doing what's right and staying positive, not popular
- Trying something new, risking failure
- Leading by example

Teamwork

- Coming together in times of crisis
- Mentoring
- Working with people in other departments for a common purpose

Passion

- Sharing creative solutions with the leadership team
- Demonstrating pride in what we do
- Attempting to perform at a level we would expect of others

Service

- Maintaining respectful relationships
- Working effectively with our justice partners
- Doing our job really well

Curiosity

- Listening to new ideas
- Challenging the way we do business and being willing to try new ideas
- Seeking a better way to achieve our goals

Accountability

- Being responsible for any action we take, and believing in ourselves
- Taking ownership for our actions
- Providing effective leadership and direction to our teams

Vancouver Police Department

The Vancouver Police Department has four core values, which they refer to as IPAR:

- Integrity
- Professionalism
- Accountability
- Respect

Royal Canadian Mounted Police (RCMP)

Recognizing the dedication of all employees, we will create and maintain an environment of individual safety, well-being and development. We are guided by:

- Integrity
- Honesty
- Professionalism
- Compassion
- Respect
- Accountability

When applying for a job with any law enforcement agency, it is important that the applicant understands the core values of that agency. The Vancouver Police website succinctly addresses the importance of knowing the agency's stated core values and demonstrating a life lived where these values have been incorporated in day-to-day living:

These core values can't be taught in any school, and they are non-negotiable for our applicants. Without these, it would be impossible to have a successful career with the VPD.[5]

Values are not solely limited to what the agency believes are core values, but also include one's personal and outside values. (Caldero and Crank, 2004). For example, applicants to the Vancouver Police Department should be aware of the agency's values and demonstrate how they have incorporated these values into their everyday personal and professional life.

We are inclined to have similar values that are shared among other members of the agency. Values are important for law enforcement officers and should be shared and agreed upon by all members. These imparted values are concentrated throughout the agency and become part of the agency's culture. Working with various constituents and members of other agencies also requires officers to consider their values. The Canadian Border Services Agency articulates the full integration of values from various sectors of society in its values statement, which reads:

Values are a compass that guides us in everything we do; they represent what we believe and care about. Values cannot be considered in isolation from each other as they often overlap. We are expected to integrate public sector and CBSA values into our decisions, actions, policies, processes, systems, and how we deal with others. Similarly, we can expect to be treated in accordance with these values by our colleagues and management.[6]

Let's review a situation of differing values in a law enforcement case. As illustrated in the table below, in the case of an active shooter at a theatre, individuals involved in the shooting will have differing values.

Role at the Theatre	Values
Single person	Hope, stamina, sobriety
Mother with child	Caring, concern, fortitude
Officer responding	Self-discipline, fortitude, courage
Follow-up detectives	Accountability, empathy, consideration

Each person will have his or her own interests and goals, which reflect the values that are important to them at the time. The mother with her child is primarily concerned with the safety of her child, and must show caring to her child and the fortitude to protect her child in the face of danger. Conversely, the follow-up detectives sent to investigate the shooting have goals that include conducting a thorough investigation. They may share some of the values that the mother possesses, but for the investigation, they will likely possess values of accountability to the mother and other victims, as well as have empathy for all the victims' families. When the situation changes, so too do the values that we possess.

The Ethics Resource Center (2009), located in Arlington, Virginia, identifies the following values as typical values that appear throughout codes of ethics. These are important for us to remember when faced with difficult ethical decisions where we are required to be aware of all the values of each of the vested stakeholders. Some ethical values include:[7]

Acceptance	Favorable reception or belief in something
Accomplishment	Doing or finishing something successfully
Accountability	Obligation or willingness to accept responsibility
Adaptability	The ability to modify behavior to fit changing situations
Adventurousness	Inclination to undertake new and daring enterprises
Allegiance	Loyalty or the obligation of loyalty
Altruism	Unselfish concern for the welfare of others
Ambition	An eager or strong desire to achieve something
Appreciation	Recognizing the quality, value or significance of people and things
Aspiration	A strong or persistent desire for high achievement
Assiduousness	Unceasing; persistent; diligent
Authenticity	The quality or condition of being trustworthy or genuine
Autonomy	The condition or quality of being independent
Benevolence	An inclination to perform kind, charitable acts
Camaraderie	Goodwill and lighthearted rapport between or among friends
Caring	Feeling and exhibiting concern and empathy for others
Changeability	The ability to modify or adapt to differing circumstances
Charity	Generosity toward others or toward humanity
Chastity	The condition of being of virtuous character
Cheerfulness	The quality of being cheerful and dispelling gloom
Citizenship	Exercising the duties, rights, and privileges of being a citizen
Clear thinking	Acting intelligently without mental confusion
Collaboration	To work cooperatively especially in a joint intellectual effort
Commitment	Being bound emotionally or intellectually to a course of action or to another person or persons
Community	Sharing, participation, and fellowship with others
Compassion	Deep awareness of the suffering of others coupled with the wish to relieve it
Competence	The state or quality of being adequately or well qualified
Competitive	To strive to do something better than someone else
Composure	Maintaining a tranquil or calm state of mind
Concern	Regard for or interest in someone or something
Conscientiousness	The trait of being painstaking and careful
Consideration	Process of employing continuous, careful thought and examination
Consistency	Reliability or uniformity of successive results or events
Constancy	Steadfastness in purpose
Cooperation	The willing association and interaction of a group of people to accomplish a goal
Courage	The state or quality of mind or spirit that enables one to face danger, fear, or vicissitudes with confidence and resolution
Courtesy	Civility; consideration for others
Credibility	The quality or power to elicit belief
Decency	Conformity to prevailing standards of propriety or modesty
Dedication	Selfless devotion of energy or time
Democracy	The principles of social equality and respect for the individual within a community
Dependability	The trait of being reliable
Determination	Firmness of will, strength, purpose of character

Diversity	A point of respect in which things differ; variety
Easygoing	Relaxed or informal in attitude or standards
Education	Obtaining or developing knowledge or skill through a learning process
Efficiency	The quality of producing an effect or result with a reasonable degree of effort to energy expended
Empathy	Identification with and understanding of another's situation, feelings, and motives.
Encouragement	The act of incitement to action or to practice
Equality	The right of different groups of people to receive the same treatment
Equity	The state, quality, or ideal of being just, impartial, and fair
Ethics	The way people behave based on how their beliefs about what is right and wrong influence behavior
Excellence	State of possessing good qualities in an eminent degree
Fairness	Consistent with rules, logic, or ethics
Faith	Confident belief in the truth, value, or trustworthiness of a person, idea, or thing
Faithfulness	Adhering firmly and devotedly to someone or something that elicits or demands one's fidelity
Fidelity	Faithfulness; loyalty or devotion
Flexibility	Responsive to change
Forgiveness	The willingness to stop blaming or being angry with someone
Fortitude	The strength or firmness of mind that enables a person to face danger, pain or despondency with stoic resolve
Friendship	A relationship between people based on mutual esteem and goodwill
Generosity	Liberality in giving or willingness to give
Gentleness	The quality of being mild and docile
Genuine	Not spurious or counterfeit
Giving	Voluntarily transferring knowledge or property without receiving value in return
Goodness	Morally right, or admirable because of kind, thoughtful, or honest behavior
Goodwill	A friendly attitude in which you wish that good things happen to people
Gratitude	A feeling of thankfulness and appreciation
Hardworking	Industrious and tireless
Helpfulness	The property of providing useful assistance or friendliness evidence by a kindly and helpful disposition
Honesty	Fairness and straightforwardness of conduct
Honor	Principled uprightness of character; personal integrity
Hope	The feeling that something desired can be had or will happen
Humility	Feeling that you have no special importance that makes you better than others
Industriousness	The characteristic of regularly working hard
Ingenuity	Inventive skill or imagination
Initiative	Ability to begin or to follow through energetically with a plan or task
Integrity	Strict adherence to moral values and principles
Joy	Intense or exultant happiness
Justice	Conformity to moral rightness in action or attitude
Kindness	The quality or state of being beneficent
Law-abiding	Abiding by the encoded rules of society

Liberty	The right and power to act, believe, or express oneself in a manner of one's own choosing.
Love	A feeling of intense desire and attraction toward a person or idea
Loyalty	A feeling or attitude of devotion, attachment and affection.
Mercy	Forgiveness shown toward someone whom you have the power to punish
Moderation	Having neither too little or too much of anything
Morals	Individual beliefs about what is right and wrong
Obedience	Compliance with that which is required; subjection to rightful restraint or control
Opportunity	Favorable or advantageous circumstance or combination of circumstances
Optimism	A bright, hopeful view and expectation of the best possible outcome
Patience	The ability to accept delay, suffering, or annoyance without complaint or anger
Peace	Freedom from war or violence
Perseverance	Steady persistence in adhering to a course of action, a belief, or a purpose
Promise-keeping	Keeping your word that that you will certainly do something
Prudence	Doing something right because it is the right thing to do
Punctuality	Adherence to the exact time of a commitment or event
Purity	Moral goodness
Reason	The ability to think and make good judgments
Recognition	An acceptance as true or valid
Reconciliation	Enabling two people or groups [to] adjust the way they think about divergent ideas or positions so they can accept both
Reliability	Consistent performance upon which you can depend or trust
Repentance	Remorse or contrition for past conduct
Resilience	The ability to rebound quickly from misfortune or change
Resourcefulness	The ability to act effectively or imaginatively, especially in difficult situations
Respect	Polite attitude shown toward someone or something that you consider important
Responsibility	That for which someone is responsible or answerable
Righteousness	The state of being morally upright; without guilt or sin
Sacrifice	To give up something for something else considered more important
Self-control	Control of personal emotions, desires, or actions by one's own will
Self-discipline	Making yourself do things when you should, even if you do not want to do them
Sensitivity	Awareness of the needs and emotions of others
Serenity	Calmness of mind and evenness of temper
Sharing	To allow others to participate in, use, enjoy, or experience jointly or in turns
Sincerity	Genuineness, honesty, and freedom from duplicity
Sobriety	Habitual freedom from inordinate passion or overheated imagination; calmness; coolness; seriousness
Stamina	The physical or mental strength to do something for a long time
Stewardship	The careful conducting, supervising, or managing of something
Supportive	Furnishing support or assistance
Thoughtfulness	The tendency to anticipate needs or wishes
Tolerance	Recognizing and respecting the beliefs or practices of others
Tranquility	A state of calm and peacefulness

Trustworthiness	The trait of deserving confidence
Understanding	Knowing how something works or a positive, truthful relationship between people
Values	Core beliefs that guide and motivate attitudes and actions
Virtue	Doing something right because it is the good thing to do
Wisdom	The ability to make good judgments based on what you have learned from your experience
Work	Perform as intended or desired

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Solving Ethical Dilemmas

With values as focal point, the National Association of Social Workers has created a framework that is used by social workers to address ethical dilemmas. The framework includes six steps:[1]

- Determine whether there is an ethical issue or/and dilemma. Is there a conflict of values, or rights, or professional responsibilities?
- Identify the key values and principles involved. What meanings and limitations are typically attached to these competing values?
- Rank the values or ethical principles which – in your professional judgement – are most relevant to the issue or dilemma. What reasons can you provide for prioritizing one competing value/principle over another?
- Develop an action plan that is consistent with the ethical priorities that have been determined as central to the dilemma. Have you conferred with clients and colleagues, as appropriate, about the potential risks and consequences of alternative courses of action? Can you support or justify your action plan with the values/principles on which the plan is based?
- Implement your plan, utilizing the most appropriate practice skills and competencies. How will you make use of core social work skills such as sensitive communication, skillful negotiation, and cultural competence?
- Reflect on the outcome of this ethical decision making process. How would you evaluate the consequences of this process for those involved: client(s), professional(s), and agency(ies)?

In comparison, Evans and MacMillan (2014) have developed a framework involving 10 steps to make ethical decision-making efficient and practical. This framework is specific to law enforcement officers and addresses the consideration of laws, regulations, policy, and procedures that other frameworks assume will be followed, but in law enforcement are very important to avoid charges and allow cases against suspects to proceed. The framework concludes with a follow-up to determine the effectiveness of the course of action taken by the officer.

As a simple alternative to these frameworks, students should consider the following framework:

1. Establish the facts surrounding the ethical dilemma.
2. Facts are important in law enforcement. To investigate all cases, officers must rely on facts to guard against misinformation and cognitive biases. This is also true in ethical dilemmas that we face. If the facts are not known to us, we must investigate everything that surrounds the dilemma to ensure we are acting on the right information. Avoid acting on rumours and gossip by verifying information through factual information and evidence.
3. *Determine your legal obligations and duties.*
4. We must be sure what our professional and legal obligations are. Professional and legal obligations will likely allow us to easily decide on a course of action to take in an ethical dilemma. However, while professional and legal obligations may not always require a course of action that coincides with these obligations, our awareness of any professional and legal obligations must be known to allow us to be fully cognizant of the consequences of our actions should we choose to ignore professional or legal obligations.
5. *Establish the interested participants involved.*
6. It is important to know who will be impacted by the course of action that we decide upon. Often the primary participants are easy to identify and it is the secondary participants that are often not considered. These may include friends, families, or employees that are related somehow to the primary participants in the ethical dilemma. Knowing the impact of the decision made to secondary participants may be particularly important for a decision made with utilitarian underpinnings; where

the rights of those who are not part of the majority may not be considered.

7. *Determine the ethical values of each participant.*
8. Determining ethical values is important to allow us an understanding of what is truly at stake. A participant in an ethical dilemma may value loyalty as the most important value. However, another participant may value equality as the more important value. When considered, the value of loyalty may not compare with equality, depending upon the ethical dilemma.
9. *Consider normative ethical theories as an aide to determine a course of action.*
10. When considering options, normative ethical theories may assist us in determining the consequences of actions, or the duties we may be obligated to follow that fall outside of the laws, rules, and procedures. We may also assess whether the decision we are considering is rational from another perspective we have not considered. We may also settle on an option, and rely on an ethical theory to assist us in articulating the reasoning behind the option we have chosen.
11. *Consider options that would be ethically sound.*
12. There may be several options to consider, and each option ought to be considered critically by determining what harm it would cause and what values the person being harmed holds. The participant should consider the positives and negatives of the decision and determine the risks and benefits associated with each option, as well as the benefits of each action, with these values in mind.
13. *Consideration of the possible negative and positive outcomes of each possible option.*
14. Try to predict what may otherwise be unintended consequences of your decision. These consequences may not be readily apparent, but they require a critical analysis of the consequences of your decision. To help with this, try asking the following questions:

- Would the action taken be well received if it was on the front page of a newspaper? While this should be a consideration, keep in mind that often the right decision may be the least popular in public opinion.
- If the decision is job-related, would the agency or company you work for still hire you if it knew you would make this decision? If the answer is yes, then this should give weight to the decision you are about to make.
- If the decision is not job-related, would the agency you would like to work for still hire you if it knew all the facts surrounding the dilemma and the decision you would make? If the answer is yes, then this should give weight to the decision you are about to make.

Implement options after considering steps 1-7.

REFERENCES

1. Crank, J. P., & Caldero, M. A. (2004). Police Ethics: The Corruption of Noble Cause (2nd ed.). United States: Anderson Publishing Company (OH).
2. Ethics Resource Center, (2009). Definitions of Values. Retrieved from: http://www.ethics.org/resource/definitions-values
3. Evans and MacMillan (2014). Ethical Issues in Criminal Justice and Public Safety (4th ed). Edmond Montgomery Publications, Toronto.
4. Pollock, J. (2010). Ethical Dilemmas and Decisions in Criminal Justice. Belmont, California: Wadsworth Cengage Learning.

4. KEY ETHICAL ISSUES WITHIN LAW ENFORCEMENT

Ethical Issues

There are numerous ethical issues that arise in law enforcement that are particular only to law enforcement. While widespread systemic corruption and lawbreaking by law enforcement officers in Canada is relatively rare, although it does occur from time to time. Such infractions include a clear violation of federal, provincial, or municipal statutes, and for the sake of brevity, they do not warrant discussion in this text. However, readers should look at such issues critically to gain an understanding of the variables that surround them. It is important to look beyond the obvious moral, ethical, and/or legal violations of the main actor and to critically assess the ethical issues that can, at times, surround the case peripherally. For example, Vancouver police officer Constable Hodson was arrested for selling drugs from his police car and threatening his former informant. This is a clear-cut violation of numerous statutes, including the Criminal Code and the Controlled Drugs and Substances Act. Nonetheless, the following questions may be asked relating to the case:

- What questions arise about the ethics of the Vancouver Police Department investigating Hodson?
- Did the Vancouver Police Department choose to ignore warning signs that Hodson was becoming increasingly involved in immoral behaviour?
- Should the Vancouver Police Department have conducted integrity testing of members making drug arrests?
- What can the Vancouver Police Department do to avoid such a serious breach in the future?
- Should the Vancouver Police Department have detected this moral flaw in Hodson before hiring him?

Key ethical issues that face law enforcement are not easy to identify at times, and when they are identified, they are open to interpretation. Often in law enforcement, a high-profile decision made by an officer in a millisecond is analyzed over months and sometimes years. Even with this ability to analyze the decision over years, a consensus is often not reached about whether the law enforcement officer’s actions were ethical or not. It is for this reason that it is important to look at all ethical issues in law enforcement with a critical mind, so we can understand both sides of each issue. It is also why this text will focus on those issues that are not clearly ethical or unethical, but nonetheless are deserving of debate.

The Ethics of Power and Authority

Law enforcement officers possess enormous amounts of power, which can be used against citizens to deprive them of their freedom, search them and their dwellings, seize their property, and use force against them. These powers are legally permitted under specific circumstances, and law enforcement officers are trained to know when these powers can be legally applied. As law enforcement officers rank among the most powerful occupations in society, what compounds their ability to use their power is that they are often in contact with relatively powerless and disenfranchised citizens who may be unable to resist an officer's illegitimate use of that power. These powers are legally prescribed, and law enforcement officers are well aware of them. It is important that law enforcement officers not misuse their power for the following reasons.

Because of the psychology of citizenship. Citizens, for the most part, want to participate in the "social contract," to be a part of mainstream society and carry out their citizenship responsibilities. They want to belong to society and will do what they think is required by authorities to accomplish this. As a result, they will often try very hard to respond to what law enforcement requires and may be susceptible to unreasonable requests by law enforcement.

To maintain due process. Every law enforcement officer should acknowledge the importance of due process. The abuse of power runs directly contrary to the notion of due process, and officers who misuse their power are creating an environment in which due process cannot flourish. Ideally, all officers in the criminal justice system should be focused on due process, and the police have a role in accomplishing due process by being fact finders and apprehenders (Manning, 2010). Along with this, law enforcement officers who are under pressure to charge a suspect must resist the power they are afforded when charges or other actions such as search and seizure are not warranted (Reiner, 2010). Police officers, in particular, face the challenge of weighing crime control against due process, in which they are faced with opportunities to misuse their power. Officers must make decisions on when and in what situations they should use their power. Officers must reflect on how the use of their power would look in a court of law under close scrutiny.

To safeguard discretionary power and therefore efficiency. As mentioned previously, law enforcement officers exercise power through discretion. Radical criminologists propose that the police have too much discretion, with the end result being "too much street justice" for the poor, while ignoring crimes of the powerful, of which the police are a member (Box, 2008, p.274). Box argues that the way to eliminate this lack of due process is to place restrictions on discretion. Should law enforcement officers desire to maintain the discretion that they have, which is critical for efficiency, they must not abuse their power.

Power and authority are tools that law enforcement officers must use judiciously and ethically. Without an ethical life, this power will be misused, creating a power imbalance that is bad for the officer, the agency, and society.

The Milgram Experiment

To demonstrate the ease with which power can be used to coerce people, Stanley Milgram conducted a scientific experiment that demonstrated how far people will go when confronted with someone who has power and is in a position of authority. In this instance, subjects often performed actions that were unethical when ordered to by a person in authority. Milgram's experiment demonstrated the power of authority and how someone in a position of authority can influence people to behave unethically and against their wishes.

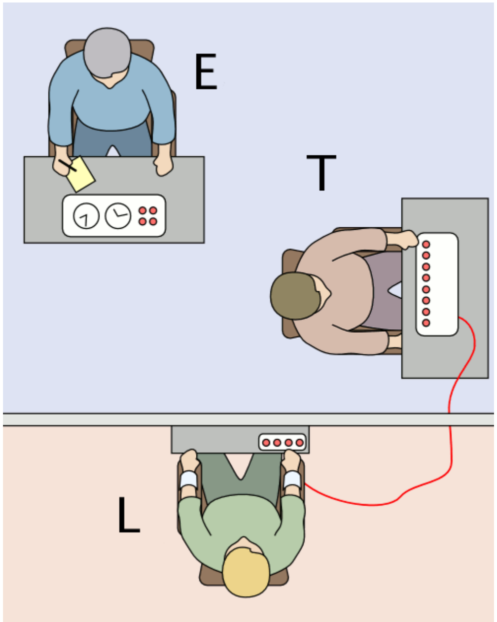
The following description of Milgram's experiment comes from the chapter "Obedience, Power, and Leadership" from the open textbook book *Principles of Social Psychology: 1st International Edition.* http://opentextbc.ca/socialpsychology/chapter/obedience-power-and-leadership/ and is licensed CC BY 4.0. All references cited on this page can be found on http://opentextbc.ca/socialpsychology/chapter/obedience-power-and-leadership/

Milgram's Studies on Obedience to Authority

The powerful ability of those in authority to control others was demonstrated in a remarkable set of studies performed by Stanley Milgram (1963). Milgram was interested in understanding the factors that lead people to obey the orders given by people in authority. He designed a study in which he could observe the extent to which a person who presented himself as an authority would be able to produce obedience, even to the extent of leading people to cause harm to others.

Like his professor Solomon Asch, Milgram's interest in social influence stemmed in part from his desire to understand how the presence of a powerful person—particularly the German dictator Adolf Hitler who ordered the killing of millions of people during World War II—could produce obedience. Under Hitler's direction, the German SS troops oversaw the execution of 6 million Jews as well as other "undesirables," including political and religious dissidents, homosexuals, mentally and physically disabled people, and prisoners of war. Milgram used newspaper ads to recruit men (and in one study, women) from a wide variety of backgrounds to participate in his research. When the research participant arrived at the lab, he or she was introduced to a man who the participant believed was another research participant but who was actually an experimental confederate. The experimenter explained that the goal of the research was to study the effects of punishment on learning. After the participant and the confederate both consented to participate in the study, the researcher explained that one of them would be randomly assigned to be the teacher and the other the learner. They were each given a slip of paper and asked to open it and to indicate what it said. In fact both papers read *teacher*, which allowed the confederate to pretend that he had been assigned to be the learner and thus to assure that the actual participant was always the teacher. While the research participant (now the teacher) looked on, the learner was taken into the adjoining shock room and strapped to an electrode that was to deliver the punishment. The experimenter explained that the teacher's job would be to sit in the control room and to read a list of word pairs to the learner. After the teacher read the list once, it would be the learner's job to remember which words went together. For instance, if the word pair was *blue-sofa*, the teacher would say the word *blue* on the testing trials and the learner would have to indicate which of four possible words (*house*, *sofa*, *cat*, or *carpet*) was the correct answer by pressing one of four buttons in front of him. After the experimenter gave the "teacher" a sample shock (which was said to be at 45 volts) to demonstrate that the shocks really were painful, the experiment began. The research participant first read the list of words to the learner and then began testing him on his learning.

The shock panel, as shown in [the figure],"The Shock Apparatus Used in Milgram's Obedience Study," was presented in front of the teacher, and the learner was not visible in the shock room. The experimenter sat behind the teacher and explained to him that each time the learner made a mistake the teacher was to press one of the shock switches to administer the shock. They were to begin with the smallest possible shock (15 volts) but with each mistake the shock was increased by one level (an additional 15 volts).



Once the learner (who was, of course, actually an experimental confederate) was alone in the shock room, he unstrapped himself from the shock machine and brought out a tape recorder that he used to play a prerecorded series of responses that the teacher could hear through the wall of the room. As you can see in [the figure], "The Confederate's Schedule of Protest in the Milgram Experiments," the teacher heard the learner say "ugh!" after the first few shocks. After the next few mistakes, when the shock level reached 150 volts, the learner was heard to exclaim "Get me out of here, please. My heart's starting to bother me. I refuse to go on. Let me out!" As the shock reached about 270 volts, the learner's protests became more vehement, and after 300 volts the learner proclaimed that he was not going to answer any more questions. From 330 volts and up the learner was silent. The experimenter responded to participants' questions at this point, if they asked any, with a scripted response indicating that they should continue reading the questions and applying increasing shock when the learner did not respond.

The Confederate's Schedule of Protest in the Milgram Experiments

75 volts	Ugh!
90 volts	Ugh!
105 volts	Ugh! (*louder*)
120 volts	Ugh! Hey, *this* really hurts.
135 volts	Ugh!!
150 volts	Ugh!! Experimenter! That's all. Get me out of here. I told you I had heart trouble. My heart's starting to bother me now. Get me out of here, please. My heart's starting to bother me. I refuse to go on. Let me out!
165 volts	Ugh! Let me out! (*shouting*)
180 volts	Ugh! I can't stand the pain. Let me out of here! (*shouting*)
195 volts	Ugh! Let me out of here! Let me out of here! My heart's bothering me. Let me out of here! You have no right to keep me here! Let me out! Let me out of here! Let me out! Let me out of here! My heart's bothering me. Let me out! Let me out!
210 volts	Ugh!! Experimenter! *Get* me out of here. I've had enough. I *won't* be in the experiment any more.
225 volts	Ugh!
240 volts	Ugh!
255 volts	Ugh! Get me *out* of here.
270 volts	(*agonized scream*) Let me out of here. Let me out of here. Let me out of here. Let me out. Do you hear? Let me out of here.
285 volts	(*agonized scream*)
300 volts	(*agonized scream*) I absolutely refuse to answer any more. Get me out of here. You can't hold me here. Get me out. Get me out of here.
315 volts	(*intensely agonized scream*) Let me out of here. Let me out of here. My heart's bothering me. Let me out, I tell you. (*hysterically*) Let me out of here. Let me out of here. You have no right to hold me here. Let me out! Let me out! Let me out! Let me out of here! Let me out! Let me out!

Before Milgram conducted his study, he described the procedure to three groups—college students, middle-class adults, and psychiatrists—asking each of them if they thought they would shock a participant who made sufficient errors at the highest end of the scale (450 volts). One hundred percent of all three groups thought they would not do so. He then asked them what percentage of "other people" would be likely to use the highest end of the shock scale, at which point the three groups demonstrated remarkable consistency by all producing (rather optimistic) estimates of around 1% to 2%.

The results of the actual experiments were themselves quite shocking. Although all of the participants gave the initial mild levels of shock, responses varied after that. Some refused to continue after about 150 volts, despite the insistence of the experimenter to continue to increase the shock level. Still others, however, continued to present the questions, and to administer the shocks, under the pressure of the experimenter, who demanded that they continue. In the end, 65% of the participants continued giving the shock to the learner all the way up to the 450 volts maximum, even though that shock was marked as "danger: severe shock," and there had been no response heard from the participant for several trials. In sum, almost two-thirds of the men who participated had, as far as they knew, shocked another person to death, all as part of a supposed experiment on learning.

Milgram's study is important in a law enforcement context for the following reasons:

1. Officers must be careful in exercising authority, especially to those that are most vulnerable.
2. Officers can also be greatly influenced by the negative/unethical actions of fellow officers and their own supervisors. It is important for senior officers to understand that Milgram's study strongly suggests that the actions of senior officers will coerce the same action in junior officers. While senior officers may think they are not being copied, or are manipulating the junior officer, Milgram's study suggests that they may be doing so.
3. Law enforcement officers are commonly involved in extraordinary situations, where heightened stress and perceived danger are high. In this environment, even those most strong-willed individuals may be vulnerable to coercion.
4. When a person is being arrested, his or her perception of losing freedom may provoke a reaction to the officer, despite the officer's position of power.

It is important for any person who possesses power to understand and be aware of the coercive nature of power; that power and authority are easily used to make people do things they otherwise would not do. It is within this paradigm, that abuse of power can occur, and officers must be aware of their power and the ease with which it can be abused.

Person, Gender, and Cultural Differences In Conformity

The following discussion comes from the chapter "Person, Gender, and Cultural Differences in Conformity" from the textbook *Principles of Social Psychology: 1st International Edition.*http://opentextbc.ca/socialpsychology/chapter/person-gender-and-cultural-differences-in-conformity/ and is licensed CC BY 4.0. All references cited on this page can be found onhttp://opentextbc.ca/socialpsychology/chapter/person-gender-and-cultural-differences-in-conformity/

Person Differences

Even in cases in which the pressure to conform is strong and a large percentage of individuals do conform (such as in Solomon Asch's line-judging research), not everyone does so. There are usually some people willing and able to go against the prevailing norm. In Asch's study, for instance, despite the strong situational pressures, 24% of the participants never conformed on any of the trials.

People prefer to have an "optimal" balance between being similar to, and different from, others (Brewer, 2003). When people are made to feel too similar to others, they tend to express their individuality, but when they are made to feel too different from others, they attempt to increase their acceptance by others. Supporting this idea, research has found that people who have lower self-esteem are more likely to conform in comparison with those who have higher self-esteem. This makes sense because self-esteem rises when we know we are being accepted by others, and people with lower self-esteem have a greater need to belong. And people who are dependent on and who have a strong need for approval from others are also more conforming (Bornstein, 1992).

Age also matters, with individuals who are either younger or older being more easily influenced than individuals who are in their 40s and 50s (Visser & Krosnick, 1998). People who highly identify with the group that is creating the conformity are also more likely to conform to group norms, in comparison to people who don't really care very much (Jetten, Spears, & Manstead, 1997; Terry & Hogg, 1996).

However, although there are some differences among people in terms of their tendency to conform (it has even been suggested that some people have a "need for uniqueness" that leads them to be particularly likely to resist conformity; Snyder & Fromkin, 1977), research has generally found that the impact of person variables on conformity is smaller than the influence of situational variables, such as the number and unanimity of the majority.

Gender Differences

Several reviews and meta-analyses of the existing research on conformity and leadership in men and women have now been conducted, and so it is possible to draw some strong conclusions in this regard. In terms of conformity, the overall conclusion from these studies is that that there are only small differences between men and women in the amount of conformity they exhibit, and these differences are influenced as much by the social situation in which the conformity occurs as by gender differences themselves.

On average, men and women have different levels of self-concern and other-concern. Men are, on average, more concerned about appearing to have high status and may be able to demonstrate this status by acting independently from the opinions of others. On the other hand, and again although there are substantial individual differences among them, women are, on average, more concerned with connecting to others and maintaining group harmony. Taken together, this means that, at least when they are being observed by others, men are likely to hold their ground, act independently, and refuse to conform, whereas women are more likely to conform to the opinions of others in order to prevent social disagreement. These differences are less apparent when the conformity occurs in private (Eagly, 1978, 1983).

The observed gender differences in conformity have social explanations—namely that women are socialized to be more caring about the desires of others—but there are also evolutionary explanations. Men may be more likely to resist conformity to demonstrate to women that they are good mates. Griskevicius, Goldstein, Mortensen, Cialdini, and Kenrick (2006) found that men, but not women, who had been primed with thoughts about romantic and sexual attraction were less likely to conform to the opinions of others on a subsequent task than were men who had not been primed to think about romantic attraction.

In addition to the public versus private nature of the situation, the topic being discussed also is important, with both men and women being less likely to conform on topics that they know a lot about, in comparison with topics on which they feel less knowledgeable (Eagly & Chravala, 1986). When the topic is sports, women tend to conform to men, whereas the opposite is true when the topic is fashion. Thus it appears that the small observed differences between men and women in conformity are due, at least in part, to informational influence.

Because men have higher status in most societies, they are more likely to be perceived as effective leaders (Eagly, Makhijani, & Klonsky, 1992; Rojahn & Willemsen, 1994; Shackelford, Wood, & Worchel, 1996). And men are more likely to be leaders in most cultures. For instance, women hold only about 20% of the key elected and appointed political positions in the world (World Economic Forum, 2013). There are also more men than women in leadership roles, particularly in high-level administrative positions, in many different types of businesses and other organizations. Women are not promoted to positions of leadership as fast as men are in real working groups, even when actual performance is taken into consideration (Geis, Boston, & Hoffman, 1985; Heilman, Block, & Martell, 1995).

Men are also more likely than women to emerge and act as leaders in small groups, even when other personality characteristics are accounted for (Bartol & Martin, 1986; Megargee, 1969; Porter, Geis, Cooper, & Newman, 1985). In one experiment, Nyquist and Spence (1986) had pairs of same- and mixed-sex students interact. In each pair there was one highly dominant and one low dominant individual, as assessed by previous personality measures. They found that in pairs in which there was one man and one woman, the dominant man became the leader 90% of the time, but the dominant woman became the leader only 35% of the time.

Keep in mind, however, that the fact that men are perceived as effective leaders, and are more likely to become leaders, does not necessarily mean that they are actually better, more effective leaders than women. Indeed, a meta-analysis studying the *effectiveness* of male and female leaders did not find that there were any gender differences overall (Eagly, Karau, & Makhijani, 1995) and even found that women excelled over men in some domains. Furthermore, the differences that were found tended to occur primarily when a group was first forming but dissipated over time as the group members got to know one another individually.

One difficulty for women as they attempt to lead is that traditional leadership behaviors, such as showing independence and exerting power over others, conflict with the expected social roles for women. The norms for what constitutes success in corporate life are usually defined in masculine terms, including assertiveness or aggressiveness, self-promotion, and perhaps even macho behavior. It is difficult for women to gain power because to do so they must conform to these masculine norms, and often this goes against their personal beliefs about appropriate behavior (Rudman & Glick, 1999). And when women do take on male models of expressing power, it may backfire on them because they end up being disliked because they are acting nonstereotypically for their gender. A recent experimental study with MBA students simulated the initial public offering (IPO) of a company whose chief executive was either male or female (personal qualifications and company financial statements were held constant across both conditions). The results indicated a clear gender bias as female chief executive officers were perceived as being less capable and having a poorer strategic position than their male counterparts. Furthermore, IPOs led by female executives were perceived as less attractive investments (Bigelow, Lundmark, McLean Parks, & Wuebker, 2012). Little wonder then that women hold fewer than 5% of Fortune 500 chief executive positions.

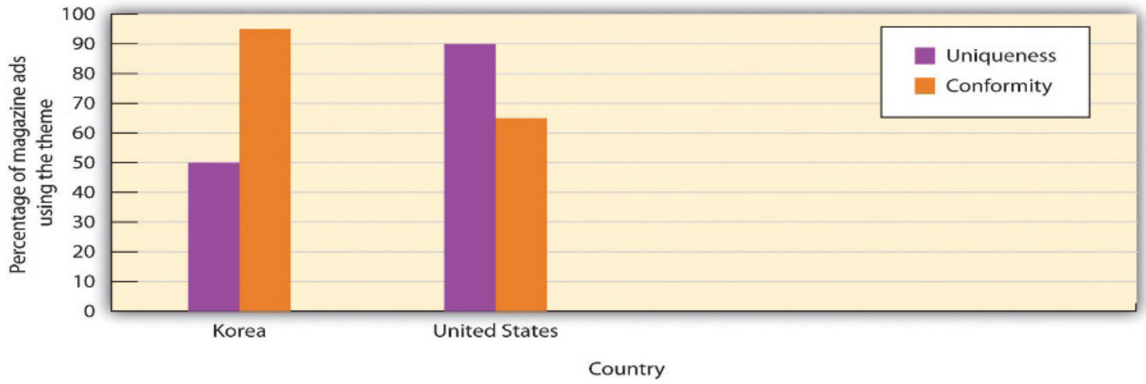
One way that women can react to this "double-bind" in which they must take on masculine characteristics to succeed, but if they do they are not liked, is to adopt more feminine leadership styles, in which they use more interpersonally oriented behaviors such as agreeing with others, acting in a friendly manner, and encouraging subordinates to participate in the decision-making process (Eagly & Johnson, 1990; Eagly et al., 1992; Wood, 1987). In short, women are more likely to take on a transformational leadership style than are men—doing so allows them to be effective leaders while not acting in an excessively masculine way (Eagly & Carli, 2007; Eagly, Johannesen-Schmidt, & van Egen, 2003).

In sum, women may conform somewhat more than men, although these differences are small and limited to situations in which the responses are made publicly. In terms of leadership effectiveness, there is no evidence that men, overall, make better leaders than do women. However, men do better as leaders on tasks that are "masculine" in the sense that they require the ability to direct and control people. On the other hand, women do better on tasks that are more "feminine" in the sense that they involve creating harmonious relationships among the group members.

Cultural Differences

In addition to gender differences, there is also evidence that conformity is greater in some cultures than others. Your knowledge about the cultural differences between individualistic and collectivistic cultures might lead you to think that collectivists will be more conforming than individualists, and there is some support for this. Bond and Smith (1996) analyzed results of 133 studies that had used Asch's line-judging task in 17 different countries. They then categorized each of the countries in terms of the degree to which it could be considered collectivist versus individualist in orientation. They found a significant relationship: conformity was greater in more collectivistic than in individualistic countries.

Kim and Markus (1999) analyzed advertisements from popular magazines in the United States and in Korea to see if they differentially emphasized conformity and uniqueness. As you can see in [the figure], "Culture and Conformity," they found that while U.S. magazine ads tended to focus on uniqueness (e.g., "Choose your own view!"; "Individualize") Korean ads tended to focus more on themes of conformity (e.g., "Seven out of 10 people use this product"; "Our company is working toward building a harmonious society").



Culture and Conformity

Kim and Markus (1999) found that U.S. magazine ads tended to focus on uniqueness whereas Korean ads tended to focus more on conformity.

In summary, although the effects of individual differences on conformity tend to be smaller than those of the social context, they do matter. And gender and cultural differences can also be important. Conformity, like most other social psychological processes, represents an interaction between the situation and the person.

Psychological Reactance

Conformity is usually quite adaptive overall, both for the individuals who conform and for the group as a whole. Conforming to the opinions of others can help us enhance and protect ourselves by providing us with important and accurate information and can help us better relate to others. Following the directives of effective leaders can help a group attain goals that would not be possible without them. And if only half of the people in your neighborhood thought it was appropriate to stop on red and go on green but the other half thought the opposite—and behaved accordingly—there would be problems indeed.

But social influence does not always produce the intended result. If we feel that we have the choice to conform or not conform, we may well choose to do so in order to be accepted or to obtain valid knowledge. On the other hand, if we perceive that others are trying to force or manipulate our behavior, the influence pressure may backfire, resulting in the opposite of what the influencer intends.

Consider an experiment conducted by Pennebaker and Sanders (1976), who attempted to get people to stop writing graffiti on the walls of campus restrooms. In some restrooms they posted a sign that read “Do not write on these walls under any circumstances!” whereas in other restrooms they placed a sign that simply said “Please don’t write on these walls.” Two weeks later, the researchers returned to the restrooms to see if the signs had made a difference. They found that there was much less graffiti in the second restroom than in the first one. It seems as if people who were given strong pressures to not engage in the behavior were more likely to react against those directives than were people who were given a weaker message.

When individuals feel that their freedom is being threatened by influence attempts and yet they also have the ability to resist that persuasion, they may experience psychological reactance, *a strong motivational state that resists social influence* (Brehm, 1966; Miron & Brehm, 2006). Reactance is aroused when our ability to choose which behaviors to engage in is eliminated or threatened with elimination. The outcome of the experience of reactance is that people may not conform or obey at all and may even move their opinions or behaviors away from the desires of the influencer.

Reactance represents a desire to restore freedom that is being threatened. And an adult who feels that she is being pressured by a car sales representative might feel the same way and leave the showroom entirely, resulting in the opposite of the sales rep’s intended outcome.

Of course, parents are sometimes aware of this potential, and even use “reverse psychology”—for example, telling a child that he or she cannot go outside when they really want the child to do so, hoping that reactance will occur. In the musical *The Fantasticks*, neighboring fathers set up to make the daughter of one of them and the son of the other fall in love with each other by building a fence between their properties. The fence is seen by the children as an infringement on their freedom to see each other, and as predicted by the idea of reactance, they ultimately fall in love.

In addition to helping us understand the affective determinants of conformity and of failure to conform, reactance has been observed to have its ironic effects in a number of real-world contexts. For instance, Wolf and Montgomery (1977) found that when judges give jury members instructions indicating that they absolutely must not pay any attention to particular information that had been presented in a courtroom trial (because it had been ruled as inadmissible), the jurors were *more* likely to use that information in their judgments. And Bushman and Stack (1996) found that warning labels on violent films (for instance, “This film contains extreme violence—viewer discretion advised”) created more reactance (and thus led participants to be *more* interested in viewing the film) than did similar labels that simply provided information (“This film contains extreme violence”). In another relevant study, Kray, Reb, Galinsky, and Thompson (2004) found that when women were told that they were poor negotiators and would be unable to succeed on a negotiation task, this information led them to work even harder and to be more successful at the task.

Finally, within clinical therapy, it has been argued that people sometimes are less likely to try to reduce the harmful behaviors that they engage in, such as smoking or drug abuse, when the people they care about try too hard to press them to do so (Shoham, Trost, & Rohrbaugh, 2004). One patient was recorded as having reported that his wife kept telling him that he should quit drinking, saying, “If you loved me enough, you'd give up the booze." However, he also reported that when she gave up on him and said instead, "I don't care what you do anymore," he then enrolled in a treatment program (Shoham et al., 2004, p. 177).

Person, gender, and cultural differences in conformity are important in a law enforcement context for the reasons discussed below.

Citizens may not obey a lawful order by a police officer when the officer uses power lawfully. This may occur when the citizen perceives the officer is eliminating the citizen's right to engage in the behavior they wish to. This, according to Dr. Rajiv Jhangiani and Dr. Hammond Tarry, may lead people not to conform, or obey an order, and may indeed lead the citizen to oppose the officer who is trying to make a lawful order.

Furthermore, while person variables may predict conformity, situational variables are usually more important. This would suggest that the behavior and action of the officers may have a strong role to play in determining whether or not the citizen will conform.

Ethical Issues During an Investigation

Caseload Management

Law enforcement officers who are in investigative roles are often confronted with ethical issues during the investigative process. Officers who have a heavy caseload are expected to determine which case to investigate at the expense of other cases. Officers often rely on the solvability of the case, and concentrate on that case, which means that cases that may be slightly more difficult to solve are never solved. This is a consequentialist perspective, in which the end result is seen as the most important aspect of the investigation.

Some officers may do an assessment of the victim, coupled with other investigative variables that allow the officer to decide which case is ultimately more serious and more important to work on. The difficulty with this approach is that the officer's values are taken into account and are weighed against the rights of all victims. Problems arise when victims who may not be considered high on the investigator's valued list (for example an officer who does not value sex-trade workers), do not receive the same level of service that other, favoured victims do. Officers must be cognizant of their personal biases and ensure that they consider other variables, such as solvability, continuation of the offence, serial offences of the suspect, seriousness of the injury, and perishable evidence.

Lies, Deception, and Tricks

Investigators walk a line between being tenacious in their investigations and being overzealous in refusing to give up a case that ought to be closed due to a lack of evidence. Officers must be aware not to allow their personal feelings to interrupt objective, critical and reflective consideration of the case. Investigators should routinely ask themselves how a case would look in court when all the facts are known by the defence counsel and the judge. Would their credibility suffer as a result? If the answer is yes, investigators need to address this and decide whether they should continue along their investigative path, or stop.

The Supreme Court of Canada does permit officers to use "tricks" to solve crimes. In *Regina v. Rothman,* the Supreme Court ruled that police can use tricks, so long as they do not shock the community. Such shocking or "dirty" tricks include things such as impersonating a priest or a lawyer to gain a covert confession.

Tricks that officers are able to use include posing as gangsters or drug dealers in undercover operations in order to obtain covert confessions. Other tricks that officers may use are lies in interviews to bond with subjects. Lying in law enforcement is allowed in certain circumstances, but is strictly forbidden in other circumstances. These include, but are not limited to:

- Creating evidence or planting evidence
- Lying in court (testifying)
- Lying in reports, notebooks, or other administrative or investigative reports
- Lying in any administrative or civil proceedings
- Lying to fellow officers or supervisors

The scope for lying is very narrow and it should be used sparingly for serious investigations by officers who know the boundaries and what would be accepted in court. However, the ethics around lying lead some officers to discount it as a tactic. Some of the reasons they cite for the unacceptability of lying include:

- Lies destroy confidence in the police. Both the suspect and the community at large will not believe even truthful information brought forward in the future by an officer who uses lying.
- Lies are immoral because they are an illegitimate means to an ends. It goes against Kant's categorical imperative that we should never lie, regardless of the consequences of not getting a confession in what may be an important case.
- The courts may disallow the evidence because the courts may determine that the evidence was obtained through tactics not warranted under *Regina v. Rothman.*
- The officer's religious beliefs and scripture prohibit or strongly discourage lying for interviews and criminal investigations.

Some officers have little issue with lying to suspects, taking a utilitarian and legalistic approach. They argue the following:

- It is for the greater good because lying justifies the end result (a classic utilitarian perspective that maximizes happiness).
- The positive consequence of lying to find evidence outweighs the consequence of not lying and thus not retrieving evidence.

Other officers take a different perspective, arguing:

- It is their duty to do what they can to solve a crime. However, lying does not follow Kantian logic because the act itself is wrong. The duty is to solve crime, not to lie. Furthermore, Kant would argue that the officer is using the person as a means to an end to get a confession.

- Solving a crime means you have to play at the criminal's moral level at times, and that as long as the evidence is admissible, anything goes. This perspective brings officers dangerously close to crossing the ethical line, venturing into noble-cause corruption. Officers must, in this case, be aware of the limits allowed by the court and not be tempted to surpass these limits.

Other investigative tricks include undercover operations ranging from simple stolen property investigations to elaborate and lengthy operations for murder and drug conspiracies. Essential in undercover operations is the need for an undercover officer to establish credibility with the suspect or target. In doing so, the officer may have to commit, or appear to commit, a crime. This may include stealing or damaging property, selling and handling drugs, or selling and handling restricted weapons. The actions of undercover officers have limits, such as officers not engaging in drug use, crimes of violence, or sex-related activities. Section 25.1 of the Criminal Code protects officers against prosecution as long as they are in the lawful execution of their duty and can account for the need to "break the law."

Gratuities

For the purpose of discussion surrounding ethics in law enforcement, a gratuity is the gift of an item to another person based solely on their occupation. A gratuity is most often given to officers by workers in the service industry, such as waiters and bartenders. Additionally and problematically, gratuities are given for services expected and services already rendered; free coffees for law enforcement officers often come with strings attached, or at the very least, as an insurance policy to gain favours in the future should the need arise. A cynic would argue that offering free coffee is not an altruistic gesture, but rather an insurance policy for security in the future. A law enforcement officer who receives free coffee from a restaurateur will likely be expected to provide extra service to the restaurant should it be required. Conversely, a law enforcement officer who removes a drunk person from a restaurant can often expect a free coffee after the drunk has been removed. Four main reasons that gratuities are given to law enforcement officers are:

1. Because of the theory of reciprocity, where people feel they owe something to the giver. In a law enforcement context, this will be collected after the gift (the free coffee) is given.
2. To ensure future cooperation, where the gift-giver may want the services of the officer in the future. This can include gaining biased support of officers in spite of the facts surrounding an issue.
3. To use the presence of police officers, attracted by free coffee, as an advertisement to potential patrons that the environment is safe.
4. To use the presence of police officers, attracted by free coffee, as a way to dissuade potentially problematic patrons from patronizing the restaurant.

Gratuities are often seen as the first step on the slippery slope toward major corruption (Coleman, 2004), and it is for this reason that accepting gratuities is always frowned upon by law enforcement agencies. Coleman argues that while each step is, on the slippery slope, individually insignificant, it is the cumulative effect of the steps that draws and pushes officers to more serious forms of unethical behaviours. Once an officer starts on the slippery slope, pne step leads to another: the coffee leads to a coffee and a donut, which eventually leads to a free dinner. The cumulative effect of these gratuities, according to Coleman (2004), leads to a situation that is difficult for the officer to stop doing or turn around.

Coleman (2004) also identifies an absolutist perspective in which the free-coffee gratuity is viewed the same as receiving a thousand dollar bribe. They are both wrong regardless of the financial gain received by the officer. It can be argued that the intent of the officer should be considered. If the officer's intent in receiving the free coffee is to build community cohesion and better relations with the police, that should always be considered. However, if the intent is unethical, such as to save money by using the officer's power position, then this too should be considered.

In a controversial paper, Kania (1998) proposes that the police should be allowed to exercise discretion and decide the appropriateness of receiving minor gratuities such as free coffee. This, he argues, is similar to other professions and is a way to foster community relations; refusing minor gratuities such as coffee strikes at the core of building bridges with the community and can have an adverse effect on relationships. Kania (1998) offers little more than anecdotal evidence of this and recalls incidents in his own policing career in which he observed noble officers rejecting free coffee to the consternation of the provider, thus creating a rift between police and the community.

The most balanced view on gratuities belongs to Pollock (2007), who draws a sharp distinction between a gift and a gratuity. The gift refers to an exchange in which there are no strings attached, whereas a gratuity would likely be given for future favour, however subtle (Pollock, 2007). The difficulty is in determining what is and is not a gift versus a gratuity. Pollock utilizes ethical systems to make this determination.

A deontological perspective would suggest that if all businesses were to give all police gratuities, the ramifications would not be desirable (Pollock 2007). In essence, Rawls' (1999) principles of justice would be subverted by a system in which only those who pay are entitled to service. Pollock (2007) also suggests from a formalism perspective that the motive of the giver would be paramount and that the giver who has good intentions would make the gift morally permissible. Conversely, utilitarianism would suggest that the negatives outweigh the positives and, as a result, the gratuities would be unethical; however, act utilitarianism would judge each act on its own merits, allowing for gratuities to be accepted when the consequences are good for all concerned (Pollock, 2007). Rule utilitarianism, on the other hand, would determine that the long-term consequences of gratuities would be damaging to more people than they would aid, and therefore would not be morally permissible (Pollock, 2007).

Kania's (1998) perspective would fall under an ethics of care approach, in which gratuities would be ethical if there were a positive social relationship already formed between the giver and the taker. The ethics of virtue would be concerned only with the virtues of the receiving officer (Pollock, 2007).

In conclusion, while other professions, such as doctors, are free to receive gratuities, law enforcement officers must be careful when receiving gratuities for the following reasons:

- Police are professionals and professionals don't take gratuities.
- People will expect different treatment.
- Gratuities could erode public confidence.
- There is the slippery slope potential; the receipt of gratuities can be a gateway for more corruption.
- Police get paid by the public to treat everyone equally.

REFERENCES

1. Box, S. (2008). Crime, Power and Ideological Mystification in E. McLaughlin, J. Muncie and G. Hughes (eds)*Criminological Perspectives: Essential Readings*, London: Sage Publishing, 271- 284.
2. Coleman, S. (2004). When police should say no to gratuities. *Criminal Justice Ethics* 23: 33-43. Retrieved from: http://heinonline.org.ezproxy.lib.le.ac.uk/HOL/Page?handle=hein.journals/crimjeth23&id=33&collection=journals&index=journals/crimjeth.
3. Kania, R. (1998). Should we tell the police to say "yes" to gratuities? *Criminal Justice Ethics* 7(2): 37-48. Retrieved from: http://heinonline.org.ezproxy.lib.le.ac.uk/HOL/ Page?handle=hein.journals/crimjeth7&id=127&collection=journals&index=journals/crimjeth.
4. Manning, P. (2010). The police: mandate, strategies and appearances. In T. Newburn (Ed.), T. Newburn,*Policing: Key readings*. Cullompton: Willan Publishing.
5. Pollock, J. (2007). *Ethical Dilemmas and Decisions in Criminal Justice.* Belmont, California: Wadsworth Cengage Learning.
6. Rawls, J. (1999). *A Theory of Justice.* Cambridge: Harvard University Press.
7. Reiner, R. (2010). *The Politics of the Police.* Oxford: Oxford University Press.

5. ACCOUNTABILITY AND INVESTIGATION

Autonomy and Accountability

The police must remain autonomous and free from the influence of government and mass media. Law enforcement executives should not be forced into decisions based upon the dictates of a mayor, premier, prime minister, or the media. Law enforcement executives should remain autonomous and concern themselves with the effective and efficient operation of their agencies to achieve an ethical law enforcement agency with high standards and values. Likewise, officers on the line must remain impartial, and, in doing so, should avoid comment on political and judicial matters. This does not mean that officers do not have the right to comment like everyone else, but that their comments should not be made in their capacity as police officers.

While the independence of law enforcement is important, oversight of law enforcement is also crucial. Oversight includes ensuring agencies are accountable to the public for resource allocation, are fiscally responsible, and have law enforcement policies and procedures. Law enforcement agencies must balance the need for accountability with the need for independence, but doing so can create tension. According to Reiner (2010) there are four ways in which law enforcement is held accountable:

1. Officers are charged and prosecuted for crimes (under the Criminal Code or the Police Act).
2. Officers are held civilly liable in court.
3. Judges ruling on cases find the evidence brought before them is as inadmissible.
4. Judicial review of policy forces changes upon the police.

Griffiths (2013, p.58) further identifies six processes that hold police accountable in Canada:

1. Political accountability to governing authorities
2. Legal accountability through the courts
3. Accountability to administrative agencies
4. Freedom of information legislation
5. Community policing committees
6. Special ad hoc mechanisms such as royal commissions

In cases that may not warrant a criminal investigation, police officers in British Columbia are governed by statutes. In British Columbia, municipal police officers are governed by the Police Act and RCMP officers are governed by the Royal Canadian Mounted Police Act. Offences alleged under these acts are often investigated by police officers in their own agencies. For more serious and/or high-profile cases, police officers from other agencies may conduct the investigations. These are known as *internal investigations, professional standards investigations,* or *police act investigations.*

These specialized investigations are conducted by units within departments, which are often referred to as Professional Standards Units.

British Columbia's Police Act

In British Columbia, the Police Act allows for complaints against municipal police officers to be made directly by an aggrieved party or by a complainant who is acting as a third party. The latter, called a *third-party complaint,* allows a person who is otherwise uninvolved in the incident to make a complaint. The rationale is to protect those people who have been victimized by police who do not want to complain (or are not capable of doing so) to be safeguarded. The third-party complaint rule essentially protects those who do not complain, and in doing so allows for the investigation of officers whose unethical conduct may have otherwise gone uninvestigated.

Complaints about police misconduct under the Police Act must be related to the following:

- Allegations of misconduct by individual police members
- Complaints concerning various aspects of the administration of a municipal police department
- Matters that concern the maintenance of discipline within a police department and that do not directly impact the public

The nature of the allegations against police officers under the Police Act is varied; however, two complaint types that face police officers are corruption and breach of public trust.

Corruption as defined by the Police Act includes such things as not promptly returning money or property while performing one's duty; using or attempting to use the position of police officer for personal gain; and using or attempting to use equipment or facilities for purposes unrelated to duty.

Breach of public trust encompasses a wide range of activities that are used as a "catch-all." When an officer engages in behaviour that is unethical, but not against the Criminal Code or other legislation under which civilians would be charged, the officer can be charged under the Police Act. Charges can be brought against an officer for unethical activities such as:

- Anything that discredits the reputation of the member's police department
- "Abuse of authority," referred to as oppressive conduct toward a member of the public
- Using unnecessary force, or detaining or searching a person without good and sufficient cause
- On or off duty, when in uniform, using profane, abusive, or insulting language to any person. The language can be used to intimidate people or disrespect them

The Police Act states that the regulations detail the expected or code of professional conduct for municipal police officers within the province of British Columbia. Along with the expectations for conduct are the consequences that may occur when an officer commits a disciplinary default.

The Royal Canadian Mounted Police Act

The Royal Canadian Mounted Police Act is comparable to British Columbia's Police Act in that it provides a legal framework that defines the way in which disciplinary procedures will be administered. The Royal Canadian Mounted Police Act contains two provisions for investigating wrongdoing by the RCMP, the External Review Committee, and the Public Complaints Commission.

The External Review Committee reviews appeals made by RCMP officers who have been disciplined under the Royal Canadian Mounted Police Act. The Public Complaints Commission is an independent team of civilians that rule on the outcome of investigations of police complaints. Critics suggest that the investigators will favour the police officer and investigate an offence with bias.

In June 2013, the federal governmentpassed Bill C-42, which created the Enhancing Royal Canadian Mounted Police Accountability Act that is designed to enhance accountability and transparency by:

- Creating a new Civilian Review and Complaints Commission (CRCC) for the RCMP to replace the existing Commission for Public Complaints (CPC) against the RCMP and providing it with enhanced powers
- Establishing a statutory framework for handling investigations of serious incidents involving RCMP members, which will improve the transparency and accountability of these investigations
- Modernizing the RCMP's discipline, grievance, and human resource management processes, with a view to preventing, addressing, and correcting performance and conduct issues in a timely and fair manner, which includes enabling the commissioner to establish a specific process for the investigation and resolution of harassment when a member of the Force is a respondent

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This enactment enhances the accountability of the RCMP by reforming the Royal Canadian Mounted Police Act in two vital areas. First, it strengthens the RCMP review and complaints body and implements a framework to handle investigations of serious incidents involving members. Second, it modernizes discipline, grievance, and human resource management processes for members, with a view to preventing, addressing, and correcting performance and conduct issues in a timely and fair manner.

It establishes a new complaints commission, the Civilian Review and Complaints Commission (CRCC) for the RCMP. Most notably, it sets out the authority for the CRCC to have broad access to information in the control or possession of the RCMP, it sets out the CRCC's investigative powers, it permits the CRCC to conduct joint complaint investigations with other police complaints bodies, and it authorizes the CRCC to undertake policy reviews of the RCMP.

It establishes a mechanism to improve the transparency and accountability of investigations of serious incidents (death or serious injury) involving members, including referring the investigations to provincial investigative bodies when possible and appointing independent civilian observers to assess the impartiality of the investigations when they are carried out by the RCMP or another police service.

It modernizes the RCMP's human resources management regime. In particular, it authorizes the Commissioner to act with respect to staffing, performance management, disputes relating to harassment, and general human resource management.

It grants the Commissioner the authority to establish a consolidated dispute resolution framework with the flexibility to build redress processes through policies or regulations. It provides for a disciplinary process that will empower managers or other persons acting as conduct authorities to impose a wide range of conduct measures in response to misconduct and that requires conduct hearings only in cases when dismissal is being sought.

Jurisdiction of the Current Commission for Public Complaints

The Commission for Public Complaints (CPC) has jurisdiction over a complaint from a member of the public that concerns the conduct of an RCMP member while performing a policing duty or function. These duties and functions include criminal investigations, public complaint investigations, policing public events, security assignments, and intelligence operations.

A complaint must also involve:

- An RCMP member or other person appointed or employed under the authority of the Royal Canadian Mounted Police Act.

- An RCMP member or other person who, when the complaint is made, is not deceased, retired, or resigned, or has been dismissed from the Force.
- Conduct that occurred after September 30, 1988, the date the CPC became authorized to take complaints.

Investigation Models

Griffiths (2013) describes three different models that are used in different jurisdictions to investigate the police: the dependent model, the interdependent model, and the independent model.

The *dependent model* includes police departments in which police officers investigate allegations against their own members, or members of another police department. The benefits of a dependent model include the following: the officers being investigated are easily accessible to the investigator; there are lower costs associated with the investigation; and the investigators are fluent in the local police culture and organizational values and have greater legitimacy among officers. Conversely, the criticism associated with the dependent model of investigation is primarily directed at the lack of accountability toward subject officers. The lack of accountability is a result of investigators being part of the same subculture and therefore not being independent enough to be objective. Without independence, the investigation can be viewed as biased and therefore not legitimate by society.

The *interdependent model* is a system in which investigators investigate allegations against their own members, or members of another police department with civilian oversight. One of the benefits of this model is that it demonstrates independent oversight of the investigation. This enables the community to believe that the investigation will be balanced and not in favour of the police or the civilian party. Additionally, the community is able to provide feedback and suggestions regarding the investigation from a civilian perspective. Criticisms include the inability to gain the cooperation of the police should they decline to participate in the investigation. Furthermore, given their own experiences with investigations, police officers may be reluctant, in some instances, to follow the directions of civilians who may not be aware of flaws in an investigation's process.

The *independent model* includes a civilian body of investigators that receive complaints and initiate and conduct the complete investigation independently from the law enforcement agency that is involved in the allegation. The public generally views this model as the most effective due to the independence of the investigators, which offers greater accountability for the actions of officers. The independent model allows citizens to feel more comfortable complaining about officer misconduct, without the fear of reprisals or the fear of being interviewed in a manner in which they are the "them" in an "us versus them" situation. Arguments against an independent model include are that investigators may not have a full understanding of police techniques and police culture and they may lack experience in criminal investigations. Additionally, independent investigators will likely be unable to gain trust within law enforcement agencies, therefore eliminating such important investigative tools as source information and the necessity to bond with subjects.

INDEPENDENT INVESTIGATIONS OFFICE

PreviousNext

Ensuring accountability under British Columbia's Police Act and the Royal Canadian Mounted Police Act is difficult and can often be correlated to the "mechanics" of investigations into law enforcement misconduct. To ensure these investigations are carried out fairly and with due process, the Police Act designates a police complaint commissioner who has the duty and responsibility to oversee municipal internal investigations.

Operating under Griffiths' (2013) independent model, the Independent Investigation Office (IIO) investigates cases that involve serious injury or death resulting from the actions of RCMP or municipal police members. The Police Act designates the IIO as a police force in British Columbia and thus its members are subject to provisions under the Act.

The IIO's team is composed of ex-police officers and civilians. The civilians are trained at the Justice Institute of British Columbia (JIBC) alongside police recruits. Their training does not include all the curriculum followed by the police recruits, but it does include lessons that cover becoming investigators and understanding how the police may act in certain use-of-force scenarios.

Two issues to consider:

1. Is the IIO truly independent when its members are covered under the Police Act?
2. Many investigators in the IIO are trained at the JIBC in the Police Academy. Does this inculcation into police culture make them less independent from the police they are investigating?

REFERENCES

1. *Enhancing Royal Canadian Mounted Police Accountability Act,* http://laws-lois.justice.gc.ca/eng/annualstatutes/2013_18/FullText.html
2. Griffiths, C (2013). *Canadian Police Work.* Toronto: Nelson Education.
3. Reiner, R. (2010). *The Politics of the Police.* Oxford: Oxford University Press.

6. POLICING

Noble Cause Corruption

According to Caldero and Crank (2004, p.17) noble cause is a "moral commitment to make the world a safer place." This commitment is why most people join law enforcement agencies, and while this is an admirable goal, when the commitment to make the world a safer place becomes more important than the means to accomplish these goals, corruption may result. There are reasons why within law enforcement the means to accomplish the ends are particularly magnified. Caldero and Crank (2004, p.17) describe the "scent of a victim's blood," which means officers in law enforcement are motivated by the suffering of victims and their families. As officers sworn to uphold the law, they are duty bound to stop further violence against other victims. The vivid recollection of victims suffering can, at times, compel officers to focus only on the end result of making the world a safer place. Officers generally join law enforcement to protect the vulnerable, to help others, and to enforce the law; their cause is generally a noble one, filled with good intent.

When officers reach a point where they are more concerned with the end result, they may resort to unethical and even unlawful activities to protect victims from further victimization and other citizens from becoming victimized. This rationale is an example of teleological thinking where the means are not as important as the ends. Utilitarianism would be an example of an ethical system that would be used to justify such an action. Ultimately, as Pollock (2010) reminds us, the values that an officer brings to the job are those that induce him or her to use unethical means to fulfill the end value: to "make the world a safer place."

When confronting a situation in which an officer is faced with noble cause misconduct, Pollock (2010) suggests the following questions be considered by the officer:

- Is the activity he or she about to partake in illegal?
- Is the activity allowed under departmental policy?
- Is the activity unethical?
- Is the activity acceptable under any ethical system, or just utilitarianism?

While acknowledging that there is a need for tenacity in law enforcement, often the lines may be blurred between tenacious police work and noble cause corruption. By asking these questions, it is possible to determine whether the act is good police work, or noble cause corruption.

Policing Public Demonstrations and Crowd Control

Peaceful public demonstrations are a right in liberal Western democracies. Such demonstrations must be permitted to enable free speech. In Canada, this right is protected under section 2 of the Canadian Charter of Rights and Freedoms as a freedom of peaceful assembly and expression. While police officers must respect and allow freedom of peaceful assembly and freedom of expression, tension arises when these freedoms are at times contrary to the duty of law enforcement officers to ensure public safety and security.

Policing public demonstrations is historically difficult. Police reaction to public demonstrations often results in criticism of the police for either being too lax in enforcement, resulting in riotous situations, or too restrictive, resulting in the restriction of the rights enshrined under the Charter. Police reaction is also criticized when the mere presence of officers escalates a situation or the public perceives their use of force to be excessive. This tension is exacerbated by the nature of public demonstrations, as demonstration groups can range from violent anti-authority groups to groups that historically participate only in peaceful protest.

Because of the potential volatility of protest groups, the police use intelligence sources to identify potentially aggressive or violent members. Once identified, police may apply a technique called **strategic incapacitation**to counter the violence that may result from aggressive protesters within protest groups (Gillham and Noakes, 2007). Although this tactic allows police to preserve or restore short-term order, it is also gives them a potential tool to suppress the civil liberties of protesters, which may result in further protest against the police, and turn arrested protesters or protesters who have been illegitimately treated by police into martyrs. Techniques used by police are not meant to protect civil rights, but to ensure peace, protect property, and safeguard society and the government against a state of anarchy. Police strategies include the establishment of no protest zones, increased use of less lethal weapons, strategic use of arrests, and the surveillance and infiltration of protest groups (Gillham and Noakes, 2007).

The establishment of no protest zones was used during the Quebec City Summit of the Americas in 2001. As protesters from a wide range of causes descended upon Quebec City, large fences were erected allowing the meetings of officials to proceed unhindered (King and Waddington, 2005). The fences prevented protesters from assembling at any meaningful location, essentially muting their voices to the dignitaries attending the summit. To the protesters, these tactics represented a suppression of their right to voice legitimate grievances and strengthened their resolve to protest (King and Waddington, 2005). Such actions by police, while increasing the potential for order, served as evidence to protesters that the police and the government did not respect the rights of citizens to protest (Redekop and Pare, 2010). In Quebec City, the final conclusion drawn by protesters was that the police were acting illegitimately, thus providing ample ammunition to further their protest (Redekop and Pare, 2010). As protesters penetrated the fence, their grievances spread beyond their original cause to the perceived illegitimacy of police actions that denied their rights to express their opinion. The police countered that the protest was not peaceful, and thus the protesters' rights were not protected by the Canadian Charter of Rights and Freedoms. The severity of these new grievances caused the protesters to focus directly on those officers who, in their minds, were directly responsible for these egregious actions. Therefore, the police must be mindful that their actions are constantly observed and weighed as being for or against the democratic right to protest, and, when such actions are taken, protesters view the actions as illegitimate even if they are legitimate.

Increasing the use of less lethal weapons is also fraught when this tactic is used in situations where there is no legitimate threat to safety and property. In Canada, using weapons on crowds is unlawful and unjustified under the Criminal Code unless officers feel their lives or the lives of the general public are threatened (Criminal Code, 2015, Sec. 25). Weapons can only be used against the person who is posing the threat as there are no provisions allowing the use of a weapon on a collective mass, no matter how benign the weapon. A protest that is not a riot as defined in the Criminal Code is not an appropriate venue for the police to use weapons. A riot is defined in the Criminal Code as an "unlawful assembly that has begun to disturb the peace tumultuously" (Criminal Code, 2015, Sec. 64).

Even in situations that can be deemed to be a riot, police can face criticisms by the public and the media and in judicial reviews. Police can also be subject to civilian lawsuits and criminal charges. In the 2011 Stanley Cup riots in Vancouver, police were criticized for using the Anti Riot Weapon Enfield (ARWEN) gun, which propels plastic batons (Furlong and Keefe, 2011; Lee, 2011). Less lethal weapons, such as water cannons and ARWEN guns, are not approved for use in

Vancouver due to concerns with the civil litigation resulting from the first Stanley Cup riot in 1994 (Furlong and Keefe, 2011).

The use of non-lethal weapons is also symbolic of repressing the right to protest and can cause police to lose legitimacy among the public and the protesters. In the August 2011 riots in England, Peter Waddington (Kelly and Fraser, 2011) stated that the use of water cannons and baton rounds symbolically "looks like the end of the world" and may cause the police to lose "the moral high ground," and thus lose legitimacy with protesters and the general public. Since the implementation of these weapons is frowned upon when used against rioters committing criminal acts, their use against protesters would likely be even less acceptable.

The strategic use of arrests should only be implemented when there are sufficient grounds for arrest, regardless of the context. When police pre-emptively arrest potential agitators on charges that would not normally be entertained, their legitimacy can only be questioned. Arrests were strategically utilized in the 1997 Asia-Pacific Economic Cooperation (APEC) conference in Vancouver. While the arrests resulted in incapacitating the protest, they ultimately demonstrated, in the long term, the illegitimacy of police and government actions with respect to protesters' rights (Ericson and Doyle, 1999). Of the 49 arrests made, only one party was eventually charged for the original arrest, and this charge was eventually dropped (Ericson and Doyle, 1999).

In the APEC example, noted Canadian anti-globalization protester Jaggi Singh was arrested for assault days before the APEC conference was to start (CBC News, 1999 Panitch, 2002). The charge of assault occurred as a result of Singh talking through a megaphone and causing temporary damage to a security guard's ear. Singh was imprisoned during the APEC conference, thus suppressing his right to protest (CBC News, 1999; Panitch, 2002). Once the APEC conference was over, Crown counsel determined that the charge was not worth pursuing and charges were stayed (CBC News,1 999). This strategy, while preventing some protesters from protesting, abuses police authority and is demonstrative of the tactics used to achieve an end (institutional protest) without regard to the means (legitimate protest). This utilitarian example of using any means to justify a peaceful end resulted in the denial of Singh's rights to express his opinion under the Canadian Charter of Rights and Freedoms. From a police standpoint, this tactic also resulted in the future mistrust of police making legitimate arrests or conducting active surveillance for public safety. While some measure of safety and security may have been accomplished by pre-emptively arresting Singh, we will never know whether the consequences of arresting him were positive or negative in this regard; we know only that the end result was negative.

Surveillance of protest groups by police is a tactic used on groups that do not cooperate with the police. This lack of cooperation by some groups results in a lack of intelligence-gathering through open communication (Waddington, 1998). These tactics may include surveillance of protesters before a protest begins (Waddington, 1998), or the surveillance of online activities of protesters (della Porta, 2006). della Porta (2006) argues that, when used, these tactics demonstrate a suspension of civil liberties and a lack of respect for protesters' rights, and that their use must be limited to those rare occasions when police feel the group is threatening the safety of the general public, or, in Canada, where the peace will be disturbed tumultuously (Criminal Code, 2015, Sec. 63).

The infiltration of protest groups is a way in which police can gather information about protesters' strategies when there is no communication between the police and protestors. However, tactics such as these were used in the 1960s in the United States, and were widely seen as an abuse of civil liberties and are disallowed in some American jurisdictions (Gillham and Marx, 2000). Police, in response to the perception of such tactics, must continue attempts to communicate with all protest groups regardless of the cause of the protest or the plans of the protesters.

To achieve ethical control of protest groups, communicating with these groups is important because it enables law enforcement officers to understand the goals of a protest and to assess the type of protest they will face (Reicher, Stott, Cronin, and Adang, 2004). Reicher et al. (2004) consider communication with protesters to be a vital part of crowd control. Without it, police lack vital intelligence that would inform them about how to manage and differentiate the crowd. These are important considerations for police if they are to behave in a manner that will allow protesters their freedom of speech while maintaining public order, which is the end result desired in order for police to fulfill their common law duties.

Policing all public order events is a difficult task regardless of the groups involved. Protest groups are especially difficult to police due to the lack of a hierarchical structure affecting communication. In attempting to police disorder resulting from protest groups, police must continually assess whether their values lean toward public order or respect of the right to protest and civil liberties. When this assessment leans toward public order, tactics of strategic incapacitation may result in the public order being maintained at the expense of the right to protest in a meaningful way. The tactics used against protest groups may have lasting implications regarding the credibility of the police. Additionally, institutionalizing protest groups may yield few results immediately, compared to strategic incapacitation, but may result in long-term meaningful protest that is also peaceful. Ultimately, police must demonstrate their legitimacy through their acceptance of the democratic right to protest. In doing so, police must recognize that their duty is also the protection of rights under the Canadian Charter of Rights and Freedoms, and not merely their duty to uphold the Canadian Criminal Code. Often these two duties are at odds with one another, which can create a situation where law enforcement leaders responsible for crowd control and public order face an ethical dilemma that is high profile with high stakes.

Sex Offender Notification Laws

Sex offender notification laws are an example of how a community attempts to provide a sense of security for its citizens against horrific crimes that often target the most vulnerable in society (Sample and Kadleck, 2008). These laws are predominantly found in the United States. Levenson and Cotter (2005, p.50) generally view U.S. notification laws as "intended to enhance community safety from sexual violence through awareness and education combined with vigilant surveillance and collaboration between law enforcement agents and citizens." Thomas (2003, p.217) further strengthens this link between community safety strategies and notification laws by asserting that American notification laws are "a form of regulation to achieve greater community safety and public protection." Notification laws, he asserts, are not additional punishment but rather regulation used to enhance the safety of the community. Gilling (2001) adds that risk and the management of risk are required to protect vulnerable victims, and the management of risk is a theme of community safety, which is the stated goal of American notification laws (Levenson, Brannon, Fortney, and Baker, 2007; Sample and Kadleck, 2008). Notification laws in the American context are laws that require offenders to register and make the offender's information available to the community. In Canada, there is no such legislation; however, notification is made on a case-by-case basis, which requires a subjective analysis to determine which offenders to notify the public about.

In the United States, notification laws have evolved from the Jason Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which requires sex offenders to register with the police (Levenson et al., 2007). Commonly known as Megan Laws after murdered child Megan Kanka, offender information contained in sex offender registries is made available to the public ostensibly to enhance the safety of children and in theory to limit the risk of the offender reoffending (Anderson and Sample, 2008; Levenson et al., 2007). Megan Laws are administered at the state level where individual states are left to decide the manner in which the information will be made public (Levenson et al., 2007). However, there is inconsistency in the application of such laws as some states circulate information about all sex offenders, while other states use risk assessment tools to determine whether the offender is a risk and whether or not the public is notified (Small, 1999).

While sex offender registries seem on the surface to make sense, they may motivated more by politics than public safety. As such, the democratic freedoms and the rehabilitative ability of offenders may be hindered. Initiated by politicians as a response to urging by the media and other interest groups, notification laws in the United States have greatly exaggerated the risk of and the inherent dangers of strangers (Zgoba, 2004). Such laws may cause more harm than good, creating with them a culture that views not only the offender as a risk, but all strangers as risks. As such, these strategies, which are heavily influenced by the media, cause moral panic in the community (Sandler, Freeman and Socia, 2008; Zgoba, 2004).

Moral panic is an increased sense of danger, which can be a result of the media, entrepreneurs, and public institutions portraying high-profile and disturbing incidents as relatively common place and a risk to the public. Such media events capture the attention of the public, and leave some people in a state of fear, afraid that this crime could easily happen to them. The reality is that random crimes are very rare in our society (Emsley, 2007).

Some entrepreneurs contribute to moral panic by suggesting it is critical to have security devices such as panic alarms installed at home (Emsley, 2007), because without them the public is at risk of victimization. As well, police and corrections agencies may add to moral panic by making public announcements about the release of offenders or of crimes committed in the community.

Politicians exploit the moral panic climate by using emotive strategies that tap into a community's fears. Emotive strategies rely on emotions of fear that are the result of terrible crimes that frighten the public. Such strategies involve using the names of child victims for laws aimed at protecting the community, such as Megan's Law, which evoke emotion and public anger toward all offenders and a general sense of moral panic (Anderson and Sample, 2008; Petrunik, 2002). It is this anger and moral panic that heightens the perceived risk and allows the notion of risk to influence notification laws.

The risk of children being abducted or sexually assaulted by strangers is minimal compared to the threat that lies at home or among family and friends (Quinn, Forsyth, and Mullen-Quinn, 2004; Small, 1999; Zgoba, 2004). In spite of this, moral panic causes the community to exaggerate the risk from outside offenders (Petrunik, 2002; Zgoba, 2004).

Ethical considerations include weighing the rights of the offender, in spite of the heinous crimes that he or she has committed, against the safety of the community. The resulting moral panic created is perpetuated by the media in the form of non-stop news programs, which heighten the perception of risk, and thus perpetuate the demand for extreme laws to control the perceived risk (Sample, 2003, as cited in Quinn et al., 2004). While anger may well be justified for any offences against women and children, it is the manner in which such anger forces politicians to react by implementing laws that may have no empirical evidence to support them.

Although notification laws reflect strong emotions held by the public, there is little to suggest that they make communities safer. Strategies such as notification and registry laws have been shown to have little effect on the ability to prevent offences (Anderson and Sample, 2008; Levenson et al., 2007; Vess, 2008). If such strategies were effective, little could be argued against their use if they saved even one child; however, the unintended consequences of their use may lead to an even greater risk of recidivism than if they hadn't been employed at all (Levenson et al., 2007).

Crime prevention programs using such strategies as notification laws are based on utilitarian principles, in which consequences are more important than the means to achieve the end results. Such teleological programs are often unethical as they may appear to be noble because of their emotional connection to victims, but they are often not assessed with as much scientific rigour as they ought to be. It is important that such programs be objectively studied so that their true utility can be assessed, rather than assumed.

Assessing crime prevention programs, such as those using notification laws, demands scientific rigour and academic skepticism and auditing (Eck, 2005). Ekblom and Pease (2005) note that it is rarely possible for the evaluator to determine an irrefutable conclusion about whether a program is effective or not. Programs such as juvenile intervention in the United States seem, on the surface, to appear intuitively good; however, a disturbing picture emerges after an empirical review. Such U.S. programs were once thought of as valid tools for preventing at-risk youths from committing future crimes (Petrosino, Turpin-Petrosino, and Finckenauer, 2000). Through the "scared straight" program, high-risk youths were identified and required to meet with hard-core offenders in prison (Petrosino, et al., 2000). This program attempted to rehabilitate young offenders and spread rapidly through the United States after the airing of the *Scared Straight!* documentary. Despite the well-meaning intentions of the program, research by Petrosino et al. (2000) shows that it has adverse effects and may actually cause participants to reoffend more often than those in the control groups. Moreover, in spite of the significant evidence about the harm caused by this program, positive media attention and a political climate conducive to reducing risk have ensured its continuation.

In much the same way, notification laws have been subject to empirical study, which has failed to support their stated goals of notifying the public of offenders in the community. The conclusion drawn (Levenson et al., 2007) is that notification is not successful in reaching its target audience; therefore, notification laws are unsuccessful. Levenson et al. (2007) have studied residents in Florida and learned that they were not aware of notifications in their community. This study was corroborated by Anderson and Sample (2008), who found that the majority of citizens sampled did not access the registry to gain information about offenders in their area. However, even if notification laws were successful in reaching their intended audience, it is doubtful whether this information would be taken in the spirit for which it was intended: to lessen the risk of children.

The purpose of notifying a community about offenders is to allow parents to adjust their parenting and lessen the risk to their child. Anderson and Sample (2008) found that of those who were aware of such information, only 42% of respondents with children took preventive actions. Consequently, Anderson and Sample (2008) conclude that the laws are ineffective at reducing risk, are a response to moral panic, and have little empirical evidence to support them. The negative consequences of such ineffective laws affect the offenders and may actually lead to a greater chance of reoffending because they cause difficulties in reintegrating into society (Levenson et al., 2007).

Notification laws can also cause offenders to suffer unnecessarily. Pratt suggests that strategies such as public notifications serve to "humiliate, degrade or brutalize the offender before the public at large" (2000, p.418). O'Malley (2010) further argues that the influence of risk on sentencing in the name of community safety has, in fact, a negative impact on offenders by creating difficulties that go well beyond the intent of offenders' sentences. Such difficulties include bouts with isolationism and exposure to vigilantism, affecting not only the offender but also the offender's family. While O'Malley (2010) acknowledges that the influence of risk theories on community safety strategies can be positive, in terms of using statistical models to predict risk factors, the use of risk-based sentences does nothing to reform the offender and, in fact, turns the community into an extension of the prison system.

Offenders' rights must be protected regardless of the offences committed; however, "The pendulum of justice is now focused on the protection of society, rather than individual rights" (Quinn et al., 2004). While certain rights must inevitably come to an end when an offender is identified and convicted, basic human rights should never be eliminated. Ward et al. (2007) identify basic human rights as those that belong to all humans simply because they are members of the human race. The rights that must be afforded to humans include rights that are centred on the "dignity of persons and their significant interests" and ought never be extinguished (Ward, Gannon, and Birgden, 2007, p.198).

Alternatively, from a utilitarian viewpoint, there are circumstances in which basic human rights are extinguishable if other rights are overridden (Gerwith, 1981). In the case of notification laws, this would include the rights of the future victim overriding the rights of the offender. However, as pointed out earlier, empirical research has shown that notification laws in the United States are unsuccessful in their stated goals; therefore, any such removal of the basic rights of offenders is unnecessary, even from a utilitarian perspective. Ward et al. (2007) acknowledge the right of the state to punish and restrict the movement of sex offenders in the name of community safety but suggest these powers must be balanced without unnecessarily harming the offender and limiting the potential of the offender to reintegrate successfully into society.

Risk-based strategies that employ limits on basic human rights are neither rehabilitation nor treatment. Petrunik (2002, p.484) views such strategies as not only extraneously punitive but also debilitating as a result of extraordinary measures that "override conventional understandings of justice and civil rights." As risk is determined and used as a basis for community safety, offenders' rights are diminished. While the rights of the community, victims, and future victims are important, the rights of sex offenders must also be considered, and the two should not be competing interests (Sanders and Young, 2007). The rights of the state to protect the community from sex offenders is a right that must be tempered by justification and deliberation so that the offender is not subject to obstacles, but rather is helped to become a contributing member of society.

Basic human rights protect dignity, security of person, and the right to work, and are essential for successful assimilation into society (Ward et al., 2007). Notification laws are the antithesis of such positive characteristics because by publicizing an offender's private information, they can unnecessarily subject the offender to physical assaults and threats from vigilantes, cause the loss of jobs and job prospects, and can promote harassment of and indignity for family, friends, and neighbours (Small, 1999; Tewksberry and Lees, 2006, Thomas, 2003; Ward et al, 2007; Zgoba, 2004). Such violations have caused offenders to be treated as "… objects, simply as means to other people's ends rather than ends in themselves" (Ward et al, 2007, p.199).

Ethics of Private Policing

The private policing sector has grown to take over the security and, by extension, the policing of public land. Private police are often seen on public land, providing security to access points of adjacent private land. In doing so, private police are acting on behalf of corporate interests, at times against the rights of civilians and potentially by using force. Loss prevention officers also act as private police who, in the interests of the corporation that employs them, restrict the liberty and freedom of citizens who are observed breaking the law. This leads to private police using force to apprehend citizens who have been identified as breaking the law. Ultimately, it can be argued, that the private sector should not engage in functions that will likely result in the use of force, which should be the exclusive domain of the state.

Cohen provides a practical description of the private policing sector by stating: "The state ceases to provide a particular service and it is then supplied by the private enterprises which are directly paid by the public as a customer" (Cohen, 1985, p.64). Cohen's description does not include private sector agencies that augment existing and parallel police services.

Policing is a practice that may involve authorizing coercive power, and this power must be used responsibly and with accountability (Department of Criminology, 2006/7; Girodo, 2000). The very suggestion of allowing an under-regulated private sector body to police society therefore strikes at the very core of democratic statehood (Marks and Goldsmith, 2006; Pastor, 2003). The importance of accountability cannot be minimized as it ensures that policing services are provided in an ethical manner and that service providers act with integrity, thus lessening the potential for misconduct (Girodo, 2000). The accountability of the private sector and regulations enforcing that accountability are controversial issues and opinions on them are varied. However, some argue that allowing the state to enforce accountability on private security is intrusive and unnecessary (Rothbard, 1973).

Rothbard (1973) believes state regulation of private police is not necessary because the free market rewards companies that self-regulate. Private police would therefore be answerable to their clients and would "enforce whatever their clients are willing to pay for" (Rothbard, 1973, p.221). It follows, therefore, that private policing companies, which do not satisfy their clients, would soon find themselves out of business due to free market forces. In Rothbard's view, regulation is provided by market forces (not the state), as the market will eliminate companies that do not produce.

The most obvious problem with Rothbard's conception of privatization is his failure to address accountability and the goals of the client. Given that the client of a private police service is seeking security, the client would be content to see the civil rights of its adversaries diminished, if that meant more security (Davis et al., 2003). The private police's goal would be to satisfy the client who pays for the services (U.S. Congress Senate Committee on Education and Labor, 1939). Rothbard assumes the client's goals will be altruistic and that the client will be concerned that justice is served. With this in mind, it is useful to look at two examples: one of the need for the state to tightly regulate policing and the other of the consequences when such regulation is absent.

In 1939, the U.S. Government held an inquiry into the use of privately paid police to battle protests staged by the burgeoning labour movement. The conduct of the police was anything but altruistic (U.S. Congress Senate Committee on Education and Labor, 1939). The Committee on Education and Labour was formed as the result of murder committed by the private police while serving their clients, the embattled corporations. In its final report, the committee concluded that private police systems were "…created to meet the economic needs and desires of private interests. Because there is no accountability other than the criminal code, they cannot be considered as *agencies of law and order*" (U.S. Congress Senate Committee on Education and Labor, 1939, p.2). The committee recognized the need for police agencies to be accountable in order to protect the interests of the public at large and stated that the criminal code – the only mechanism to enforce accountability among private police – was insufficient to fulfill this purpose.

The consequences of lax regulation were more recently seen in South Africa, where private policing resulted in the murder of civilians suspected of being criminals (Baker, 2002; Shearing and Berg, 2006). The citizens' group Mapogo-a-mathaamaga consisted of 70,000 members and was considered a formal, albeit voluntary, police organization dedicated to assisting public police with the investigation of crimes and punishing the transgressors (Shearing and Berg, 2006). Mapogo-a-mathaamaga members were citizens from all walks of life, and the group was formed as an altruistic response to the murder of business people by gangsters (Baker, 2002). Without any mechanisms in place to ensure their accountability, the Mapogo-a-mathamaga were allowed to do as they wished and act without regard to due process, with the end result being murder. Such abuses are certain to occur when accountability is not required of a policing agency.

McLeod (2002), a security company owner, views the private security business as having distinct advantages over public police. From the perspective of crime control, McLeod believes that private police are able to do things public police agencies cannot do because of the complex procedural processes required by their large bureaucracies and the restraints imposed upon them by the Canadian Charter of Rights and Freedoms (McLeod, 2002). These observations demonstrate that due process and the guarantee of statutory rights can only be delivered by a public police agency, which is governed by the state. In McLeod's (2002) experience, the powers of private security may be at odds with policing in a democratic society.

The problem of private policing accountability is further illuminated by comparing private police agencies to public police agencies (Wakefield, 2003). Ceyssens (2000, p.62) outlines the nine principle forms of regulation that Canadian public police are bound by: the Criminal Code, the Canadian Charter of Rights and Freedoms, supervision by independent authorities, internal processes, public complaint processes, police services, human rights legislation, commissions of inquiry, and coroners' inquests. In contrast, Canadian private police are bound only by the Criminal Code, market accountability, insurance restrictions, and minimal licensing requirements (McLeod, 2002). McLeod states that private-sector entrepreneurs' greatest responsibility is not accountability to government, but rather the "requirement that I meet a payroll every two weeks" (McLeod, 2002, p.60). This standpoint reflects the primary shortcoming of private policing, which is its reliance on generating money versus accountability.

Though government regulation is at times ineffective, private police require more accountability to be on a par with public police (Davis et al., 2003). Stenning, as cited in Davis et al. (2003), states that the private sector is not only regulated by market pressures but also by civil liability, and that both compensate for the lack of state regulations and controls. While civil litigation may at times be a viable method to achieve accountability, the cost of legal representation is prohibitive for many citizens. More formal, codified sanctions and rules are necessary to provide citizens whose rights have been violated by private police or security with the proper means of redress.

State regulations and controls that ensure a measure of accountability are daunting and force public police to obey the law and guarantee the rights of citizens, suspects, and lawbreakers. In Canada, Britain, and the United States, public police are required to follow procedures to ensure suspects retain their rights. From a Canadian perspective, these rights, enshrined in the Canadian Charter of Rights and Freedoms, include the right to retain counsel upon arrest (Department of Justice, 2010). Any statement taken without that right being upheld is potentially inadmissible in criminal courts (Law Commission of Canada, 2006). Private police and security officers are exempt from the requirement to uphold the Charter (Hutchinson and O'Connor, 2005; Rigakos and Greener, 2000). Private police officers are therefore able to breach the Charter to gain statements resulting in a value system based not on integrity and accountability, but rather on profit and efficiency. Furthermore, market variances affect private sector companies and would ultimately dictate the allocation of resources (Johnston, 1992). The more lucrative populations can afford more services, while the poor would be left without adequate police service. Loader (1997) refers to this as a two-tier system, which is unbalanced by its very nature. A two-tiered policing system would deliver high-quality services to the affluent and lower-quality services to the poor.

Alleviating the public police's stretched resources has been heralded as one of the benefits of expanding private policing. The reasoning behind this is that the private sector is able to augment public policing and thereby allow public police to concentrate on activities requiring specialization related to their function as a servant of the state (Davis et al., 2003). Marks and Goldsmith (2006) assert that the public's acceptance of the private policing phenomenon is an acceptance of private security as an extension of the state. The public sees private police as a part of the policing continuum and believes they are able to relieve the police of some of their vital and complex duties (Marks and Goldsmith, 2006). McLeod (2002) recognizes the limits of the private security sector and cannot foresee the private sector ever taking over core policing; rather, he sees the private sector absorbing up to 60% of non-core policing. In an attempt to find a middle ground, the state has permitted private companies the ability to create private policing agencies at their own costs, with state-imposed conditions.

This complex model, known as hybrid policing, allows certain private organizations to obtain official status as police (Johnston, 1992). However, hybrid policing organizations have been successful as semi-private entities due to the state's regulation of their powers. For example, B.C. Transit Police are paid by the transit authority to serve customers who use the transit system and to protect transit system property. Officers are governed by the Police Act, which governs all municipal public police in British Columbia (Transit Police, 2009). The state ensures some accountability of the hybrid policing service, but it does not ensure an equitable allocation of the service's resources.

Unlike private police or hybrid police, public police are available to all segments of society and will respond to calls no matter where they originate. Police often have a strong presence in urban pockets of poor or disadvantaged citizens (Johnston, 1992). The ability of disadvantaged citizens to pay for private security is limited, and if they were not served by public police, their communities would be under-policed or policed by volunteer organizations.

To resolve this issue, Rothbard (1973) suggests that private police would be expected to voluntarily police these areas out of goodwill, ignoring the market costs and essentially providing welfare policing. He furthers his extreme libertarian argument by suggesting that those who don't pay for security would not receive the service. Here, the poor and disadvantaged would be at the mercy of the goodwill of other private police companies and societies formed by police. Even without considering the earlier example of the Mapogo-a-mathaamaga, Rothbard's perspective is problematic. He does not consider how unlikely it is for police officers to be convinced that they should volunteer a day of their time to police-disadvantaged areas or the likelihood of a company donating labour costs to police such areas. In addition, policing can be a risky occupation and to expect the private sector and volunteers to provide adequate policing for a specific area, at all hours, is unrealistic and certainly not possible for an extended time frame. Consequently, if private sector policing replaced the public police, the impact on underprivileged neighbourhoods would most likely be increased crime and violence, thus increasing the likelihood of the police using force.

In their assessment of underprivileged neighbourhoods in South Africa, Koonings and Kruijt (2004) found that the incidence and impact of violence in underprivileged neighbourhoods is disproportionate to that in other neighbourhoods. If we accept that disadvantaged neighbourhoods are more prone to violence, it follows that the use of force by policing agencies in these areas is likely to be more common than in affluent neighbourhoods. Private police without accountability should not investigate crimes of violence or be placed in a position where the use of force is probable.

Although private security officers have a right to protect themselves, this right should extend no further than the rights afforded to other citizens. The state should be the only body entitled to legitimately use force, and this entitlement should be granted only to designated state representatives (Walker, 2000). This notion is not only shared by proponents of public police, but also by libertarians such as Nozick (1974), who advocate that the use of force be restricted to the domain of the state. Nozick (1974) reluctantly draws this conclusion in spite of his desire for a minimalist state that adopts a privatization approach in all other areas of public service. He concedes that as a state becomes more powerful or extensive, it becomes more coercive and civil rights are increasingly stripped. However, he makes an exception to this rule with regard to the use of force:

> A state claims a monopoly on deciding who may use force when; it says that only it may decide who may use force and under what conditions; it reserves to itself the sole right to pass on the legitimacy and permissibility of any use of force within its boundaries; furthermore it claims the right to punish all those who violate its claimed monopoly (Nozick, 1974, p.23).

The second half of Nozick's statement reveals a second function of policing that should never be conducted by the private sector: the investigation of crimes where force was used. The state, as the sole legitimate purveyor of the use of force, should also be the sole investigator and punisher of those who do use force illegitimately. Prominent philosophers Thomas Hobbes and Jean Bodin, as well as Max Weber in the 20th century, have also professed the axiom of the state's sole responsibility for the use of force to protect against internal and external threats. Walker (2000) adds that a "key defining feature of statehood is ultimate control over the legitimate use of force" (Walker, 2000, p.228). Surprisingly, Nozick (1974), who argues for minimal state involvement, also concedes that statehood requires those who use force without the consent of the state be punished in order to legitimize the use of force. Furthermore, it is imperative that the arms of the law which are not focused on a profit margin must investigate the illegitimate use of force that results in violent crimes. The investigations of such offences need to be tightly controlled, highly accountable, and ethical to protect the integrity of the state.

Private security companies not only lack accountability but also likely lack an effective ethical structure (Livingstone and Hart, 2003). Ethics are a necessary component of violent crime investigations because such cases too often present a temptation to tamper with the evidence. While public police organizations cannot always guarantee ethical conduct, rules and protocols are in place to maximize it (Livingstone and Hart, 2003). Ethical conduct is far less likely to be a concern for private organizations that have to answer to their paymaster. The goal of private companies is ultimately to make profit, and ethics act as an impediment to making profit. In his analysis of corporations, Alvarez (2001, p.107) notes that many companies "create cultures of amoral calculation in which values and ethics are less important than eliminating competition and increasing profits." This practice of ignoring ethical considerations is unlikely in a public policing environment due to the mechanisms of accountability that public policing is subject to and the freedom from the need to increase profits.

The lack of an ethical code of conduct among the private sector is reflected in private policing agencies' lack of commitment to ethical standards. Livingstone and Hart (2003, p.168) have observed that there is a need for an "ethical component and commitment on the part of the security sector that goes further beyond strict legality and the pursuit of profit." Until the private policing sector is forced to adopt structured ethical constitutions and mechanisms to ensure accountability, it is not qualified to use force or be directly involved in the investigation of violent offences.

REFERENCES

1. Alvarez, A. (2001). *Governments, Citizens and Genocide.* Bloomington, Indiana: Indiana University Press.
2. Anderson, A. and Sample, L. (2008). Public Awareness and Action Resulting From Sex Offender Community Notification Laws. *Criminal Justice Policy Review* 19(4): 371-396.
3. Baker, B. (2002). Living With Non-State Policing In South Africa. *Journal of Modern Africa Studies,* 40:1.
4. Caldero, M. and Crank, J. (2004). *Police Ethics: The Corruption of Noble Cause.(*2nd ed.*)*. Mathew Bender and Company.
5. CBC News (1999). *Crown Drops Charge Against APEC Protester*. Retrieved from:http://www.cbc.ca/news/canada/story/1999/02/01/singh990201.html.
6. Ceyssens, P. (2000). Accountability, Oversight and Human Rights in Policing and Private Security In (Ed.) Richardson, J., *Police and Private Security: What The Future Holds,* Canadian Chiefs Of Police, Pp 61-69.
7. Cohen, S. (1985). *Visions of Social Control: Crime, Punishment and Classification.* Cambridge, Polity Press.
8. Criminal Code, R.S.C. (2015) c. C-1, s. 25
9. Criminal Code, R.S.C. (2015), c. C-2, s. 63
10. Criminal Code, R.S.C. (2015) c. C-2, s. 64
11. Davis, R., Ortiz, C., Dadush, S., Irish, J., Alvarado, A., and Davis, D. (2003). 'The Public Accountability of Private Police: Lessons From New York City, Johannesburg and Mexico City, *Policing And Society.* 2003, 13-2, Pp 197-210.
12. della Porta, D. (2006). Policing Transnational Protest in D. della Porta, A. Peterson and H. Reiter (eds) *The Policing of Transnational Police* Burlington: Ashgate, 1-12.
13. Department of Criminology (2006/7). *Theories of Crime Module*. Leicester, Department of Criminology, University of Leicester.
14. Department of Justice (2010). *Canadian Charter of Rights and Freedoms (1982).* Retrieved from:http://laws.justice.gc.ca/en/charter/1.html#anchorbo-ga:l_I-gb:s_1.
15. Eck, J. (2005). Evaluation for Lesson Learning in N. Tilley (ed) *Handbook of Crime Prevention and Community Safety,* Devon: Willan Publishing, 699-733.
16. Ekblom P. and Pease, K. (2005). Building a Safer Society: Strategic Approaches to Crime Prevention in *Crime and Justice* 19: 585-662. Retrieved from: http://www.jstor.org.ezproxy.lib.le.ac.uk/stable/pdfplus/1147604.pdf?acceptTC=true.
17. Emsley, C., (2007). Historical Perspectives on Crime. M. Maguire, R., Morgan, and R. Reiner (eds) in *The Oxford handbook of Criminology Oxford*, Oxford University Press: 122-38.
18. Ericson, R. and Doyle, A. (1999). Globalization and the Policing of Protest: The Case of APEC 1997. *British Journal of Sociology* 50(4): 589- 608, Retrieved from: http://onlinelibrary.wiley.com.ezproxy.lib.le.ac.uk/doi/10.1111/j.1468- 4446.1999.00589.x/pdf.
19. Furlong, J. and Keefe, D. (2011). *The Night the City Became a Stadium: Independent Review Of The 2011 Vancouver Stanley Cup Playoffs Riot* Victoria, Solicitor General and Minister of Public Safety, Province of British Columbia. Retrieved from: http://www.vancouversun.com/pdf/riot-review-report.pdf.
20. Gerwith, A. (1981). Are There Any Absolute Rights. *The Philosophical Quarterly* 31 (122): 2-16, Retrieved from: http://www.jstor.org.ezproxy.lib.le.ac.uk/stable/2218674.
21. Gillham, P. and Noakes, J. (2007). More Than A March in a Circle: Transgressive Protests and the

Limits of Negotiated Management. *Mobilization: An International Quarterly* 12(4): 341- 357.

22. Gillham, P. and Marx, G. (2000). Complexity and Irony in Policing And Protesting: The World Trade Organization. *Seattle Social Justice* 27(2): 212- 236. Retrieved from:http://go.galegroup.com.ezproxy.lib.le.ac.uk/ps/retrieve.do?retrieveFormat =PDF_FROM_CALLISTO&inPS=true&prodId=EAIM&userGroupName=leicester&workId=PI-2846- 236.JPG&docId=GALE|A67547375&callistoContentSet=PER&isAcrobatAvailable=true.
23. Gilling, D. (2001). Community Safety and Social Policy. *European Journal on Criminal Policy and Research* 9: 381-400.
24. Girodo, M. (2000). Preventing Misconduct in Police and Private Security in Richardson, J. (ed) *Police and Private Security: What the Future Holds,* Ottawa, Canadian Association of Chiefs of Police, pp 132-136.
25. Hutchinson , S. and O'Connor, D. (2005). Policing The New Commons: Corporate Security Governance On a Mass Private Property In Canada. *Policing And Society,* 15:2, Pp 125-144.
26. Johnston, L. (1992). *The Rebirth of Private Policing.* New York, Routledge.
27. Kelly, J. and Fraser, K. (2011) England Riots: What Could the Police Do to Stop the Disorder? *BBC News Magazine.* Retrieved from: http://www.bbc.co.uk/news/magazine-14459127.
28. King, M. and Waddington, D. (2005). Flashpoints Revisited: A Critical Application to the Policing of Anti-globalization Protest' *Policing & Society*, 15(3): 255- 282, Retrieved from:http://www.tandfonline.com.ezproxy.lib.le.ac.uk/doi/pdf/10.1080/10439460500168584.
29. Koonings, K., and Kruijt, D. (2004). Armed Actors, Organized Violence and State Failure in Latin. America: A Survey of Issues and Arguments, in (Eds.) Koonings, K., and Kruijt, D., *Armed. Actors: Organised Violence and State Failures In Latin America*, New York, Zed Books, p. 5-15.
30. Law Commission of Canada, (2006). *In Search Of Security: The Future Of Policing In Canada.* Canada, Ottawa, Minister Of Public Works And Government Services.
31. Lee, J. (2011). Vancouver Police Used Prohibited Weapon On Stanley Cup Rioters: Report. *The Vancouver Sun.*Retrieved from: http://www.vancouversun.com/news/Vancouver+police+used+prohibited+ weapon+Stanley+rioters+report/5347816/story.html#ixzz1XJXaH5O.
32. Levenson, J. and Cotter, L. (2005). The Effect of Meagan's Law on Sex Offender Reintegration. *Journal of Contemporary Criminal Justice* 21(1): 49-66. Retrieved from:http://ccj.sagepub.com.ezproxy.lib.le.ac.uk/content/21/1/49.full.pdf+html.
33. Levenson, J., Brannon, Y., Fortney, T., and Baker, J. (2007). Public Perceptions about Sex Offenders and Community Perception Policies. *Analyses of Social Issues and Public Policy* 7(1): 137-161.
34. Livingstone, K. and Hart, J. (2003). The Wrong Arm Of The Law? Public Images of Private Security. *Policing and Society*, 13:2, Pp 159- 170.
35. Loader, I. (1997). Private Security and the Demand for Protection in Contemporary Britain. *Policing and Society*, 7:3, Pp 143- 162.
36. Marks, M. and Goldsmith, A. (2006). The State The People And Democratic Policing In South Africa, in (Eds.) Wood. J., and Dupont, B., *Democratic Society and The Governance of Security,* Cambridge, Cambridge University Press, pp139-165.
37. McLeod, R. (2002). *Parapolice: A Revolution in The World Of Law Enforcement*. Boheme Press: Toronto.
38. Nozick, R. (1974). *Anarchy, State, and Utopia.* Prentice Hall: Englewoods Cliffs, New Jersey.
39. O'Malley, Pat (2010.) *Crime and Risk.* Sage Publishing: London.
40. Panitch, L. (2002). Violence as a Tool of Order and Change: The War on Terrorism and the Anti Globalization Movement. *Option Politique* September, 40-44. Retrieved from:http://www.irpp.org/po/archive/sep02/panitch.pdf.
41. Pastor, J. (2003). *The Privatization of Police in America*. Jefferson. North Carolina, McFarland and Company Publishers Incorporated.
42. Petrosino, A., Turpin-Petrosino, C., and Finckenauer (2000). Well-Meaning Programs Can Have Harmful Effects! Lessons from Experiments of Programs Such as Scared Straight. *Crime and Delinquency* 46: 354-379. Retrieved from: http://cad.sagepub.com.ezproxy.lib.le.ac.uk/content/46/3/354.full.pdf+html.
43. Petrunik, M., (2002). Managing Unacceptable Risk: Sex Offenders, Community Response,and Social Policy in the United States and Canada. *International Journal of Offender Therapy and Comparative Criminology*, 46(4): 483-511. Retrieved from: http://ijo.sagepub.com/content/46/4/483.refs.html.
44. Pollock, J. (2010). *Ethical Dilemmas and Decisions in Criminal Justice*. Wadsworth Cengage Learning: Belmont, California.
45. Pratt, J. (2000). Emotive and Ostentatious Punishment: Its Decline and Resurgence in Modern Society in*Punishment and Society* 2 (4): 417-439.
46. Quinn, J., Forsyth, C. and Mullen-Quinn, C. (2004). Societal Reaction to Sex Offenders: A Review of the Origins and Results of the Myths Surrounding Their Crimes and Treatment Amenability. *Deviant Behaviour*25(3): 215-232. Retrieved from: http://www.swetswise.com.ezproxy.lib.le.ac.uk/FullTextProxy/swproxy?url=http%3A%2F%2Fwww.informaworld.com%2Fsmpp%2Fftinterface%3Fcontent%3Da715235715%26format%3Dpdf%26magic%3Dswets%7C%7CD0488B488368DEAB8E17849356766BC5%26ft%3D.pdf&ts=1297118752234&cs=723361743&userName=8080059.ipdirect&emCondId=112844&articleID=154021765&yevoID=3147198&titleID=58053&referer=1&remoteAddr=143.210.133.24&hostType=PRO&swsSessionId=oIjUpG6yDZPeW8bAZSdqYg_.pasc1.

47. Redekop, V. and Pare, S. (2010). *Beyond Control: A Mutual Respect Approach to Protest Crowd- Police Relations* London: Bloomsbury Academic.

48. Reicher, S., Stott S., Cronin, P. and Adang, O. (2004). An Integrated Approach to Crowd Psychology and Public-order Policing. *Policing: An International Journal of Police Strategies & Management* 27(4): 558-572. Retrieved from: http://heinonline.org.ezproxy.lib.le.ac.uk/HOL/Page?handle=hein.journals/polic27&id=5 62&collection=journals&index=journals/police.

49. Rigakos, G., and Greener, D. (2000). Bubbles of Governance: Private Policing and the Law In Canada. *Canadian Journal Of Law and Society*, Volume 15:2, pp 145-185.

50. Rothbard, M. (1973). *For A New Liberty.* The Macmillan Co.: New York.

51. Sample L. and Kadleck, C. (2008). Sex Offender Laws: Legislator's accounts for the Need of Policy *Criminal Justice Policy Review* 19(1): 40-62, Retrieved from:http://cjp.sagepub.com.ezproxy.lib.le.ac.uk/content/19/1/40.full.pdf+html.

52. Sanders, A. and Young, R. (2007). From Suspect to Trial in M. Maguire, R. Morgan and R. Reiner (eds) *The Oxford Handbook of Criminology,* Oxford: Oxford University Press, 953-989.

53. Sandler, J., Freeman, N., and Socia, K. (2008). Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law. *Psychology, Public Policy, and Law* 14(4): 284–302.

54. Shearing, C. and Berg, J. (2006) South Africa, in (eds.), Jones, Trevor And Newburn, Tim, *Plural Policing, A*Comparative *Perspective*, New York, Routledge, pp 190-221.

55. Small, J. (1999) Who Are the People in Your Neighborhood? Due Process, Public Protection, and Sex Offender Notification Laws. *New York University Law Review* 74: 1451- 1494.

56. Tewksberry, R and Lees, M. (2006). Perceptions of Sex Offender Registration: Collateral Consequences And Community Experiences. *Sociological Spectrum* 26(3): 309- 334. Retrieved from:http://www.swetswise.com.ezproxy.lib.le.ac.uk/FullTextProxy/swproxy?url=http%3A%2F%2Fwww.informaworld.com%2Fsmpp%2Fftinterface%3Fcontent%3D10.1080%2F02732170500524246%26format%3Dpdf%26magic%3Dswets%7C%7CD0488B488368DEAB8E17849356766BC5%26wmdesc%3D192.87.50.16%26ft%3D.pdf&ts=1297124166487&cs=4244037432&userName=8080059.ipdirect&emCondId=112844&articleID=32101475&yevoID=1969850&titleID=188309&referer=1&remoteAddr=143.210.133.23&hostType=PRO&swsSessionId=NAlD56WOqoTCtvxLY5NPHA__.pasc1

57. Thomas, T. (2003). Sex Offender Community Notification: Experiences from America. *The Howard Journal*42(3): 217-228.

58. Transit Police (2009). *Mandate* [online]. Retrieved from: http://www.transitpolice.bc.ca/en/About-Us/Mandate.aspx.

59. U.S. Congress Senate Committee on Education and Labor (1971) *Private Police Systems* / U.S. Committee on Education and Labor, New York, Arno Press, Note: Reprint of Senate Document, *Violations of Free Speech and Rights of Labor : Report of the Committee on Education and Labor*, pursuant to S. Res. 266 (74th Congress). Washington : U.S.G.P.O., 1939.

60. Vess, J. (2008). Sex Offender Risk Assessment: Consideration of Human Rights In Community Protection Legislation. *Legal and Criminological Psychology* 13: 245–256.

61. Waddington, P.A.J. (1998). Both Arms of the Law: Institutionalised Protest and The Policing of Public-order.*The British Criminology Conferences: Selected Proceedings* Volume 1: Emerging Themes in Criminology. Loughborough University, 18-21 July 1995. Retrieved from: http://www.britsoccrim.org/volume1/008.pdf.

62. Wakefield, A. (2003). *Selling Security: The Private Policing Of Public Space*. Willan Publishing Co.: Portland, OR.

6.3. Walker, N. (2000). *Policing In A Changing Constitutional Order.* Street and Maxwell: London.

64. Ward, T., Gannon, T., and Birgden, A. (2007). Human Rights and the Treatment of Sex Offenders' Sexual Abuse. *A Journal of Research and Treatment* 19(3): 195-204, Retrieved from:http://sax.sagepub.com.ezproxy.lib.le.ac.uk/content/19/3/195.full.pdf+html.

65. Zgoba, K. (2004). Spin Doctors and Moral Crusaders: The Moral Panic Behind Child Safety Legislation. *Criminal Justice Studies* 17(4): 385-404.

7. DISCRETION, SUPERVISION, AND LEADERSHIP

The Ethics Surrounding Discretion

According to McGregor (Kleinig,1996), discretion can only be interpreted as those decisions that are made with lawful authority rather than decisions made for illegal reasons. Furthermore, the individuals within an institution must have lawful authority to make the decisions and must operate under the constraints acceptable to others within the organization or profession. This definition is useful as it allows discretion to be considered in a legal context rather than only when police officers operate illegally and decide to commit prohibited acts, which is not considered to be lawful discretion. Kleinig (1996) accordingly considers these illegal acts not as discretion but rather as a decision to engage in forbidden conduct. In a law enforcement context, discretion only concerns decisions that are made in a legal setting. When decisions that are made by officers do not yield the desired positive results, but are made in good faith, these decisions still fall under the umbrella of discretion. Decisions made by officers without good faith are not classified as discretionary.

Discretion in law enforcement, and especially within policing, is critical to both the functioning of the police department and to the relationship with the public the police department serves. It is unusual within the paramilitary policing environment, due to the inverse relationship between discretion at the top of the rank structure and that of the lower end of the rank structure, compared to military bodies and some commercial enterprises (Manning, 2010). Officers who have recently started in patrol exercise more discretion than the chief constable or the highest rank within the department. In comparison, a general in the army possess discretionary powers at a much higher level than does a low-ranking soldier.

There is an inevitable tension that exists between paramilitary agencies that require members of all ranks to follow orders and those agencies that acknowledge discretion among members of lower ranks is necessary to function. In the military, discretion is seldom used at lower levels. Orders are given and are to be followed regardless of the feelings or desires of the subordinate. The move toward more discretion inevitably leads police services away from the military hierarchical structure to a more organic structure in which decisions are made throughout the organization (Hughes and Newton, 2010). Key to the argument, however, is that some in law enforcement view professionalism as partially gauged on the amount of discretion that is afforded to an occupation, and it is in this respect that a shift toward more discretion will result in police services being more professional.

It is also important to explain how the term *professionalism* will be used in the context of law enforcement. While arguments persist as to whether or not policing is a "profession" or an "occupation," it is important to note that professionalism, within a law enforcement context, is related to the ability of police officers to exercise discretion with a level of autonomy (Villiers, 2003). More specifically, the meaning of professionalism in this context is related to the freedom of police to make discretionary operational decisions. When discretion is removed from police due to managerialism and accountability, professionalism decreases. Klofas, Stojkovic, and Kalinich (1990) use the term *deprofessionalization* to describe this process. Without discretion, it is argued, an organization loses its professionalism.

The shift to more professionalism requires the need for management to proactively promote operational decisions in a manner that is reflective of an organic organization and still be able to control its members (Jones, 2008).

However, Sanders and Young (2007) take a dim view of police management's ability to control the discretion of operational police officers. Discretion, they argue, has the potential to:

- Lead officers to fabricate evidence
- Look for guilt rather than truth
- Summarize statements with bias
- Handle exhibits poorly and fail to disclose evidence

The ability to control and provide effective leadership to officers, who possess more discretion and autonomy than the management, raises serious implications for police managers.

Crawshaw, Devlin, and Williamson (1998, p.24) argue that it is due to the discretion afforded to police at the operational level that police work is unsupervised and for large amounts of the officer's day "unsupervisorable." Pagon (2003, p.159) refers to this as the "discretionary paradox" in which police officers are answerable to their superiors even though they operate with a high degree of autonomy and out of view of their supervisors.

An irony within law enforcement exists because while a law enforcement structure is different from the military, the police still have a quasi-military structure. To further complicate matters, within policing specifically, sergeants have an increased role in administration, which has limited their ability to provide supervision on the street. Ultimately, this does not allow for close supervision of junior officers who are forced to exercise their discretion often without the benefit of the wisdom of experienced supervisors (Butterfield, Edwards, and Woodall, 2005). Lipsky (1980) warns that the need for a high degree of control through supervision is critical in allowing discretion to be effective; without such control, officers will make decisions that are self-promoting and in opposition to organizational goals. Direct supervision and control is a difficult task for front-line managers who are faced with an increased workload.

Because of the discretionary mistakes that are inevitably made by officers, attempts have been made to control operational decision making among police officers (Butterfield, Edwards, and Woodall, 2005). Lipsky (1980) notes that discretion has been curtailed in regards to domestic assaults where police officers are encouraged to charge offenders rather than informally resolve the situation. In British Columbia, the Violence Against Women in Relationships Policy was introduced in 1993 and underwent changes in 2010. The policy makes clear to officers the protocols, roles, operational procedures, and responsibilities they must adhere to when investigating instances of domestic assault (British Columbia Ministry of Public Safety and Solicitor General Ministry of Attorney General, Ministry of Children and Family Development, 2010). Policies such as these are regarded as examples of positive arrest policies (or legislation) where the intention is to limit discretion in favour of arrests (Rowe, 2007). Since this policy is intended to limit discretion, it ultimately holds officers accountable if they choose not to arrest while still affording them the facade of autonomy (Rowe, 2007).

Studies have shown that there are problems with such policies and legislation, and an examination of such problems highlights the benefits of a shift to more discretion (Fyfe, 1996; Mastrofski, 2004; Neyroud, 2008; Rowe, 2007). In a study of officers' perceptions of the Domestic Violence, Crime and Victims Bill, an equivalent example from Britain, Rowe (2007) found that officers were concerned about the ethics of positive arrest policies in cases where they would not have arrested had it been left to their discretion. Officers felt that when they are forced to arrest suspects in cases where they would otherwise operationally decide against charges, their ethical standards would be compromised as they believed that such charges would be unjust. Other problems associated with the legislation included such things as increased workload, reduced professionalism, and the potential for worsening a situation due to the arrest (Rowe, 2007). The Domestic Violence, Crime and Victims Bill (2003) demonstrates inherent problems when discretion is curtailed either through legislation or organizational policy; however, it does highlight three benefits that would result from a shift to more discretionary powers in operational decision making, namely greater efficiency or a smaller workload (Davies and Thomas, 2003), professionalism and ethics (Villiers, 2003), and leadership within the junior ranks of the service (Bass, 1990).

It is impossible for the police to detect all crimes all the time. However, even if the police were able to detect every crime, resources would not be sufficient to investigate each one and make an arrest. Discretion is needed to filter offences so that only those that are most important will be investigated, even though at times such discretion may be misused (Tillyer and Klahm IV, 2011). Without discretion the police, and indeed the whole criminal justice system, would become overwhelmed with cases, resulting in public displeasure (McLaughlin, 2009). Lipsky (1980) further asserts that discretion among police officers will always be mandatory due to the inevitable lack of resources and the need for an efficient service. Decisions, ethically made, will allow for charges to be limited to only those that matter and will render the police service more efficient in prosecuting only such offences.

However, while efficiency is important in all public organizations, there is the danger that police agencies will lose their way if efficiency is promoted over ethical and rightful decisions concerning the protection of the public and if citizens are denied justice. Rawls (1971, p.71), in his seminal theory on justice, observes that "the principle of efficiency cannot serve alone as a conception of justice." Discretion, according to Rawls (1971), should not be used as a means of ensuring efficiency but rather as a way of applying a utilitarianism counterbalance to unjust laws within the justice system. The end result should never be efficiency at the expense of human rights and ethical policing. Dobel (2005, p.161) extends this thought process to discretion when noting "that the existence of discretion increases the tension between liberal democracy and public management and administration." The end result of using discretion as a means to ensure maximum efficiency potentially leads to an abuse of process in which the rights of individuals are superseded by the will to maximize results with minimal resources (Dobel, 2005).

Therefore, the goals of the organization can become ambiguous, caught between ensuring democracy and individual rights and promoting efficiency. Goal ambiguity can lead to placing the rights of individuals at lower levels of importance and can be further fostered by the different subcultures within the police service (Lipsky, 1980).

Goal ambiguity is consistent with some of the inherent problems faced by police officers in operational decision making. Lipsky (1980) identifies a conflict that police confront between client-oriented goals, social-engineering goals, and organizational-centred goals, and spousal-assault policies are an example. In this instance, an officer is mandated to charge where there is evidence even if the officer feels charges are not appropriate and go against the goals of the client—for example, if the victim does not wish to pursue charges (Rowe, 2007). Likewise, an officer who is acting only to comply with policy guidelines may be inclined to perform poorly to compromise the investigation, thereby subverting the charge which he or she was obliged to make, however reluctantly (Lipsky,1980).

Proper use of discretion, within the parameters of McGregor's definition (as cited in Kleinig, 1996), will effectively allow the state to save resources while enforcing only the violations that the public want enforced. According to Reiner (2010), police require the ability to use discretion due to the inevitable lack of police resources to enforce all laws all the time. While police services chronically lack the resources to formally enforce all laws, they must, as a result, allow officers to determine which laws will be enforced at the operational level (Crawshaw, Devlin and Williamson, 1998; Lipsky, 1980). The discretion allowed at the lower levels of the hierarchy allows police services to spare precious front-line resources while concentrating on those offences that should be enforced in accordance to the police service's values and/or the values of the community the agency serves. While discretion creates an efficient system, the proper operational decisions must be made at the lower levels of the hierarchy, which will benefit the agency by fostering leadership throughout the organization.

Discretion and Supervision

Police officers who believe they are professional will more likely act in a professional manner and therefore act with accountability and ethics. In his qualitative study, Rowe (2007) observed that when discretionary powers are reduced, officers report a feeling of frustration due to the perception that superiors do not view them as trustworthy enough to make decisions. One could logically infer from this that when discretion increases so too does the feeling of professionalism. Therefore, discretion, when professionally instructed, will lead to ethical decision making and ultimately an ethical police service (Neyroud, 2008). The alternative is having a police service where trust is not shown to the lower ranks, which results in officers who do not view themselves as professionals and who likely would not conduct themselves so. Neyroud (2008) concludes that although police do possess a large amount of discretion, unfortunately, the legal framework under which they operate sharply limits their discretion and therefore their professionalism.

Professionalism in policing is also problematic due to the military hierarchical nature of policing structures previously outlined. This means that the military organizational model of the police is not compatible with a profession that uses discretion as much as it is used by the police (Hughes and Newton, 2010).

In policing, to further complicate matters, the position of sergeant in the past was that of an operational police officer with some supervisory duties whose principal responsibility included mentoring and training constables to ensure their welfare, discipline, team leadership, and ultimately controlling subordinates (Butterfield, Edwards, and Woodall, 2005). Currently, there is a devolving of the duties and responsibilities of the executive rank to those of the sergeant rank (Butterfield, Edwards, and Woodall, 2005). While sergeants were once seen as mentors and experienced practitioners on whom constables relied, they essentially have become office managers who are concerned with budgets and target-setting and are unable to spend time monitoring their subordinates (Butterfield, Edwards, and Woodall, 2005). The lessening of the direct supervisory role of the sergeant has had a negative impact on the ability of the police service to rely on the discretion of the individual officer in his or her operational decisions, and it is in these conditions that discretion is likely to be misused, thus highlighting the need for more control.

Discretion among the lower ranks in policing organizations makes control by the organization imperative so that the operational decisions represent the organization's values. Panzarella (2003) suggests that organizational control of police discretion is a facade because police officers are an uncontrollable entity and that an increase in police discretion will further erode such control and more unethical practices will ensue. Additionally, Punch (2003) suggests that systemic failures within policing organizations result in corruption: the outcome of a lack of control by managers who, he asserts, are all too willing to let rules be bent or broken. At issue then, according to Panzarella (2003) and Punch (2003), is the inability of police management to monitor and control the inevitability of police discretion.

While police managers have access to technology that enables them to closely monitor the discretion exercised by police officers at all times (Alderson, 2003), a manager watching an officer's every move is a superficial solution, which suggests a lack of trust in the ethics and values of the officer. Managers must instead act in ways that promote values that reflect the organization's goals; they must also pass these values on to their subordinates so that they too will use their discretion in a similar fashion. The goal is to lead officers in enabling the effective use of discretion rather than merely overseeing their every operational decision.

Selective Enforcement

Law enforcement officers are given enormous discretion to choose which laws to enforce and when. While discretion enables them to decide when and what to investigate, issues arise when an officer's decision may be questionable. Officers often refer to the "ways and means act" to explain selective enforcement that results in "legally" punishing poor behaviour in a way that may not be justified. An example is best used to illustrate this line of thinking.

A police officer who is accosted by a rude and obnoxious citizen may find an obsolete charge with which to charge the person to teach him or her a lesson. The charge is usually something minor, such as riding a bicycle without a bell. While technically the bylaw may require riders to have a bicycle bell, it may very rarely be used. In addition, the police officer may not have enforced this bylaw in the past and is aware that numerous people ride bicycles without bells.

While the officer has a legal right to charge the citizen, he or she should reflect on how this case will look if it is taken to court. The officer's credibility will be questioned after the circumstances of the case are read in court. Typically, the citizen's obnoxious behaviour, when recalled later on, will pale in comparison to what the court could rule as an abuse of authority by the police officer. Officers must be objective and treat everyone equally, regardless of the behaviour exhibited. When confronted with obnoxious citizens, officers must strive to remain unmoved, unnerved, and calm. Using discretion as a tool to charge a citizen with obsolete laws and bylaws should be avoided for the good of the officer, the agency, and society.

Loyalty

Most branches of law enforcement are paramilitary, having a formal rank structure while still possessing some traits of a civilian organization. One of the characteristics of a military environment is loyalty and camaraderie: loyalty to other members of the agency, loyalty to the system of rank structure, and loyalty to the values possessed by the agency. Correction guards and other law enforcement personnel work most of their careers in an unsafe environment, in which they have to rely on one another for their safety. In this context, when a law enforcement member is in danger, that member must be secure in the belief that fellow members will be loyal to him or her, even in dangerous situations or situations involving emotional risk. Loyalty is critical for ensuring law enforcement members understand that their colleagues will be willing to ignore danger and assist them regardless of the peril. Without loyalty and camaraderie, law enforcement personnel would be ineffective as they would likely be reluctant to put themselves in harm's way.

Police investigators for one agency often assist other investigators in different agencies. Part of this compelling duty to assist in an investigation is because of a sense of loyalty to other members of the same profession. The loyalty felt by officers fosters teamwork in investigations and in general duty or patrol work. Loyalty and teamwork in all branches of law enforcement are critical in preventing crime, investigating crime, and guarding prisoners.

While loyalty is important, there are limitations; officers should be aware of how far their loyalty extends before they report misconduct. Westmarland (2010) surveyed police officers about corruption and the "blue code" of silence. Specifically, Westmarland sought the following:

- What officers think about violations of rules
- When to inform superiors of rule breaking
- Whether informing superiors of rule breaking is just as bad as the behaviour of the original rule breaker
- Behaviour the officer would definitely not report on
- What the appropriate punishment would be for each sort of behaviour

The survey included scenarios that ranged in seriousness from off-duty business interests to theft and assault. Scenarios varied and included themes that were acquisitive (where greed was the motivating factor, such as theft), administrative or internal disciplinary infringements (rule bending), and noble cause corruption. The survey was administered to 171 serving police officers in the United Kingdom. Based on the survey results, Westmarland concluded the following:

- Acquisitive cases were regarded by the officers as being the most serious.
- Officers in judging acquisitive cases severely depended largely on the perceived dollar amount that was taken.
- It is not clear whether the money amount, or the way the money/property was taken, is correlated to the perceived seriousness of the case.
- Of the acquisitive scenarios, taking bribes (95% of respondents), stealing at a crime scene (99% of respondents), and taking money from a wallet (95% of respondents) were described as very serious.
- Of these acquisitive scenarios, taking bribes (82% of respondents would report to their superiors), stealing at a crime scene (95% of respondents would report to their superiors), and taking money from a wallet (88%

of respondents would report to their superiors) were highly reportable.

Of particular interest is that some officers who stated that these offences were serious said they would not report them to a supervisor. For example, 95% of officers described taking money from a wallet as very serious. However, 88% stated they would report to their supervisors, meaning 7% who considered this as very serious would not report something that they thought was very serious to their supervisor. This is a demonstration of officers who value loyalty more than the morality of other officers. Westmarland also concluded the following:

- Officers generally appear to be forgiving of noble cause corruption, brutality, and rule bending.
- Officers were generally unwilling to report the behaviours related to noble cause.

Westmarland's study provokes the following questions:

- Are police officers right in grading the seriousness of the infringements?
- Are officers who do not report infringements as guilty as those who commit the original infringement?
- Does loyalty stop police from reporting infringements?
- Are questionnaires of this nature reliable, or do officers respond only in a way in which they think they should respond?

Police officers who breach loyalty to report minor ethical violations may be seen to damage the overall team or structure of a law enforcement agency. The importance of loyalty within law enforcement is an inhibitor for reporting instances of ethical misconduct, and law enforcement officers are required, at times, to alter their loyalty from individuals in their agency or profession to their agency or society at large. This requires a more comprehensive world view that looks past the individual and focuses on the values of the organization or society. The reporting officer will inevitably have his or her loyalty questioned by other officers in the agency; however, it is the loyalty of the officer participating in the misconduct that should be questioned, and that person should be viewed as disloyal to society and to the goals and values of his or her organization.

Ethical Leadership

As we have learned, ethical conduct in law enforcement is critical. Leaders within law enforcement agencies play a significant role in determining the ethical orientation of their agency. Specifically, leaders must regard ethics as a key component of the agency's culture in which officers behave ethically and respect the rights of others. This can only be accomplished by leaders demonstrating ethical actions to all members of the agency.

Zuidema and Duff (2009) believe that agency leadership can facilitate an ethical workforce in the following ways:

- Incorporate agency values or ideals through mission statements. Mission statements are a tool agencies can use to explicitly state their values for all to see. Some agencies develop mission statements and present them to their workers who sign a confirmation that they hold the same values as the agency and will adopt the values stated in the mission statement. The confirmation is strictly symbolic in nature, but it can be a powerful reminder of the values that are important.
- Focus on ethical behaviour as part of formal events and training sessions. Ethical behaviour should be woven throughout all training and stated in lesson plans. Leaders should not assume that ethical decisions are made, but rather they should remind and train members that ethical considerations are a critical component of their daily business activities.
- Emphasize ethical behaviour in the agency's philosophy. The agency must reflect ethics in all policies and philosophies. In law enforcement, agencies must be aware of the problems that arise when crime control models are too closely adhered to at the expense of ethical behaviour.
- Do not tolerate any unethical activities, including unethical behaviour at the executive level. This means that agencies should consider a policy of zero tolerance for any unethical activity by executives. Agencies should consider universality as a test for executives: assessing the ethics of the behaviour by assessing whether the behaviour would be appropriate for every member of the agency.

Mayer et al. (2009) have proposed a "trickle down" model in which the effects of ethical leadership are mimicked by workers throughout the ranks and are eventually replicated by employees at all levels of the hierarchy. In a survey administered to employees and leaders in corporations in southeastern United States, Mayer et al. (2009) found:

- Top management has an effect on employee behaviour indirectly through supervisory leadership.
- Employees imitate the behaviour of leaders.
- Employees will behave in a manner consistent with what they believe are the values of the employer.
- It is likely that leaders who demonstrate ethical behaviour influence middle managers who influence all employees.

Mayer et al. (2009) further suggest that these findings have practical implications in large organizations; that is, because of the relationship between leaders and subordinates, it is critical to promote or hire ethical leaders. Ethics training for management is important for enhancing the ethical decision making of leaders, thereby promoting ethical behaviour throughout the hierarchy.

By extension, we can extrapolate that employees will replicate the unethical behaviour of leadership. In law enforcement, this can lead to corrupt practices among patrol officers who model the behaviour of corrupt leaders. The implication is that law enforcement agencies cannot tolerate unethical behaviour among members of the lower ranks and especially among those who serve in leadership roles.

Frisch and Huppenbauer (2014) studied ethical leadership by conducting a series of interviews with 18 executive leaders. They determined that ethical leadership leads to the following outcomes:

- Enhanced well-being of themselves, society, nature, and other people

- Financial success of their enterprise due to benefits resulting from a positive reputation
- Satisfaction from customers and employees

Transactional and Transformational Leadership

Huberts, Kaptein, and Lasthuizen (2007) found that effective role modelling is especially significant in demonstrating moral behaviour, while strictness is especially effective in limiting fraud, corruption, and the misuse of resources. As an extension of strictness, the ethics of law enforcement agencies are likely to be greater when there are rules, regulations, and systems of oversight that carefully manage law enforcement behaviour. In the case of law enforcement agencies, the behaviour usually occurs on the street, where street police officers are interacting with civilians without supervision. Because the police are out of view and not supervised for much of their working day, leadership must evolve away from strictness as a way to promote ethical conduct.

There are two distinct models of leadership that operate within large organizations: transformational and transactional. Historically, due to the paramilitary nature of law enforcement, leadership has largely been transactional. Transactional leadership in law enforcement is a style of management used by those who are more oriented toward bureaucracy and maintaining the status quo. Transactional leaders tend to take the decision-making powers away from those they supervise and to make decisions on their own, not yielding power to those beneath them in the hierarchy. This leadership style often runs contrary to what is practised in law enforcement: the requirement to exercise discretion throughout the ranks (Bass, 1990).

Bowie (2000) asserts that leadership is not effective unless managers empower subordinates to make decisions; however, the empowerment of subordinates is at odds with the military hierarchical system. What is required is a system that allows subordinates to make operational decisions and leadership that is willing to risk the mistakes that result from these decisions. Mastrofski (2004) suggests the way to achieve these goals is throughtransformational leadership, which guides officers to make the right decisions by following the moral lead of their managers who possess the moral standards that are shared by the organization. Failure to promote these values will lead subordinates to mirror the unethical practices of their leader, resulting in poor decisions. There are risks associated in allowing subordinates to use discretion, such as forgetting, missing, or just not adhering to the morals of their leader; risk is unavoidable when subordinates are given increased discretion.

The risk of poor decisions at the operational level requires strong leadership in which managers not only understand the risk but also are willing and able to bear the weight of this risk (Villiers, 2003). Such a style of leadership is difficult within a culture that is so deeply entrenched in a military type of structure, where following policy and rules are expected throughout the hierarchy. Villiers (2003, p. 28) describes this as "mechanistic bureaucratization" in which the policing service operates in an autocratic style, which is contrary to the autonomy police officers have in exercising their discretion. Villiers (2003) further argues that a more democratic style of leadership is required in order to effectively lead the officer who exercises more discretion than his or her manager.

Transformational leadership is conducive to discretionary policing and, in its purest form, empowers subordinates to make moral decisions that are reflective of the organization (Bass, 1990). The transformational leader requires followers to transcend their own interests to uphold the interests of the organization by focusing on future and long-term goals instead of short-term satisfaction (Bass, 1990). A transformational leader is required to exert his or her organizational morals on subordinates who will in turn make decisions that reflect the leader's values and therefore the organization's values. The result of such effective leadership is a subordinate who, when confronted with operational decisions, will be able to make the same decisions that his or her leader would make. In this way, a transformational leader is a "developer of people and a builder of teams who inspire their followers to act and make decisions" (Bass, 1990, p.54). Bass (1990) further describes those that possess such qualities as being naturally gifted and suggests that one is either born with the trait or not, which renders them a valuable commodity.

The notion that transformational leaders are born, not made, presents a problem for law enforcement agencies that need sergeants and other managers to possess both operational knowledge and transformational qualities. The possibility that managers cannot be taught transformational qualities potentially eliminates those who hold only operational knowledge as an attribute. Tourish, Craig, and Amernic (2010, p.41) describe such leaders as "exceptional people" who are also powerful and have the ability to understand organizational values as well as the personalities of their followers. Police managers, having risen through the ranks, may or may not be capable of developing such attributes and as result, require training. In their qualitative study of managers, Hay and Hodgkinson (2006) found managers who felt that training in these qualities is a difficult prospect and something that cannot be learned in courses. This makes it difficult for those police managers who are not born with these qualities to learn and apply them on a regular basis. Courses in leadership are used to train officers of all ranks; however, there have been few studies that have determined whether this training leads to transformational leadership or not. The question remains: can competent operational officers learn the skills to be transformational leaders?

The notion of transformational leadership in policing is sometimes at odds with police culture for the following reasons:

- Officers are unlikely to embrace the transformational leader due to their inculcation in the blame culture where blame is assessed when discretion has failed and a mistake is made (Villiers, 2003). The blame culture is a double-edged sword:
  - First, operational officers mistrust their superiors, believing that if they make a mistake, they will be held accountable.
  - Second, managers have difficultly extricating themselves from the blame culture when assessing the poor discretionary decision of a subordinate.
- Police culture is generally characterized by cynicism toward leadership, and this is especially true toward

leaders who are charismatic and are purveyors of transformational leadership values (Villiers, 2003).

- Transformational leaders must fight the blame culture and be willing to accept the inevitable risk associated with decisions made at the operational level. As discretion increases, so too does the risk of more mistakes. The manager who assumes the role of transformational leader must accept this risk as a part of officers' development rather than as an opportunity to blame.
- In acknowledging the inevitability of discretion, Mastrofski (2004) maps out transformational leadership as the best way to ensure proper and effective control of discretion among operational police officers. Transformational leadership convinces officers to make the right discretionary choices by persuading them to achieve the right goals without the need to directly supervise them. Officers functioning beyond the view of their superiors will need to use discretion, and if they have adopted the values of their leader (and therefore their organization), they will likely make decisions that are based on these shared values (Bass, 1990).

REFERENCES

1. Alderson, J. (2003). Police Leadership: A Search for Principles in R. Adlam and P. Villiers (eds) *Police Leadership in the Twenty First Century: Philosophy, Doctrine and Developments* Hook, Hampshire, Waterside Press: 56-67.
2. Bass, B. (1990). *Bass and Stodgill's Handbook of Leadership: Theory, Research,and Managerial Applications (*3rd ed.). New York: The Free Press.
3. Bowie, N. (2000). A Kantian Theory of Leadership. *The Leadership & Organization Development Journal*21(4):185-193.
4. British Columbia Ministry of Public Safety and Solicitor General Ministry of Attorney General, Ministry of Children and Family Development. (2010). *Violence Against Women in Relationships Policy 2010.* Retrieved from: http://www.pssg.gov.bc.ca/victimservices/shareddocs/pubs/vawir.pdf
5. Butterfield, R., Edwards, C., and Woodall, J. (2005). The New Public Management and Managerial Roles: the Case of the Police Sergeant. *British Journal of Management* 16(4), 329–341.
6. Crawshaw, R., Devlin, B. and Williamson, T. (1998). *Human Rights and Policing: Standards for Good Behaviour and Strategy for Change,* The Hague: Kluwer Law International.
7. Davies, A. and Thomas, R. (2003). Talking Cop: Discourses of Change and Policing Identities. *Public Administration* 81(4): 681-699.
8. Dobel, P. (2005). Public Management as Ethics in E. Ferlie, L. Lynn and C. Pollitt (eds) *The Oxford Handbook of Public Management,* Oxford, Oxford University Press: 156-181.
9. Frisch, C. and Huppenbauer, M. (2014). New Insights into Ethical Leadership: A Qualitative Investigation of the Experiences of Executive Ethical Leaders. *Journal of Business Ethics*, 123(1), 23-43. doi:10.1007/s10551-013-1797.
10. Fyfe, J. (1996). Structuring Police Discretion in (eds) J. Kleinig handled with *Discretion: Ethical Issues in Police Decision Making* Lanham, Maryland, Rowman and Littlefeild Publishers, Inc.: 183-205.
11. Hay, A. and Hodgkinson, M. (2006). Rethinking Leadership: A Way Forward for Teaching Leadership. *Leadership and Organization Development Journal* 27(2): 144-158.
12. Huberts, L. Kaptein, M. and Lasthuizen, K. (2007). A Study of The Impact of Three Leadership Styles on Integrity Violations Committed by Police Officers. *Policing: An International Journal of Police Strategies & Management*, 30 (4): 587-607.
13. Hughes, O. and Newton, R. (2010). *A Police Force in Transition: Bureaucracy or Management.* Paper presented to the 14th IRSPM Conference Berne, Switzerland/April 7-9, 2010.
14. Jones, T. (2008). The Accountability of Policing. *Handbook of Policing*. Portland Ore.: Willan Publishing: 693-724.
15. Kleinig, J. (1996). Handling Discretion with Discretion. J. Kleinig (ed) *Handled with Discretion: Ethical Issues in Police Decision Making.* Maryland: Rowman and Littlefeild Publishers, Inc, p.1-12.
16. Klofas, J., Stojkovic, S. And KalinichD. (1990). *Criminal Justice Organisations: Administration and Management.* Pacific Grove California: Brooke/Cole Publishing Co.
17. Lipsky, M. (1980). *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services.* New York: Russell Sage Foundation.
18. Manning, P. (2010). The police: mandate, strategies and appearances. In T. Newburn (Ed.), T. Newburn,*Policing: Key readings*. Cullompton: Willan Publishing.
19. Mastrofski, S.D. (2004). To Better Serve and Protect: Improving Police Practices. Special Editor: Wesley G. Skogan. Controlling Street-Level Police Discretion. *Social Science, The Annals of The American Academy of Political And Social Science*, 593100.
20. Mayer, D., Kuenzi, M., Greenbaum, R., Bardes, M., and Salvador, R. (2009). How low does ethical leadership flow? Test of a trickledown Model. *Organizational Behavior and Human Decision Processes*, 108(1), 1–13.
21. McLaughlin, E. (2009). Discretion in E. McLaughlin & J. Muncie (eds) *The Sage Dictionary of Criminology,*London: Sage, 134-135.
22. Neyroud, P. (2008). Policing and Ethics. *Handbook of Policing* Portland Ore.: Willan Publishing: 666- 692.
23. Pagon, M. (2003). The Need for a Paradigm Shift in Police Leadership in R. Adlam and P. Villiers (eds) *Police Leadership in the Twenty First Century: Philosophy, Doctrine and Developments* Hook,

Hampshire, Waterside Press: 157-168.

24. Panzarella, R. (2003). Leadership Myths and Realities in R. Adlam and P. Villiers (eds) *Police Leadership in the Twenty First Century: Philosophy, Doctrine and Developments* Hook, Hampshire, Waterside Press: 119-133.
25. Punch, M. (2003). Rotten Orchards: "Pestilence", Police Misconduct and System Failure. P*olicing and Society*13 (2): 171–196.
26. Reiner, R. (2010). *The Politics of the Police*. Oxford: Oxford University Press.
27. Rowe M. (2007). Rendering Visible the Invisible: Police Discretion, Professionalism and Decision-Making.*Policing & Society.* 17(3): 279-294.
28. Sanders, A. and Young, R. (2007). From Suspect to Trial in M. Maguire, R. Morgan and R. Reiner (eds) *The Oxford Handbook of Criminology,* Oxford: Oxford University Press, 953-989.
29. Tillyer, R. and Klahm IV, C. (2011). Searching for Contraband: Assessing the Use of Discretion by Police Officers. *Police Quarterly* 14(2): 166-185.
30. Tourish, D., Craig, R., and Amernic, J. (2010). Transformational Leadership Education and Agency Perspectives in Business School Pedagogy: A Marriage of Inconvenience? *British Journal of Management*21(special supplement): S40-S59. Retrieved from:http://web.ebscohost.com.ezproxy.lib.le.ac.uk/ehost/pdfviewer/pdfviewer?vid=3&hid=17&sid=01d7fa59-b6c6-40ce-9e33-3cee8742021b%40sessionmgr14.
31. Rawls, J. (1971). *A Theory of Justice*. Cambridge, Harvard University Press.
32. Villiers, P. (2003). Philosophy, Doctrine and Leadership: Some Core Values' in R. Adlam and P. Villiers (eds) *Police Leadership in the Twenty First Century: Philosophy, Doctrine and Developments,* Hook, Hampshire: Waterside Press, 15- 33.
33. Westmarland, L. (2008). Police cultures in T. Newburn (ed) *Handbook of Policing*, Collumpton,UK: Willan Publishing, 253-280.
34. Zuidema, B. V., and Duff Jr., H. (2009). Organizational Ethics Through Effective Leadership. *FBI Law Enforcement Bulletin*, 78(3), 8-11.

8. THE CULTURE OF LAW ENFORCEMENT

Police Subculture

At the root of all that is good and bad in law enforcement, there is a strong subculture that permeates most agencies. While a common theme in academic discourse is that police culture is negative, entrenched in cynicism, masochism, loyalty above all else, and an "us versus them" mentality, it has positive aspects that are often overlooked. Members of the law enforcement subculture share values that enable officers to survive what at times is a difficult and emotionally taxing job. Values such as supportiveness, teamwork, perseverance, empathy, and caring enable officers to cope with post-traumatic stress; they are part of team of colleagues who care for their coworkers. The support received from other officers is the result of shared values within the culture. Officers who are faced with dangerous situations are able to rely on their comrades because of other values they believe these members also possess. Values such as bravery, camaraderie, and sacrifice will embolden members to place themselves in harm's way.

The following table outlines both positive and negative attributes within the police culture.

Positive attributes	**Negative attributes**
Safety	Cynicism
Camaraderie	Close-mindedness
Empathy	Biases
Support	Prejudice
Caring	Non-scientific tactics
Teamwork	Overly conservative
Loyalty	Loyalty
Sacrifice	Alienated
	Suspicion
	Authoritarianism

In spite of the positive aspects of police subculture, what society may define as ethical or good conduct may not be viewed within the subculture as relevant to the task, which is, among other things, to continue the mission of "safe-guarding social order" (Reiner, 2010, p.120). The tactics that are relevant to the police subculture may include using trickery and lies to elicit confessions and receiving minor gratuities to foster community relations (Reiner, 2010). Examining ethics and its relation to the police subculture is important to help delineate not only the grey area of ethics but also the grey area within which the police operate.

Once selected and hired by municipal police agencies, police recruits are exposed to police subculture during their training partially due to the instruction they receive from police officers who are recently retired or seconded to the police academy. However, the choice to become a police officer is not made in a vacuum. When recruits start their training, they often think like police officers on a visceral level, because generally certain individuals are drawn to the occupation (Conti, 2010). In an ethnographic study observing police recruits at an American police academy, Conti (2010) observed that the evolution of recruits into members who reflect the police mindset likely started at an early age when they formed the belief that they would become police officers. As potential officers enter the selection process, they become involved in an extensive application process, which is their first introduction into the police subculture. Rokeach, Miller, and Snyder (1971) concluded that a police personality distinct from others does exist, and proposed the idea that individuals come into an occupation with predetermined attributes that are identified with their new occupation. However, Rokeach et al. (1971) also found that this distinct police personality is attributed to predispositions of personality that are present before the recruits' induction into the police subculture. These distinct predispositions are conducive to a career in policing and allow the individuals to comfortably choose and fit into the subculture (Conti, 2010; Rokeach et al., 1971). While the police subculture is distinct, at times it does attempt to catch up to the norms of the mainstream culture and can shift from negative attributes to positive attributes (Skolnick, 2008).

A historical look at the police subculture offers a view into the changing nature of how police officers see the world. In analyzing the police subculture in the 1940s, Myrdal (1964) observed in an ethnographic study of police officers in America that officers behaved in an overtly bigoted fashion toward African Americans. Myrdal (1964) observed that these were the norms of the day and that the police subculture reflected the attitude of mainstream society toward African Americans. While not supported empirically, it would be a logical conclusion that police recruits or rookie police officers would have shared the same cultural bigotry as mainstream society and their fellow police officers. More recently, when we see and question incidents involving police use of force on racial minorities, it is important to look broadly at society as well. The shooting of Michael Brown in Ferguson, Missouri, is an example where prominent civic leaders pointed out that the incident was merely a manifestation of a broader issue of racism that is widespread throughout the United States.

As society has evolved so too have law enforcement agencies. Ethical conduct and diversity play a large role in recruiting and are considered important attributes of potential officers. Crank and Caldero (2010) have concluded that due to society's emphasis on ethics and the stringent hiring process, recruits are typically very ethical. The subculture, they argue, is not only present but also highly influential; the recruits' ethical orientations are formed earlier, well before their application process commences (Crank and Caldero, 2010). Conversely, Conti (2010) and Banish and Ruiz (2003) argue that the police subculture is present when the officers start at the police academy and that its influence on recruits' ethics is negative and destructive.

Conti views a recruit's induction into the police academy as a transformation of the recruit into the "organisational ideal" (Conti, 2010). It is in this way, Conti (2010) argues, that the police subculture, ever-present at the police academy, assists in the conversion of the recruit from civilian to police officer. These cultural nuances are passed on through a variety of means such as:

- Parades and drills (Campbell, 2007)
- Marching (Davis, 1996)
- Storytelling (Banish and Ruiz, 2003; Ford, 2003; Newburn and Reiner, 2007).

Storytelling by instructors in the police academy can be a valuable and effective teaching tool, as demonstrated by Conti's (2010) study of an American police academy. Stories told by trainers must reflect ethical conduct and be relatable to the lesson plan goals and outcomes. Conversely, stories by instructors may inflate the recruits' perception of danger (Banish and Ruiz, 2003) or cynicism (Ford, 2003), but instructors' stories can also serve to relay positive outcomes, such as surviving life and death situations confronted by police (Conti, 2010). Ultimately, storytelling perpetuates the police subculture by passing on both truisms as well as not-so-true legends (Newburn and Reiner, 2007). Banish and Ruiz (2003) further contend that storytelling affects the police culture negatively by instilling negative traits of cynicism, suspicion, conservatism, and authoritarianism.

These negative traits are often associated with a police subculture that affects senior police officers, and it is specifically these traits that define an individual as a police officer. Skolnick (2008) considers the police vocation as being similar to that of a priest or the clergy: the culture wholly defines what it means to be a police officer by the traits that police officers share. These traits, according to Skolnick, include "skepticism, cynicism, mistrust of outsiders—all are traits observers of police apply to them and that they apply to themselves" (2008, p.36). Twersky-Glasner (2005) concurs, noting that the police are members of a unique occupation in which they are the insiders and the rest of society are the outsiders. The insiders are those who are trustworthy while outsiders are viewed with suspicion (Skolnick, 2008). This is reflected not only in the culture in which recruits find themselves, but also in the training they receive and the way in which they as civilians are accepted into the academy to begin training.

In a qualitative study of police officers, Loftus (2010) followed officers on the street and determined that two characteristics are ever-present in the police culture: cynicism and moral conservatism. While older officers exhibit these traits, Loftus (2010) did observe that newer officers are hired from a more diverse background that includes different sexual orientations, cultures, and races. This may enable the police subculture to adapt and overcome its more negative characteristics.

Socialization of Police

It is through socialization that police recruits are inducted into the police subculture, enabling the subculture to maintain its norms and to continue its existence (Newburn and Reiner, 2007; Volti, 2008). Socialization is the process in which recruits are introduced to police officers who impart not only their knowledge but also any negative qualities they possess. The influence of socialization is enormous: it can erase the positive influences from training and introduce the recruit to the darker side of the police subculture (Ellwanger, 2012; Volti, 2008). Ironically, within law enforcement the negative aspects of the socialization of officers are also, at times, positive. Two examples are loyalty and solidarity, which can be both positive and negative. The stories told in police academies may lead to confusion about what is ethical loyalty and solidarity and what is unethical solidarity and loyalty.

Ford (2003) examined this phenomenon in a content analysis study in which he observed the use of parables or stories told by experienced police officers to police recruits during lessons, showing that shifts in the ethics of the recruits resulted from the socialization process that occurs when introducing recruits to the police subculture. To Ford's surprise, 85% of the parables were neutral about the law and only 11% referred to illegal activities, such as excessive use of force, unconstitutional searches, and lying in court.

Typical of all studies using content analysis, Ford's (2003) study contains flaws because it relied exclusively on the memory of police recruits. The possibility of poor recollection by police recruits can render the validity of such studies susceptible to bias (Gilbert, 2008). Even police recruits who correctly recall the parables may be mistaken about their intent and may bias their meaning by failing to understand what the instructor was trying to convey (Gilbert, 2008).

Socialization is not just a law enforcement phenomenon. Socialization occurs at all levels of employment, from assembly line workers (Thompson, 2003) to medical students (Becker and Geer, 2003). In most occupations, socialization is a positive influence, as it is a means of learning unwritten rules that help the new worker assimilate into the new work environment (Coffey and Atkinson, 1994; Harper and Lawson, 2003; Volti, 2008). While some occupations possess a strong organizational subculture, which assists new workers beyond their formal training and education, other occupations have little in the way of socialization to help new workers assimilate into the organization (Volti, 2008). However, according to Harper and Lawson (2003), the socialization of all workers is a necessary component for all occupations and professions. Because police exercise a high level of discretion and at times operate outside the realm of rules, the policing occupation relies heavily on socialization to help its recruits (Volti, 2008).

Two primary conditions that Volti (2008) identifies as being associated with higher levels of socialization are occupational isolation and danger. While the policing profession is not statistically dangerous, police officers perceive certain aspects of their job as more dangerous than they are (Banish and Ruiz, 2003; Loyens, 2009; Twersky-Glasner, 2005). Unlike other more dangerous occupations, police officers are subject to acts of willful harm, in which citizens target them intentionally. These dangers are different from those faced by other occupations in which accidents occur. The belief by officers that they are targeted by some citizens who mean them harm reinforces the perceived need to protect one another. The belief in the dangerousness of the police occupation, according to Volti (2008), reinforces the need for socialization in which experienced members of the occupation share information with new recruits that will protect and keep them safe.

Isolation, as identified by Volti (2008), reflects both physical isolation (as with oil rig workers), and social isolation (as with shift workers). Police officers, according to Newburn and Reiner (2008), suffer from isolation based not only on their shift work but also from their subculture, which emphasizes moral conservatism, suspiciousness, and internal solidarity (Naus, van Iterson, and Roe, 2007). Together these make for a potentially toxic level of socialization that police recruits confront when they first start on their journey as police officers. Police officers, as a by-product of their isolation, rely on the solidarity and loyalty of other officers, which may cause increased tension between upholding this solidarity and performing ethically (Reiner, 2010).

Police socialization is particularly invasive early on due to the dominant nature of a police academy's paramilitary structure (Chappell and Lanza-Kaduce, 2010). Police recruits at the B.C. Police Academy, located at the Justice Institute of British Columbia, are immediately introduced to a formal military-style inspection in their first hour. The nature of paramilitary-style education has historically been to strip a person of his or her individuality and force a culture of compliance upon the individual (Chappell and Lanza-Kaduce, 2010). In doing so, the individual's personal values are replaced with those of the organization. Chappell and Lanza-Kaduce (2010) further argue that such a pervasive culture should be closely examined, and attempts should be made to neutralize it.

In spite of the negative aspects of socialization, there can be some benefits to the socialization of experienced police officers with junior officers. Paoline (2004) asserts that while socialization within the police subculture is generally negative, there are values that are learned in the process of socialization with senior police officers. Learning the craft of any complex occupation or profession is enhanced when senior members pass on vital information learned from experience (Paoline, 2004). However, it is critical for the recruit to adhere to the organization's values even if they conflict with information received during negative socialization (Sato, 2003). Socialization can impart to a recruit values and ethics that are not formally written down, yet are needed for the recruit to function well in the job while on the road (Gould and Moore, 2003). A value that recruits learn through socialization is loyalty, which is strongly associated with the military (Loyens, 2009; Sunahara, 2002).

Campbell (2007) further states that the police academy process institutionalizes the culture of the organization in the recruit. This institutionalization is enhanced through the use of artifacts such as wearing uniforms and taking part in drill parades, which are overseen by experienced police officers who ultimately are responsible for enforcing the expectations they have of recruits to adopt the institution's values and to prove they are suited to continue on the path of a policing career (Campbell, 2007). This is evident at the B.C. Police Academy where police recruits learn how to march and stand for inspection under the watchful eyes of senior officers. The process is designed to ready recruits for ceremonial duties and to learn formations that may be applied in situations such as crowd control.

Ellwanger (2012) agrees that recruits are socialized through these means, but sees a more sinister side to the police subculture, noting that the process of job socialization and enculturation may both purposefully and inadvertently threaten the positive ethical ideals and values brought to the police profession by new recruits. A strong or pervasive deviant subculture, according to Ellwanger (2012), may exist in some instances, which can passively or actively teach unethical behaviours to new police officers.

Chappell and Lanza-Kaduce (2010) add to this concept through their ethnographic study of a police academy in Florida. Here they observed the negative influences of the military nature of the police academy. The attributes of a military-style academy led to periods of socialization in which the recruits were indoctrinated into a paramilitary-style culture whose values included loyalty, solidarity, and dress and deportment (Chappell and Lanza-Kaduce, 2010). The socialization within the walls of the police academy was sufficient as an introduction to police culture; on the road socialization simply reinforces these ideas. Chappell and Lanza-Kaduce (2010) argue that the socialization within the academy is so pervasive that it creates an "us versus them" mentality, which is contrary to values found in community policing. Ellwanger (2012) further suggests that the socialization recruits experience on the job unintentionally thwarts the values and ethical practices they develop at the police academy. The subculture, Ellwanger (2012) argues, is responsible for teaching recruits unethical behaviours.

Additionally, to demonstrate the importance of socialization, Mastrofski and Ritti (1996) investigated the perspective of officers regarding impaired driver investigations. They found that officers trained in impaired driving investigations who returned to supportive organizations were more likely to follow their training. Those officers who returned to organizations that did not value impaired driving investigations eventually considered their training to be "technically irrelevant" (Mastrofski and Ritti, 1996, p.318). The implications of these findings suggest that socialization in a negative organization can undermine positive training.

In taking a different approach, Rokeach et al. (as cited in Twersky-Glasner, 2005) found that socialization plays a secondary role when recruits bring established values into their careers. These personality traits are congruent with those of other experienced police officers, and the socialization process is minor, likely reinforcing recruits' long-held beliefs. According to Rokeach et al. (as cited in Twersky-Glasner, 2005), these distinctive personality traits are present when the recruit is deciding upon his or her career, and it is these traits that attracts the person to policing.

The socialization of police and other law enforcement officers has both positive and negative components. The negative components create an atmosphere that may lead some officers to immoral and/or unethical conduct that runs contrary to the stated values of the agency. As mentioned previously, citizens who have demonstrated a high level of moral conduct are recruited into policing. Despite demonstrated morality being a key required attribute, a small percentage of officers act immorally on occasion. The socialization of some of these officers may be where they learned their immoral behavior.

Skepticism and Cynicism

Cynicism, as mentioned previously, is a major negative component of the police subculture. Cynicism should not be confused with skepticism as they are vastly different. Skepticism refers to critical thinking, which is what we should all strive for. It allows us to question commonly held beliefs that may not be true. It forms the basis of scientific inquiry that has enabled humanity to evolve from a reliance on superstition to an ability to address difficult questions and problems in society using research and reasoned approaches. Skepticism is especially important in law enforcement as it is a critical component of being an objective investigator, one who is willing to view issues from a neutral perspective. According to Kurtz (2010, p.13) "a skeptic is one who is willing to question any claim to truth, asking for clarity in definition, consistency in logic, and adequacy of evidence." The ability to question any claims of truth is critical for all law enforcement officers who are confronted on a daily basis with people who are disinclined to tell the truth in order to protect their own interests. Furthermore, investigators should strive for empirical evidence that eliminates a biased conclusion that can potentially lead to wrongful accusations and convictions.

Skepticism is endangered when we have difficulty distinguishing between "questioning truth" and "questioning and rejecting truth. Kurtz (2010) defines this as "nihilistic skepticism." In essence, this is the assertion that nothing should be believed as truth, because it is unprovable. As such, nihilistic skepticism is based upon subjectivity. Nihilistic skepticism is essentially skepticism in which there is no basis for "objective moral judgment" (Kurtz, 2010, p.15).

Cynicism is similar to nihilistic skepticism; however, it embodies an element of pessimism toward everyday occurrences that may ignore the objective truth. Cynicism can include a negative response to morality that illustrates a contempt for community standards. Truth is unimportant to a cynic, and the distrust that is exhibited by the cynic belies the facts. Specifically, law enforcement officers often see themselves in an "us versus them" environment in which officers are attacked from all sides of society. Officers routinely say that the biggest stress they face is not on the streets from dangerous people but in the office before they make it to the streets. This notion is, to a degree, cynical. The objective truth is that the streets are not as safe as the office; however, officers ignore this due to their frustration in dealing with management.

Another example of cynicism is the belief some officers have that the only way to remove sex-trade workers from the area they patrol is to verbally abuse them to the point they feel threatened. In cynical officers' minds, such behaviour is acceptable even though it may be contrary to community standards and their agency's values.

Sunahara (2002) draws a further link between cynicism, alienation, and estrangement from management and departmental policy, suggesting that police officers who become alienated are likely to become disengaged from performing their duties and could slip into unethical behaviour. The cause of alienation is unclear, raising the possibility that cynicism begets alienation, or that alienation begets cynicism.

Graves (1996, as cited in Sunahara, 2002, p.12) describes police cynicism as "an attitude of 'contemptuous distrust of human nature and motives.' A cynic expects nothing but the worst in human behaviour." The feeling of alienation stems from this attitude as officers shield themselves from those they believe they cannot trust and from those who are potentially dangerous to them and their families. This feeling is likely the result of working in a negative environment in which officers see and do things that mainstream society is not privy to. Police officers often talk about happenings on the job that "you couldn't write in a movie script, because they are so unbelievable." Much of what police officers see is rarely talked about in mainstream society because it is alarming and disturbing. Yet officers are confronted with these issues not only on a daily basis but multiple times a day, depending on where the officer works. It is little wonder that officers in this environment tend to want to alienate themselves from society, and little wonder why alienation, at the very least, isn't coupled with cynicism.

Moral Culpability Versus Legal Culpability

Moral culpability is loosely tied to *mens rea,* meaning that there is an explanation for the intent of the actor. However, with moral culpability, the explanation put forth by the actor may excuse the immoral action from being caused due to intentional immorality. An example would be a mother who has killed her infant while suffering postnatal depression. The mother would not be charged with murder, as would a stranger who killed the same infant, or a mother who is not suffering postnatal depression who killed her infant. However, because the mother suffers from a medical diagnosis of postnatal depression, she would be charged with the lesser offence of infanticide. A mother with postpartum depression is suffering an illness, and her decision to kill her infant is not a moral one, rather it is a decision she has made due to her illness. A further example would be a person who kills someone because he threatened serious bodily harm to another person. Although the action is homicide, there may be no moral culpability because the intent was first to save another person even though the*mens rea* may have existed to kill the victim in order to stop him. Because the moral culpability is less than if someone killed for his or her own gain, a manslaughter charge would be used instead of a murder charge. Here we weigh moral culpability against legal culpability.

A police officer on the street may, in some instances, use his or her discretion when determining moral culpability or legal culpability for minor investigations. Where a suspect of a crime may be charged with an offence, the officer may decide not to charge because of diminished moral culpability. An example is a minor theft in which a homeless suspect steals a blanket in order to survive a frigid night on the streets. The officer may choose to forgo charges and locate a shelter for the homeless suspect.

The distinction between moral culpability and legal culpability is at times blurred; law enforcement officers must be aware that what may be legally permissible may not be morally permissible. While it is true that in solving ethical dilemmas, officers should consider the laws or regulations that are applicable, so too must they consider the moral culpability in all their actions regardless of the lack of legal restrictions. An example in a law enforcement context may be an officer who ignores a homeless person waving her hand for assistance. While there may be no policy or legal infraction, the officer's conduct may be regarded as morally culpable if the homeless person is later harmed when the officer's assistance may have protected her from harm. The officer who ignored the person may be regarded as morally culpable for the injury by not assisting the person. Another example would be an officer who fails to investigate a crime due to a heavy caseload. Should the omission of the investigation lead to a preventable assault, the argument may be made that the investigator's decision not to investigate made him or her morally culpable, depending on the reasoning behind the officer's decision. If the officer decided that the case was not as serious as others, then it may be determined that the officer was not morally culpable. However, if the officer's decision was based upon the ethnicity of the victim, then the officer would be morally culpable for the assault that occurred as a result of the officer's decision.

REFERENCES

1. Banish, H. and Ruiz, J. (2003). The anti-social police personality: a view from the inside. *International Journal of Public Administration* 26(7): 831-881. Retrieved from:http://www.tandfonline.com.ezproxy.lib.le.ac.uk/doi/pdf/10.1081/PAD-120019322.
2. Becker, H. and Geer, B. (2003). The Fate of Idealism in Medical School. in D. Harper and H. Lawson (eds) *The Cultural Study of Work,* Lanham, Maryland: Rowman and Littlefield, 65-74.
3. Campbell, M. (2007). Applying communities of practice to the learning police. *Learning and Socio-cultural Theory: Exploring Modern Vygotskin Perspectives' Workshop* 1(1). Retrieved from: http://ro.uow.edu.au/llrg.
4. Chappell, A. and Lanza-Kaduce, L. (2010). Police Academy Socialisation: Understanding the Lessons Learned in a Paramilitary Organisation. *Journal of Contemporary Ethnography* 39 (2):187-214. Retrieved from:http://jce.sagepub.com.ezproxy .lib.le.ac.uk/content/39/2/187.full.pdf+html.
5. Coffey, A. and Atkinson, P. (1994). *Occupational Socialization and Working Lives*. London: Ashgate Publishing Co.
6. Conti, N. (2010). Weak links and warrior hearts: a framework for judging self and others in police training.*Police Practice and Research* 12(5): 410–423. Retrieved from:http://www.tandfonline.com.ezproxy.lib.le.ac.uk/doi/pdf/10.1080/15614263.2010.536726
7. Crank, J. and Caldero, M. (2010) *Police Ethics: The Corruption of Noble Cause.* New Providence, RI: Mathew Bendre and Company.
8. Davis, M. (1996). Police, discretion, and professions in J. Kleinig (ed) *Handled with Discretion: Ethical Issues in Police Decision Making.* Lanham, Maryland: Rowman and Littlefield, 1-35.
9. Ellwanger, S. (2012). How police officers learn ethics in M. Braswell, B. McCarthy, and B. McCarthy (eds) *Justice, Crime and Ethics* (7th Edition). Burlington, ME: Elsevier, 45-71.
10. Ford, R. (2003). Saying one thing, meaning another: the role of parables in police training. *Police Quarterly*6(1), 84-110.Retrieved from: http://pqx.sagepub.com.ezproxy.lib.le .ac.uk/content/6/1/84.full.pdf+html.
11. Gilbert, N. (2008) *Researching Social Life* (2nd Edition). London: Sage Publications.
12. Gould L. and Moore, C. (2003). Comparison of the MMPI-2 and Niederhoffer: cynicism scales for a sample of police academy trainees. *Journal of Police and Criminal Psychology* 18(2). Retrieved from:http://www.springerlink.com.ezproxy.lib.le.ac.uk/ content/706036637j5517p5/fulltext.pdf.
13. Harper, D. and Lawson, H. (2003). Introduction' in D. Harper and H. Lawson (eds) *The Cultural Study of Work,*Lanham, Maryland: Rowman and Littlefield, xi-xviii.
14. Loftus, B. (2010). Police occupational culture: classic themes, altered times. *Policing & Society* 20(1): 1-20. Retrieved from: http://www.tandfonline.com.ezproxy.lib.le.ac.uk/doi/pdf/10.1080/10439460903281547.
15. Loyens, K. (2009). Occupational culture in policing reviewed: a comparison of values in the public and private police. *International Journal of Public Administration* 32(6): 461-490. Retrieved from:http://www.tandfonline.com.ezproxy.lib.le.ac.uk/doi/pdf/10.1080/01900690902861688
16. Mastrofski, S. and Ritti, R. (1996). Police training and the effects of organizations on drunk driving enforcement. *Justice Quarterly* 13(2): 291-320. Available from:http://heinonline.org.ezproxy.lib.le.ac.uk/HOL/Page?handle=hein.journals/jquart13&collection=journals&page=291

17. Myrdal, G. (1964). *An American Dilemma: The Negro Problem and Modern Democracy* (Volume 2), New York: McGraw-Hill.

18. Naus, F, van Iterson, A. and Roe, R. (2007). Organizational cynicism: extending the exit, voice, loyalty, and neglect model of employees' responses to adverse conditions in the workplace' *Human Relations*, 60(5): 683-718. Retrieved from: http://hum.sagepub.com.ezproxy.lib.le.ac.uk/content/60/5/683.full.pdf+html

19. Newburn T. and Reiner, R. (2007). Policing and the Police in M. Maguire, R. Morgan and R. Reiner) *The Oxford Handbook of Criminology (*4th ed.). Oxford: Oxford University Press, 910-952.

20. Paoline, E. (2004). Shedding Light on Police Culture: An Examination of Officers' Occupational Attitudes. *Police Quarterly* 7: 205-236.

21. Reiner, R. (2010). *The Politics of the Police*. Oxford: Oxford University Press.

22. Rokeach, M., Miller, M.G. and Snyder, J.A. (1971). The value gap between the police and the policed. *Journal of Social Issues* 27: 55-171.

23. Sato, M. (2003). Police recruits' training and the socialisation process: from the network perspective. *The Police Journal*, 76: 289-303.

24. Skolnick, J. (2008). Enduring issues of police culture and demographics. *Policing & Society* 18(1): 35-45. Retrieved from: http://www.tandfonline.com.ezproxy.lib.le.ac.uk/doi/pdf/10.1080/10439460701718542

25. Sunahara, D.F. (2002). *A Social-Psychological Model of Unethical and Unprofessional Police Behaviour*. Ottawa, Ontario: Canadian Police College.

26. Thompson, W. (2003). Hanging Tongues: A Sociological Encounter with the Assembly Line in D. Harper and H. Lawson (eds) *The Cultural Study of Work.* Lanham, Maryland: Rowman and Littlefield, 313-334.

27. Twersky-Glasner, A. (2005). Police personality: what is it and why are they like that? *Journal of Police and Criminal Psychology* 20(1). Retrieved from: http://www.springerlink.com .ezproxy.lib.le.ac.uk/content/tn83112t243x11w0/fulltext.pdf.

28. Volti, R. (2008). *An Introduction to the Sociology of Work and Occupations.* Los Angeles, California: Pine Force Press.

CHAPTER 2

TO BLAME OR TO FORGIVE? RECONCILING PUNISHMENT AND FORGIVENESS IN CRIMINAL JUSTICE

Nicola Lacey[1] and Hanna Pickard[2]

[1]Departments of Law and Social Policy and Gender Institute, London School of Economics

[2]Department of Philosophy, University of Birmingham

ABSTRACT

What do you do when faced with wrongdoing—do you blame or do you forgive? Especially when confronted with offences that lie on the more severe end of the spectrum and cause terrible psychological or physical trauma or death, nothing can feel more natural than blame. Indeed, in the UK and the USA, increasingly vehement and righteous public expressions of blame and calls for vengeance have become commonplace; correspondingly, contemporary penal philosophy has witnessed a resurgence of the retributive tradition, in the modern form usually known as the 'justice' model. On the other hand, people can and routinely do forgive others, even in cases of severe crime. Evolutionary psychologists argue that both vengeance and forgiveness are universal human adaptations that have evolved as alternative responses to exploitation, and, crucially, strategies for reducing risk of re-offending. We are naturally endowed with both capacities: to blame and retaliate, or to forgive and seek to repair relations. Which should we choose? Drawing on evolutionary psychology, we offer an account of forgiveness and argue that the choice to blame, and not to forgive, is inconsistent with the political values of a broadly liberal society and can be instrumentally counter-productive to reducing the risk of future re-offending. We then sketch the shape of penal philosophy and criminal justice policy and practice with forgiveness in place as a guiding ideal.

INTRODUCTION

What do you do when faced with wrongdoing—do you blame or do you forgive? When confronted with crime, especially offences that lie on the more severe end of the spectrum and cause victims terrible psychological or physical trauma or death, nothing can feel more natural than blame. We may feel a range of hostile, negative emotions, such as hate, anger, resentment, indignation, disgust, contempt and scorn towards the perpetrator. We may judge them harshly, condemning their character. We may want them punished and to suffer in turn for what they have done. Moreover, we may feel entitled to these sorts of emotions and attitudes, as reactions which are *deserved* by the offender. Indeed, in the UK and the USA, increasingly vehement and righteous public expressions of blame and calls for vengeance have become commonplace in wider society.[1] On the other hand, people can and routinely do forgive others, even in cases of severe crime.[2] Evolutionary psychologists argue that both vengeance and forgiveness are universal human adaptations that have evolved as alternative

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responses to exploitation, and, crucially, strategies for reducing the risk of future re-offending.[3] We are naturally endowed with both capacities: to blame and retaliate, or to forgive and seek to repair relations. We have a choice. Which should we choose?

Contemporary penal philosophy has witnessed a resurgence of the retributive tradition, in the modern form usually known as the 'just deserts' or 'justice' model.[4] On this model, punishment is hard treatment visited on the offender in response to, by reason of, and in proportion to his or her 'desert' or blameworthiness. Blameworthiness, in turn, demands that the offender have the capacity for *responsible agency*: minimally, cognitive and volitional capacities such that they knew what they were doing when they committed the offence, and exercised choice and a sufficient degree of control in doing so. According to this tradition, punishment is only justified if the condition of responsible agency is met, and it is further limited by the requirement that it be proportional to blameworthiness.[5] Hence our propensity for vengeance is to that extent tempered, rather than left wholly unchecked. Nonetheless, in forging a strong association between the justification of punishment and the appropriateness of blame, the choice made is clear—according to this model, when confronted with culpable wrongdoing, we should blame, not forgive.[6]

Our aim in this article is to explore the possibility that this choice—to blame, not forgive—which is garnering increasing consensus within penal philosophy, is inconsistent with the basic political values of a broadly liberal society, and stands in need of challenge. For these values demand that respect and equality ideally accrue to all. They therefore require responses to crime that aim—even if they do not always succeed—to restore offenders as full participant members of our society and repair the rupture to all that criminal offending creates. If indeed forgiveness functions to repair relations (while reducing the risk of future re-offending) then these values suggest that we ought—so far as possible—to replace blame with forgiveness as a guiding ideal within penal philosophy and criminal justice policy, and promote practices within criminal justice institutions that move away from blame and towards forgiveness within the vast spectrum of possible real-world responses.

This suggestion may at first glance appear so radical as to beggar belief. We hope that, as the article progresses, the contours of what it would mean, in theory and in practice, will become clear and credible. But it is worth stating at the outset that, in counselling forgiveness within penal philosophy and criminal justice policy and practice, we are not advocating*the abolition* of punishment, but rather its *reconception*. On the 'justice' model, punishment is the imposition of retaliatory *costs* or hard treatment in response to *blameworthiness*: it is an institutionalised form of blaming.We suggest that punishment be reconceived as an institutionalised form of forgiving: the imposition of *consequences* in response to *responsibility* for crime, enacted with forgiveness in that these consequences ought to be constructed, so far as possible, to embody reparative and corresponding risk-reduction strategies.[7] In this respect, our proposal is allied with, yet distinct from, recent developments in restorative justice theory and practice. Like restorative justice, we aim to justify and develop criminal justice practices that move away from retribution, and towards reparation and rehabilitation. But unlike restorative justice, we do not suggest bringing victims and offenders together, with the aim of creating atonement in offenders and forgiveness in victims, as a means to this end. Rather, on our view, the criminal law itself can offer forgiveness, not on behalf or in place of victims, but in its own right. Similarly, criminal justice institutions and practices can be better designed to embody reparative and rehabilitative strategies. Hence, despite its radical appearance, our proposal aims to be pragmatic, suggesting how we can potentially shift cultural attitudes and reconfigure elements of existing criminal justice theory and practice, broadly speaking within the confines of the current system.[8]

The article proceeds as follows. We begin in section 2 by briefly re-visiting our argument, more fully articulated elsewhere,[9] that there is both value and scope for importing to the criminal law a conceptual framework derived from clinical practice that sharply differentiates responsibility from blame. We use this framework to show how the law can operate with a robust notion of responsible agency as a condition of justifiable punishment, without thereby invoking the 'worthiness' or appropriateness of blame as a response to criminal wrongdoing. With this framework in place, we turn in section 3 to the nature of forgiveness. Drawing on both philosophical and legal traditions, we begin with an investigation of our ordinary folk psychological concept and the puzzle it is thought to create, before turning in section 4 to broaden the investigation, by drawing on evolutionary psychology to consider forgiveness in light of its possible function. To anticipate, we claim that we can understand forgiveness not simply as an intrinsic, subjective state of mind, but as one which additionally functions to motivate reparative behaviours. This allows us to draw on the nature of these behaviours to reconceive punishment as a response to responsibility for wrongdoing which imposes consequences—no doubt typically negative but occasionally not, so long as they are serious and appropriate to the crime and the context—*that embody reparative strategies*. In section 5, we flesh out the claim that we ought to replace blame with forgiveness as a guiding ideal within penal philosophy and criminal justice policy and practice, beginning with instrumental considerations, and moving to argue for this conclusion based on a commitment to the basic political values of a broadly liberal society. Finally in section 6 we briefly counsel against some tendencies within our current forgiveness practices that may undermine genuine forgiveness by in fact inviting blame back in to criminal law. And we explore what it could mean in practice to punish with forgiveness as opposed to punishing with blame, distinguishing various stages of the criminal justice process, including conviction, sentencing, and the execution and longer-term effects of the sentence.

TAKING THE CLINICAL MODEL OF RESPONSIBILITY WITHOUT BLAME INTO THE LEGAL REALM

In a previous article, we argued at length that there were compelling reasons to adopt the clinical model of responsibility without blame within penal philosophy and practice.[10] We will not rehearse all the details of that argument here, but aim rather to provide the basic outline of the clinically-derived conceptual framework and illustrate its applicability to criminal law. Within moral philosophy, as well arguably as the law and society at large, there is a deep-rooted tendency to link the idea of responsibility fundamentally to morality, by holding that its point or purpose is moral evaluation: the assessment of another and their behaviour as good or bad, right or wrong. In addition, such moral evaluation is often believed to be fundamentally affective in form—embodied and expressed in our emotions and reactive attitudes towards those whose actions show ill will towards others.[11] These attitudes can include hate, anger, resentment, indignation, disgust, contempt and scorn, to reiterate the possibilities listed in the opening paragraph of this article, and of course are often accompanied by equally hostile expressions and actions. At its most radical, the link between responsibility and these attitudes is thought to be constitutive: 'to regard oneself or another as responsible just is the proneness to react to them in these kinds of ways'.[12] More modestly, to hold another responsible has instead been proposed to consist in believing that such reactions would be appropriate or fitting, even if one does not actually have the relevant feelings oneself.[13] But such nuances aside, the idea of responsibility to emerge from this picture links it fundamentally to moral evaluation via our practice of responding to others with what is in effect an affective form of blame.[14] Indeed, theories of criminal law that see the criminal process and the execution of punishment as a form of *institutionalised resentment* (alongside other attitudes) are often underpinned by this picture, with the law understood as functioning to uphold our common morality by assessing transgressions and condemning trangressors through institutional processes that stand proxy for our collective emotions and reactive attitudes towards wrongdoing.[15]

Clinical practice offers a very different model. Effective treatment of certain kinds of disorders of agency—where core symptoms or maintaining factors involve actions and omissions including, but by no means restricted to, those that cause harm to others or are wrong—may require clinicians to engage with patients as responsible agents with regard to their behaviour in order to help them to change.[16] Such problematic behaviour is often a habitual if ineffective way of coping with psychological distress, and so part of a cycle of dysfunction. Improvement or recovery from disorders of agency therefore requires patients to break the cycle by doing things differently. Responsibility—understood, as in criminal law, as possession of minimal cognitive and volitional capacities—is essential for this to be possible. For it is only possible to deliberately and directly change behaviour over which we have choice and at least a degree of control.

Hence the clinical task with such patients is, in part, to motivate, encourage, and support them to take responsibility and do things differently. Importantly, this can involve asking patients to be accountable when they don't. Although forms of accountability vary between therapeutic modalities, they can include challenging feedback, so that the negative effects of problematic behaviour on self, others and relationships is made explicit and must be faced, potentially alongside the imposition of negative consequences (usually with advance warning, and patient agreement). Although these consequences typically involve a reflective component to encourage patients' understanding of why they lapsed on this occasion, and to develop a plan for how to succeed next time, they may also involve measures that potentially feel punitive, such as withdrawal of privileges, or time-limited suspension from a therapeutic group. It is a staple of clinical practice that, because these forms of accountability potentially feel punitive, they must be enacted with an attitude of concern, respect and compassion for the patient, as opposed to being accompanied by or expressive of any of the hostile, negative emotions or reactive attitudes connected to affective blame. Within the clinic, responsibility is understood as fundamentally linked simply to agency, not morality: the point or purpose of the idea of responsibility and a demand for accountability is to enable and empower patients to change behaviour that is problematic for the sake of their wellbeing or recovery. When the problematic behaviour causes harm to others alongside its impact on patients themselves, clinicians will of course recognise this impact on others and the moral dimension of the behaviour. Correspondingly, they may form a judgment of 'detached blame', which attributes to patients responsibility for harm to others or wrongdoing.[17] But the aim of clinical engagement is not to form such judgments or morally evaluate patients, but to care for patients and help them to change—irrespective of whether the problematic behaviour does or does not cause harm to others or is wrong. Affective blame is understood within clinical practice to undermine the capacity of responsibility and accountability to enable change, because of its propensity to make patients feel rejected, worthless, ashamed and uncared for, thereby rupturing the therapeutic relationship as well as damaging any sense of hope for the future, and, correspondingly, motivation and belief that they really can do things differently.

The clinic thus offers a corrective to the widespread tendency to link responsibility with affective blame by offering a clear and established practice of attributing responsibility for problematic behaviour—including morally problematic behaviour—and holding to account without affective blame, but instead with an attitude of concern, respect and compassion. Put crudely, reflection on clinical practice brings into sharp relief a distinction between whether *the patient* has choice and a sufficient degree of control over their behaviour to be appropriately asked to take responsibility and potentially held to account, and how *others respond* to patients when they are indeed responsible for behaviour—again, including morally problematic behaviour—and are being held to account. Patients may be responsible and held to account for behaving in ways which are harmful or wrong, yet clinicians engage and act without affective blame.

Although there are important differences between the clinic and criminal justice institutions, this clinically derived conceptual framework can yet be imported in many respects to the criminal law.[18] In the law as in the clinic, responsibility is contingent on possession of cognitive and volitional capacities. Punishment—as a form of accountability—is only appropriate in relation to the degree of responsibility for and severity of an offence. But this fact does not in itself entail the 'worthiness' or justification of affective blame as a response to criminal wrongdoing any more than it is so entailed as a response to problematic behaviour—moral or otherwise—in the clinic. Hence the emphasis placed by the 'justice' model on degree of responsible agency and severity of offence as a condition and limit to justifiable punishment[19] can be maintained wholly apart from the rhetoric of 'just deserts'. Affective blame can be severed from punishment, thereby allowing for penal practices to be fashioned that better serve reparative and rehabilitative ends. Punishment can be understood not as hard treatment or the imposition of retaliatory costs in response to blameworthiness, but, similarly to the clinic, as the imposition of*consequences*—no doubt typically negative but occasionally not, so long as they are serious and appropriate to the crime and the context—in response to responsibility for crime.

Given that responsibility and accountability are maintained by this reconception of punishment as proceeding without affective blame, we have good reason in general to adopt it if indeed doing so better serves reparative and rehabilitative ends. What we aim to explore in this article is the possibility that these ends are best served not only by punishing*without affective blame*, but further, by punishing *with forgiveness*. In other words, given the choice to blame and to forgive, we should choose to replace blame with forgiveness as a guiding ideal within penal philosophy and criminal justice policy and practice. We therefore turn next to the task of articulating the nature of forgiveness and the reasons why, out of all the many positive sentiments that could be fostered within criminal justice processes that yet leave responsibility attributions and punishment intact, forgiveness is particularly well suited to play this role.

THE MEANING OF FORGIVENESS

Forgiveness is often allied with a range of emotions and reactive attitudes that express goodwill or positive regard, such as compassion, empathy, kindness, clemency and mercy.[20] Within legal philosophy, mercy in particular has been singled out as valuable if not indeed essential to the justification of punishment.[21] Our first step therefore is to distinguish forgiveness from mercy, as the two are easily confused.

On the one hand, the grounds for both mercy and forgiveness may converge. Both can stem from compassion and empathy, which may occur in response to offenders who 'make good' by expressing guilt, regret and remorse, and apologising and offering reparation.[22] Note that these various attitudes and actions on the part of the offender are not excuses or justifications: in themselves they do not bear on degree of responsibility or severity of offence. But they may nonetheless function to obviate the felt need to inflict punishment, for they offer evidence that some of the (non-retaliatory) ends that we may hope punishment serves, such as reduction of risk of re-offending, or atonement and the making of amends, have already been secured without it. With the exception of theories such as Kant's[23] that punishment is not merely justified but*necessitated* by the 'justice' model's conception of blameworthiness, consideration of these grounds may therefore incline us to show mercy for the offender or to forgive the offence, and therefore to punish less if at all. Hence, on the other hand, mercy and forgiveness may converge not only in their grounds but in their outcome: both may result in the voluntary withholding of punishment.

Yet mercy and forgiveness are distinct attitudes. Despite the fact that both can affect the decision of whether and to what extent to punish, once punishment has been determined and enacted, the question of mercy is otiose, while the question of forgiveness remains.[24] There is no question of whether or not to be merciful if we are not in a position to punish, whether that is because we have punished already, or because, more simply, we lack the power to do so. Mercy is a possible sentiment only for those with power and authority, exercised necessarily *de haut en bas*.[25]Yet there is a question of whether or not to forgive, wholly apart from our capacity to punish. The offender may have been appropriately punished and so paid their dues, and yet we find we do not forgive. Alternatively, we may find it in our hearts to forgive when no dues have been paid and we are not ourselves in any position to demand them, for we are powerless—unlike mercy, forgiveness can in theory be exercised *de bas en haut*, from powerless victim to powerful perpetrator.

There is ample reason for thinking that mercy should play a larger role in sentencing procedures than it typically does within contemporary courts.[26] Many different kinds of consideration may be relevant to merciful sentencing, from compassion and empathy for those who come from impoverished backgrounds of poor opportunity, which is the case for many offenders,[27] to concerns about the increasing numbers of people sentenced to prison in many countries, and about the length and quality of prison sentences.[28] But, once the sentence is determined, there is nothing more mercy can do. In contrast, there is room for an attitude of forgiveness to shape the nature and execution of punishment—and its aftermath—in prison and in the community. We can hold offenders responsible and punish appropriately in relation to the offence, without vengeance and affective blame, but with forgiveness.[29]

What does this mean? Philosophical discussions of forgiveness typically puzzle over its very possibility. Forgiving is not forgetting, nor, alternatively, accepting or minimising the offence. To forgive, one must keep the wrongdoing of the offender clearly in view. But how can one both do this and yet forgive the offence? As Lucy Allais puts the puzzle: 'Forgiving seems to mean ceasing to blame, but if blaming means holding the perpetrator responsible, then forgiveness requires *not* ceasing to blame, or else there be nothing to forgive.'[30]

The straightforward solution to this puzzle is that, as articulated in section 1 in relation to clinical practice, 'blaming' does not mean 'holding the perpetrator responsible', as the two can be kept clearly distinct. The offender may be responsible for wrongdoing and so 'blameworthy' to use the language of the 'justice' model: they knew what they were doing when they committed the offence and exercised choice and a sufficient degree of control in doing so. But the fact that they are responsible for wrongdoing and so 'blameworthy' does not entail that we must affectively blame them. Hence, once the distinction between responsibility and affective blame is properly recognised, the puzzle of forgiveness is dissolved: we can judge another responsible for wrongdoing and indeed hold to account and punish, without vengeance and affective blame, but with forgiveness. This is part of why an attitude of forgiveness—unlike, say, one of clemency or leniency—is particularly suitable to inject into criminal justice processes that keep responsibility attributions and punishment intact. There is still the task, however, of offering a positive account of what forgiveness is.

Many philosophical accounts of forgiveness hold that it involves overcoming the hostile, negative emotions that can comprise affective blame, in particular anger and resentment.[31] Some further hold that forgiveness demands replacing hostile, negative emotions with goodwill or positive regard. But there are straightforward and well rehearsed objections to these views as standardly articulated. On the one hand, overcoming hostile, negative emotions can occur in the absence of forgiveness. The passage of time notoriously dissipates strong emotions even when one will not forgive. Alternatively, one may decide the offender is simply not worth the energy these emotions require, thereby overcoming them through a form of withdrawal and rejection, rather than through forgiveness. On the other hand, one can forgive a person for one offence, while still holding a further offence against them, and so not replace one's hostile, negative emotions with goodwill or positive regard. Relatedly, one's affective stance post-forgiveness may simply be one of neutral detachment: one is willing to forgive and let bygones be bygones, but that does not itself mean one feels positively disposed towards the person who has offended.

Lucy Allais has offered an account of forgiveness which aims to do justice to the intuition that forgiveness involves overcoming hostile, negative emotions, but meets these concerns.[32] Allais holds that at its 'heart' forgiveness involves 'wiping the slate clean' in the sense of no longer holding a particular offence against the offender insofar as one forbears from allowing the offence to continue to affect one's emotions and attitudes towards him or her as a person. This is a sophisticated version of the adage that we can hate the sin, but love the sinner. When we forgive, we can in one sense hate the sin, in that we keep the wrongdoing clearly in view and judge the offender responsible for it. But, although we may not love the sinner, we need not therefore hate them either. To put it in our terms, we need not affectively blame the offender for the wrongdoing that we judge them responsible for. Because of its attention to the detail of what it means to overcome hostile, negative emotions—namely, to judge another responsible for a particular offence, yet forbear from the hostile, negative emotions and attitudes towards them as a person that the offence initially engendered—Allais is able to meet the objection that not all ways of overcoming emotions count as forgiveness. One forbears from nothing in allowing time to dissipate strong feelings, and one does not forbear from hostile, negative emotions in the right way by overcoming them through withdrawal and rejection, for one yet allows the offence to colour one's attitude to the person. Equally, her account allows that one can forgive an offender for one offence, while still failing to treat them with goodwill or positive regard, because one continues to judge them harshly for other reasons, or because one's affective stance may rather be one of neutral detachment.[33]

We believe that Allais has articulated the 'heart' of forgiveness in many of its core instances. But there are two respects in which our understanding of the nature of forgiveness departs from hers.[34] First, in keeping with many other accounts of forgiveness, Allais holds that only victims—or possibly those closely identified with victims—are in a position to forgive. Yet there is nothing in her account that demands this restriction. And the restriction strikes us as at odds with how we think of forgiveness within our society. For, it is not only the victims of offences who are prone to allow the offence to colour their emotions and attitudes towards the offender as a person—to affectively blame them. Third parties are also prone to do so. Why, then, when third parties stop blaming and instead forbear from allowing the offence to affect their emotions and attitudes towards the offender as a person, should that not count as forgiving the offender for the offence?[35] Equally, forgiveness can also be a self-regarding attitude. We can also forgive—or fail to forgive—ourselves for our own wrongdoing.

The second respect in which we depart from Allais is that she seems to assume that one can only forgive *if* one antecedently affectively blames—in other words, if one initially experiences a range of hostile, negative emotions and attitudes towards the offender as a person engendered by the offence. But again, although this may accurately describe many core instances of forgiveness within personal relationships, we do not think an account of forgiveness requires this restriction. Forgiveness can be a sort of standing disposition as well as a particular act or event.[36] When confronted with an offence, a person of forgiving disposition can forgive the offence not by *overcoming* their hostile, negative emotions and attitudes towards the offender as a person or *forbearing* from allowing these *to continue* to affect them in this way, but rather by *foreswearing* any and all hostile, negative emotions and attitudes that it would be natural to have towards the offender on the basis of the offence in the first place, while yet judging the offender responsible and accountable for the wrongdoing. Thus understood, forgiving an offender for an offence can forestall affective blame before it takes hold, rather than overcome it once it has.

These departures from Allais' account are especially important for the possibility of a role for forgiveness within contemporary courtrooms and criminal justice institutions. Any such role requires a transposition of forgiveness from interpersonal relationships to institutional contexts. Some alternative versions of justice, such as restorative justice, bring victims and offenders together, with the aim of creating atonement in offenders and forgiveness in victims, using reconciliation between them as a means to restoration of the offender's status within society.[37] Such reconciliation can be powerful and important when it is achievable, but often it is not. Victims may be dead, or, alternatively, unwilling to participate in such a process, or unprepared to forgive, and we may rightly view it as wrong in such circumstances to demand participation and forgiveness from them. They are, after all, the victims of the offence. Moreover many offences (eg endangerment offences such as driving under the influence of alcohol, inchoate offences such as conspiracy, and offences of possession) are 'victimless', while others (eg sophisticated forms of fraud) involve victims who are unaware of their victimisation. Yet, as we discuss in section 4, there may be compelling reasons to believe that offenders should have the opportunity to be forgiven for their offence. Just as it is possible to see the criminal process and the execution of punishment as a form of institutionalised resentment, so too it is possible to see it as offering institutionalised forgiveness. This is what the law, as an institutional third-party, can offer: punishment with forgiveness, insofar as, from the perspective of the law and what it represents within our society, the slate is wiped clean.[38]

This may seem an especially obvious role for the law in relation to those offenders whose sentence has been served and so have 'paid their dues'. Yet, even then, there are many respects in which contemporary criminal justice procedures are non-forgiving and create enduring forms of stigma. For instance, under the UK Rehabilitation of Offenders Act 1974, although convictions punished by a non-custodial sentence, or a prison sentence of less than two and a half years, are 'spent' some years after that sentence is served, convictions punished by a prison sentence of more than two and a half years remain on the person's record for the rest of their life. Furthermore, all offenders retain obligations to disclose even spent convictions, for all kinds of criminal offence, when applying for positions in numerous professions, including medicine, education, social work, accountancy and law. In some jurisdictions, notably in many parts of the United States, a host of stigmatising disqualifications, such as ineligibility to vote, to participate in a range of occupations, and to receive a variety of benefits, persist for some time after the sentence has been served, and, sometimes, for life.[39] Replacing such non-forgiving practices with practices that offer a clean—or at least cleaner—slate once the sentence has been served is arguably extremely important, not only in order to promote rehabilitation and restoration, but also for the sake of justice.

But, we argue, the law can do more than simply offer forgiveness to those who have paid their dues by amending such stigmatising procedures. In order to genuinely punish *with* forgiveness, and without vengeance and affective blame, the law must not first punish with these but then overcome them through forgiveness. This is no reconception of punishment. Rather, such an approach simply reverts to the conception of punishment as hard treatment and imposition of retaliatory costs that is characteristic of 'just deserts' theories, but with forgiveness added on in its aftermath. We suggest that the task for criminal justice is not to punish and then to forgive—to inflict hard treatment as a supposed means to fostering inclusion and reparation, as some 'just deserts' theorists, perhaps most notably Antony Duff, would argue.[40] Rather, we suggest it is to punish with forgiveness—to *foreswear* vengeance and affective blame *in*punishing, not just afterwards. For this is what allows the reconception of punishment as the imposition of *consequences*—as opposed to hard treatment or retaliatory costs—in response to responsibility for wrongdoing to take hold, and for these consequences to be effectively fashioned to embody reparative and corresponding risk-reduction strategies. The possibility of reparation and rehabilitation can then in principle proceed in tandem with punishment—if, that is, it is reconceived as inflicted not out of vengeance and affective blame, but with forgiveness.

In the next section, we say more about what this means in theory. In section 5, we discuss the instrumental and ethical reasons we have to adopt such a reconception of punishment, and we then in section 6 briefly sketch some of the ways it could be implemented in practice within criminal justice policy and procedures.

THE EVOLUTIONARY PSYCHOLOGY OF FORGIVENESS

Thus far, drawing on legal and philosophical traditions, we have suggested that we can understand forgiveness as *foreswearing* any and all hostile, negative emotions and attitudes that it is natural to have towards the offender as a person on the basis of the offence. This is a precise, but negative, analysis of forgiveness: we know what forgiveness *does not*involve—affectively blaming the offender—but not yet what it *does*. To answer this question, in this section we broaden the investigation by drawing on evolutionary psychology to consider forgiveness in light of its possible function.[41]

Evolutionary psychologists argue that both vengeance and forgiveness are universal human adaptations that have evolved as alternative responses to exploitation and, crucially, strategies for reducing the risk of future re-offending.[42] Exploitation is likely to have been a major adaptive problem that we faced during our evolution as a species. But it can stem from either in-group or out-group members, predicting different responses. Out-group members typically have limited fitness (eg survival and reproductive) or other forms of value to us for the simple reason that they are not part of our group. We do not have ongoing and potentially mutually beneficial relationships with them. From an evolutionary perspective, there is unlikely to be any inherent cost to killing or permanently incapacitating out-group exploiters.[43] In contrast, in-group members may have substantial fitness or other forms of value to us, because we stand in ongoing and potentially mutually beneficial relationships with them. Killing or permanently incapacitating in-group exploiters therefore carries an inherent cost: the loss of a valuable or potentially valuable person or relationship. For this reason, in-group exploitation ideally requires adaptive strategies that protect against risk of future exploitation, while yet preserving the possibility of an ongoing mutually beneficial relationship. Both vengeance and forgiveness may have evolved as competing strategies with this function.[44]

The logic of vengeance is in effect the logic of deterrence. Vengeance involves hostile, negative emotions and functions to motivate aggressive and cost-inflicting behaviours. By threatening or imposing retaliatory costs, we signal that the expected benefits of exploitation must be adjusted against them, thereby protecting against future exploitation by decreasing the exploiter's motivation to exploit. There are, however, two risks inherent in this strategy. First, responding to exploitation with hostile, negative emotions and threatening or imposing retaliatory costs risks creating a cycle of vengeance, whereby the exploiter then seeks vengeance in turn, and the possibility of preserving an ongoing mutually beneficial relationship is lost, as aggression escalates on both sides. In effect, vengeance risks rupturing relationships to such an extent that in-group members effectively become like out-group members—turning from possible friends to permanent foes, with no fitness or other forms of value attached to the relationship whatsoever. Second, retaliation can function to protect against risk of future exploitation only insofar as the exploiter genuinely fears getting caught and subjected to cost-inflicting behaviours: it fosters no intrinsic desire to end hostilities on the part of the exploiter—indeed, as just noted, it may increase it. The success of retaliation as a response to protect against risk of future exploitation therefore depends on adequate and ongoing monitoring of the exploiter and possessing and maintaining the power to effectively harm them in turn.

Forgiveness, in contrast, functions to motivate reparative behaviours, directing resources away from hostile, negative emotions and aggressive, cost-inflicting behaviours. Reparative behaviours include (at least) the following three types.[45] First, the forgiver may communicate—in a non-aggressive and non-retaliatory way—to the exploiter the extent of the damage they have suffered because of the exploitation. Some costs are imposed inadvertently or at least without full knowledge and intention: when this is so, then the risk of future exploitation may be reduced if the exploiter learns the true consequences of exploitation for the exploited party. Second, the forgiver may indicate that, despite the damage, the possibility for a mutually beneficial future relationship exists if the exploiter commits to refraining from future exploitation—in effect, the forgiver will wipe the slate clean, if they can be convinced that the exploiter really will refrain from harming them further. Third, the forgiver may remind the exploiter of the mutually beneficial past relationship, in order to make salient the potential long-term costs to the exploiter of a permanent rupture to that relationship. By motivating reparative behaviours, forgiveness thereby functions to protect against risk of future exploitation by preserving the possibility of an ongoing mutually beneficial relationship and re-establishing or indeed increasing the perceived value of that relationship to the exploiter. The success of forgiveness as a risk-reduction strategy does not therefore depend on adequate and ongoing monitoring of the exploiter and possession of the power to effectively harm them in future—rather, it aims to foster an intrinsic desire to end hostilities on the part of the exploiter, by eliciting recognition of the damage to, and value of, the exploited party and their relationship with them. In effect, forgiveness is both forward-looking and genuinely conciliatory.

The most significant risk inherent in forgiveness as a risk-reduction strategy is that the forgiver is deceived by the exploiter into believing that the exploiter is committed to refraining from exploitation in future, and so is vulnerable in virtue of trusting the exploiter and continuing the relationship. This is part of why credible expressions of guilt, regret and remorse, apologies and the offering of reparation, and public declarations of future intention to refrain from future exploitation, facilitate forgiveness:[46] they both indicate—but may also in addition help to create and establish through declared commitment and resolve—the value the exploiter now places on the exploited party. But equally, no doubt, the offering of forgiveness and the opportunity for a mutually beneficial relationship in future may serve to facilitate these responses on the part of the exploiter. Forgiveness is, in effect, a co-operative strategy: it works to benefit both parties if and only if both parties can be relied on to do their part—the exploited party must wipe the slate clean, and the exploiting party must forbear from further exploitation.

From an evolutionary perspective, reparation as opposed to retaliation is optimal when successful, for it reduces the risk of the exploiter perpetrating future harm, without incurring the costs of monitoring and maintaining the power to retaliate, and while bringing the benefit of preserving relationships so far as possible. Apart from context-specific elements, both individual and genetic differences (such as sex) appear to contribute to whether an individual opts for an avenging or forgiving strategy in response to exploitation.[47] But a key factor in choice of strategy is 'Associational Value': the expected future value of the exploiter to the individual or group across a variety of domains, and as indicated by factors such as kinship, capacity for work or other forms of social productivity, level or remorse or repentance post-exploitation, and various other forms of mutually interdependent and benefit-conferring relations. Where Associational Value is high, the orientation to forgiveness and reparation is accordingly enhanced; where it is low, the orientation to retaliation will be stronger.[48] Indeed, a series of striking experiments suggests that it governs intuitions about the appropriateness of punitive versus reparative responses to criminal wrongdoing in contemporary contexts.

Petersen and others conducted a series of studies[49] both in the US and in Denmark that—despite clear differences in large-scale national attitudes towards crime, with Americans inclining towards punishment and Danes focusing on rehabilitation—converge on the same set of results. Subjects' views of the severity of a crime predicted their view of the intensity of the response that was appropriate: the more severe the crime, the more intense the response needed to be. But their view of the severity of a crime did not predict their view of the kind of response that was appropriate: retaliatory or reparative/rehabilitative. The choice between a retaliatory or reparative/rehabilitative response was predicted instead by the Associational Value of the offender. Hence, independently of perception of crime severity, subjects preferred a retaliatory response for criminals with a low Associational Value, indicated by persistent offending, out-group status, or low levels of remorse, and a reparative/rehabilitative response for criminals with a high Associational Value, indicated by first-time offending, in-group status, or high levels of remorse. These results strongly suggest that Associational Value predicts the kind of response deemed appropriate. Severity of crime predicts, in contrast, the intensity of *either* kind of response deemed appropriate—worse crimes demand more retaliation or more reparation/rehabilitation, but do not demand retaliation as opposed to reparation/rehabilitation.[50]

These findings have striking implications. On the one hand, they demonstrate that the intuition that responses to crime must be 'fitting' or appropriate in relation to the degree that an offender is responsible in combination with the severity of the offence is not exclusive to the 'justice' model. Our basic intuition is that a severe crime requires an intense response, whether this is retaliatory or reparative/rehabilitative. This makes sense: where an offence is serious, on a vengeance strategy, there is more wrongdoing to punish, while on a forgiveness strategy, there is more reparative and rehabilitative work to be done. On the other hand, these studies suggest that, however natural vengeance may feel, forgiveness comes just as instinctively to our species, even in response to severe offences. We stand prepared to forgive—in that we prefer reparative/rehabilitative to retaliatory risk-reduction strategies—when we view the offender as a person of value to us and as one who, if they play their part in the forgiveness strategy we are prepared to offer, is worth trusting to value us in turn.

How then does drawing on evolutionary psychology allow us to offer a more positive analysis of forgiveness, over and above the negative claim that it requires forbearing from affective blame? The key idea that we want to emphasise is that both vengeance and forgiveness are not simply intrinsic, subjective states of mind, but can be viewed in functional terms. Both respond to the same input: exploitation. Both can be seen to serve the same end: reduction of risk of future exploitation, by decreasing motivation to exploit. Vengeance does this by signalling that the expected benefits of exploitation must be adjusted against retaliatory costs. Forgiveness does this by preserving the possibility of an ongoing mutually beneficial relationship and re-establishing or indeed increasing the perceived value of that relationship to the exploiter. But, correspondingly, vengeance and forgiveness have different outputs, consonant with the difference in the means by which they respectively reduce risk of future exploitation: vengeance motivates retaliatory behaviours while forgiveness motivates reparative behaviours. Hence to punish without vengeance and affective blame, but with forgiveness, can be cashed out as follows. Punishment is reconceived as a response to responsibility for wrongdoing which imposes consequences—no doubt typically negative but occasionally not, so long as they are serious and appropriate to the crime and the context—*that embody reparative strategies*. We not only foreswear any and all affective blame towards the offender as a person, but we employ reparative rather than retaliatory behaviours to fashion the consequences imposed by, and the environment and practices found within, the criminal justice system.

Within personal relationships between individuals, the extent to which we have clear and conscious choice over the decision to blame or to forgive is complex. On the one hand, forgiving is to some extent an act—something one can certainly refuse to do, or, alternatively, offer as a gift. On the other hand, it may sometimes seem as if no matter how hard one hopes or wills oneself to forgive, one cannot bring oneself to offer the proverbial olive branch—blame prevails, despite one's best efforts. No doubt, there are methods to help us, as individuals, forgive as opposed to blame—if that is what we decide that we ought ideally to do.[51] However, the criminal justice system is not an individual, but an institution. There is therefore ample scope for choice in how we punish within it, in that we can design practices and procedures and promote environments within the criminal justice system as a whole—in courts, prisons and the community—that are either blaming and retaliatory, or forgiving and reparative (for specific examples, see section 5).

Undoubtedly, implementation of such practices will require individuals who work within criminal justice institutions to perform tasks and accept responsibilities specific to their role that are designed to offer institutional forgiveness and promote reparation: if punishment is to proceed with forgiveness, that will affect the nature of criminal justice work. As with all professional roles, some individuals may then be more suited to the nature of the work than others. For instance, individuals who believe in forgiveness and reparation as a guiding ideal within criminal justice policy and practice, and who are skilled in modes of communication and interaction that are non-judgmental and non-aggressive, may find themselves better suited to the work than those whose outlooks and skills are different. But the design and implementation of these practices within the criminal justice system does not depend on individuals who work within it themselves *feeling* forgiveness at a personal level, but rather on their ability to perform their duties and abide by their professional roles. That is how there can be ample scope for choice in whether the criminal justice system, as an institution, is blaming or forgiving, and, correspondingly, in how it punishes, irrespective of the extent to which, as individuals, we have clear and conscious choice over the decision to blame or to forgive.

Choosing forgiveness and adapting the reparative behaviours identified by evolutionary psychology for use within the criminal justice system and as a form of punishment will not be simple or straightforward. In section 6, we begin the task of sketching what it might mean for the criminal justice system to punish with forgiveness in real terms. But we turn next to articulating some of the reasons we have to aspire to do so in theory.

FROM INSTRUMENTAL TO ETHICAL REASONS TO PUNISH WITH FORGIVENESS

One of the more striking ideas to come from evolutionary psychology is that forgiveness—like vengeance—has evolved as a strategy to reduce risk of future harm in face of past exploitation. Indeed, when forgiveness works, it arguably offers a more reliable and economical risk reduction strategy than vengeance, because it does not depend on monitoring together with possessing and maintaining the power to retaliate. Long-term monitoring in contemporary contexts—whether in the form of incarceration in prisons, or in the form of supervision in the community—is both expensive and fallible. Costs are high, yet much offending goes undetected. Similarly, maintaining the appearance—let alone the reality—of having the power to detain and punish requires significant and sustained social and economic investment. In contrast, forgiveness—when it works—functions to reduce risk of future exploitation by fostering an intrinsic desire to end hostilities on the part of the exploiter—eliciting recognition of the value of the exploited party and an ongoing relationship with them to the exploiter. The success of forgiveness as a risk-reduction strategy does not therefore rely on monitoring and maintaining power.

The recent marked growth of the prison population and sentence lengths in many countries,[52] together with the disturbing fact that rates of re-offending remain staggeringly high despite evidence that most persistent offenders desist over the longer term,[53] suggest that the current criminal justice system, with its commitment to a mode of punishment that is retributive and expressive of affective blame, is not working to reduce re-offending rates.[54] Indeed, vengeance as a risk reduction strategy is likely to harbour serious risks when implemented within contemporary socio-political and economic climates.[55]

Vengeance as a risk reduction strategy carries the inherent risk of creating a cycle of revenge. Indeed, the treatment offenders receive at the hands of the courts, inside prisons, and by parole services, can be debasing and humiliating.[56] Such punishment is poised to create resentment and grudges among offenders so that—rather than reducing risk of re-offending—it may in fact contribute to bitterness towards 'society' and 'authority', bolstering an intrinsic desire to perpetuate hostilities. Moreover, this inherent risk to vengeance—namely, that it creates a cycle of revenge—may be compounded by the socio-politico-economic context in which the criminal justice system currently operates. Many offenders come from impoverished backgrounds of little opportunity and low socio-economic status. Many have suffered extreme forms of psycho-social adversity in childhood, including violence in the home, physical or sexual abuse and emotional neglect, bereavement and institutional care.[57] Many are members of ethnic minorities who will have been the victims of discrimination and prejudice.[58] Moreover adult substance misuse and mental health problems are associated with such childhood and systemic adversity.[59] Such offenders are therefore already at the margins of society—deprived of many goods and opportunities that others possess, they are people whose early and later experiences may naturally make them feel outcast and uncared for—and so may for good reason believe that their relationships to others as well as to society at large have little proven value or benefit to them. Their mindset entering the criminal justice system may be that people are not to be trusted, and that society does not work in their favour. Retributive punishment that stigmatises and gives license to expressions of affective blame may therefore serve to further alienate such offenders from society—in effect, increasing the divide between 'us' and 'them' and shifting an already marginalised and underprivileged faction of our community into a *bona fide* out-group, thereby confirming their belief that there can be no valuable relationship between society and them—no mutual 'fitness benefits' in the language of evolutionary psychology. A hostile, anti-social attitude among offenders may as a result be entrenched by retributive, blaming modes of punishment enacted within contemporary socio-political and economic climates. If so, then vengeance as a risk reduction strategy may worsen the propensity for offending via its impact on the psychology of offenders, and so will depend for its effectiveness entirely and increasingly on monitoring and maintaining power.[60]

For wholly instrumental reasons—namely, the desire to reduce the risk of re-offending—we therefore have reason to question the value of retributive modes of punishment in contemporary contexts that stigmatise and give licence to expressions of affective blame. But the picture just painted of its potential effect on the structure of relationships within our society should also give us pause for ethical reasons. The basic political values of a broadly liberal society demand that respect and equality ideally accrue to all.[61] These values are horrendously violated by strategies such as capital punishment, life imprisonment and post-sentence practices that carry enduring stigma—put otherwise, strategies such as killing, incapacitation through forced and permanent ostracisation and exclusion, and, finally, permanent shaming and branding[62]—which in effect endorse the treatment of offenders as out-group members. Rather, these values demand responses to crime that aim—even if they do not always succeed, and even if risk reduction and public protection are of course equally important values[63]—to restore offenders as full participant members of our society and repair the rupture to all that criminal offending creates. Vengeance and affective blame do not serve those values. Indeed, they may undermine them, by further marginalising and ostracising those who are already on the fringe of our society due to being victims of discrimination, inequality, and psychological, social and economic adversity.

In contrast with vengeance and affective blame, forgiveness may function to serve the basic political values of a broadly liberal society, while yet addressing the need to reduce the risk of re-offending. For it addresses this need by seeking to repair relations—by fostering in-group solidarity and mutually beneficial relationships as a means of overcoming hostilities and committing to future equality and respect for all parties involved. Given contemporary social, political and economic climates in countries such as Britain and the United States, together with a commitment to these values, we therefore have both instrumental and ethical reasons to consider working towards a reconception of punishment, as proceeding without vengeance and affective blame, but with forgiveness, so as to embody reparative strategies.[64]

We opened this article with a stark question: faced with wrongdoing, should we choose to blame and retaliate, or forgive and repair relations? We have argued that, from a theoretical perspective, the answer lies in forgiveness: we should choose to forgive and repair relations while yet holding offenders responsible and accountable for crime, by forgoing vengeance and affective blame in punishment. We do not, however, claim that this choice will always be easy to make let alone to effect in practice—even for those convinced of its correctness. Given that many offenders—even apart from their offending—may be viewed by the criminal justice system as well as society at large as low in Associational Value, replacing blame with forgiveness as a guiding ideal may require overcoming deep psychological as well as institutional barriers. What we hope to have established thus far is more theoretical, namely, that reconceiving punishment as proceeding with forgiveness represents an ideal towards which we have instrumental and ethical reasons to strive. In the next and final section, we begin the project of exploring what this reconception might mean in practice—not simply in theory—sketching how it could be realised at various stages of the criminal justice process, including conviction, sentencing, and the execution and longer-term effects of the sentence. Given the spectrum of real-world responses that exist to wrongdoing, how can we begin to move the criminal justice system further away from the extremes of blame and retaliation, and more towards the ideal of forgiveness and reparation?

PUNISHMENT WITH FORGIVENESS: CREATING INSTITUTIONS AND PRACTICES THAT 'WIPE THE SLATE CLEAN'

Forgiveness may be a universal human adaptation, but expectations and practices connected to forgiveness are affected by cultural context. Before exploring what this reconception of punishment means in real terms, we need to draw attention to one element of our standard cultural expectations and practices connected to forgiveness which is potentially undermining to this project, namely, the belief that forgiveness *must be earned.*[65] This belief expresses the view that forgiveness ought to be granted only after the offender has taken the initiative to apologise in full—they have repented, suffered and atoned. In other words, before we are willing to countenance forgiveness, we may be minded to ask offenders in effect to take the first step: to acknowledge without excuse or justification the entirety of their culpability and the nature of their offence, experience the full psychological weight of their wrongdoing, and accept punishment for it.

Forgiveness is a co-operative strategy that, to be optimal in reducing risk and repairing relations, requires both parties to participate. It is entirely appropriate to have expectations of offenders as part and parcel of a practice of forgiveness. However, these expectations must not smuggle in vengeance and affective blame under the guise of forgiveness. Asking offenders to earn forgiveness may in reality be an expression of retributive sentiment, manifesting a desire that wrongdoers feel debased and humiliated because of what they have done. If forgiveness is granted only after such sentiments have been indulged, then it comes too late to contribute to a reconception of punishment. Indeed, if such sentiments are indulged, they may—in keeping with vengeance—risk a cycle of revenge, where offenders are motivated to pay lip-service to apology, repentance and atonement, in order to reap the rewards of forgiveness, while yet harbouring bitterness and hostility. In other words, demanding that forgiveness is earned before it is offered may decrease the capacity of forgiveness to function effectively as a risk reduction strategy, by increasing the likelihood that offenders nurture hidden resentments and are not genuinely committed to refraining from future exploitation.

It may also decrease the availability of the kind of narrative told by *ex*-offenders of their journey to desistance. Based on extensive controlled studies of persistent offenders who 'make good'—to use his term—and desist from crime, Maruna argues that ex-offenders employ 'redemption scripts' to make sense of their experience as a person who was once a criminal, but has now left that behind them.[66] In our culture, such redemption scripts tend to posit a core self who was led astray by various forces and influences outside of their control. The offender eventually returns to their rightful path, partially because they had within them a 'good self' all along, partially through their own hard work, and partially through changed life circumstances and the help of others who believed in them. As a result of this experience, they are then in a position to 'give back' and offer help to others who find themselves also being led astray.[67]In so doing, they gain a sense of purpose, and are able to reconcile themselves to their pasts. The redemption scripts told by those who have successfully desisted from crime tend to express strong belief in the current self's powers of control and agency with respect to the present and the future. They do not, however, equally tend to acknowledge full control and agency with respect to past wrongdoing. Responsibility for past offending is not denied, but there are significant excuses, justifications and mitigating conditions that are an important part of the narrative. Crucially, this is essential to a narrative where the core self has always been to some extent 'good', but is—through various outside forces and influences—led astray.[68]

These studies suggest that asking offenders to acknowledge without excuse or justification the entirety of their culpability and the nature of their offence—in order to earn forgiveness—would not aid them in generating a redemption script. Rather, it is likely to further cement what Maruna calls a 'condemnation script' which portrays them as, by nature, criminal, deviant and outsiders—bad to the core, as we say. This, in turn, cannot but be destructive to the effectiveness of any reparative strategy, for it precludes offenders from believing in the possibility that they are the kind of person who could ever be of value to society and stand in mutually beneficial relations with others.

Hence, in exploring how punishment could proceed with forgiveness in practice—in designing real procedures and promoting environments within the criminal justice system that are genuinely reparative—we need to be alive to the way elements of our own cultural practice of forgiveness may undermine this task if we are not vigilant. It is an empirical question what in fact helps people to desist from crime and come to function as full participant members of our community. We may need to help current offenders tell a good redemption story in order to become ex-offenders, even though this requires us to forego satisfaction of our desire for full apology, repentance, suffering and atonement.

In light of this, we therefore suggest that we depart from this element of our standard forgiveness practice and begin by asking, not what offenders can do to earn our forgiveness, but *what the criminal justice system can do to encourage offenders to participate in a reparative process*. In other words, how can the criminal justice system in effect take the first step, offering forgiveness prior to it being earned?

As well as offering a clean—or at least cleaner—slate post-sentencing as discussed in section 2, no doubt part of this endeavour will require creating environments and practices at all stages of the criminal justice process that, in the most general of terms, disavow and discourage affective blame. This task is the upshot of the negative component of forgiveness identified in section 2, as *foreswearing* vengeance and affective blame in punishing. But we here wish to make some very preliminary suggestions, more specifically directed towards the particular question just mooted, of how the criminal justice system could—drawing on the insights of evolutionary psychology and the argument presented thus far—institutionalise forgiveness so as to encourage offender participation in reparative strategies.

Recall from section 3 that reparative behaviours include (at least) the following three types. First, the forgiver may communicate to the exploiter the extent of the damage they have suffered because of the exploitation. Second, the forgiver may indicate that, despite the damage, the possibility for a mutually beneficial future relationship exists if the exploiter commits to refraining from future exploitation—in effect, the forgiver will wipe the slate clean, if they can be convinced that the exploiter really will refrain from harming them further. Third, the forgiver may remind the exploiter of the mutually beneficial past relationship, in order to make salient the potential long-term costs to the exploiter of a permanent rupture to that relationship. How can these interpersonal behaviours be institutionally implemented with the criminal justice system? We distinguish three stages of the process—conviction, sentencing and the execution of the sentence—and suggest how each offers the opportunity to enact one of these strategies.

A. Conviction

Conviction involves a formal declaration that a person is guilty of an offence by verdict of a jury or decision of a judge in a court of law: it is a judgment of responsibility for criminal behaviour. Its broader context, of course, is the trial, where the facts surrounding the offence are established. But within courtrooms which licence vengeance and affective blame, the process of trial and conviction can all too easily become a more generalised expression of 'judgmentalism' whereby the offender's character is paraded, derided, and condemned.[69] In other words, the courts may do more than judge a person as responsible for criminal behaviour—they may judge the person in themselves as 'essentially' of 'bad character'.

This tendency of the trial and conviction stage of the criminal justice process to slide into character judgmentalism can undermine its potential to contribute to a redemption script. Rather than offering a process where offenders are invited to 'own up' to their conduct in a way that facilitates finding a path to a different future, they are required to 'own up' to the fact they are, in essence, bad to the core. When conviction becomes a form of condemnation of character rather than a declaration of responsibility for crime, its potential for reparation will be lost.

Rather, we suggest that to be reparative, trial and conviction must remain focused on the nature of the conduct, understood with respect to severity of offence and degree of responsibility, and its impact on others and the community—not turn to the nature of the offender as a person and their overall character. In effect, this stage of the criminal justice process can be used to communicate the extent of the damage suffered—the first reparative behaviour identified above. Such communication need not be blaming if conducted in a non-retaliatory and non-judgmental fashion. Instead, it can be a form of learning—helping the exploiter to recognise the true consequences of the exploitation and reflect on its meaning. Indeed, studies of restorative justice, which often emphasise direct communication of damage by the victim to the perpetrator, suggest that this can be one of the most important and meaningful aspects of the process to the perpetrator—if also, of course, emotionally difficult for them.[70] Offenders may be straightforwardly unaware of some of the harm they perpetrate on others—whether because they have poor ability to predict or understand other people's mental states or limited capacity for empathy, or because they repress or deny this truth, because of the pain, guilt, and shame that acknowledging it creates. If the trial and conviction stage of the criminal justice process is used to help offenders better recognise the nature of their actions and the effects on others and the community, it may aid psychological and moral growth, thereby serving reparative and rehabilitative ends. Conviction must not, however, be undertaken with affective blame if it is to have this effect—communication and learning is unlikely to be achieved if the trial and conviction process slides into one of character derision and condemnation, where offenders get their 'noses rubbed' in their wrongdoing.

B. Sentencing

Upon conviction for an offence and in absence of diversion to hospital, the sentencing process then determines what punishment will be inflicted in response to the crime. In many jurisdictions, notably England and Wales and many of the US jurisdictions, sentencing must in practice proceed in accordance with established guidelines that constrain the type and degrees of punishment that can be imposed, relative to the level of responsibility for and severity of the crime. Typically, the sentence is decided by the judge and then received by the offender. As argued above, we believe some of these guidelines codify overly harsh and punitive sentencing practices. However, whether or not there is agreement on this point, there is yet scope to use this phase of the criminal justice process to actively encourage offenders to participate in a reparative process: rather than sentences being decided and delivered *de haut en bas*, the sentencing process could aim to create dialogue and discussion with offenders about the nature of the consequences—within, necessarily, the established sentencing framework that already exists—that might genuinely allow them to feel they had the opportunity for reparation and rehabilitation as a component of their sentence.[71] Existing provisions in some systems for the deferral of sentence pending reparatory efforts on the offender's part provide one potentially relevant institutional mechanism.[72]

Recall the second reparative strategy identified, which involves the forgiver indicating that, despite recognition of the damage, the possibility for a mutually beneficial future relationship exists if the exploiter commits to refraining from future exploitation. In effect, the forgiver will wipe the slate clean, if they can be convinced that the exploiter really will refrain from harming them further. Inviting offenders to say what, in their view, reparation and rehabilitation should involve—inviting them to engage in the process of fashioning and therefore also accepting the consequences to be imposed for their offending—might increase the possibility that these goods were realised. Such dialogue and discussion not only expresses respect and a willingness to interact and try to work together towards a productive relationship. By providing offenders with the opportunity to have a voice and role within sentencing, it also thereby allows them to begin the process of taking responsibility for their offence and in addition to consider what might realistically help them to repair the damage and move forward in a different way—to 'make good' in Maruna's terms. In other words, using sentencing to create dialogue and discussion with offenders about the nature of the consequences appropriate to the offence, and how to make these reparative and rehabilitative, may increase their investment in and commitment to reparation and rehabilitation, and so too the likelihood that these goods are realised.

For clarity, we emphasise again that any such dialogue and discussion would in practice need to respect the sentencing guidelines relevant to the jurisdiction in question. But, equally, insofar as offenders appropriately identify, for example, particular kinds of public service or labour as offering the opportunity for a form of reparation, or therapy, workforce or educational training as offering an important personal pathway towards rehabilitation, these options need to be available to the courts to mandate as part of the sentence so long as they are concordant with guidelines. For any co-operative strategy to work and benefit both parties, both parties must be relied on to do their part. Offenders' views of how their punishment might serve reparation and rehabilitation—when these are appropriate—must be heard and enacted.

C. The Execution of the Sentence

In addition to the need for provision for adequate reparative and rehabilitative opportunities within both community and prison sentences, one further reform worth considering is to allow offenders to better maintain relationships with significant others—in a manner and to an extent which is very far from current practice within English and US prisons. When people go to prison, they often lose their relationships with their families and their friends. Undeniably, some of this loss is inevitable. But the fact that, in the UK and the US, many offenders are imprisoned very far from home, together with the severe restrictions on and monitoring of visits and phone calls, so that intimacy is infrequent if not outright impossible, cannot but raise the probability of interpersonal and social rupture. Such restrictions are neither humane nor necessary—as witnessed by the fact that a host of countries, including most prominently Canada, but also countries as diverse as Australia, Denmark, Spain, Israel and Saudi Arabia, allow conjugal or family visits of varying lengths of stay and frequency, as well as part-time imprisonment around continued employment.[73]

The final reparative behaviour identified above involves the forgiver reminding the exploiter of a mutually beneficial past relationship, in order to make salient the potential long-term costs to the exploiter of a permanent rupture to that relationship. In interpersonal contexts, forgivers seek to exploit the fact that they or their relationship has been of value to the exploiter, as a way of increasing the latter's motivation to take the steps required to maintain it. Although no exact parallel is possible here between the criminal justice system and offenders (who, insofar as they have had a past relationship at all with the system, may not have had a good one), this strategy can yet be adapted if the criminal justice system provides a real opportunity for offenders to maintain—rather than lose—the people and relationships they care about in the community during their period of imprisonment. Imprisonment, of course, has terrible consequences for families and friends. Offenders may be strongly motivated to work towards desistence in order to protect these people and their relationships with them from these consequences. But this will not be possible if imprisonment permanently ruptures the relationships offenders care about most, isolating them even further. Hence, rather than criminal justice policies and practices that threaten and destroy these relationships, prisons—and, where relevant, community sentences—should instead aim to protect and maintain them as much as possible, as a way to furthering reparative and rehabilitative motivation in offenders.

These suggestions offer only a preliminary sketch of how criminal justice policy and procedures could be reformed in line with a reconception of punishment as proceeding with forgiveness. They are not all new, and there are of course many other suggestions that might be made. What we hope to have established is only how, if convinced of the merit of this reconception on both instrumental and ethical grounds, we can draw on evolutionary psychology to help us institutionalise forgiveness, by adapting interpersonal reparative behaviours to criminal justice institutions.

CONCLUSION

Designing a criminal justice system to take advantage of our evolutionarily endowed capacity to forgive and seek to repair relations must, inevitably, be a collaborative process between all of us—the institutions and officials comprising the criminal justice system, offenders and society at large, understood to include past and potential future victims. For only then will it be successful in reducing risk of re-offending and repairing relations. As well as holding responsible and to account, the system must offer an invitation to the offender to acknowledge their wrongdoing and help to fashion a sentence in a way that creates the opportunity to move forward in their lives—to be forgiven if they will do their part in making a better future for themselves and for others. The offender, in turn, must then step in to do the reparative and rehabilitative work involved in creating this different future. Acknowledgement of past wrongdoing and commitment to active change is no doubt central to this process. And, in all likelihood, for many offenders, this will provoke feelings of guilt, regret and remorse, as they face up to and make sense of the damage their offending has done to others as well as its role in their own lives. But in tandem with holding responsible and to account, reparative strategies can be offered by the criminal justice system and society, without requiring offenders first to earn them. Rather, we can ourselves take the initial step, and look forwards rather than backwards, and choose to punish not with vengeance and affective blame, but with forgiveness.

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CHAPTER 3

INTEGRATING INFORMATION FROM MULTIPLE METHODS INTO THE ANALYSIS OF PERCEIVED RISK OF CRIME: THE ROLE OF GEO-REFERENCED FIELD DATA AND MOBILE METHODS

Jane Fielding and Nigel Fielding

Department of Sociology, University of Surrey, Guildford, Surrey GU2 7XH, UK

ABSTRACT

This paper demonstrates the use of mixed methods discovery techniques to explore public perceptions of community safety and risk, using computational techniques that combine and integrate layers of information to reveal connections between community and place. Perceived vulnerability to crime is conceptualised using an etic/emic framework. The etic "outsider" viewpoint imposes its categorisation of vulnerability not only on areas ("crime hot spots" or "deprived neighbourhoods") but also on socially constructed groupings of individuals (the "sick" or the "poor") based on particular qualities considered relevant by the analyst. The range of qualities is often both narrow and shallow. The alternative, emic, "insider" perspective explores vulnerability based on the meanings held by the individuals informed by their lived experience. Using recorded crime data and Census-derived area classifications, we categorise an area in Southern England from an etic viewpoint. Mobile interviews with local residents and police community support officers and researcher-led environmental audits provide qualitative emic data. GIS software provides spatial context to analytically link both quantitative and qualitative data. We demonstrate how this approach reveals hidden sources of community resilience and produces findings that explicate low level social disorder and vandalism as turns in a "dialogue" of resistance against urbanisation and property development.

INTRODUCTION

This paper demonstrates the use of computationally based mixed methods discovery techniques to enhance the power and analytical reach of fieldwork in the study of crime risk and public safety. The substantive focus of this paper is on community safety and the perception of risk from crime and social disorder at neighbourhood level. Our conceptual focus is on the application of an etic/emic framework for vulnerability to crime. Our methodological focus is on a mixed methods approach using software to help combine and integrate layers of information to reveal connections between community, crime, and place. This demonstrator study draws on primary empirical data from fieldwork at sites and in criminal justice settings in a contemporary English town.

In countries like the US and the UK the policy register for research on safety and risk is "community policing." Police forces and police researchers in such countries have developed the diagnostic activity of the "environmental scan" as a tool

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to gauge public risk perception in so far as it relates to the built environment. The present official system for community policing in England and Wales is labelled "Neighbourhood Policing." Neighbourhood policing includes the practice of the environmental scan alongside community consultation and crime audits. Our research seeks to extend environmental scan methodologies by new procedures and IT tools. However, we also have a conceptual or analytic objective.

In our analysis, procedures like the environmental scan are one-way practices that presume that the police and State are always benign and that the noncriminal public always stand beside them. We are interested in developing a richer conceptual frame that recognises not only the unintended criminogenic consequences of official interventions but also the social pathologies driven by competing interest groups against a backcloth of general public indifference in communities where crime and disorder are a relatively modest part of everyday life. We are not arguing that the public are indifferent to crime and social disorder but that public sentiment is intermittent, being mobilised largely by the reporting of high profile crimes or when personally touched by crime as a victim or when victims are in one's proximal social network [1]. To this we add that when crime and disorder do become a concern it is too little recognised that individuals, families, and small friendship networks have their own resources that may make them resilient in ways that are barely detectable by formal agencies and agents of criminal justice.

The field of community safety and risk perception has been dominated by an understandable but empirically questionable assumption that crime and disorder are major stressors and concerns for the general public. These assumptions may be an artefact of the survey methods that are the principal source of our understanding of crime fear. Within an international context of steadily falling crime rates, England and Wales are themselves relatively low crime countries. To better direct our limited resources of crime prevention, public reassurance, and crime detection to areas where there is a real need, we must get to better know our communities. Such an agenda applies to recent interventions based on "participatory appraisal," where policy is informed by research that involves community participants mapping points of importance to them (see Fielding and Cisneros-Puebla [2] as an example). Our headline research question is therefore "what is the basis of resilience against crime and disorder in a stable neighbourhood located at the median in standard indices of deprivation/prosperity?" The technologically enhanced fieldwork methods we demonstrate here produce results that we see as useful comparators to data from the British Crime Survey (since April 2012 known as the Crime Survey for England and Wales) and other large sample surveys on the distribution of victimisation and its effects.

APPLYING THE EMIC/ETIC DISTINCTION TO PERCEPTIONS OF RISK AND SAFETY IN A COMMUNITY

A useful framework for exploring these ideas of risk and safety in the community is that of an emic and etic conceptualisation of vulnerability [3, 4]. These concepts, reinterpreted from linguistics and anthropology, refer to two complementary perspectives. An etic perspective defines risk from an "outsiders" viewpoint, thus imposing the vulnerable categorisation not only on areas (such as "crime hot spots" or "deprived neighbourhoods") but also on groupings of individuals, often based on their assumed dependency (such as the "sick" and the "poor"). The groupings are generally underpinned by relative position in respect of a limited range of sociodemographic indicators, drawn together around a broad, monochrome label. The alternative, emic, perspective explores vulnerability based on the meanings held by the individuals informed by their lived experience and expressed in their own terms. Individuals classified as "vulnerable" from an etic perspective may not feel vulnerable from a personal, emic, perspective. Thus both viewpoints are needed to fully explore social phenomena such as risk and vulnerability.

An approach combining both perspectives necessarily involves a mixed methods research design. In the case of our research, police-recorded crime data and area classifications derived from Census data are used to categorise a local area from an etic viewpoint, emulating a standard approach to inference from population characteristics. Mobile interviews with local residents and police community support officers (PCSOs) and researcher-led environmental audits, conducted while being on accompanied walks around the area discussing and recording visible risk/reassurance indicators, provide additional layers of data from an emic viewpoint. To handle such a variety of data types, several software tools were needed as profiled in Figure 1.

Figure 1 displays the interrelationships between the data, the technology, and the software tools for both data collection in the field and analysis, and exemplar output from using such tools. Audio data were collected using digital recorders (Olympus DS-40), and GPS tracks were either captured using a smart phone (a Sony Ericsson Xperia X1) running Garmin Mobile XT or a handheld GPS device (Garmin eTrex). Quantitative survey data (and still images) were captured using the smart phone and SurveyToGo software [5]. Data representing the etic viewpoint were analysed using statistical software (IBM-SPSS), the emic viewpoint was explored with qualitative software (ATLAS-ti [6] and MAXQDA [7]), and geographical context was analytically linked to the quantitative and qualitative data using GIS software (ArcGIS 9.3 and Google Earth 6). The objective of integrating multiple methods and using various software tools is that data from them coalesce to produce information which is both related and linked. We choose the term "coalesce" deliberately. In a mixed methods research design, data may or may not converge. Used as a discovery technique it is important not to suppress variation or prematurely apply analytic closure. Indeed, there is an established argument in the mixed methods literature that apparently contradictory data may be particularly conceptually illuminating and we should not regard a lack of agreement between data of different kinds as a failure of method [8]. In fact, we should also explore cases where data from different elements of the research design conveniently fit together with equal stringency. These are helpful principles when our objective is "discovery," the fuller exploration of elusive or complex social phenomena.

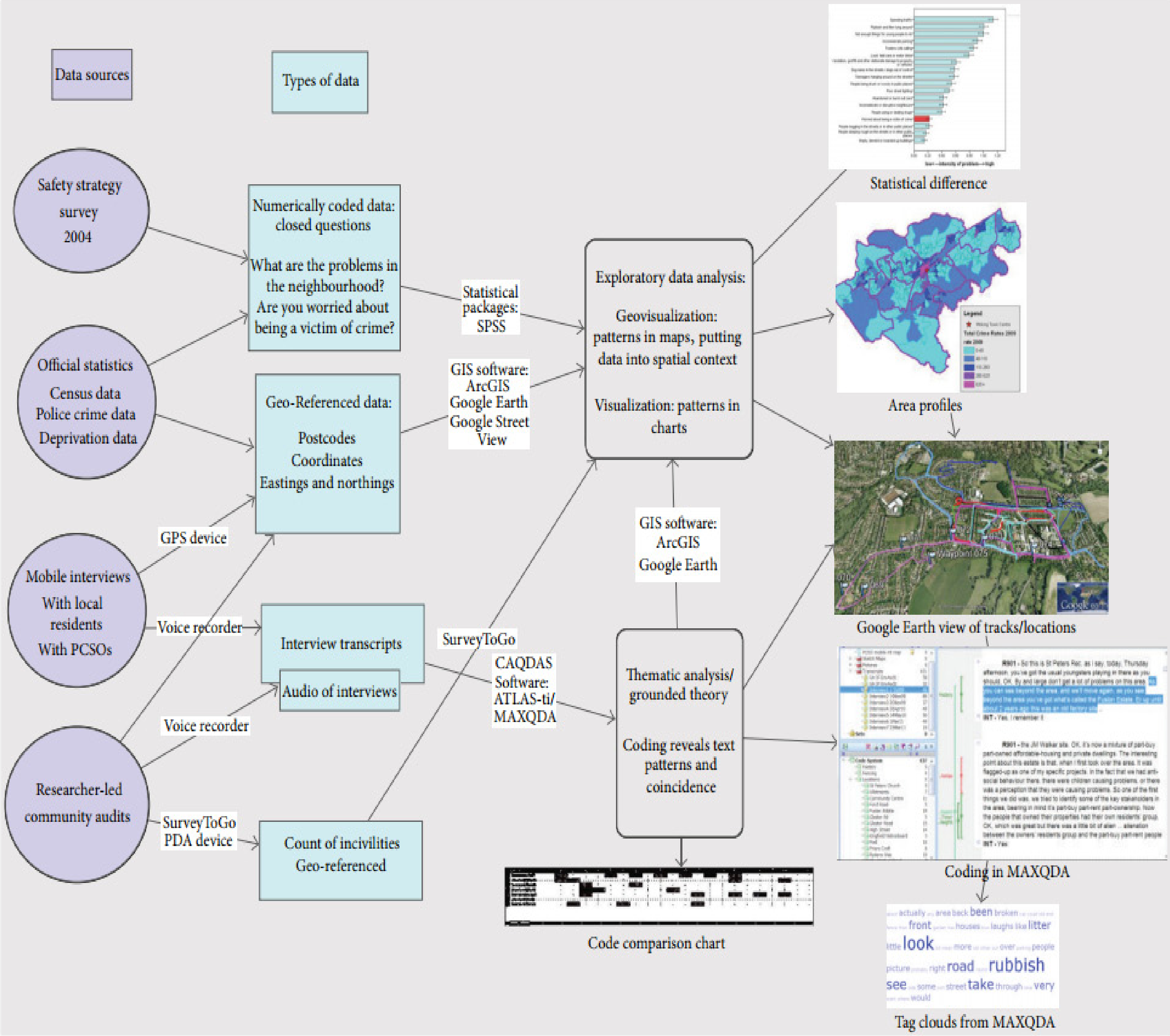

Figure 1: Data sources and technology and software tools for collection and analysis.

In the present context such an exploration calls on us methodologically to address the question of the basis on which sociodemographic and crime profile data produced from secondary data can be compared with primary data based on local intelligence derived from fieldwork. Our general premise is that this requires drilling down to match as closely as possible the secondary data to the specific contextual characteristics of the primary data. Secondary and primary data should be matched as closely as possible in time, duration, and period and likewise in place and space. The temporal consideration requires us to align the time at which secondary data were drawn with that of the specific episode of data elicitation and, in respect of recall data, the time to which respondents refer and/or the time when physical artefacts in question were present (e.g., the date of closure of a factory that became derelict, affording illicit play space, and vandalism opportunities). As the factory example suggests, duration may be lengthy or ephemeral (e.g., in many jurisdictions local government commits to removing abandoned vehicles within a few working days). Period may be addressed by seeking to capture the "crisis point" at which a crime-related phenomenon is in the public eye. In terms of secondary data this can sometimes be captured by peaks in media reports and/or the drawing up and publication of special editions of official data examining a given issue in detail in response to public concern; this happened, for instance, in the mid 1980s following high profile cases of "network" sexual abuse of children [9]. As to spatial considerations, place involves matching of secondary and primary data in respect of geolocation, where Census "output area"/"block" level information is a substantial resource providing finer granularity to which sociogeographical descriptors can be attached that characterise and differentiate very small clusters of residential addresses by socioeconomic qualities assigned to a resident typology, with the most basic being social class. Space in our usage refers to the extent or "reach" of a given attribution; this is useful in sites that have "mixed" characteristics, such as a residential area comprised mostly of properties whose residents enjoy secure housing tenure but where there is a "bad end" comprising social housing with high turnover of tenancies.

As we will see, the scope for precision in matching secondary and primary data is increasing on the back of "open data" initiatives and the willingness of commercial data providers to grant access to datasets produced for other purposes, but there remain significant constraints that must be negotiated. At the broadest level, the hallmark problem of secondary data is granularity—coverage may be insufficiently "micro," or, when it is sufficiently geolocal, exact locations may be deliberately obscured to protect citizen identity or sensitive locations (e.g., military facilities). At the broadest level, the hallmark problem of primary data is the established issues of reliability (transferability to other settings) and validity (accuracy of subjective accounts of social phenomenon elicited from respondents). In both cases, these issues can be addressed by a mixed methods research design and comparative analysis, although certainty will always be bounded by the generic epistemology of interpretive social science.

An important matter in a locally based study is the ethical dimension of site selection. Both fieldwork methods and georeferencing challenge the participant anonymisation convention that social researchers normally adopt. We do not attempt to disguise the location of the fieldwork site in this paper, because we believe that the data to be considered here are not especially contentious and cannot be tied to individual respondents (only the site is identified; the anonymisation convention is observed in relation to individuals quoted or discussed). But we do need to recognise that the more fine-grained our methods are, the greater are the concerns over identifiability and that sophisticated technology has a role in this. Its affordances include means by which anonymity can more readily be penetrated, and consideration of technical protections is an important part of proceeding ethically.

METHODOLOGY

Profile of the Research Community

The research site discussed in this paper was chosen as an instance of a mixed residential community with population and tenure stability that nevertheless had a historically problematic reputation and was "socially deprived" in the context of this area. Figure 2 shows a map of the research district, displaying the supergroup Output Area Classifications (OAC), which are based on the UK 2001 Census data. The k-mean clustering methods used to create these seven supergroup OACs, and derivation and conventions used to name the supergroup classifications are described in detail by Vickers and Rees [12]. The overall district is generally prosperous, as one would expect in Surrey, a county adjacent to the London conurbation and featuring a mix of suburbs, mid- and large size towns, and densely-wooded countryside with villages, hamlets, and military reservations with low population density. The red circle in Figure 2 indicates the study area, which is a mixed neighbourhood not far from the town centre. Note, however, that the study region contains an area classified as "constrained by circumstances" within a larger area of "typical traits" and "blue collar communities" (OAC). Although the wider borough has a higher than average ethnic minority composition, the sample area has a predominately white population which is younger than average, not only for the district but also for England as a whole (IMD 2010 [10]; ONS 2001 [11]). The area is close to the median level of deprivation for England as a whole but is one of the most deprived areas in the locality itself.

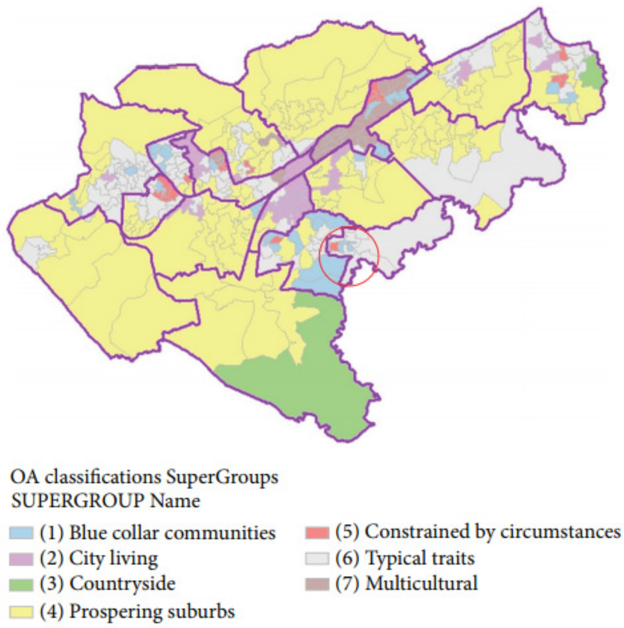

Figure 2: Profile of the district (granted borough status in 1974). Note: circle indicates sample area. Source: IMD 2010 [10]; ONS 2001 [11].

We now turn to a profile of crime and disorder in the area. In Figure 3, crime rates in 2009 per 1000 head of population show that the study area is in a fairly low crime area for the Borough, although there are two locations within it which do experience higher rates. Also, in Figure 3, the vulnerable localities index (VLI) [13] is displayed for the area. The VLI is a composite measure derived from both Census data and recorded crime data. It is a measure of community vulnerability and is used by government and official agencies to identify neighbourhoods that require priority attention from the police and local crime and disorder reduction partnerships (CDRP). Here we see that while most of the borough experiences low levels of vulnerability on this measure, the sample area does contain locations of higher vulnerability for the overall region (those areas that score more than 200 on the VLI). We will now turn to one of those areas which has both a higher crime rate and is officially regarded as being in need of priority attention.

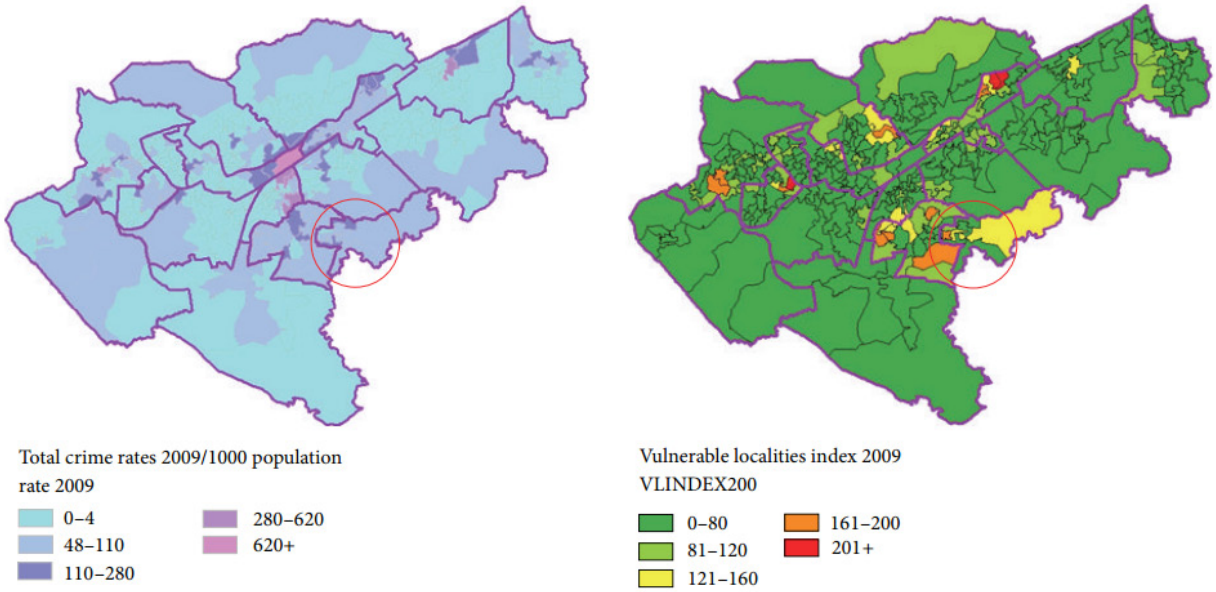

Figure 3: Recorded crime rates per 1000 population and the vulnerable localities index. Circle indicates sample area.

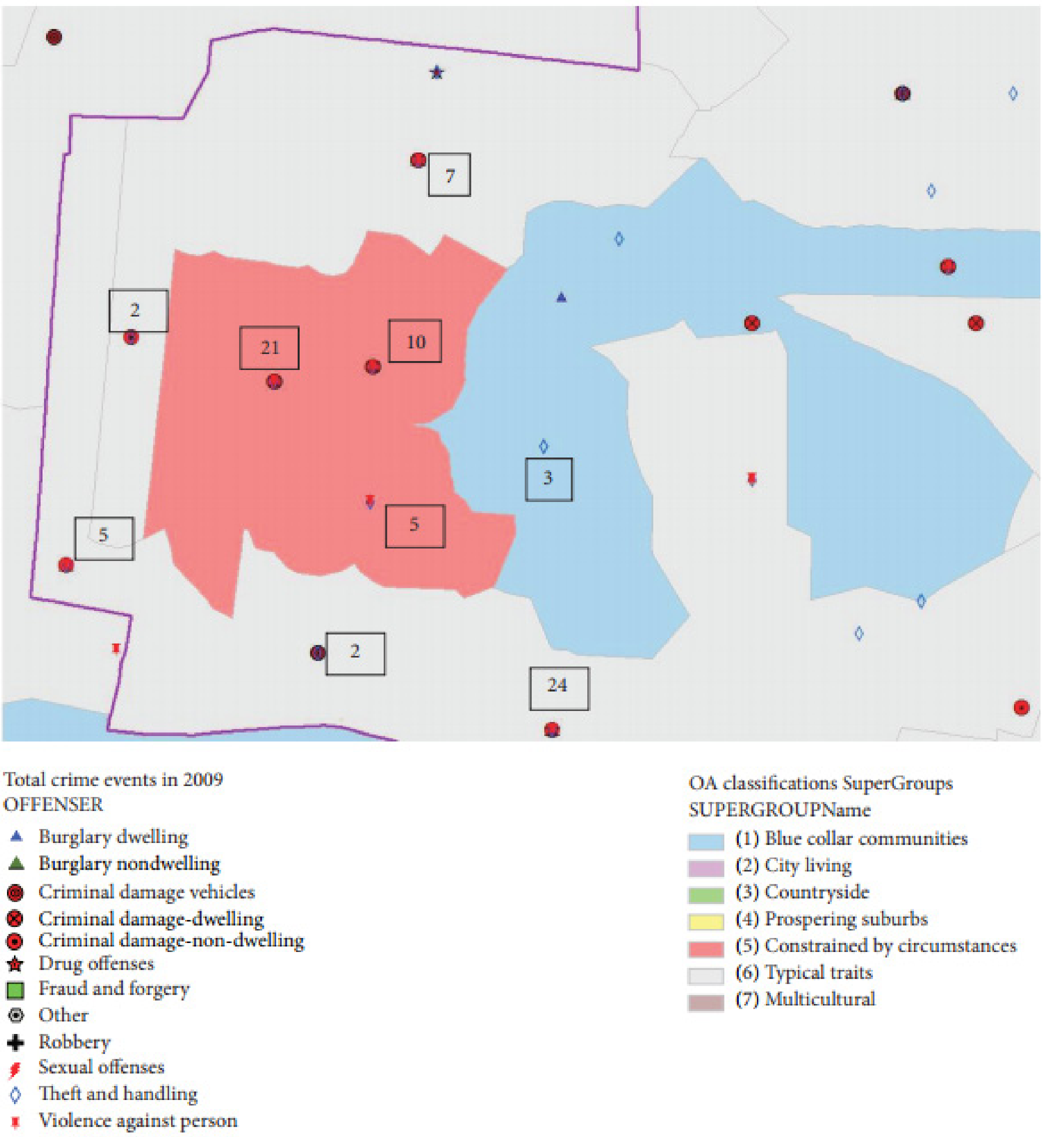

Figure 4: Area classifications and crime event data. Numbers indicate crime events at postcode centroid.

Figure 4 focuses on individual crime events in the sample area and highlights the problems with such postcode located data. In the area defined as “constrained by circumstances” in the output area classifications, note that the three crime locations actually represent 36 recorded crimes which have been located at three postcode centroids. It is not clear from a centroid-based image that multiple crimes were actually attributed to several points. This illustrates one problem in attending only to the classic “etic” viewpoint. It is a problem of granularity. As we will see, methods directed to the emic dimension reveal the more nuanced view of the relationship of place to crime risk applied by people aware of the fine-grained microhistory of the locale. It should also be noted that previous analysis [14] of a local Community Safety Survey conducted in 2004 for the Borough Council confirmed that one part of this ward had a bad reputation and was deemed by nonresidents to be a place to avoid. In fact, despite its reputation, G*** Road has an active residents association and a website which lists “Twenty Great reasons for Living in the Croft & Road Area”.

So what was the local public’s feeling about crime and disorder in their area? Did Road residents see it as a place in which they would rather not reside?

In the same 2004 Community Safety Survey, analysis (see Figure 5) indicated that “fear of being a victim of crime” was quite low down the concerns of the respondents, ranked at 15th out of 18 in a list of neighbourhood problems. It was well below problems associated with traffic, parking, and vehicles that feature as three of the six most highly rated problems for the area.

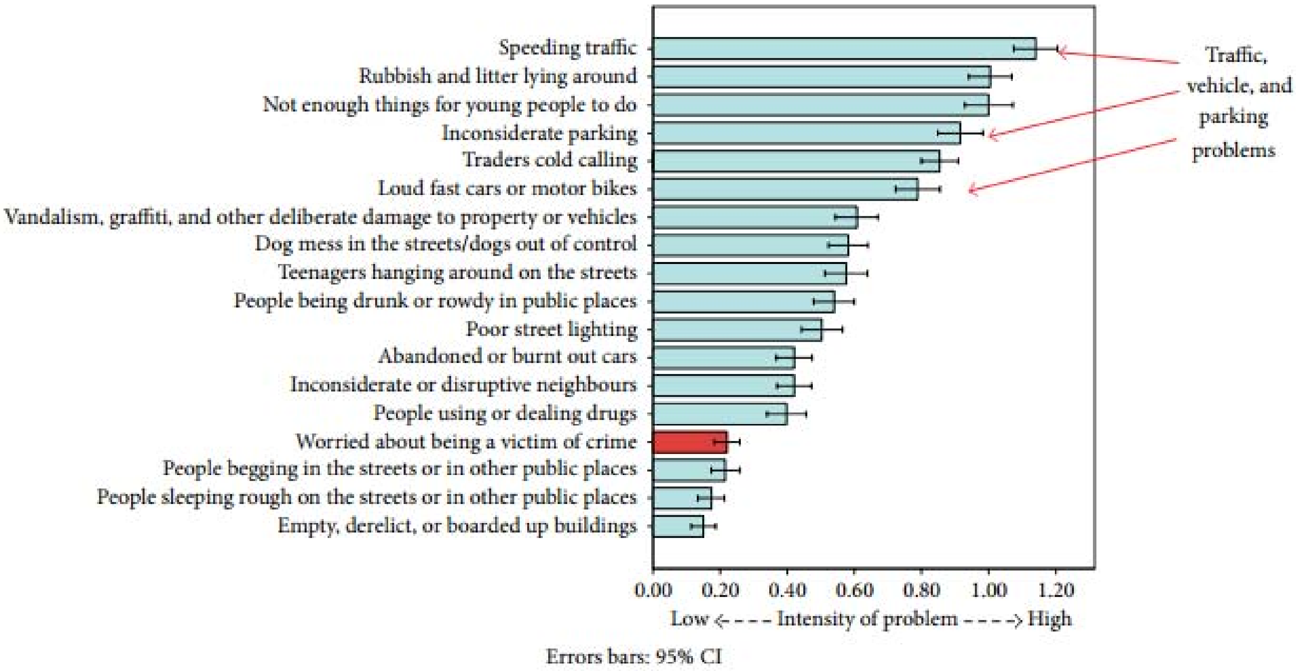

Figure 5: Problems in the neighbourhood and worry about being a victim of crime.

It is, of course, the multidimensional picture we get from combining methods that enables techniques of discovery. Thus, the quantitative and spatial analysis element gave a useful etic baseline against which to compare the primary data from the qualitative fieldwork procedures, to which we looked for insight into the emic dimension.

Fieldwork towards an Emic Perspective

The tracks and conversations of mobile interviews with local people, community representatives, and PCSOs were recorded while walking around a route chosen by them within the locality (participants were simply asked to take the researcher on a walk round notable places in their locale and to comment on why places were notable). In this demonstrator project we conducted six mobile interviews with residents, one with the local PCSO and two researcher-led community audits. The residents interviewed comprised four females aged between 30 and 40 and two older males, one aged between 50 and 60 and the other over 70. All respondents had lived within the area for at least four years, and most for much longer, and had children, grandchildren or, in the case of the oldest male, great grandchildren. The PCSO interviewed lived outside the area. We called these “mobile interviews” but they are often also referred to as “walk-along” interviews. The unaccompanied environmental scans of the area were conducted using a smartphone running SurveyToGo software to log the instances, geographical position, and any artefacts of incivilities that were observed (e.g., abandoned cars) or of events that had taken place (e.g., marks on buildings from objects thrown at them). This methodology is based on the environmental scan techniques developed by Fielding et al. [15] for Surrey Police as part of their “Reassurance Policing” programme, the forerunner of Neighbourhood Policing.

To give a sense of the mobile fieldwork, Figure 6 is a visual representation of the tracks of 7 mobile interviews and 2 community audit walks, with waypoints “flagged” for one interview in Google Earth [16]. Waypoints were convenient points at which the researcher accompanying the interview participant logged the coordinates on the GPS device to more easily synchronise the interview data with the track data during analysis. Integrating exact location with utterances in the mobile interview enabled more precise insights into why given locations elicited particular feelings or memories. Participants appeared to find being at the location a trigger to a fuller response, with higher affect (emotional salience) as well as more exact anecdotal detail when compared to response to similar items in a static interview format conducted in a meeting room. For analytic purposes, being able to visualise the location and specific route taken while coding the transcripts using CAQDAS software (such as MAXQDA and ATLAS-ti) provided an extra dimension and insight into meaning, especially for members of the research team who were not present during the interview. However, while one can easily synchronise the transcripts with the audio within the CAQDAS software to facilitate coding of the transcript (albeit in lapsed time, i.e., starting at time zero), synchronising the audio with the mapped route in real time proved more difficult. One can run the "time slider animation" within Google Earth to visualise the route taken, but while it is calibrated in real GMT time, it is very much speeded up. Thus, it is not possible to listen to the real-time audio at the same time. Synchronising tracks with audio in real time was possible with Open Street Map (OSM) [17], but then coding was not possible in this software, as it is a mapping application. Thus, to listen to all the talk in a given area, one had to use Open Street Map in conjunction, but not in synchrony, with the CAQDAS software which was used for coding the data.

Figure 6: Mobile Interviews tracks in Google Earth. Source: Google Earth ©2013 Infoterra Ltd & Bluesky.

DISCUSSION

Communities as Social Capital

Social capital theory [18] tells us that it is not only economic resources or their lack that affect fear of crime and experience of the reality of crime. While the wealthy can assuage their fear of crime and deter the reality of crime, with crime prevention measures such as gated communities and high tech security systems, the less well-off can secure themselves by resources of neighbourliness, collective action, and simply by knowing the area well. We are used to seeing high population turnover as a sign of an unstable, risky area but we do not so often explore how low population turnover provides deep local knowledge that can insulate people against crime by such things as knowing where not to be if one wants to avoid a given risk.

The "signal crimes" perspective applied by Innes and Fielding [19] in their work on the Surrey and Metropolitan Police experiments with reassurance policing and their evaluation of the Home Office programme of Neighbourhood Policing [20–22] encouraged us to focus on differences in knowledge resources held by users of a given space against a geographical frame of reference. A classic instance collected in the Neighbourhood Policing evaluation was of the varying levels of fear of crime relating to respondents' residential proximity to the scene of a vicious rape and murder. Innes and Fielding found that, in the immediate aftermath, those who lived in the same borough but who were reliant on the local media for information had a higher fear of similar victimisation than those who lived in the building where it had happened. Immediate neighbours were acquainted with the precise details of the incident and knew what had motivated it and that the motive ruled out anyone else being similarly victimised.

The crime and disorder reality of the fieldwork site involved in the present study was a great deal more humdrum than that, but it does give us some examples of similar knowledge resources in action.

One street within the study area had gained a bad reputation over many years and was mentioned by all but one of the respondents at some point during the walking interviews. One respondent who lived near this street, Road, said that

We've got G*** Road, coming off R*** Way, and for years and years it was nothing but trouble on this road, I mean really sort of heavy stuff, and these sort of things sort of stick in your mind a little bit, you know. And [locality] unfortunately had a bit of reputation for that. (Int 6 #271—lives nearby)

Yet, those who live in the street have a more measured response and even an explanation for its bad reputation:

Oh! I mean we've had some bad trouble here over the years. I mean they used to put all the riff raff down here. Everybody that did not pay their rent anywhere else, they used to dump them down here. (Int 4 #7—resident)

And the same resident said that

Well it has the worst reputation in this area, but actually it's not that bad. It's actually quite nice to live here. It's a good community. […] I mean you'll find most people that are scared to come down G*** Road are people that do not live there. They, they've just heard about it, and they won't even walk down it. (Int 4 #326—resident)

And another resident explained that

I think what impresses me with this community is the fact that there's so many people that actually like the community and want to do things for it. (Int 5 #352—resident)

Although milder in scale, these comments indicate a similar phenomenon to the rape example, around the more general theme of a street's reputation. Those living closest to the actual problems were able to isolate the specific locations in their minds and still see the positives around them.

Note that the presentation of crime data on the police public website [23] goes against the grain of this approach. The practice of standardising the crime locations to the middle of the postcode to preserve privacy may well reinforce the reputational damage to the whole street. In areas of the sort we researched, medium and major serious crime is rare, but incivilities such as shouting matches between neighbours, egg and stone throwing at houses, and the routine vandalism of plantings, gates, and signs gave parts of the area a character that was reflected in expressions of real uneasiness and frustration on the part of our respondents. For the most part these were people who were active in the community and who seemed to go out of their way to find the positives in their community and its residents, so we would argue that the frustrations and fears they expressed would be all the more likely in others who were less active, less in the know, and more housebound.

Importantly for analysis, though, we collected examples of ways in which such individuals made their own accommodations to the circumstances in which they found themselves. Formal agencies were certainly part of the landscape through which individuals negotiated their way to their objectives, but individuals typecast the function of such agencies and seldom regarded them as flexible resources available to them or as a gateway to such resources. Instead, they sought to negotiate obstacles to their goals by taking direct, individual initiative. For instance, a woman with two school age children, who, following divorce, was no longer able to afford to live in the area of town in which she had grown up, confronted the problem of poor schooling in the district to which she had been obliged to move. She was concerned about the potential influence of local children with whom her own children may come in contact. Rather than seeking official interventions against the unruly children in her new neighbourhood, she resolved the problem by converting from one Christian denomination to another, gaining access for her children to a faith school with high standards. Also concerned about after-school contact, she confined the play area of her children and regulated their use of bicycles.

The Role of Official Agencies

Having briefly profiled the community's informal social resources, we now turn to the role of official agencies. We customarily think of frontline agencies such as the police, the local authority, housing associations, social services, and the youth service as agencies unambiguously arrayed against crime and disorder. However, our research has sensitised us not only to the positive effects of interventions by these agencies but to the unintended criminogenic consequences of some of their policies and actions. These are attested by the comments from several of the respondents about the parking problems in the area. A typical example is expressed by one respondent:

We only have got 2 visitor's parking, and because most people have more than one car there's always rows about parking. (Int 7 #185)

Another respondent goes on to mention a more serious consequence of the parking problems in the area:

We've got an old people's block … we're finding the ambulances having to take them across the grass in the stretchers to get, because they cannot park anywhere near it. So we're trying to get double yellow lines just in front of the door, … stop the permanent parking right in front of the door. Because it is, definitely a risk issue, it's happened 3 times this year, we've had an ambulance not able to park there. (Int 2 #426) A local authority planning department that stipulates a limited number of parking spaces for a new housing development on the basis that use of the car is to be discouraged and people must be nudged to use public transport may produce a feel-good effect in town hall but is also highly likely to create tensions between the development's residents as they struggle over limited parking and trouble for pedestrians and emergency services with obstructed footpaths and verges.

One revealing example of the way in which the policies and decisions of formal agencies can have unintended criminogenic effects which require closely engaged local fieldwork to discover came to us as a direct result of the technology-enhanced methods of discovery we were using. The example concerns persistent antisocial behaviour at a particular new estate of mixed social and owner-occupier housing which came up in the interview with the PCSO while walking through the area:

… when I first took over the area, it was flagged-up as one of my specific projects. In the fact that we had antisocial behaviour there, there were children causing problems, or there was a perception that they were causing problems. So one of the first things we did was, we tried to identify some of the key stakeholders in the area, bearing in mind it's part-buy part-rent part-ownership. Now the people that owned their properties had their own residents' group, OK, which was great but there was a little bit of alienation between the owners' residents group and the part-buy part-rent people.

So what we went about doing was, in partnership, was to set up a Neighbourhood Watch Scheme, … the idea was that everybody in the estate could be involved in it. And that's what we've done, and it seems to work quite well. (Int 1 #9–15)

To explore the reported levels of antisocial behaviour in the area, we first turned to the mapped images and explored the physical location of the area in Google Earth. We sought to further explore another issue mentioned by five of the seven respondents while they were walking through the same area—that the new estate used to be the site of an old factory:

And then there was a great big factory, [anon], the [anon] factory in front of it. But on the back of the houses there was just this open abandoned bit of land that belonged to the council, and they sold it to build all these houses. (Int 2 #170)

Using historical Google Earth imagery, we were able to explore the area in 2004 and again in 2010. It is thus straightforward to see how the location of interest has changed over recent time. The two images seen in Figure 7 show how an old factory site has been developed as a new housing estate. The waste ground mentioned in Interview 2, which was sold for new housing, is seen outlined in the image on the left.

One of our respondents, a resident of the new estate thus created, told us how she had been troubled by youths throwing eggs at the houses on the estate. Another respondent, in the course of bemoaning the obtrusive three-storey block, latterly built here for social housing on the periphery of the estate (see Google Street View Image in Figure 8), reminisced about how her children used to play in the waste ground beside the old factory. A third spoke about the excessive height of the fence erected around the new development, possibly intended to help the sales of the owner-occupier houses located further within the boundaries of the estate:

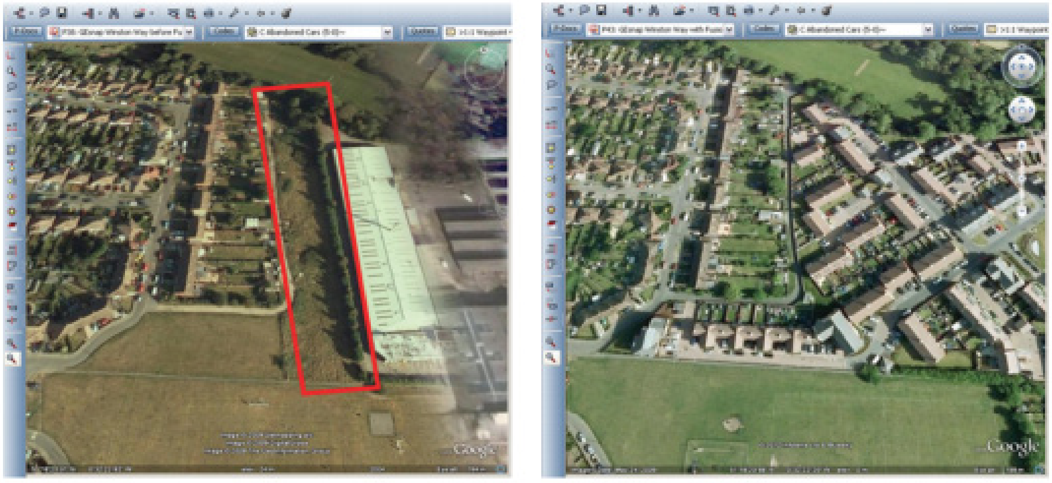

Figure 7: Loss of amenity space—Google Earth images compared within ATLAS.ti v6. Source: Google Earth: (2004 image) Image ©2009 Getmapping plc; Image ©2009 DigitalGlobe; Image ©2009 The GeoInformation. Group (2010 image) ©2010 Infoterra Ltd & Bluesky.

When this was first built, this estate, it had a much higher fence. But they had to take it down because it contravened planning permission. And so it was, I think, six/seven foot before and they had to drop it down to the level it is now. Erm, quite a lot of bad feeling they did … […] the established estate in R*** and G*** Road and that, there was a lot of resentment. Erm and we have had cases of unsocial behaviour of people coming over from the other estate into our estate and just running amok, vandalising the fences, throwing bins around and just generally being oiks. (Int 7 #175)

Figure 8: Google Street View image of social housing block on periphery of new estate. Source: Google Earth Street View © Google 2013.

Looking at these images, these accounts suggest to us that the egg-throwing reported by residents may be an expression of resentment at a lost amenity, reinforced by the exclusionary nature of the high fences. In a full-scale study this hypothesis would, of course, be subject of a "member check" procedure. Now that the fences had been lowered, removing the perceived barrier between this new estate and the old established estates in the neighbourhood, it would seem to have reduced the unintended barrier which, according to our fieldwork respondents, incited neighbourhood rivalries leading to antisocial behaviour.

… there was concern that there was a solid fence with no gates in it, separating that community from the village community, and got it changed, so there's gates. OK there's problems, there's a bit of vandalism here and there and a bit of hassle, but at the end of the day […], there's no barrier. (Int 5 #58)

Ironically, the victims of this antisocial behaviour appeared to be the social-housing tenants who were most similar in sociodemographic background to the assumed perpetrators implicated by the victims.

To the urban planner, the waste ground adjacent to an old factory may merely be disused, but to local people it may be a site with a valued use but one that is invisible to officialdom, a case analogous to the "urban gardens" that local residents had created on waste ground in Knigge and Cope's [24] study of the social geography of community integration in the "rustbelt" city of Buffalo, New York. The high fences, perhaps designed to protect the residents on the new estate, actually provoked the opposite reaction.

To explore the impact of the PCSO's interventions in setting up a neighbourhood watch scheme and the local resident's perceptions of improvements in the area once the high fence was removed, we explored the local crime trends in the area since our fieldwork was completed. Using the http://www.police.uk website we collated crime event data for the specific new estate area (by defining the boundaries of the estate by "drawing your own area" within the website; see box in Figure 9) over a period of time since the interview with the PCSO in October 2009. From this data we found that the number of crime events in this small estate area totalled 51 in 2011 compared to 30 crime events in 2012, indicative of a fall in reported crime over this two-year period.

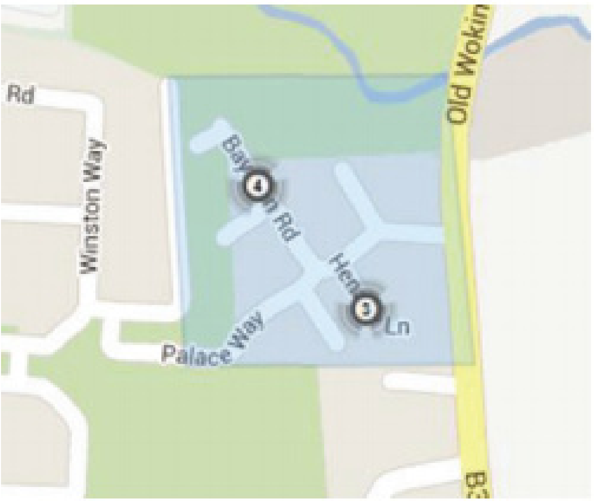

Figure 9: Box drawn to define new estate boundaries showing crime events for a selected month. Source: http://www.police.uk.

However, plotting quarterly crime in this area over the same period in comparison with the wider borough area of Old Woking (see Figure 10) does show that reported crime is falling more generally and is indeed following national trends in this respect [25]. The technique used in this demonstrator project would, of course, be useful in disentangling local and wider regional/national contextual effects.

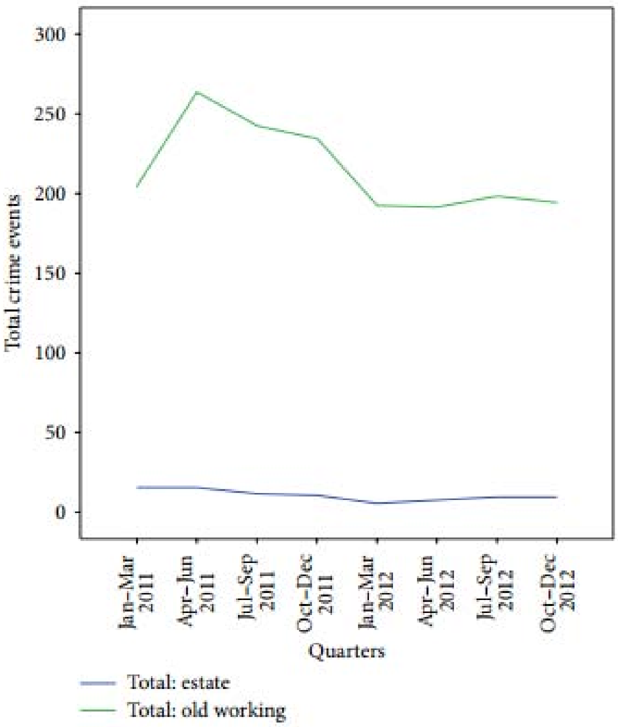

Figure 10: Total recorded crimes on the new estate in comparison with the wider local area. Source: http://www.police.uk.

A further indication of the locale's microhistory that may colour attitudes and condition antisocial behaviour in the area relates to another nearby development. Close to the location shown in Figure 7 is an unusual development site, land set aside between the wars for a bypass that was never built (see the grassy open space on the bottom left to top right diagonal in Figure 11).

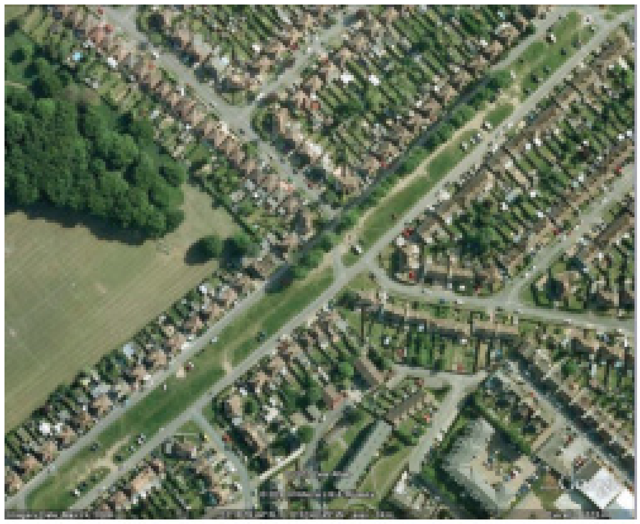

Figure 11: Future development site in Google Earth. Source: Google Earth: ©2011 Tele Atlas: ©2011 Infoterra & Bluesky.

The community that lived on either side of this strip had a mixed reputation as asserted by the PCSO while walking through this area:

> But there's a little bit of a divide, I've got to be honest, and this is only what residents have told us, there's a little bit of a divide between R*** Way … they say that this end of R*** Way is the nice part and the top end is not such a nice part.
>
> […]
>
> I do not know why, but you know, the houses this end seem to be more, shall we say, presentable from the outside, than the houses further up the top end, near the rec. (Int 1 #285–289)

This central strip of land appears to have been a central feature of the communities around it with stories of informal cricket and football games, and as can be seen in this Google Earth image, there are lots of free parking spaces. During the fieldwork period, development went ahead and this green "stripe" was being built upon (the near-completed development is now visible in Google Street View), despite a long campaign against the developers. On the basis of the suggestive evidence presented above, we might speculate that the first occupants of the new houses being built there could encounter antisocial behaviour problems, especially in view of the shape of the site. The area appeared to function as both an informal boundary and an uncontested pressure valve for informal uses such as impromptu sports and play and overflow parking. Its useful but unofficial amenity may have helped reduce local tensions of a kind so regular as often to be dismissed as background "noise," a function lost due to the new housing development. To inform such hypotheses we needed both the "hard" or objective information about the physical topography and built environment of the area over time and the testimony about activities in the area provided by the mobile interviews.

CONCLUSION

We began the discussion in this paper with a distinction between emic and etic approaches, arguing that information from both is necessary to get a holistic picture and that the crime risk and community safety field is dominated by work using an etic approach. That approach offers an external perspective from outside the phenomenon, and its focus on structures and regularities gives it an affinity for quantitative methods. It answers questions about perceived risk and safety by offering findings on the lines of "this is a place where older/disabled people are objectively more vulnerable." The emic approach gives an insider's viewpoint, looking at the issue from a participant's perspective. It helps us answer questions like "why do some people feel more vulnerable in this place than others?" From a law enforcement and criminal justice priority-setting perspective, we need to be able to answer both kinds of questions, so this is not a case for the superiority of one method or heuristic over another but for understanding their interaction.

While we would support what is now the fairly commonplace view that mixed methods offer a more holistic picture [26], we would highlight that new research technologies cut across the familiar methods debates. For instance, the qualitative software we used to organise the data and support the coding and analysis process itself supports mixed methods because it has a suite of features enabling content analysis-type quantification of features in the field data; it supports Boolean retrievals that enable systematic formal analysis of the data using selective retrieval strategies, and for more complex statistical work it can export data to statistical software. Bearing in mind the examples represented in Figures 7 and 11, one of the most promising current technical developments is the georeferencing of qualitative software and its interoperability with Google Earth, Streetview, and other map and location image providers. This begins to provide criminological researchers with some of the power that geographers have long enjoyed with software like ArcGIS.

We anticipate that these technical developments, including increasing interoperability between different IT tools, may bring about a revival of some of the elegant work on the criminal area associated with the classic urban ecology studies of figures such as Morris [27] and Bottoms et al. [28, 29]. As one of us wrote in a book on qualitative software [30], with new research technologies, we can do more but we also have more to do. In the domain of community crime risk assessment it may help us better understand why the well-intentioned policies of local agencies are often confounded, why people in relatively risky areas and with the wherewithal to relocate still choose to stay put, and ultimately why the crime "map" is not the territory.

The more nuanced understanding of the perceived risk of crime based on combining the emic and etic dimensions in a mixed methods research design facilitated by new research technologies carries implications for research on the fear of crime more generally. The stream of research engendered by applications of Putnam's conceptualisation of social capital [18] from the 1990s onwards has resulted in a clearer and fuller understanding of the factors in the physical and social environment that weigh on the public's fear of crime in jurisdictions such as the US, the UK, and other "mature" democracies. While it has never been more true that the fear of crime involves a complex set of responses to the physical, socioeconomic, and cultural environment, we now have an empirical base that allows us to be a good deal more certain and discriminating in weighing the relative influence of the factors in play and the way that they interact.

The extent of the fear of crime literature and the robustness of the studies comprising it make it possible and legitimate to apply the techniques of secondary analysis, such as those of the systematic review, to the literature reporting primary studies. When this is done, some clear regularities in the results of primary studies emerge. These regularities are consistent with the broad lines of analysis, and the methodological techniques used, in the research reported in the present paper. Thus, Lorenc et al. [31] inspected 18 crime, health, and social science databases for UK studies presenting data on fear of crime and the environment. Applying the Hawker et al. framework [32], they identified 40 studies meeting the criteria for inclusion in a systematic review. While the review identified several factors in the physical environment having impact on the public's fear of crime, such as visibility and signs of neglect (as per the "broken windows hypothesis" of Wilson and Kelling [33]), Lorenc et al. (page 496) found that "factors in the local social environment appear to be more important as drivers of fear of crime." The factors prominently include social networks and familiarity with the locale.

The original focus of the Lorenc et al. review was on the built (physical) environment but early in their work this was widened to include the social environment. This revealed interesting enculturated thinking and mechanisms behind thoughts on the built environment; for example, those measures such as locks, fencing, and secure entry systems reduce fear when installed in private space but their equivalent, such as shutters and security gates, can raise fear in public space. There was an issue of balance, where some security measures were needed to instil reassurance but an excess of security measures in the home was seen as "unwelcoming and depressing." Sociocultural factors were also at work in the finding that while strong, well-placed lighting boosted confidence in urban settings, dwellers in the countryside felt safe in their domain without expecting or feeling the need for heavy lighting. People also balanced the natural surveillance afforded by clear sight lines and uncluttered street design against feelings of being under observation and were reassured by "a sense of 'openness' in the environment" [31, page 500]. Yet wholly deserted areas widely induced fear. The established fear-inducing elements of the physical environment, the kinds of decay, vandalism, and neglect encapsulated in the "broken windows" idea, registered widely in the studies reviewed, but, importantly, reaction to these was mediated by knowledge of, and familiarity with an area. Familiarity inspired a feeling of safety despite the presence of "objective" fear-inducing features in the physical environment. Moreover, the public explicitly recognised that outsiders may feel fearful in a locale in which residents and regular visitors felt confident and unthreatened.

Such findings are highly consistent with those reported in the present study and, indeed, quotations extracted from the underlying studies and presented in Lorenc et al.'s review are expressed in closely similar terms to some of those we presented earlier. The underlying cognition supporting this is clearly indicated by Lorenc et al.: "much of the protective effect of familiarity has to do with having strong social networks locally" [31, page 500]. This consistent finding is, of course, welcome, but in terms of ongoing research, we would note the "granularity" of the findings from our fieldwork, where subtle differences in confidence and perceived risk were expressed in relation to small movements around the streetscape and features imperceptible to the fieldworker until pointed out by community members.

Several of the studies captured in the Lorenc et al. systematic review suggest respondents relating to a broader geographical frame of reference than the neighbourhood level in our own study, an issue we regard as worth fuller exploration, as it has methodological as well as substantive implications. Lorenc et al. also identify an intriguing aspect of the established gender difference in relating to areas of perceived risk or safety, that of "'vicarious' fear" [31, page 501] expressed by the parents or partners of females. As Lorenc et al. note, there are parallels in work on the perceptions of ethnic and sexual minorities, to which we might add those who are subject to "hate crime" on the basis of their appearance. We would regard systematic comparison of crime fear and risk perception amongst these groups as a promising avenue for further research, given that some have only latterly been legally recognised as likely to suffer distinctive experience of criminal victimisation.

We would certainly endorse Lorenc et al.'s assessment that "aspects of the physical built environment are clearly relevant to fear to some extent, but fear often relates more directly to the environment's social meanings than its physical form" [31, page 501]. This opens the door to an approach that acknowledges both the generic factors that reliably induce crime fear in a population and factors that mediate the fear response in analytically suggestive ways, such as the idea that some variations in crime fear may reflect conflict between different stances towards the normative standards that frame contemporary constructions of deviance and morality.

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REFERENCES

1. M. Innes, "Signal crimes and signal disorders: notes on deviance as communicative action," British Journal of Sociology, vol. 55, no. 3, pp. 335–355, 2004. · ·
2. N. Fielding and C. A. Cisneros-Puebla, "CAQDAS-GIS convergence: toward a new integrated mixed method research practice?" Journal of Mixed Methods Research, vol. 3, no. 4, pp. 349–370, 2009. · ·
3. J. Spiers, "New perspectives on vulnerability using emic and etic approaches," Journal of Advanced Nursing, vol. 31, no. 3, pp. 715–721, 2000. ·
4. J. Fielding, "Environmental injustice or just the lie of the land: an investigation of the socio-economic class of those at risk from flooding in England and Wales," Sociological Research Online, vol. 12, no. 4, 2007, http://www.socresonline.org.uk/12/4/4.html. ·
5. Dooblo Ltd, "Survey to go software," http://www.dooblo.net/stgi/surveytogo.aspx.
6. Scientific Software, "ATLAS-ti: the qualitative and data analysis research software," http://www.atlasti.com/.
7. Verbi GmbH, "MAXQDA, qualitative data analysis software," http://www.maxqda.com/.
8. N. G. Fielding and J. L. Fielding, Linking Data: The Articulation of Qualitative and Quantitative Methods in Social Research, Sage, Beverly Hills, Calif, USA, 1986.
9. Department of Health Home Office, Working together under the Children Act 1989: A Guide to Arrangements for Inter-Agency Co-Operation for the Protection of Children from Abuse, Stationery Office Books, London, UK, 1991.
10. ONS, "Neighbourhood statistics," http://neighbourhood.statistics.gov.uk/dissemination/.
11. IMD, "Indices of multiple deprivation," 2010, http://www.communities.gov.uk/communities/research/indicesdeprivation/deprivation10/.
12. D. Vickers and P. Rees, "Creating the UK national statistics 2001 output area classification," Journal of the Royal Statistical Society A, vol. 170, no. 2, pp. 379–403, 2007. · ·
13. S. Chainey, "Identifying priority neighbourhoods using the vulnerable localities index," Policing, vol. 2, pp. 196–209, 2008.
14. SSMR, "Safer woking partnership," Survey Final Report, Surrey Social & Market Research, University of Surrey, Guildford, UK, 2004.
15. N. Fielding, M. Innes, and J. Fielding, Reassurance Policing and the Visual Environmental Crime Audit in Surrey Police: A Report, University of Surrey, Guildford, UK, 2002.
16. Google Earth Inc, "Google earth," http://earth.google.com/.
17. Open Street Map Foundation, "Open street map (OSM)," http://www.openstreetmap.org/.
18. R. D. Putnam, "Bowling alone: America›s declining social capital," Journal of Democracy, vol. 6, pp. 65–78, 1995.
19. M. Innes and N. Fielding, "From community to communicative policing: "signal crimes" and the problem of public reassurance," Sociological Research Online, vol. 7, no. 2, 2002, http://www.socresonline.org.uk/7/2/innes.html.
20. Home Office, Neighbourhood Policing: Your Police, Your Community, Our Commitment, Home Office, London, UK, 2005.
21. M. Innes, S. Hayden, T. Lowe, H. Mackenzie, C. Roberts, and L. Twyman, Signal Crimes and Reassurance Policing Volumes 1 and 2, University of Surrey, Guildford, UK, 2004.
22. M. Innes, S. Hayden, T. Lowe, and C. Roberts, Signal Crimes and Reassurance Policing Volume 3, University of Surrey, Guildford, UK, 2005.
23. Police UK, "Police UK," http://www.police.uk.
24. L. Knigge and M. Cope, "Grounded visualization: integrating the analysis of qualitative and quantitative data through grounded theory and visualization," Environment and Planning A, vol. 38, no. 11, pp. 2021–2037, 2006. · ·

25. Economic Policy Centre, "UK crime statistics," http://www.ukcrimestats.com/National_Picture/.

26. J. W. Creswell, Research Design: Qualitative, Quantitative, and Mixed Methods Approaches, Sage, London, UK, 2009.

27. T. Morris, The Criminal Area: A Study in Social Ecology, Routledge & Kegan Paul, London, UK, 1957.

28. J. Baldwin, A. E. Bottoms, and M. A. Walker, The Urban Criminal: A Study in Sheffield, Tavistock Publications, London, IK, 1976.

29. Bottoms and P. Wiles, "Explanations of crime and place," in Crime, Policing, and Place: Essays in Environmental Criminology, D. J. Evans and N. R. Fyfe, Eds., pp. 11–35, Routledge, London, UK, 1992.

30. N. Fielding and R. Lee, Computer Analysis and Qualitative Research, Sage, London, UK, 1998.

31. T. Lorenc, M. Petticrew, M. Whitehead et al., "Fear of crime and the environment: systematic review of UK qualitative evidence," BMC Public Health, vol. 13, pp. 496–503, 2013.

32. S. Hawker, S. Payne, C. Kerr, M. Hardey, and J. Powell, "Appraising the evidence: reviewing disparate data systematically," Qualitative Health Research, vol. 12, no. 9, pp. 1284–1299, 2002. · ·

33. J. Wilson and G. Kelling, "The police and neighborhood safety: broken windows," Atlantic Monthly, vol. 127, pp. 29–38, 1982.

CHAPTER 4

CONCEALED HANDGUN LICENSING AND CRIME IN FOUR STATES

Charles D. Phillips, Obioma Nwaiwu, Szu-hsuan Lin, Rachel Edwards, Sara Imanpour, and Robert Ohsfeldt

Department of Health Policy and Management, School of Public Health, Health Science Center, Texas A&M University, College Station, TX 77843-1266, USA

ABSTRACT

Firearm policy in the United States has long been a serious policy issue. Much of the previous research on crime and firearms focused on the effects of states' passage of concealed handgun licensing (CHL) legislation. Today, given the proliferation of CHL legislation and growing strength of the "pro-gun" movement, the primary policy focus has changed. State legislators now face issues concerning whether and how to increase access to CHLs. Because of this transformation, this research moves away from the research tradition focused on the effect of a legislative change allowing CHLs. Instead, we consider two issues more policy relevant in the current era: What are the dynamics behind CHL licensing? Do increases in concealed handgun licensing affect crime rates? Using county-level data, we found that the density of gun dealers and other contextual variables, rather than changing crime rates, had a significant effect on increases of the rates at which CHLs were issued. We also found no significant effect of CHL increases on changes in crime rates. This research suggests that the rate at which CHLs are issued and crime rates are independent of one another—crime does not drive CHLs; CHLs do not drive crime.

INTRODUCTION

America has the most heavily armed civilian population in the western world. Estimates from the most recent Small Arms Survey [1] indicate that American civilians owned between 270 million and 310 million firearms in 2011. Using census data for a comparable period [2], that minimum figure of 270 million translates to 117 firearms in civilian hands for every 100 Americans 18 years of age or older. European countries fall far behind the USA in gun ownership rates. Those nations with firearm ownership rates closest to the United States have less than half the firearm density reported for the United States; Swiss citizens held only 46 firearms for every 100 adults; Finland had 45 firearms per 100 adults [1].

As interesting, inspiring, or frightening as these data may be, general data on firearm ownership have, for a single reason, been the focus of little criminological research in the United States. American criminals, in the vast majority of crimes involving firearms, use handguns. In 2011, for example,

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handguns were used in 72 percent of firearm homicides, while rifles and shotguns were used in slightly less than 8 percent of firearm homicides [4]. Thus, researchers interested in the relationship between firearms and crimes have expended the bulk of their energy investigating the impact of handguns on crime.

More specifically, for decades, researchers have investigated the impact of the passage of concealed handgun licensing (CHL) legislation in various American states. The debate concerning the effects of CHL legislation began in 1997 with the publication of John Lott's work indicating that the passage of concealed handgun legislation significantly reduced crime [5]. The literature on this issue is now extensive (see Moody and Marvell [6] for a summary of this research). The results of this research, as of very early in the 21st century, were summarized by the National Academy of Science panel as "inconclusive" [7]. Given the results of more recent research, one would easily be justified in reaching that same conclusion today [8–14].

However ambiguous the results of the research on this topic may be, the effect of the passage of CHL legislation is, in reality, no longer a pressing policy issue. Forty-six of the 50 states in the United States now issue licenses to citizens that allow them to carry concealed handguns [15, 16]. Allowing concealed carry is no longer the issue. Instead, whether and how to loosen restrictions on the issuing and carrying of concealed handguns are the major policy issues that now dominate much of the concealed handgun debate in state legislatures. Recent years have seen a burst of state legislation easing citizens' restrictions of citizens' ability to carry concealed handguns [17, 18].

Most recently, the state of Kansas passed legislation allowing any adult resident to carry a concealed handgun without acquiring a license or receiving any training on gun safety or relevant state law related to the use of deadly force [19]. This highly publicized legislation that Kansas passed as it prepared to host the 2015 National Rifle Association annual meeting and gun show was not, however, ground-breaking legislation. Kansas simply joined Alaska, Arkansas, Arizona, Montana, New Hampshire, and Vermont as states that do not require licensing of residents to carry concealed handguns [3].

Unfortunately, little research is currently available to ascertain just what the effects of such "liberalization" may be. At this point John Lott offers the currently available research related to changes in CHL permit density and crime. Lott reports the results of his preliminary analyses of state-level concealed handgun permit data and crime from 2007 and concludes that a one percentage point increase in the percent of the adults in a state holding CHL permits may generate roughly a 1.4 percent drop in the murder rate [3].

This research follows Lott's lead in using CHL permit data as its main independent variable. However, this research differs from Lott's research in that we used county-level CHL permit and serious crime data covering at least a decade after passage of CHL legislation in four states. In its report, the National Academy of Sciences indicated that new approaches and different data are needed to be used to develop a clearer picture of the relationship between concealed carry and crime [7]. The strategy utilized in this research constitutes one response to that call. We used these county-level crime and CHL data to address two issues. First, what factors affect the rate at which concealed handgun licenses are issued in a county? Second, what effect does an increasing CHL rate in a county have on changes in the crime rate?

Why Do Individuals Seek a CHL? The basic argument used by those who support greater access to concealed handguns is that individuals seek a CHL as a response to the fear of victimization [3]. However, research on more general gun ownership indicates that demographic factors, as well as desire for self-protection, play a role in gun ownership [20]. Fragmentary data suggest that such factors may also play a role in who seeks a CHL [21].

One can argue that both crime and demographics may affect the demand for CHLs. The other side of the issue (analogous to supply) involves estimating the number of opportunities civilians have to acquire a CHL. Unfortunately, no previous research has investigated this issue. In this research, we use the number of federally licensed firearm dealers in a county to represent the supply of CHL providers. CHL applicants must have a handgun, so the supply of firearm dealers is an important factor in access to a handgun. The density of Federal Firearm Licensees (FFLs or licensed gun dealers) should be positively associated with increased opportunities to acquire a CHL.

In Texas, for example, CHL applicants must provide a photo and fingerprints for a background check, pass a written exam, and pass a handgun proficiency test, which involves the supervised and graded a marksmanship test on a firing range [22]. These requirements make it easier for commercial gun dealers (FLLs) to offer CHL courses, using their firing ranges, equipment, and employees for CHL training, as an additional source of revenue and a potential source of customers for firearms. Figure 1 serves as a graphical representation of our preliminary model for CHL licensing.

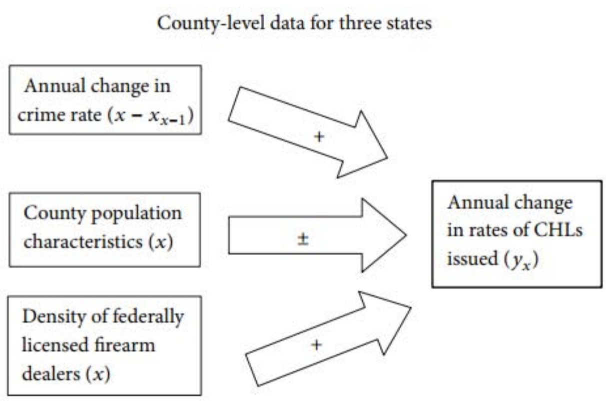

Figure 1: Hypothesized relationships in model estimating changes in county CHL rates.

Effect of Concealed Handgun Licensing on Crime. The theoretical foundation of the hypothesized relationship between CHLs and crime has always been a simple deterrence model, or as Lott puts it, "more guns, less crime." The mechanisms underlying the alleged relationship between passage of CHL legislation and crime have always been somewhat obscure. In addition, how one correctly models the effects of this legislation on crime with the appropriate covariates has been a topic of considerable debate [5–14]. In this research we take advantage of the longitudinal nature of the available data to allow each county to serve over time as its own "covariates" and estimate the model depicted in Figure 2. Our hypothesized preliminary model implies that crime rates will vary among states, across years, and as a result of variation in lagged values of the rates at which CHLs are issued in a county.

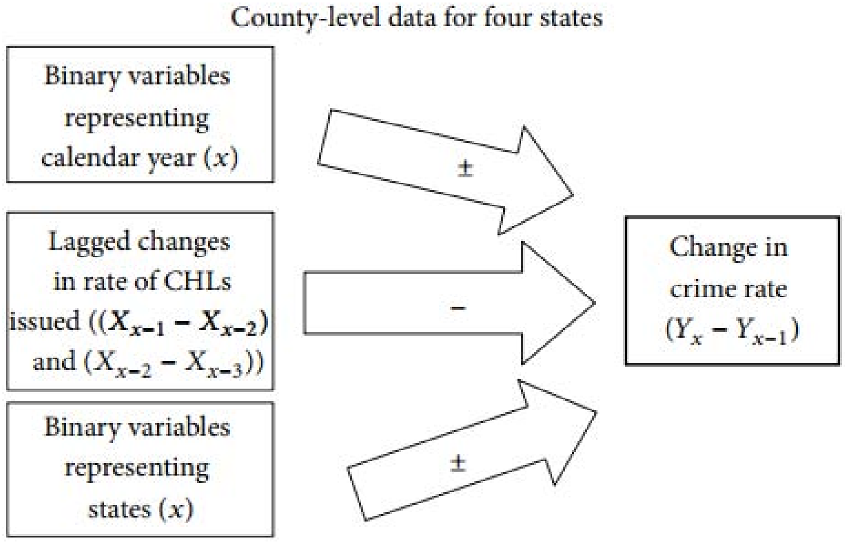

Figure 2: Hypothesized relationships in model estimating the relationship between CHLs and crime.

METHODS

Data

Study States

Our analyses used data on the number of CHLs issued from 1998 to 2010 in every county in Florida, Michigan, Pennsylvania, and Texas. After reviewing the publicly available data from each of the states with CHL legislation, only these four states publicly reported CHL and arrest data at the county level for at least a decade following the passage of the CHL legislation in the state. Table 1 presents basic information on these states and their legislation.

Table 1: Concealed handgun information for study states

Study state	CHL laws [3]	Estimated number of CHL holders [3]	CHLs per population of 100,00€	Percent of population with CHL€	State laws allowing open carry of handguns
Florida	Shall Issue 1987	1,278,246	6,779	7%	No
Michigan	Shall Issue 2000	430,095	4,325	4%	Yes
Pennsylvania	Shall Issue 1989	872,227	6,876	7%	Yes
Texas	Shall Issue 1995	798,048	2,816	3%	No
United States	—	11,113,013	3,599	4%	

€Authors' estimates using 2010 population figures.

As Table 1 indicates, the four states for which we found publicly available county-level data passed "Shall Issue" CHL legislation over a period of thirteen years. Shall Issue legislation removes almost all local discretion from the process of issuing CHLs. Anyone who meets the state statutory requirements "shall" be issued a CHL. Understandably, those states that have had the statutes in effect have the largest proportion of their population (seven percent) licensed for concealed carry of a handgun. Though the states differed in the date they passed legislation, the study period for all states was restricted to 1998 to 2010. This focus was taken because that time span allowed the research team to use the most recent full decade of data on CHLs and crime for each state.

Two of the four states also allowed open carry of handguns. However, both states place restrictions on such activities. In Michigan, a citizen is required to obtain a permit to purchase a handgun for open carry and that purchase is registered with state officials [23]. In Pennsylvania, open carry is allowed outside Philadelphia, though a permit is required for open carry in a vehicle. In fact, the Pennsylvania Firearms Owners Association indicates that open carry is openly discouraged by Pennsylvania law enforcement [24].

Why Do Individuals Seek a CHL?

To investigate what factors affect the rates at which CHLs are issued, the research team was able to use data from three of our four states (Florida, Pennsylvania, and Texas). The analytic database included data taken from five county-level datasets: (1) concealed handgun licenses (CHL), (2) arrest data from the Federal Bureau of Investigation (UCR), (3) Federal Firearms Licensees (FFLs), (4) US census data, and (5) the Area Resource Files (ARF). The CHL and UCR data sources are discussed in Section 2.1.3.

The Bureau of Alcohol, Tobacco, Firearms and Explosive (ATF) posted information on all Federal Firearms Licensees (federally licensed gun dealers) in our study counties. We downloaded the publicly available 2010 and 2011 data for three of the states from the ATF website [25]. At the time of our data development, the research team contacted the ATF to obtain additional data on FFLs. the ATF did not respond to our requests. Currently, however, additional data have become available on the ATF website.

The research team obtained data for 388 counties in our three-state database. However, we excluded three counties in Texas; one county had a CHL rate that was an extraordinary outlier; two counties had missing data. The final database contained 385 counties. Texas counties constituted 65.2 percent of the counties, while Pennsylvania and Florida each accounted for roughly half of the remaining counties. County-level covariates included in the analysis were county demographic characteristics gathered from the U.S. Census Bureau [26] and the Area Resource File (ARF) from the National County-Level Health Resource Information Database [27].

Effect of Concealed Handgun Licensing on Crime

This analysis only used data from two sources. CHL data were obtained from publicly available state data, and crime (arrest) data from the publicly available Uniform Crime Reports were used. The CHL data were obtained from the Florida Department of Agriculture and Consumer Services [28, 29], the Michigan State Police [30, 31], the State Police Department in Pennsylvania [32, 33], and the Texas Department of Public Safety in Texas [34, 35], respectively. CHL data for the entire study period (1998–2010) were available for Florida, Pennsylvania, and Texas. In Michigan, CHL data were only available from 2001–2010 because the "Shall Issue" CHL statute was passed in 2000. The number of arrests and offenses for each type of crime from 1998 to 2010 in each county was abstracted from the Uniform Crime Reports (UCR) [29, 31, 33, 35].

Measures

Why Do Individuals Seek a CHL?

The dependent variable for this analysis was the annual rate at which concealed handgun licenses were issued in a county, and the major independent variable was the change in the arrest rate for each type of index crime: seven individual crime arrests, violent crime arrests, property crime arrests, and total UCR arrests in the previous year.

To calculate the concealed handgun license (CHL) rate and the Federal Firearm Licensee (FFL) rate, we divided the total number of CHLs issued in 2011 in each county and the total licensed federal firearm dealers in the county by the total number of people aged 20 and over in the county times 10,000 people. We used the population aged 20 and over in our analysis because the available census data did not provide total population aged 21 and over. In most states, a person must be at least 21 years of age to apply for concealed handgun license. In Texas, however, a person at least 18 years of age can apply for concealed handgun license if he/she is currently serving in or honorably discharged from the military [36].

We calculated the change in arrest rates per 100,000 from 2009 to 2010 and used these figures in the construction of our lagged arrest/crime variable. We separately analyzed data for each of the seven crimes, for violent crimes, for property crimes, and for total crimes. Violent crimes include murder, rape, robbery, and aggravated assault, while property crimes include burglary, larceny, and motor vehicle theft. We calculated the density of FFLs per 10,000 persons in the county.

We performed natural log transformations on the CHL rate and FFLs rate because these variables exhibited positive skews. Using the data on general firearm ownership, we included a number of county-level covariates (e.g., age structure, average income) in our models.

Effect of Concealed Handgun Licensing on Crime

Our analyses of the effect of CHL rates on crime included annual county arrest rates for murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. We further categorized these crimes into two broader categories: violent crime (murder, rape, robbery, and aggravated assault) and property crime (burglary, larceny, and motor vehicle theft).

The research team used U.S. Census Bureau county-level population data to develop county-level crime rates. For 2000 and 2010, we used the actual census estimates [37] of the county population as denominators in our analysis. For other years (2001–2009), we used county population estimates derived from intercensal estimates [37] as the denominators. The intercensal demographic estimates of population are generated from complex models joining administrative records with data from the previous census [38, 39].

We converted the number of CHLs issued in a year into rates per 10,000 county residents and changes in crime from one year to another into rates per 100,000 county residents. We used total county level population estimates, rather than population over 21 years of age, to calculate the rates of CHL issuance in these analyses, in contrast to our other analyses. We did so because intercensal population estimates were not available for the above-21 population.

Analysis Strategy

Why Do Individuals Seek a CHL?

We used bivariate analyses to examine the relationships among log CHL rate, log FFL rate, and arrest rates for different crimes. Unadjusted and adjusted regression models were estimated. Since one cannot expect an instantaneous change in CHL rates due to changes in crime rates, we lagged the change in crime rate, our main independent variable, by one year. County covariates were included in the models. Covariates that had no significant effect were pruned from the final model.

Effect of Concealed Handgun Licensing on Crime

As the effect of receiving a CHL license on crime is expected to materialize over time, we conducted longitudinal analyses. We estimated the effects of changes in CHL density on crimes using three sets of time lag models:(i)A one-year lagged CHL rate model.(ii)A two-year lagged CHL rate model.(iii)A third model with both one- and two-year time lags for CHLs.

To account for the highly skewed nature of CHL rates, we used the natural log of CHL rates in our analysis. Analyses were completed using STATA statistical software (version 12.1) [40]. The time lag model was chosen in part because the longitudinal nature of the data allows each county's prior values to serve as "comparisons controls or covariates" for the relationship under investigation. In essence, this approach obviates the need for an elaborate list of county covariates.

Another advantage of the time lag model is that it allows for easy identification of any significant latent association between measures over time. We accounted for the within-county correlation for crime rates and CHL license rates over time by computing cluster-robust standard errors at the county level [41].

In each of these models we included indicator variables for each state. As Table 1 indicates, the states differ in CHLs and firearm policy. These indicator variables constituted controls for these factors. Indicator variables were also included for each year, to control for any long-term changes in the counties.

In supplementary analysis, data from each state were analyzed separately. This was done to assure that pooling the data from the four states did not obscure differences among the states. In other analyses, annual county crime data points indicating a zero rate of a crime were deleted from analyses. This strategy served dual purposes. It removed smaller counties with potentially questionable UCR data from the analysis. It also protected the model estimates from any bias toward a positive relationship between CHLs and crime due to the fact that any change in the crime rate in a year following a year with no crime could only mean an increase in crime.

The results of these supplementary data analyses did not differ significantly from the results of the more general analyses. In few instances in these analyses, a positive relationship was observed between CHL licensing and crime. These results did not involve the violent crimes that one expects CHL to affect, and the results were not consistent.

For example, in these more finely grained analyses, the only significant negative result came in Florida. For larceny, the one-year lag for CHLs had a significant negative coefficient () and the two-year lag in that same model had a significant positive coefficient (). Given the number of parameters being estimated and the low likelihood that CHL changes would affect larceny rather than violent crimes, the authors attributed such results to Type I error. Because of the consistency of the results with the more general analysis, only the results of the more general analysis are reported.

In addition, one might be concerned about the effects of spatial correlation on the results. The effect of such correlation is to increase the likelihood of Type 1 error. The results presented below seem to be in no danger of such a bias.

RESULTS

Why Do Individuals Seek a CHL?

Table 2 presents descriptive statistics for variables used in these analyses. The average change in the county arrest rate for each crime type ranged from −2.10 (larceny) to 1.96 (motor theft). The average percent of divorced females in our sample of counties was 10.8% and the average percent of country population residing in an urban area was 49.2%. The mean percent of persons over 16 years of age who were unemployed was 8.1%, and the average percent of people in the county over age 25 with less than high school degree was 21.2%.

Table 2: Variables used in analyses of rates at which CHLs are issued in counties

Variables	Average (n = 385)	SD
CHLs issued in 2011		
Log concealed handgun license (CHL) rate (per 10,000, aged 20+) in 2011	4.72	0.65
Change in arrest rate (per 100,000) from 2009 to 2010		
Murder	−0.09	0.88
Rape	−0.04	1.85
Robbery	−0.22	1.73
Assault	0.93	27.45
Burglary	−1.45	6.29
Larceny	−2.10	10.00
Motor vehicle theft	1.96	41.94
Violent crimes	0.59	27.66
Property crimes	−1.58	44.71
Total crimes	−0.99	54.18
Log federal firearms license (FFL) rate (per 10,000) in 2011	1.75	0.62
Percent female divorced	10.83	2.75
Percent urban population	49.17	31.82
Percent unemployed rate, aged 16+	8.13	2.25
Percent person over 25 with less than HS education	21.23	8.36
Counties		
State	N	%
Texas	251	65.2
Pennsylvania	67	17.4
Florida	67	17.4

*Excluding three counties in Texas: Denton County (extreme outlier) and Crockett and Loving Counties (missing values).

Table 3 presents the results from estimated least squares regression models with change in the county CHL rate. These results were obtained in models that contained all significant county covariates. Table 3 shows the crime rate parameter and log FFL rate parameter for each crime and total crimes. Among the crimes, motor vehicle theft and total crimes showed slightly negative relationships with the CHL rate. Further research is needed to determine the robustness of these seemingly anomalous results. Other crimes show no statistically significant relationship with the CHL rate. However, the estimated positive and statistically significant relationships between the log CHL rate and the log FFL rate in these models were relatively consistent and robust with respect to the specific crime measure.

Table 3: Parameters for lagged county crime rates and logged federal firearms license rate (FFL) in models estimating county CHL rate

Modeling CHL rates	Crime coefficient (SE)	Log FFL coefficient (SE)
Murder	0.034 (0.026)	0.196** (0.043)
Rape	−0.005 (0.013)	0.194** (0.043)
Robbery	0.006 (0.014)	0.196** (0.043)
Assault	−0.002 (0.0008)	0.192** (0.043)
Burglary	0.002 (0.004)	0.190** (0.044)
Larceny	−0.003 (0.002)	0.194** (0.043)
Motor vehicle theft	−0.001* (0.0006)	0.194** (0.043)
Total crimes	−0.001** (0.0004)	0.194** (0.043)

* $p < 0.05$, ** $p < 0.01$.

Effect of Concealed Handgun Licensing on Crime

Table 4 indicates that the average annual increase in CHLs per population of 100,000 varied from a low of 386 in Texas to a high of 1469 in Pennsylvania. While the other states had "Shall Issue" CHL legislation for many years prior to the period covered in this research, Pennsylvania only enacted its "Shall Issue" legislation in 2000. Thus, as one would expect, we see higher rates of concealed handgun licensing in Pennsylvania in its early years of the availability of such licenses. The research team does not consider the inclusion of states with a mixture of time periods since the enactment of CHL legislation is a problem; in fact, this may enhance the robustness or external validity of our results.

Table 4: Average annual change in crime rates and CHL rates per county population of 100,000 ($\bar{N} = 427$)

Average annual change per population of 100,000[¥]	Years 1998–2010 FL	MI	PA	TX
Concealed handgun licenses	598.4	604.8	1,469.1	386.1
Personal crime rate	−9.15	0.14	1.36	1.36
Property crime rate	−6.12	−1.69	−0.79	−8.65
Murder rate	0.09	−0.43	0.03	−0.11
Rape rate	−1.34	−0.42	−0.22	−0.35
Robbery rate	0.03	0.08	0.54	−0.264
Assault rate	−7.75	0.37	1.05	1.62
Burglary rate	−1.08	−0.90	−1.49	−3.12
Larceny rate	−1.13	0.34	2.39	−3.04
Motor theft rate	−3.73	−1.38	−2.08	0.26

[¥]Annual average change data are provided for illustrative purposes. Yearly figures over the time period used may vary dramatically, and the annual average can be affected by outliers.

The changes in crime rates exhibit a number of patterns. Rape and burglary showed decreases across all four of our study states. Robbery, aggravated assault, and larceny increased in Michigan and Pennsylvania, with Texas and Florida showing mixed results for the rates of changes in these crimes. Murder decreased in Michigan and Texas, but it increased in Florida and Pennsylvania.

In Table 5, we report the results of the multivariate analysis obtained using data from all four states, using both one-year lagged and two-year lagged CHL changes, and including a series of binary variables representing years and states. As these results indicate, in all nine of the models estimated, we see no statistically significant relationship between changes in lagged CHL rates and crime rates in these four states during the recent decade, in models that also included indicators for each state and each year.

Table 5: Multivariate analysis of changes in county crime rates per population of 100,000, using both one-year lagged and two-year lagged CHL . ($N = 427$)[‡]

Crimes	Change in CHL rate[€] (one-year lag) b (se)	Change in CHL rate[€] (two-year lag) b (se)	Model F	F prob.<
Personal	−4.35 (3.76)	3.32 (3.79)	2.9	0.000
Property	−4.52 (7.55)	6.82 (7.89)	4.5	0.000
Murder	0.02 (0.50)	−0.03 (0.51)	1.5	0.094
Rape	−0.27 (0.82)	0.62 (0.92)	4.0	0.000
Robbery	0.85 (0.96)	0.34 (1.00)	3.2	0.000
Assault	−4.74 (3.62)	2.01 (3.54)	3.3	0.000
Burglary	−4.22 (4.71)	5.22 (4.70)	1.9	0.024
Larceny	4.15 (5.69)	−4.10 (6.17)	5.4	0.000
Auto theft	−0.68 (1.35)	−0.35 (1.45)	3.6	0.000

[€]Logged.
[‡]Year and state are included in models, but coefficients are not displayed. Across all models, variables representing states were significant.

Though the focus here was on CHL licensing, one might have expected that the state indicators for those states with the greatest density of concealed handguns, as Lott's preliminary analysis at the state-level seems to suggest, would display significant negative relationships with changes in the crime rate. Our results provided no evidence to support this conclusion [3]. Obviously, other research aimed more directly at this issue than our study should provide interesting results related to this issue.

DISCUSSION

The basic question underlying the hypotheses investigated in this research is simple—Is CHL licensing related in any way to crime rates? The results of this research indicate that no such relationships exist. For our study states, during the time period covered by our data, changes in crime rates did not affect subsequent CHL licensing rates. In addition, CHL licensing rates did not have a significant, negative or positive, effect on subsequent crime rates.

These results have some implications for the current policy debates concerning concealed handguns. The logic of relaxing requirements for concealed carry for the purposes of public safety implies that such legislation should reduce crime rates. However, our results indicate that more concealed handgun licensees in our four states had no significant negative effect on crime rates. This lack of a significant negative relationship is especially noteworthy for violent crimes such as murder, rape, robbery, and aggravated assault.

Intertwined with much of the discussion of easing restrictions on the accessibility of CHLs is the idea that citizens seek access to concealed weapons as a result of the risk of victimization. Our analyses of real changes in individuals' risk of being victimized did not appear to be a driving factor affecting increases in concealed handgun licensing.

Instead, our results indicated that contextual factors drive the acquisition of concealed carry permits. The age distribution of the county population, the degree of urbanization, the level of educational attainment, and the specific state of residence had significant effects on CHL acquisition. In addition, more people acquired concealed carry permits in counties where more businesses or individuals sold firearms. The number of CHLs issued was driven more by the number of individuals or businesses offering handguns for sale (the supply of handguns) than by changes in the real threat of victimization as measured by county crime rates.

This study has two limitations. First, analysis focused on the change in the rate of CHLs, not rate of gun ownership per se, or rate of unlawful concealed carry. Second, we analyzed data from only four states within a limited time span. With these limitations in mind, the research team believes that these results do provide information that may be useful when considering the easing of restrictions on CHL access. Our results imply that such changes, to the degree that they increase legal concealed carry rates, will not have an effect on crime rates. The results also suggest that increases in carry rates resulting from easing access to concealed carry licenses will be driven more by the supply of firearms dealers in an area than by changes in crime rates. As interesting as these results may be, further research using the types of data utilized in this research will determine the robustness of our results.

REFERENCES

1. Karp, "Estimating civilian owned firearms," Small Arms Survey, Geneva, Switzeland, 2011, http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-9.pdf.
2. L. M. Howden and J. A. Meyer, Age and Sex Composition: 2010, U.S. Census Bureau, Washington, DC, USA, 2011.
3. J. R. Lott Jr., J. Whitley, and R. C. Riley, Concealed Carry Permit Holder Across the United States, Crime Prevention Research Center, Swarthmore, Pa, USA, 2014, http://crimepreventionresearchcenter.org/wp-content/uploads/2014/07/Concealed-Carry-Permit-Holders-Across-the-United-States.pdf.
4. The Federal Bureau of Investigation, Crime in the United States, 2012: Expanded Homicide Data Table 8, US Department of Justice, 2013, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_8_murder_victims_by_weapon_2008-2012.xls.
5. J. R. Lott Jr., More Guns, Less Crime: Understanding Crime and Gun-Control Laws, University of Chicago Press, Chicago, Ill, USA, 1998.
6. E. Moody and T. B. Marvell, "The debate on shall-issue laws," Econ Journal Watch, vol. 5, no. 3, pp. 269–293, 2008. ·
7. F. Wellford, J. V. Pepper, and C. V. Petrie, Firearms and Violence: A Critical Review, National Academies Press, Washington, DC, USA, 2004.
8. Ayres and J. J. Donohue III, "Yet another refutation of the more guns, less crime hypothesis—with some help from Moody and Marvell," Econ Journal Watch, vol. 6, no. 1, pp. 35–59, 2009. ·
9. G. Duwe, T. Kovandzic, and C. E. Moody, "The impact of right-to-carry concealed firearm laws on mass public shootings," Homicide Studies, vol. 6, no. 4, pp. 271–296, 2002. ·
10. T. V. Kovandzic and T. B. Marvell, "Right-to-carry concealed handguns and violent crime: crime control through gun decontrol?" Criminology & Public Policy, vol. 2, pp. 363–396, 2003.
11. T. V. Kovandzic, T. B. Marvell, and L. M. Vieraitis, "The impact of "shall-issue" concealed handgun laws on violent crime rates: evidence from panel data for large urban cities," Homicide Studies, vol. 9, no. 4, pp. 292–323, 2005. View at Publisher · ·
12. T. B. Marvell, "The impact of banning juvenile gun possession," Journal of Law & Economics, vol. 44, no. 3, pp. 691–713, 2001. View at Publisher · ·
13. E. Moody, "Testing for the effects of concealed weapons laws: specification errors and robustness,"Journal of Law & Economics, vol. 44, no. 3, pp. 799–813, 2001. View at Publisher · ·
14. C. E. Moody and T. B. Marvell, "The debate on shall issue laws, continued," Econ Journal Watch, vol. 6, no. 2, pp. 203–217, 2009. ·
15. Buckeye Firearms Association, Shall-Issue, May-Issue,

No-Issue and Unrestricted States, 2014, http://www.buckeyefirearms.org/shall-issue-may-issue-no-issue-and-unrestricted-states.

16. Law Center to Prevent Gun Violence, Concealed Weapons Permitting Policy Summary, Law Center to Prevent Gun Violence, 2013, http://smartgunlaws.org/concealed-weapons-permitting-policy-summary/.

17. M. Clark, "Year after Newtown, many states have made changes in gun laws," USA Today, 2013, http://www.usatoday.com/story/news/nation/2013/12/13/stateline-newtown-gun-control-mental-health/4009051/.

18. K. Yourish, W. Andrews, L. Buchanan, and A. McLean, "State gun laws enacted in the year since Newtown," The New York Times, 2013, http://www.nytimes.com/interactive/2013/12/10/us/state-gun-laws-enacted-in-the-year-since-newtown.html?_r=2&.

19. K. Murphy, Kansas Will Allow Concealed Carry of Guns without a Permit, Reuters, London, UK, 2015,http://www.reuters.com/article/2015/04/02/us-usa-kansas-guns-idUSKBN0MT2LM20150402.

20. Pew Research Center, Why Own a Gun? Protection Is Now Top Reason, 2013, http://www.people-press.org/2013/03/12/why-own-a-gun-protection-is-now-top-reason/#.

21. Texas Department of Public Safety, Concealed Handgun Licensing: Demographic Reports for Calendar Year 2010, Texas Department of Public Safety, 2010, https://www.txdps.state.tx.us/rsd/chl/reports/demoreportscy10.htm.

22. Texas Department of Public Safety, Concealed Handgun Licensing, 2015, https://www.txdps.state.tx.us/rsd/chl/.

23. Michigan Open Carry, About Michigan Open Carry, 2015, http://www.michiganopencarry.org/.

24. Pennsylvania Firearm Owners Association, Open Carry in Pennsylvania, 2015, http://www.pafoa.org/law/carrying-firearms/open-carry/.

25. Bureau of Alcohol, Tobacco, Firearms, and Explosives, Statistics-Listing of Federal Firearms Licensees, 2013, https://www.atf.gov/about/foia/ffl-list-2012.html.

26. US Census Bureau, United States Census 2010, US Census Bureau, 2010, http://www.census.gov/2010census/.

27. Health Resources and Services Administration, Area Health Resource File (AHRF), Health Resources and Services Administration, 2013, http://arf.hrsa.gov/.

28. Florida Department of Agriculture and Consumer Services, Statistical Reports, 2013, http://www.freshfromflorida.com/Divisions-Offices/Licensing/Consumer-Services/Concealed-Weapon-License/Statistical-Reports.

29. Florida Department of Law Enforcement, UCR Arrest Data, Florida Department of Law Enforcement, 2013, http://www.fdle.state.fl.us/Content/FSAC/Data—Statistics-(1)/UCR-Arrest-Data/UCR-Arrest-Data.aspx.

30. Michigan State Police, Concealed Pistol License (CPL) Reports, 2013, http://www.michigan.gov/msp/0,4643,7-123-1591_3503_4654-77621–,00.html.

31. Michigan State Police, Uniform Crime Report, 2012, http://www.michigan.gov/msp/0,1607,7-123-1645_3501_4621—,00.html.

32. Pennsylvania State Police, Firearms Information, 2013, http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&&PageID=462425&level=2&css=L2&mode=2.

33. Pennsylvania Uniform Crime Reporting System, Annual "Crime in PA" Reports, 2012, http://ucr.psp.state.pa.us/UCR/Reporting/Annual/AnnualSumArrestUI.asp.

34. Texas Department of Public Safety, Reports & Statistics, 2013, http://www.txdps.state.tx.us/rsd/chl/reports/demographics.htm.

35. Texas Department of Public Safety, Crime in Texas, 2013, http://www.dps.texas.gov/administration/crime_records/pages/crimestatistics.htm.

36. Texas Department of Public Safety—Regulatory Licensing Division, Concealed Handgun Licensing, 2013, https://txapps.texas.gov/txapp/txdps/chl.

37. U.S. Census Bureau, County Intercental Estimates (2000–2010), 2013, http://www.census.gov/popest/data/intercensal/county/county2010.html.

38. C. Lazarus, A. Autry, J. Baio, R. N. Avchen, and K. V. N. Braun, "Impact of postcensal versus intercensal population estimates on prevalence of selected developmental disabilities—Metropolitan Atlanta, Georgia, 1991–1996," American Journal on Mental Retardation, vol. 112, no. 6, pp. 462–466, 2007.

39. U.S. Census Bureau, Methodology for the Intercensal Population and Housing Unit Estimates: 2000 to 2010, 2012, http://www.census.gov/popest/methodology/2000-2010_Intercensal_Estimates_Methodology.pdf.

40. StataCorp, Stata Statistical Software: Release 12, 2011.

41. C. Cameron, J. B. Gelbach, and D. L. Miller, "Bootstrap-based improvements for inference with clustered errors," The Review of Economics and Statistics, vol. 90, no. 3, pp. 414–427, 2008.

CHAPTER 5

COMMUNITY-ORIENTED POLICING STRATEGIES: META-ANALYSIS OF LAW ENFORCEMENT PRACTICES

Martin Maximino

United Nations Regional Centre for Peace, Disarmament and Development United Nations, Peru

Police forces across the United States have tried a range of new approaches to ensure public safety, from "hot-spots policing" to"order maintenance" strategies. Yet many American remain dissatisfied with law-enforcement authorities' ability to reduce crime, treat minorities fairly and hold officers accountable for their actions.

Meanwhile, violent events such as the 2014 shooting of Michael Brown in Ferguson, Mo., and the subsequent shooting of police officers there in 2015 — as well as recent incidents in Cleveland and Staten Island involving police use of deadly force — serve as evidence that new approaches to police-community relations are sorely needed in many places. The Justice Department's highly critical report on policing in Ferguson provides a new window into how bias can become pervasively embedded in law enforcement practices at the local level.

Community policing is a strategy that centers on the involvement of citizens in the design, implementation and evaluation of law-enforcement programs. Such strategies are supported by the Office of Community Oriented Policing Services, established in 1994 as part of the U.S. Department of Justice. The key components — community partnerships, organizational transformation of the police and problem-solving activities — offer an alternative to traditional and reactive policing strategies. However, just what constitutes "community policing" varies greatly across police departments; and the programs' outcomes have varied, as research and case studies have suggested. From foot patrols to education programs in school and door-to-door surveys, the degree of implementation and impact of community-oriented policing is uneven across America.

In January 2015, the U.S. Conference of Mayors issued a report with new recommendations for improving community-police relations, in the wake of recent controversies involving the use of deadly force by police.

Citation: Gill, Charlotte; Weisburd, David; Telep, Cody; Vitter, Zoe; Bennet, Trevor. "Community-Oriented Policing to Reduce Crime, Disorder and Fear and Increase Satisfaction and Legitimacy among Citizens: A Systematic Review," Journal of Experimental Criminology, 2014. doi: 10.1007/s11292-014-9210-y.

A 2014 study published in the *Journal of Experimental Criminology*, "Community-Oriented Policing to Reduce Crime, Disorder and Fear and Increase Satisfaction and Legitimacy among Citizens: A Systematic Review," measures the effectiveness of community policing in the United States through a quantitative analysis of prior academic studies. The researchers, based at George Mason University, Arizona State University, Hebrew University and the University of South Wales, sought to better understand the effects of community-oriented policing on crime, disorder, fear, and citizen satisfaction with and trust in the police.

The authors analyzed 25 different studies containing 65 independent assessments before and after the introduction of a range of community-oriented policing strategies. The findings include:

- Overall, community-policing strategies have a positive effect on citizen satisfaction and trust in the police, as well as in the reduction of individuals' perception of disorderly conduct, including drug dealing. However, no statistically significant effect was found on reported crime or fear of crime.
- In 27 of the 65 comparisons where official crime outcomes were analyzed, community-oriented policing was associated with 5% to 10% greater odds of reduced crime. This finding was not statistically significant, however.
- In 16 of the 65 comparisons, community-oriented policing was associated with a 24% increase in the odds of citizens perceiving improvements in disorderly conduct. While this effect was not statistically significant, the odds increased to 35% and became statistically significant when one study with a small number of observations was removed from the analysis.
- Citizen satisfaction with the police was evaluated in 23 comparisons, and community-oriented programs were found to be effective in almost 80% of the cases, and citizens were almost 40% more likely to be satisfied with the work of the police. "Citizens reported increased trust and confidence following community-oriented policing interventions and felt that they treated people more fairly," the authors state. These measures were not statistically significant, however.

The scholars describe their general findings as ambiguous: "Although our analysis suggests that COP is associated with between 5% and 10% greater odds of a decrease in crime, it is plausible under the confidence intervals that COP has no effect on crime. We also find no evidence that community policing decreases citizens' fear of crime, despite positive outcomes for other citizen perceptions. Finally, our results do not suggest that the presence or absence of a problem-solving approach as part of COP strategies affect the impact on crime." Ultimately, "these findings may reflect the complex relationship between informal social control, fear, disorder, and crime — disorder fuels fear of crime, which can lead to higher recorded crime rates as informal social controls break down."

CHAPTER
6

THE BENEFITS AND CHALLENGES EMANATING FROM COMMUNITY POLICING IN KENYA:A CRIMINOLOGICAL PERSPECTIVE

Jasper Edward Nyaura and Margaret Njeri Ngugi

Department of Peace Security and Social Studies, Faculty of Arts and Social Sciences, Egerton University, , Njoro, Nakuru County, Kenya

ABSTRACT

Community policing is an integral component in ensuring that there is no insecurity incidence in the community.. Accordingly, the Kenyan government introduced the concept of community policing which became effective in the Kibaki. regime. It was seen as the interaction of the police and the community members, thus with the view of ensuring that they. are safe from criminal activities especially from the vigilante groups. Community policing has been seen as an effort to.prevent crime and at the same time ensure communal participation towards stamping out crime at communal level. This.paper is a critical review of the various attempts to identify the concept of community policing, more specifically, identifying.the benefits and challenges of Kenyan community policing system. This paper recommends that concerned stakeholders.should devise ways of ensuring that policies on community policing reflect the needs and aspirations of all the citizens in all.regions in the country. This can be done by ensuring that the Kenya government or successive regimes; and all sectors are.committed towards community policing efforts. Critically, this will emphasize on the ability to address community policing.strategies through public participation forums.

INTRODUCTION

According to Kenya Police (2009) as cited in Masese and Mwenzwa (2012), community policing is the perceived effort to.enhance security thus recognizing the interdependence and shared responsibility of the police and the community in.ensuring a safe and secure environment. Furthermore, it is an active partnership between the police and the public to.combat crime and enhance community safety which is the core theme of Kenya's community policing. Community policing.responds to the decline in public buoyancy in the police and the need for partnership between different stakeholders to fight.crime (Coquilhat, 2008). Through this approach, the community gets to know and understand that it has a role to play in.ensuring its own safety and that of their property (Masese and Mwenzwa, 2012). Community policing, recognizing that police.rarely can solve public safety problems alone, therefore, encourages interactive partnerships with relevant stakeholders. The.range of potential partners is large and these partnerships can be used to accomplish the two interrelated goals of.developing solutions to problems through collaborative problem solving and improving public trust (BJA, 1994). Community.policing is therefore a tacit

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acknowledgement that official security apparatus including the police cannot solve all security.problems single-handedly thus requiring collective and inclusive involvement of all excluding none (BJA, 1994; Kenya Police.Service, 2014). Therefore, the public plays a role in prioritizing public safety problems that affects all..Accordingly, the police are finding that crime-control tactics need to be augmented with strategies that prevent crime,.reduce the fear of crime, and improve the quality of life in neighbourhoods. Fear of crime has become a substantial.component in enhancing the theme of community policing. Thus, highly visible police presence helps reduce fear within the.community (Fridell, 2004; Coquilhat, 2008; BJA, 1994).

To begin with, community policing can be traced back to the introduction of community constables, known as 'bobbies',. in the London's Metropolitan Police District during the early 19th century (Patterson, 2007 ; Brogden and Nijhar, 2005). Sir. Robert Peel who introduced the concept articulated the fact that "the police are the public and the public are the police".(Fridell, 2004). Accordingly, Fridell (2004) notes that the key principle of community policing is that the police should not be.detached from community policing, thus emphasizing that community policing is aimed at creating partnership between.them and the public at large..In the United Stated, community policing as a concept was first introduced in the 1960's to intensify the police-.community contact and reduce the fear of crime among the citizenry (Cordner, 1999; Innes, 2003). Accordingly, other.authors have noted that the concept became a dominant policing strategy in the United States during the 1990's with the.introduction of 100,000 new community police officers (Cordner, 2007a). The introduced concept of community policing.presented the transformation that encouraged problem solving thus community engagement and involvement with police.activities as opposed to reactive policing (Innes, 2003).. Accordingly, it is believed that community policing emerged as a result of a number of social trends relating to the quest. for human rights thus human movements. Furthermore, it advocated for the police to be more accountable to the public by.being more responsive and connected to the community (Weisheit *et al.,* 1994). Accordingly, authors have argued that.community policing emerged in response to the evolving technology, such as the police radio and patrol vehicles that have.changed the relationships between the police and the community. Heretofore, officers developed personal relationships with.the community and needed the community to be willing to share information. In addition, the police used pragmatic.scientific principles to policing, which created the perception that the police were responsible for keeping the community.safe. Previously, the community understood that ultimately the communities were responsible for reaffirming the social.norms that promoted public safety (Bucqueroux, 2006; Bucqueroux, 2004). With the above view, this paper critically reviews.the various attempts to identify the concept of community policing and more specifically identifying the benefits and.challenges of Kenyan community policing system.

METHODOLOGY

This paper used a desk review design to critically review the community policing concept in Kenya. The paper also.analyses the benefits and challenges of community policing in Kenya as perceived in the grassroots level. Furthermore, the.concept of community policing in Kenya is significant in providing the much needed security in grassroots level thus there is.need to focus on the benefits and perceived challenges with a view of providing empirical recommendation.

LITERATURE REVIEWED

Understanding the Concept of Community Policing Community policing is considered as a modern-day policing approach in response to the decline in public confidence in.police and the increasing indications that police cannot fight crime by themselves (Skogan, 2006; Virta, 2006; Innes, 2003;.Tilley, 2003; Fridell, 2004). Accordingly, Fleming (2005) believes that policing requires communal involvement both at.individual and organisational level outside of law enforcement and beyond the public sector. Community involvement in.community policing is crucial in identifying community issues, addressing public fear of crime and increasing police visibility.thus encouraging increased trust in police (Smartt, 2006; Joyce, 2006; Virta, 2006)..Furthermore, law abiding citizens deserve to participate and contribute towards community policing thus they are.involved and support the idea of community policing and the police process comes as a result of stakeholder participation.(Trojanowicz and Bucqueroux, 1990; Skogan, 2006). Community policing not only involves the community members but more.specifically incorporates the police responsiveness to community concerns towards ensuring full benefits of policing (Skogan,.2006). Community policing involves communal identification of their security needs, which in turn the police take up the.matter seriously even if the problems they define differ from police priorities (Wycoff, 1988)..Moreover, community policing determines community needs thus participation is required to identify problems, assist.police to drive the solutions, and maintain community ownership of the issues (The Office of Community Oriented Policing.Services, 2007). Community policing not only assists the stakeholders in identifying problems, but also in prioritising and.finding solutions (Cordner, 1999; Carroll Buracker Associates, 2007; Skogan, 2006).

Accordingly other authors have indicated that there are a number of mechanisms for achieving community engagement,.that include systematic and periodic community surveys, fora, community meetings, and meeting with advisory groups and.businesses (Cordner, 1999). Skogan and Hartnett (1998) suggest that the public have a great deal informing the police, and.that they are grateful for the opportunity to have their voice heard. However, Reno *et al.,* (1998) warns that the type of.neighbourhood determines whether the community is good at dealing with their own problems. For example, if the. community has more social capacity then they were more likely to deal with their own problems and attend arranged.meetings than those without such investment. Crime prevention is central to the concept and ultimate goal of community.policing (Skolnick and Bayley, 1988) and will have long term benefits (Segrave and Ratcliffe, 2004). Skogan (2006) suggests. community capacity to prevent crime will be strengthened by encouraging communities to enhance community safety.

Understanding Kenya's Community Policing

Accordingly, the Kenya police (2014), creates the understanding that community policing works by creating an.understanding between the police and the community about their role in crime prevention; Supplementing police patrols.through private guards and neighbourhood watch groups; Providing educational, capacity building, enhancing Kenya Police.personnel and members of the community to enable constructive participation in addressing the problems of crime; Forming.community policing victim support centres and training response teams (units); Improving street lighting (security lights) to.reduce crime (the use of adopt-a-light programme for the slum population). Moreover, community policing aims at.evaluating community policing programmes; Giving special attention to vulnerable groups whom include the women and.children that are crime prone; Share responsibility and decision-making as well as sustained commitment from both the.police and community, with regard to safety and security needs; Encouraged enhancement of accountability of the police to.the community they serve; Conflict resolution between and within community groupings in a manner which enhances peace.and stability; further basing problem solving activities on a consultative approach that constantly seeks to approve.responsiveness to identified community needs. Furthermore, participation of all members of the Kenya Police in community.policing and problem solving initiatives and ensuring that community policing informs, guide and sustain all policing activities.is part and parcel of community policing in Kenya thus it is an all-inclusive activity between community members and the.police.

Role of the Police and Community Members Towards Community Policing

The role of community members towards community policing entail the fact that they need to volunteer information on.suspicious characters or activities, working closely with the police through Community Policing Forums, helping the police to.help you by offering any kind of support, encourage greater contacts between neighbours. More specifically, the community.members support the victims of crime through counselling, safeguarding your own neighbourhoods and eventually, security.begins with one-self; hence you should be alert always (Kenya Police, 2014)..The police are the most perceptible institution of the security sector and their functions impacts on the entire citizenry..Community policing is a new style of policing that is reactive to the needs of local communities; a force multiplier that.contributes to conflict management. The role of the police in community policing as stipulated by the Kenya Police (2014),.entail the fact that they communicate with the community and provide give feedback regarding crime and security.information; providing a listen ear and understand public needs; being part and parcel of problem solving towards.community satisfaction; being transparent, accountable and effective; carrying out their day today activities and other police.duties; providing a platform for the formation of Community Policing Forums. Moreover, the police are encouraged to.maintenance law and order in crime prevention strategies, enforcement of law and order and conducting patrols in their.beat areas to ensure that there is enhanced security.

Community Policing Forum (CPF)

Accordingly, Community Policing Forum (CPF) is a group of people from the Police and different committees (local.leaders, residents, and community based organizations) who meet to identify and solve problems in their areas. The.Community Policing Forums are established in residential places, business areas and estates near local Police Stations for.easy communications and complementary support. The community policing forums play a crucial role in identify the.problems that affect your community, providing Contact Community Policing Unit (C.P.U), Organizing joint sensitization. workshops together with C.P.U, Planning and implementing community policing programmes and eventually monitoring and.evaluate through the committees formed (Kenya Police, 2014). The joint efforts established in the Community policing. forums (CPF) foster strength and unity between the police and the community members.

Benefits of Community Policing Among Various Communities In Kenya

Prevention Emphasis

Accordingly, various scholars have indicated that the central theme of community policing is crime prevention (Skolnick. and Bayley, 1988) thus this will have long term benefits to the society at large (Segrave and Ratcliffe, 2004). Skogan (2006).suggests community capacity to prevent crime will be strengthened by encouraging communities to enhance community.safety. The prevention emphasis of community policing is more proactive than traditional policing models (Cordner, 1999)..However, the community do appreciate and value traditional policing, such as rapid response and reactive investigation but.would prefer that victimization be prevented in the first instance. Prevention emphasis entails the fact that community.members need to enjoy securing oneself and more specifically securing their property; therefore, the interests of the.community members are well safeguarded.

Enhanced Partnership between the Police Service and the Community

The essential component of community policing is enhanced partnership. Therefore, the Police need to engage the. community in dealing with crime and related problems that may include working collaboratively with other public and.private agencies (Cordner, 1999). Police and community should work in partnership not only to solve problems, but to reduce.the fear of crime, physical and social disorder, and neighbourhood decay (Trojanowicz and Bucqueroux, 1990; Wycoff, 1988).. Moreover, the police should not take sole responsibility for crime prevention. They need to play a crucial role in developing. strategies in partnership with local communities. Measuring the impact of crime prevention should move away from relying.on crime statistics and clearance rates and complement the qualitative practice of community policing (Young and Tinsley,.1998). Furthermore, increasing community capacity to deal with issues has enabled them building capacity by mobilizing and.empowering them to identify and respond to concerns (Segrave and Ratcliffe, 2004). The benefit of an empowered.community is a stronger community who want to participate in addressing issues (Mastrofski, 2006).

Locality Focus With Reference To Securing the Communal Needs

Consequently, authors have indicated that organizing and deploying officers to maximize identification between specific.officers and their specific community should result in stronger police-community relationships. This in turn will increase.mutual recognition, responsibility and accountability (Cordner, 1999, 2007a; Cordner, 2007 b; Mastrofski, 2006).. Furthermore, this will enable communication and partnerships to develop, and sustain relationships between the officer and. community members thus securing their communal needs. Cordner (1999) believes that officers develop knowledge about. the community, which enables early intervention and problem identification and avoids conflict based on misperceptions or.misunderstandings. Furthermore, the incorporation of the police reservist who understands the terrain and community. members should be encouraged for this will bring about enhanced community policing. The permanency of officers is a.crucial component as it builds familiarity, which in turn will develop trust, confidence and cooperation from both police and.the community (Cordner, 1999). Equally, if a specific officer has permanent responsibility for a fixed area, then they will.become more responsible for identifying and dealing with the crime problems and encourage in communication with the.community (Farrell, 1988; Skogan, 2006)..However, there are a few challenges that confront communally based officer's officers in securing communal needs..First, the mobility of the urban population, where both victims and offenders cross geographical boundaries, presents a.major challenge for geographically based officers (Young and Tinsley, 1998). Secondly, crime related problems do not always.develop in identifiable communities but in pockets of several communities. Thirdly, problematic communities are often.fractured and difficult to engage with. To address these challenges, models of community policing need to be flexible enough.to accommodate the particular character of the area. Accordingly, this paper acknowledges the fact that in most cases the.police reservists do not have able resources, be it financial and material towards enhancing community policing. For instance,.they have inferior weapons and surveillance skills/techniques. As a beneficial gain to the society, community policing.strategies should be developed in order to equip the reservists, creating strong policies that will reign in insecurity and also.creating communication channels that benefit community members and the police. This will foster positive relationship.between different stakeholders

Problem Solving

The theme of community policing is the fact that problem solving techniques form an interactive process, involving police.and communities in identifying crime problems and developing appropriate solutions (Young and Tinsley, 1998). Problem.solving is essential to community policing and as such, problems should not be limited to crimes, therefore solutions should.not have to involve arrests (Weisheit *et al.,* 1994). Police and the community should be empowered to adopt problem.solving techniques and take every opportunity to address the conditions that cause incidents (Cordner, 1999, Cordner,.2007a; Cordner, 2007b; Carroll Buracker and Associates Ltd, 2007). The problem solving aspect of community policing relies.more on preventing crime than traditional methods, through deterring offenders, protecting likely victims and making crime.locations less conducive to identified problems (Office of Community Oriented Policing Services, 2007). Problem solving.establishes the fact that community policing encourages the involvement of people in realizing their potential to solve crime.incidences. Community policing offers the public a larger the window into police activity (Skolnick and Bayley, 1988) and.provides opportunities for 'grass roots' support for police (Palmiotto, 2000). Moreover, communities with existing capacity.are more likely to participate in community policing, but are less likely to benefit from it because, in general, they are already. proactively addressing issues to increase community safety thus problem solving (Mayhill, 2007).

Communication and Information System

Police information systems are central in providing information to assist the community members respond to criminal.activities effectively (Trojanowicz and Bucqueroux, 1990). The utilization of problem solving practices has emphasized the.requirement for information systems to aid the identification and analysis of problems faced by the community, including the.use of Geographical Information Systems (GIS). This information traditionally has not been available (Cordner, 2007b)..Further, Cordner (1999) suggests that information can be collected from: community police officers performance appraisals.that reflect community activities; evaluating programmes for effectiveness as well as efficiency; and assessing the police's.overall performance on a wider range of key indicators. Cordner emphasizes the need for qualitative information to measure.success rather than traditional '*bean counting*' techniques; for example, collecting information on wider functions than.enforcement and calls for service. However, in the Kenyan case the police still do not have adequate facilities that enhance.the collection of information and sharing systems. This is seen due to the fact that the government has not done enough to.ensure the needs of the police have been meet in terms of information and communication technology.

Improved Police-Community Relationships and Community Perceptions Of Police

Community policing enables police to develop improved police-community relationships (Segrave and Ratcliffe, 2004)..This provides the police with the opportunity to meet the community's needs (Ferreira, 1996), while increasing public.accountability over police through participation (Skolnick and Bayley, 1988; Palmiotto, 2000). Furthermore, established.initiatives have shown a positive improvement in police-community relationships and community perceptions of police.(Skogan and Steiner, 2004; Sadd and Grinc, 1996). The introduction police reforms in Kenya have seen the encouraged.participation of the community members and the fear traditionally perceived has reduced greatly. However, the reforms have not been fully implemented to the realization of the society as a whole.

Changing Police Officers' Attitudes and Behaviours

Accordingly, authors have indicated that there is strong evidence suggesting that community policing has positive effects. on police through increased job satisfaction and improved interaction with, and confidence in, the community (Mayhill, 2006;.Patterson, 2007). Mayhill (2006) argues that community policing 'embeds' officers within the community where they become.more understanding of the local situations and promote a positive image of police. This provides the officers with the.opportunity to make positive community-police experiences and contacts, which is said to increase morale amongst police.through the encouragement of a supportive and welcoming community (Palmiotto, 2000). However, the implementation of.the police reforms is yet to be fully realized therefore the key theme should be the government's commitment towards. enhanced police participation towards the securing the needs of the citizenry, more specifically, ensuring that there is people. participation. The full implementation of the Kenya's police reforms should be realized to enhance police participation.

Reduced Perceptions of Safety/Decreasing Fear Of Crime

It is widely accepted that community policing increases the perceptions of safety and decreases the fear of crime. Skogan. (2006) argues that there is evidence to suggest that increasing community-police interactions are associated with lower. levels in fear of crime. However, police and the community have differing levels of perceptions of safety and it has been. suggested that police are more likely to perceive a reduction in the fear of crime than the community (Sadd and Grinc, 1994)..The community members in order to realize the full benefits emanating from community policing should ensure cooperation and willingness to share and interact with the police in order to reduce crime.

Reducing Crime, Disorder and Anti-Social Behavior

Community policing is beneficial as a policing approach to address a range of different crime, disorder and anti-social. behaviour. For example, community policing approaches have been used to address graffiti and property damage to gang. violence and organized crime (Skogan and Hartnett, 1998). More recently it has been an approach adopted to deal with anti-.terrorist activities in some communities (Pickering *et al.,* 2007). Sherman and Eck (2002) argue that community policing.needs clear objectives that focus on crime risk factors. This is through developing closer liaison between Police and the public.thereby improving their relationship and removing fear of Police, enhancing public confidence and trust in the Police ability.to control crime, encouraged public participation thereby reducing the demand upon Police Service and eventual improved.crime reporting of the community members.

Challenges towards Promoting Community Policing In Kenya

Challenges in Manpower Management

The ratio of the police force has been seen to be greatly affecting community policing efforts. This gap has been filled by.the private security industry that has experienced a dramatic increase in growth, and simultaneously greater demand to be.involved in crime prevention (Minnaar, 2005; Minnaar and Ngoveni, 2004). Owing to limited financial and human resources,.they cannot meet the diverse safety and security needs of the market. Therefore, the private security industry fulfils the.security needs the police are unable to satisfy to the population at large (Schönteich, 1999 as cited in Nyaura and Ngugi,.2014). In addition, the private security sector has the ability to employ security officers on permanent or part-time contracts,.which is impossible in public policing because of strict public service regulations (Schönteich, 1999). Accordingly, the police.and the private security industry need not be left alone, therefore, the paper also advocates for the involvement of.community members into developing the neighbourhood watches in all estates in the country. Although some have done this.especially in Nairobi County (some of the estates such as South B & C), this needs to cut across all counties including.residential neighborhood watches just like those formed in the United States of America among other developed nations.

Corruption among the Police Officers

Nyaura and Ngugi (2014) point out the fact that community policing is an effort between the different security agencies. that identifies and solves community problems such as insecurity issues. Their work discussed the challenges facing the local.private security guards toward enhancing community policing. Their study findings indicated that poor working conditions,.poor pay, lack of recognition from the public, inadequate working facilities, and poor communication channels were among.the major challenges facing private guards. These challenges are similar to that of the police, who live in a deplorable.conditions yet they are supposed to protect the general population. Moreover, the police who are faced with these.challenges may result to corruption in order to sustain their families. This in turn affects the core theme of community.policing which is to prevent crime. The police may also be lured to collude with the criminals in engaging in crime who are the.enemies of community policing.

Existence of Mistrust

The relationship between police and the community has long been negative and impacted to a large extent by the police. service's role as the visible agent of government, tasked with executing past policies of control and suppression, fuelling. distrust and resentment. For police, operating in a sometimes hostile community troubled by violence, alcohol misuse and. the increasing presence of illicit drugs has been challenging. Efforts by police and community leaders to improve relations have at times been broken down following violent disturbances. This has been seen where one area has been perceived to be.favoured by the police more than the other side. The persisting mistrust is a clear manifestation that community policing has.not been fully realized up to the grass-roots. Furthermore, a study by Nyaura (2014) found that there was mistrust between.the police and the private security guards. This was seen where there was lack of information sharing between the two.agencies. This in turn affects the community members, thus they are prone to insecurity incidences.

Inadequate Sensitization of the Community Policing Policies To Community Members

Accordingly, community engagement in community policing is vital. Contemporary community policing is based on the. notion that all residents should be empowered to enhance their quality of life and prevent or eliminate crime and the. problems that lead to crime (Patterson, 2007; Palmiotto, 2000). Community members must be recognized for the vital role.they play in accomplishing these goals. Everyone benefits when community members understand the role and function of.their police and become active proponents of law enforcement. However, the community members sometimes are not.aware of the role played by the police towards enhancing community policing policies. Therefore, the key component of.ensuring that community members are aware of community policing is through educating community members about.community policing and their role in its implementation policies. Although the Kenya Police have not been seen to fast track.this, there is need to sustain and build initiatives that encourage community participation.

Established Facilities and Infrastructure

The police participation in crime prevention activities is often constrained by limited resources. For long, the police have. lacked facilities in ensuring the enhancement of community policing. Dilapidated structures including lack of improved police.stations are the order of the day in the police stations. Therefore, the public may lack confidence in the police due to the lack.of facilities. Moreover, the Kenyan government has not done enough to improve facilities that include the police cells and.station facilities in the country. Renovations and funding should be done to improve such facilities. An improved facility. entails improved service delivery to the community members thus improved security. Accordingly, there have been attempts. to improve the current ailing situation facing the police in Kenya. This is through the implementation of the police reforms..Nonetheless, the government is implementing the police reforms in piece-meal, for example, creation of housing and.improved transportation facilities. Therefore, overall provision of much needed facilities will improve confidence among the.community members thus this will in turn propagate the participation all stakeholders towards community policing.

Effective and Efficient Training of the Police towards Community Policing

Inadequate training among the police has been seen to be lacking towards community policing efforts (BJA, 1994; Office.of Community Oriented Policing Services, 2007; Sadd and Grinc, 1996). Effective community policing requires training for.both police personnel and community members. Effective training aids the development of new police attitudes, knowledge,.and skills and facilitates reorientation of perceptions and refinement of existing skills. Training must similarly target such.misconceptions. Tactics that can help overcome misperceptions about community policing including conducting accurate.community needs assessments, including all the stakeholder in collecting data to develop community policing strategies;.assuring appropriate resources are available for community programs; and finally, evaluating and modifying programs as.needed. This will be a pull factors towards community members engaging in community policing.

Lack of Transparency and Openness

Accordingly, the police culture that cultivates an aura of secrecy also impedes the implementation of a community. policing strategy in Kenya. Openness in the Police service can generate trust and improved relations between the police and. the community. Some feel policing cannot be truly effective without such trust (Cordner, 2007 b; Bucqueroux, 2007).. Therefore enhanced transparency and openness should be core theme for community policing. Accordingly there are. exceptions among community members, although the one obstacle to creating effective partnerships may be a lack of trust.between law enforcement and private security (Nyaura and Ngugi, 2014; Nyaura, 2014). Despite considerable discussion.about partnerships between the two groups, overlapping missions and the need to work together and the level of trust is.reported to be quite low. Another major cause of lack of trust is misinformation and misunderstanding. Often, neither law.enforcement nor private security has an accurate understanding of what the other does or can do (Nyaura, 2014). This can be.problematic with regard to crime and disorder.

CONCLUSION

This paper concludes that community policing should be encouraged towards promoting enhanced security needs of the. local inhabitants in Kenya. Community policing, recognizing that police rarely can solve public safety problems alone,. encourages interactive partnerships with relevant stakeholders. There need be collaborative efforts between the police and.the community members towards enhancing community policing policies. The introduction of the Nyumba- Kumi initiative.can be seen to complement the established community policing polices in the Kenya police. Therefore, community policing. calls for a long-term commitment that entails efficient and effective planning and more specifically, full participation of all.stakeholders to eradicate the insecurity challenges among community members in various communities in Kenya.. Accordingly, police reforms should be geared to targeting community policing efforts in Kenya

REFERENCES

1. Brogden, M., & Nijhar, P. (2005). *Community-oriented policing: The Anglo-American model*, in Brogden M & Nijhar P.(eds). Community policing: National and international models and approaches. Devon, UK: Willan Publishing: 23–45.
2. Bucqueroux, B. (2004). 'Community Policing in the Years Ahead: And Now for the Really Hard Part' *in Community.Policing: The Past, Present, and Future*, eds. Fridell, L., & Wycoff, M. Police Executive Research

Forum: Washington, pp.73-82..

3. Bucqueroux, B. (2007). *What Community policing teaches us about Community Criminal Justice*: Retrieved from.http://www.policing.com/articles/pdf/ccj.pdf (accessed on 08/05/2014)..

4. Bureau of Justice Assistance (BJA) (1994). *Understanding Community Policing: A Framework for Action*. Washington DC:.Bureau of Justice Assistance, US Department of Justice..

5. Carroll Buracker and Associates Ltd (2007). *Elements of Community Policing*, Carroll Buracker and Associates Ltd.Retrieved from http://www.buracker.com/sanfran.html (accessed on 13/04/2014)..

6. Coquilhat, J. (2008). *Community Policing*: An International Literature Review. Wellington. Australian Police..

7. Cordner, G. (1999). '*Elements of Community Policing in Policing Perspectives: an Anthology*, eds. L. Gaines and G..Cordner, Roxbury Publishing Company: Los Angeles, pp 137-149..

8. Cordner, G. (2007 a). *The Key Elements of Oriented Community Policing, Regional Community Policing Institute*:.Colorado Retrieved from http://www.dcj.state.co.us/crcpi/KeyElements.html (accessed on 13/04/2014)..

9. Cordner, G. (2007 b). *Community Policing: Principles and Elements, Regional Community Policing Institute*: Eastern.Kentucky University. Retrieved from http://www.kycops.org/wcp.htm (accessed on 13/04/2014)..

10. Farrell, M.J. (1988). '*The Development of the Community Patrol Program: Community-oriented policing in the New York.City Police Department'* in Community Policing: *Rhetoric or Reality* ed. Green, J., and Mastrofski, S. Praeger Publishers:.New York, pp73-88..

11. Fridell, L. (2004). '*The Defining Characteristics of Community Policing' in Community Policing: the Past, Present, and.Future*, eds L Fridell and M Wycoff, Police Executive Research Forum: Washington, pp 3-12..

12. Innes, M. (2003). Understanding Social Control: Deviance, Crime and Social Order, McGraw-Hill International: New York..

13. Joyce, P. (2006). *Criminal Justice: An Introduction to Crime and Criminal Justice System*, Willan Press: London..

14. Kenya Police (2014). "*Community Policing*". Retrieved from the Kenya Police official website www.kenyapolice.go.ke..

15. Masese, R. E., & Mwenzwa, E. (2012). The genesis and Evolution of Sungusungu Vigilante Group among the Abagusii.Ethnic Group of Kenya. *Elixir Soc. Sc.* 42 (2012): 6485-6492..

16. Mastrofski, S. (2006). '*Critic - Community Policing: A Skeptical View' in Police Innovation: Contemporary Perspectives*, ed..D. Weisburd and A. Braga, Cambridge University Press: Cambridge, pp 44-73..

17. Mayhill, A. (2007). *Community engagement in Policing: Lessons from the literature*. Retrieved from http://.police.homeoffice.govt.uk/news and publications /community policing/ community_engagement_lit_review.pdf. (accessed on 12/04/2014)..

18. Minnaar, A., & Ngoveni, P. (2004). The relationship between the South African Police Service and the private security.industry: Any role for outsourcing in the prevention of crime. *Acta Criminologica*, 17(1), 42-65..

19. Minnaar, A. (2005). Private-public partnership: private security, crime prevention and policing in South Africa. *Acta.Criminologica*, 18(1), 85-114..

20. Nyaura, J.E., & Ngugi, M. N. (2014). Challenges Faced by the Local Private Security Guards ("Watchmen") in Eldoret.Municipality, Kenya, towards Community Policing: A Criminological Perspective. *Elixir Social Studies.* 71 (2014) 24803-.24806..

21. Nyaura, J.E. (2014). The link between the police and the private security guards toward enhancing community policing.in Uasin-Gishu County, Kenya: A Criminological Perspective *Elixir Social Studies.* 75 (2014) 28006-28010

22. Office of Community Oriented Policing Services (2007). *Organizational Elements*. Retrieved from: http: // www. Cops.usdg.gov/print.asp (accessed on 20/05/2014)..

23. Palmiotto, M. (2000). *Community Policing: A Policing Strategy for the 21st Century*. Jones and Bartlett Publishers:.Boston..

24. Patterson, J. (2007). *Community Policing: Learning the Lessons of History*, Lectric Law Library. Retrieved from.http://www.lectlaw.com/files/cjs07.htm (accessed on 09/04/2014)..

25. Pickering, S., Wright-Neville, D., McCulloch, J., & Lentini, P. (2007). *Counter-Terrorism Policing and Culturally Diverse.Communities*: Final Report 2007, Monash University..

26. Reno, J., Marcus, D., Leary, M.L., & Travis, J. (1998). *Problem Solving in Practice: Implementing Community Policing in.Chicago, US Department of Justice: National Institute of Justice*. Retrieved from http: // www. ncjrs.gov /pdffiles1./nij/179556.pdf (accessed on 09/04/2014)..

27. Sadd, S., & Grinc, R. (1996). *Implementation Challenges in Community Policing Innovative Neighbourhood Oriented.Policing in Eight Cities*. Retrieved from http://www.ncjrs.gov/txtfiles/implcp.txt (accessed on 09/04/2014)..

28. Schönteich, M. (1999). Fighting crime with private muscle: The private sector and crime prevention. *African Security.Review*, 8(3), 65-75..

29. Segrave, M., & Ratcliffe, J. (2004). *Community Policing: A Descriptive Overview*, Australian Institute of Criminology..

30. Sherman, L.W., & Eck, J.E. (2002). '*Policing for crime prevention*', in Sherman, L.W., Farrington, D.P., Welsh, B.C., and.MacKenzie, D.L, Evidence-Based Crime Prevention, Routledge: New York, pp 295-329..

31. Skogan, W. (2006). '*Advocate - The Promise of Community Policing' in Police Innovations: Contrasting*

Perspectives, ed..Weisburd, D., & Braga, A. Cambridge University Press: Cambridge, pp 27-43. Retrieved from http: //www. ncjrs.gov./policing/use139.htm (accessed on 19/04/2014)..

32. Skogan, W. G., & Hartnett, S. (1998). *Community Policing: Chicago Style*, Oxford University Press: New York..
33. Skogan, W. G., & Steiner, L. (2004). *Community policing in Chicago, Year ten*. Chicago: Illinois Criminal Justice. Information Authority..
34. Skolnick, J.H., & Bayley, D. (1988). *Community Policing: Issues and Practices around the World, National Institute of.Justice*: Office of Communication and Research Utilization..
35. Smartt, U. (2006). *Criminal Justice*, Sage: London..
36. Tilley, N. (2003). '*Community Policing, Problem-oriented Policing and Intelligence-led Policing' in Handbook of Policing*,.ed. T Newburn, Willan Publishing: Cullompton..
37. Trojanowicz, R., & Bucqueroux, B. (1990). *Community Policing: A contemporary perspective*. Anderson Publishing Co:.Ohio..
38. Virta, S. (2006). '*Community Policing':* The Sage Dictionary of Criminology, eds. McLaughlin, E., and Muncie, J. Sage:.London..
39. Weisheit, R. A., Wells, L. E., & Falcone, D. N. (1994). 'Community Policing in Small Town and Rural America'. *Crime and.Delinquency*, v40, n4, pp 549-567..
40. Wycoff, M.A. (1988). '*The Benefits of Community Policing: Evidence and Conjecture' in Community Policing: Rhetoric or.Reality* ed. Green, J., & Mastrofski, S. Praeger Publishers: New York, pp 103-134..
41. Young, W., & Tinsley, Y. (1998). *Options for the development of COP/problem solving policing in New Zealand*, Victoria.University of Wellington: Wellington..

CHAPTER 7

ATTRIBUTION OF RESPONSIBILITY FOR ORGANIZATIONAL WRONGDOING: A PARTIAL TEST OF AN INTEGRATED MODEL

Jeannine A. Gailey

Department of Sociology and Anthropology, Texas Christian University TCU, P.O. Box 298710, Fort Worth, TX 76129, USA

ABSTRACT

The present study is an exploratory examination of the influence of social and organizational features on respondents' attributions of responsibility for wrongdoing within an organization. Respondents read a vignette of organizational wrongdoing that included the manipulation of social features, such as whether the organizational actor was following orders or acting on his volition (social role) and if the actor tried to cover up his actions or not (deed), and organizational features, such as standard operating procedures (SOP) and institutionalized mental schemas. Following the vignette, respondents made attributional judgments to both the individual actor and organization based on a multidimensional measure of responsibility. Results indicated that the actor's role within the organization, his actions or deeds, and organizational SOP significantly impacted how respondents attributed responsibility (on multiple dimensions) to either the individual or organization. Moreover, results indicated that women and men tended to attribute responsibility differently. Recommendations are made to improve future tests of the integrated model.

INTRODUCTION

Research on attribution of responsibility (AR) for organizations and their employees has not mustered a great deal of scholarly attention recently, despite the increasing public attention on corporate/organizational wrongdoing. Although there has been more awareness of corporate/organizational wrongdoing, largely due to the subprime mortgage crisis, financial industry scandals, and reports of government abuse of power, there have been few discussions about the accountability for these untoward actions. The purpose of the present paper is twofold: (1) to test variables, based on Gailey and Lee's [1] theoretical model, that are likely to influence people's AR for organizational wrongdoing and (2) to obtain a clearer and more coherent picture of what happens when someone (e.g., a potential juror) is asked to assign responsibility to organizations and their agents, which is necessary to gain a better understanding of how organizations escape culpability.

The study of how people attribute responsibility has its roots in the classical work of Fritz Heider [2]. Heider's focus is largely on general liability for blame or punishment. The two issues that are vital theoretically for determining responsibility in his model are (1) the extent to which the actor intended,

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or caused, the effect and (2) the extent to which the action was caused by environmental forces or pressures. Heider argues that as responsibility to the environment increases, responsibility to the individual (or actor) will decrease. Shaver [3] extended Heider's work by proposing that responsibility is a multidimensional concept, which includes consideration of causality (did the actor cause the events), the actor's intent and knowledge, and external factors, such as if the actor was coerced and whether the acts indicate moral wrongfulness. Shaver's contribution is especially appealing because it takes into consideration legally relevant aspects of responsibility [1, 4].

Heider's [2] contributions to AR inspired a long tradition of research in psychology and social psychology ([5–8]) and also in related fields such as sociology, organizational studies, communications, and criminology. Hamilton, the most prominent sociologist in the AR field, has refined Heider's classic work and contributed significantly to the AR research to date [9–17].

Inspired by Hamilton's work on AR, Gailey and Lee [1] proposed an integrated model of AR for organizational wrongdoing, situated within the sociological, psychological, and organizational studies literature. Their intent was to form a cohesive theoretical model [1]. The model is expansive and far from parsimonious, but does offer scholars an interdisciplinary stepping-stone for furthering the literature on AR for organizational wrongdoing. I argue that testing the model can help us better understand how actual people attribute responsibility in cases of organizational wrongdoing.

Combining the research in psychology and sociology on AR seems like a natural fit, but I argue that one of the most important contributions of Gailey and Lee's [1] model is the addition of variables from the organizational studies literature, especially if one is considering how perceivers attribute responsibility to organizational behaviors. The present study incorporates all three disciplines by testing the more stable characteristics of the model from the sociological literature and two newer features from the organization studies literature and employs the multidimensional measure of responsibility from the psychological literature. In order to maintain consistency with previous AR research [4, 18, 19], respondents read a vignette based on a case from the human radiation experiments and were asked to attribute responsibility to both the individual and government organization involved in the wrongdoing.

LITERATURE REVIEW

Roles and Deeds

Hamilton's [9–11] most well-known contribution to AR research is her "roles-and-deeds" model. She conceptualized roles as the actor's hierarchical position within an organization. Deeds are the actor's actions and mental state within which the act occurred. Psychological research since Piaget [20] has tended to view responsibility as a product of a person's deeds, in particular, the consequences of the act and an actor's mental state. Research has shown that more serious consequences typically lead to greater AR. People are held more responsible for their intentional acts, somewhat less responsible for their negligent acts, and least responsible for unintentional, nonnegligent acts that lead to unavoidable accidents [21].

According to Hamilton and Sanders [12–15], social roles are equally important to consider. Hamilton and colleagues have conceptualized roles on two dimensions: vertical and horizontal. Vertically, people relate to one another as superiors, equals, or subordinates. Horizontally, people see others as intimates, acquaintances, or strangers, which she refers to as the solidarity dimension. Most often, superiors are held vicariously responsible for the acts of subordinates. In sanctioning judgments, different roles seem to provide differing criteria in terms of the level of intent necessary for "guilt" [16, 17]. In other words, it is not just what a person did (i.e., deed), but what the person did given whether he or she is a superior acting in an autonomous role or a subordinate acting in an obedient role (i.e., role) that determines how they will be judged [1, 18, 19]. Hamilton's research shows that respondents take into account the social role of the actor, not just the actions, when attributing responsibility, but that both are important determinants [4].

Based on Hamilton's extensive scholarship and Gailey and Lee's [18, 19] theoretical and empirical work, I expect respondents who receive the autonomous role vignette to attribute more responsibility to the individual than respondents who receive the obedient role vignette and respondents who receive the obedient role vignette to attribute more responsibility to the organization than respondents who receive the autonomous role vignette.

Nature of the deed varies in the vignette by manipulating if the individual tries to conceal his actions or provides informed consent to the patient involved in the experiment. Therefore, respondents who receive a vignette where the individual covers up what he has done will attribute more responsibility to the individual than respondents who receive the informed consent vignette. If consent is provided, I expect no significant difference in how respondents attribute responsibility to the individual or organization.

Institutional Logics

Within the organizations studies literature, scholars have stressed the importance of the inclusion of institutional logics to explain connections between an organizational field and the behavior of actors within the organization [22]. Institutional logics provide the behavioral scripts (SOP) of actors and guide their actions, practices, and cognitive frameworks (mental schemas). Therefore, the examination of institutional logics provides one way to measure the influence of institutions on individual and organizational behavior [22].

Institutional logics prescribe behaviors and decisions for persons in organizational contexts, which is why few organizational agents make decisions based on free will ([23]; see also [24] on "bounded rationality"). They may believe that they are making decisions, but in many cases the institution has provided the SOP and mental schemas to guide behavior and shape what choices are expected ([25, 26]; see also [27] on "premise controls"). According to this perspective, decisions and decision making are best understood in terms of social representations, not rational choices [28]. "Decisions" are constructed after the occurrence as narratives to help participants understand unreflective actions taken by the organization; they are not the cause of these actions. They subsequently influence processes, facilitate new actions, and give meanings to events that occur within the organization.

Decision making is often diffused because actors refer to SOP when confronted with a new situation or do not know how to handle a given situation. Kriesberg ([29]: 1091) states, "Most corporate actions consist simply of subcorporate units following these regularized procedures." Supervisors, even when they are in an autonomous role, are still influenced by institutional logic and do not necessarily act from a position of agency. Institutional logics are an important source of mental schemas on which observers rely to make sense of events, such as organizational wrongdoing [30].

Gailey and Lee [1] aptly note that SOP and mental schemas have important implications for AR because these two variables could determine the extent to which respondents believe that the actor did or did not possess free will, thus affecting AR. Gailey and Lee [1] argue that AR scholars can benefit by explicitly including in their vignettes elements of institutional logics, such as SOP and mental schemas. If respondents believe that actors are behaving according to schemas or routines or are following behavioral scripts that are reinforced within the organizational, industrial, or institutional context, then this might affect how audiences attribute responsibility for wrongdoing, regardless of the actor's role or possibly even the nature of the deed.

Based on the above literature, I expect respondents who receive the vignette where it was the SOP for the organization to experiment on people to attribute more responsibility to the organization than respondents who receive the vignette where it was not the SOP to experiment on people. Moreover, respondents who receive the vignette where it was the SOP to experiment on people will attribute responsibility to the individual than respondents who receive the vignette where it was not the SOP to experiment on people.

Respondents who receive vignettes where mental schemas are present, meaning that a sentence was added that stated that the actor did not believe the administration of radiation would be a problem, will attribute more responsibility to the organization than respondents who receive vignettes where mental schemas are not present. In addition, respondents who receive vignettes where the above sentence, mental schemas, was omitted will attribute more responsibility to the individual than respondents who receive vignettes where mental schemas are present.

Respondent Characteristics

The previous research presents somewhat mixed findings regarding how men and women attribute responsibility. For instance, Landry et al. [31] found that women had a higher degree of ethical sophistication with regard to recognizing the nuances of moral issues presented in vignettes. Women also demonstrated stronger responses with respect to situations involving unfairness, injustice, and moral wrongfulness (see also [32]). Whereas, Krulewitz and Nash [7] found that women attributed greater responsibility to the victim than men, but the respondent's sex did not affect AR for the assailant. Thus, respondents rely, in some circumstances, not only on the deed itself, but also on sex-role stereotypes in AR. Moreover, Sanders and Hamilton [16] found that while women were more likely to advocate that something happens to the wrongdoer than men, they did not significantly differ in their AR. Based on this information, I expect women to attribute more responsibility to both the individual and organization than men.

Responsibility as a Multidimensional Concept

The present study also contributes to the literature by furthering the conversation regarding the measurement of responsibility. The majority of the AR research [14, 17–19, 33] has utilized a one-dimensional measure responsibility. For instance, respondents are typically asked how responsible an actor is for an event based on a scale of not at all responsible to completely responsible. Prior to Gailey and Falk [4], scholars had not attempted to measure AR as a multidimensional construct. Gailey and Falk [4] employed Shaver's [3] conceptualization and tested the multidimensionality of responsibility using confirmatory factor analysis in two studies with undergraduate populations. Their findings revealed four dimensions of responsibility, not five as Shaver had originally theorized. The present study borrowed Gailey and Falk's measurement model, which includes a nearly identical vignette and employment of their measurement model.

Considering the influence of Hamilton's work on AR (actor's roles and deeds) and the importance of examining institutional logics (mental schemas and SOPs) for determining organizational behavior, I chose to begin with these variables to test Gailey and Lee's [1] integrated model. In order to establish consistency in the measurement of responsibility, I used Gailey and Falk's [4] operationalization of responsibility as a multidimensional concept and incorporated their vignette to test the reliability and validity of their model and extend Gailey and Lee's [1] theoretical model. This exploratory research is important for furthering our academic understandings of AR, but it is also important on a more practical level because it can enlighten us about which circumstances and characteristics affect perceiver's assignment of responsibility in complicated cases of organizational wrongdoing. Figure 1 includes the variables tested in the present study which were selected from Gailey and Lee's theoretical model.

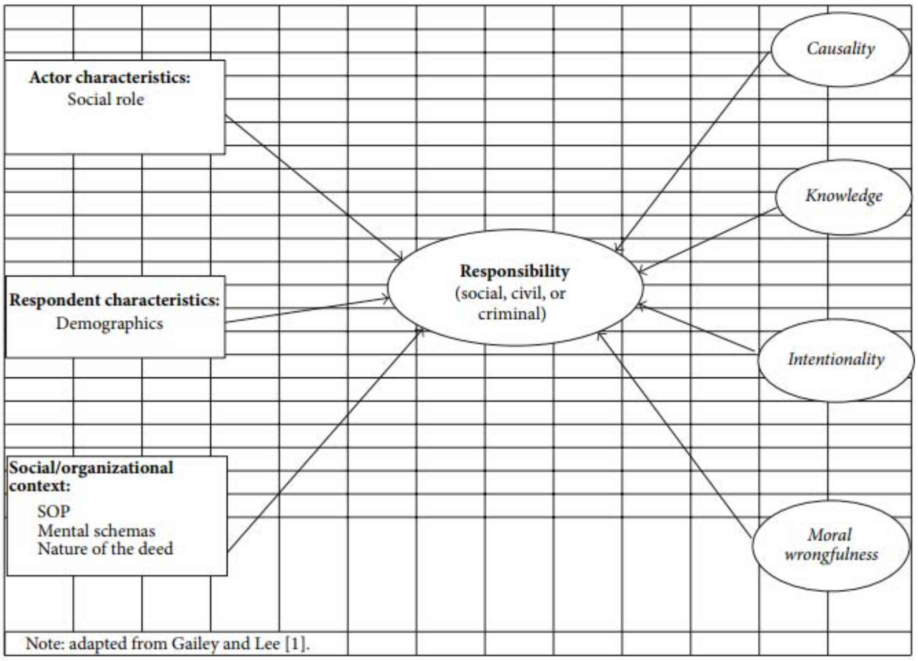


Figure 1: Partial integrated model of attribution of responsibility for wrongdoing in organizations.

METHOD

Sample

Data were collected from 228 undergraduate students at a large Midwestern university. The sample consisted of 92 men and 129 women; 7 respondents did not indicate their sex. The average age of participants was 22 and ages ranged from 17 to 53. Sixty-eight percent of the sample reported that they were Caucasian, 24 percent African American, three percent Asian/Pacific Islander, half a percent Hispanic, and four and a half percent reported other; nine respondents did not report their race. Sixty-one percent were freshmen, 27 percent were sophomores, ten percent were juniors, and two percent were seniors. The average GPA reported by respondents was a 3.08 and GPA ranged from 1.00 to a 4.00. Preliminary analysis indicated that respondent characteristics such as race, GPA, and class rank did not significantly contribute to the model probably because of the homogeneity of the sample. All analysis and descriptive statistics are available from the author upon request.

Procedures

Ten introductions to sociology classes were randomly selected for data collection at the beginning of the semester. All participants were asked to complete a survey that consisted of a vignette, described below, followed by 28 questions that measured responsibility for both the individual and the organization featured in the vignette. Participants were randomly assigned to receive one of 16 questionnaires. The vignette included four manipulations: roles and deeds, both of which have previously been manipulated in AR research, and two new variables, mental schemas and SOP. The questionnaires were put together randomly to control for order effects. The questions that followed the vignette were exactly the same across surveys and were constructed based on research conducted by Gailey and Falk [4].

Materials

The content of the vignette was based on thirty oral histories of scientists collected by the Department of Energy in 1994-1995 as part of its investigation of the Cold War human radiation experiments. The vignette involves a scientist who injects a patient with a lethal dose of plutonium; it was inspired by one of the radiation experiments and previous research [4, 18, 19]. The name of the actor, Dave, is fictitious (see the Appendix for the vignette and manipulations); however, the fact that some patients who had been diagnosed as terminally ill were injected with plutonium is true, none of the patients consented or even knew they were participating in research, and during this period of time, experiments such as these were typical of the Atomic Energy Commission (AEC). The 28 questions that followed each vignette were extracted from Gailey and Falk's [4] research.

Measurement

Independent Variables

Operational definitions for all of the independent variables are from Gailey and Lee [1, 18, 19] and Gailey and Falk [4] and adapted from Hamilton and colleagues' extensive work on roles and deeds. Role was the first independent variable included in this study and it was divided in two categories: autonomy and obedience. Autonomy is defined as being self-governing. Obedience is defined as being compliant to the restraint or command of authority. Autonomy and obedience were varied based on the actor's role in the experiments. When the actor was in an autonomous role he decided to inject the patient with plutonium, but when the actor was in an obedient role he was ordered by the AEC to inject the patient with plutonium.

Deed was the second independent variable and it was also classified in two categories: cover-up and informed consent. In the cover-up scenario, the patient or the patient's relatives were not given full informed consent (e.g., the actor does not document the injection in the patient's chart). In the informed consent situation, the patient was informed of his/her participation in the research and it was documented in his chart.

The third independent variable was mental schema, which was also divided in two categories: schema present and no schema present. When schema was included in the vignette a sentence was added that stated that the actor did not believe that the administration of radiation would be a problem because the patient was diagnosed as terminally ill. Schema not present simply meant that this sentence was omitted.

The fourth independent variable was standard operating procedures (SOP) and this variable was also divided in to two categories: typical or not typical. When the manipulation involved SOP, participants were informed that the actor knew from past experience that using patients in this manner was typical of AEC-funded research. Not typical simply meant participants were informed that using patients in this manner was not typical of AEC-funded research.

The respondent's sex was also included in the model based on slightly mixed findings in previous research about the impact of respondent's sex. As previously noted, there were 129 women and 92 men; 7 respondents did not indicate their sex and were classified as missing.

Dependent Variables

The dependent variables were created from previous research (see [4]: 678) and Shaver's [3] theoretical conceptualization of the attribution of blame. Each of the following questions was asked twice, once with the insertion of Dave (individual) and once with the insertion of AEC (organization). Each question was measured on a scale of 0–4 (zero indicating the absence of agreement with the statement and four indicating absolute agreement with the statement); there were 28 questions following the vignette, 14 for the individual actor and 14 for the organization. Coefficient alpha for each subscale is in Table 1. Cronbach's alpha level is only moderate for most of the subscales of the dependent variable. According to McDonald [34] this is not uncommon because one of the limitations of using Cronbach's alpha is that the number of items in the scale affects the alpha level. For example, when there are a small number of items in a scale the alpha level is lower than it is when there are many items in a scale (see also Cronbach [35] for a discussion of the limitations of coefficient alpha).

Table 1: Items in the attribution of responsibility subscales

Alpha reliability	
Vignette individual	
Causality	.50
Knowledge	.53
Intentionality	.58
Moral wrongfulness	.65
Vignette organization	
Causality	.55
Knowledge	.60
Intentionality	.64
Moral wrongfulness	.68

The causality dimension had four indicators: (1) how responsible is Dave/AEC in the vignette for what happened; (2) was Dave/AEC at fault for what happened; (3) could Dave/AEC have avoided injecting the patient with plutonium; (4) could anything have prevented the occurrence?

The knowledge dimension had three indicators: (1) was Dave/AEC aware of the potential consequences; (2) did Dave/AEC foresee the harm of injecting the patient with plutonium; (3) did Dave/AEC recognize the potential seriousness?

The third dimension, intentionality, had four indicators: (1) did Dave/AEC intend to inject the patient with plutonium; (2) could the injection have been considered an accident; (3) did Dave/AEC plan the injection in advance; (4) do you think Dave/AEC acted on his/its own will?

Finally, the fourth dimension, moral wrongfulness had three indicators: (1) was it wrong for Dave to inject the patient or was it wrong for the AEC to condone the injection; (2) was Dave acting morally when he injected the patient or was the AEC acting morally when it condoned the injection; (3) was Dave/AEC justified when he injected the patient?

RESULTS

Multivariate analysis of variance (MANOVA) was employed, largely because all of the independent variables were dichotomous and there were multiple dependent variables. There were eight dependent variables, four for the individual actor (i.e., Dave) and four for the organizational actor (i.e., AEC). Preliminary analysis indicated that the dependent variables (i.e., the subscales) used in the analysis were significantly and positively intercorrelated (The correlation matrix is available from the author upon request). In addition, Levene's tests were run for all of the dependent variables. None were significant; therefore I am confident that the equal variances assumption was not violated. An advantage of using MANOVA rather than ANOVA is that it protects against inflated Type 1 errors due to multiple tests with correlated dependent variables [36].

Unique sums of squares were used, and the multivariate effects were based on Wilks' Lambda. Protected univariate -tests were used to elaborate on the significant multivariate effects. Univariate effects were considered only if there was at least a trend, , for a given multivariate effect.

As mentioned, a general linear model MANOVA was performed on eight dependent variables: four dimensions for individual responsibility and four dimensions for organizational responsibility. Independent variables were role (autonomous or obedient), deed (cover-up or informed consent), schema (schema present or no schema present), SOP (typical or not typical), and respondent's sex (male or female). There were a total of 228 cases; however, missing data reduced the cases to 218.

Using the Wilks' criterion, the combined dependent variables were significantly affected by role, , , which accounted for 28 percent of the variance. There was a significant overall multivariate effect for deed, , , which accounted for 16 percent of the variance. There was a significant overall multivariate effect for SOP, , , which accounted for 10 percent of the variance. And there was a significant multivariate effect for sex, , , which accounted for 7 percent of the variance in the multivariate model. The overall multivariate effect for schema was not significant, , . I included interaction effects for the respondent's sex because it is a between-subjects variable and statistical power would not be significantly compromised; however, none of the interactions were significant. Specifically, I examined the interaction between sex and role, , , sex and deed, , , and sex and SOP, , . The multivariate results are summarized in Table 2, excluding the nonsignificant interactions.

Table 2: -statistics for multivariate effects

Factors	Multivariate effects[a]
Role	9.64***
Deed	4.80***
SOP	2.67**
Schema	0.91
Sex	1.97*

*$P < .05$; **$P < .01$; ***$P < .001$.
[a]Based on Wilks' Lambda; df = 8, 202.

Because the multivariate effect for role was significant, I examined the univariate effects for each of the eight dependent variables. Univariate analysis indicated that when respondents received the autonomous role vignette they found the individual more responsible and the organization less responsible, on two of the dimensions, compared to respondents who received the obedient role vignette (individual causality, $F(1, 209) = 6.79$, $P < .01$, and individual intentionality, $F(1, 209) = 27.74$, $P < .001$). The dimensions of individual knowledge and moral wrongfulness failed to reach significance. Univariate analysis indicated that when respondents received the obedient role vignette they found the organization more responsible on each dimension than the individual, relative to respondents who received the autonomous role vignette (organizational causality, $F(1, 209) = 24.09$, $P < .001$, organizational knowledge, $F(1, 209) = 11.54$, $P < .01$, organizational intentionality, $F(1, 209) = 43.74$, $P < .001$, and organizational moral wrongfulness, $F(1, 209) = 9.92$, $P < .01$). The results of the univariate effects indicate that respondents who received the obedient role vignette attributed significantly more responsibility to the organization on each dimension than those who received the autonomous role vignette. Because the multivariate effect for deed was significant I examined the univariate effects for each of the eight dependent variables. For the cover-up deed vignette, individual causality was significant, $(1, 209) = 8.32$, $P < .01$, compared to those who received the informed consent vignette. The cover-up deed vignette also significantly affected both individual, $F(1, 209) = 37.14$, $P < .001$ and organizational moral wrongfulness, $F(1, 209) = 6.08$, $P < .01$, compared to respondents who received the informed consent vignette.The results generally support my expectations because respondents who received the cover-up vignette attributed more responsibility to the individual and less to the organization, for two of the four dimensions, than respondents who received the informed consent vignette. The multivariate effect for schema was not significant; therefore, I will not discuss the univariate analyses for this variable. Because the multivariate effect for SOP was significant, I examined the univariate effects for each of the dependent variables. Respondents who received the SOP typical vignette found the organization more responsible than respondents who received the SOP not typical vignette (organizational causality, $(1, 209) = 12.96$, $P < .01$, and organizational intentionality, $F(1, 209) = 16.89$, $P < .001$, organizational morality, $F(1, 209) = 3.32$, $P < .05$). However, respondents who received the SOP not typical vignette did not significantly differ from respondents who received the SOP typical vignette in how they attributed responsibility to the individual. The multivariate effect for the respondent's sex was also significant; therefore, I examined the univariate effects for each of the eight dependent variables. Women attributed significantly more responsibility on three of the individual responsibility dimensions and one organizational dimension relative to men in the sample. Individual causality was significant, $(1, 209) = 3.78$, $P < .05$, as were individual intentionality, $F(1, 209) = 5.37$, $P < .05$, individual moral wrongfulness, $F(1, 209) = 4.18$, $P < .005$, and organizational knowledge, $F(1, 209) = 4.82$, $P < .05$. Thus, the univariate analyses provide partial support for my expectations. These results are summarized in Table 3 and I expand on the meaning of these findings in the discussion below. The marginal means are reported below the F values in the table.

Table 3: -statistics and means for univariate effects

Factors	Individual univariate effects[a]				Organization univariate effects			
	Causality	Knowledge	Intentionality	Moral wrongfulness	Causality	Knowledge	Intentionality	Moral wrongfulness
Role[b]	6.79** (o = 9.90 a = 10.75)		27.74*** (o = 10.55 a = 11.93)		24.09*** (o = 9.58 a = 7.75)	11.54*** (o = 7.77 a = 6.73)	43.74*** (o = 9.91 a = 7.48)	9.92** (o = 6.80 a = 5.81)
Deed[c]	8.32** (n = 9.86 c = 10.80)			37.14*** (n = 6.41 c = 8.00)				6.08** (n = 5.92 c = 6.69)
SOP[d]					12.96** (n = 8.00 t = 9.33)		16.89*** (n = 7.95 t = 9.45)	3.32* (n = 6.02 t = 6.59)
Sex[e]	3.78* (f = 10.64 m = 10.01)		5.37* (f = 11.54 m = 10.94)	4.18* (f = 7.47 m = 6.94)		4.82* (f = 6.92 m = 7.58)		

Note that nonsignificant Fs are not reported. Means are below Fs in parentheses.
*$P < .05$. **$P < .01$. ***$P < .001$.
[a]df = 1, 209.
[b]Role o: obedient, a: autonomous.
[c]Deed n: no cover-up, c: cover-up.
[d]SOP n: nontypical, t: typical.
[e]Sex f: female, m: male.

DISCUSSION AND CONCLUSION

In this exploratory study I found support, or at least partial support, for the majority of the expectations based on Gailey and Lee's [1] theoretical model. Moreover, results provide further support for Hamilton's [9] "roles and deeds" model. Respondents who received a vignette in which the individual actor was in an autonomous role attributed more responsibility to the individual, on two of the four dimensions, than respondents who received the vignette in which the actor was in an obedient role. Both causality and intentionality were significant for the individual whereas knowledge and moral wrongfulness were not. I can only speculate as to why this may have been the case, but it seems that respondents did not believe that the actor had complete knowledge about what he was doing. The vignette reads, "…in order to better understandhow the human body will process it" (emphasis added). If he did not have knowledge then maybe, at least according to this sample, he is also not morally wrong. This is an interesting finding and certainly warrants further examination in future research.

Respondents who received the obedient role vignette attributed more responsibility, on all four dimensions, to the organization than respondents who received the autonomous role vignette. This may indicate that respondents believe that organizations are superior to individuals. Organizations typically consist of a number of individuals with specialized skills and are organized in a rational structure; as a result, they could be presumed to possess better rationality, greater foresight, and a superior ability to anticipate the consequences of their actions than individuals [33].

For the deed condition, respondents who received the cover-up vignette attributed more responsibility to the individual, on two dimensions and to the organization on the morality dimension, than respondents who received the informed consent vignette. The significant results are interesting, if someone is covering up a deed (or action) they are both causally responsible and morally responsible, but I am unsure as to why the dimensions knowledge and intentionality failed to reach significance. One possible explanation is that it may reflect the content of the vignette and this is also a limitation of the present study. As part of a larger study, focus groups were conducted with respondents [37]. The participants in the focus groups expressed moral outrage and indignation about the human radiation experiments; as such, it is possible that the moral wrongfulness dimension outweighed their feelings of intent and knowledge. However, future research is necessary to disentangle these findings.

I found support for the inclusion of SOP; however, mental schemas failed to reach significance. Respondents who received the SOP typical vignette attributed more responsibility, on three of the dimensions to the organization, compared with respondents who received the SOP not typical vignette. These findings generally support my expectations. The fact that the knowledge dimension was not significant implies that just because organizational behaviors are standard practice does not presume that the organization had knowledge of the harm, especially if the actions were embedded in the institutional logic.

The mental schema manipulation was not significant in this study, perhaps because respondents did not think it was a legitimate rationale that the actor did not believe that what he was doing was a problem. Gailey [37] found that mental schemas were significant when the wording of the manipulation was slightly altered. Moreover, in the focus groups with participants they stressed that they thought that the AEC and Dave were merely trying to justify their actions by stating that the person was terminally ill and that that did not excuse their actions or give them the right to inject the person with plutonium. What is most interesting about the findings is that according to the Department of Energy (DOE) interviews with the actual scientists who engaged in the experiments, the scientists rationalized their behaviors by using the exact language presented in the vignette (see [38]). The scientists who actually injected people with lethal doses of plutonium stated that their actions were not a problem because the person was going to die anyway and because the experiments involved national security. The respondents in the present study apparently did not buy that rationale. Future research should improve upon this measure to determine if this aspect of institutional logic affects how perceivers attribute responsibility.

And finally, this study also indicates that men and women attribute responsibility slightly differently. Women attributed more responsibility than men to the individual, with regard to the causality, intentionality, and the moral wrongfulness dimensions. Men, compared to women, attributed significantly more knowledge to the organization, but they did not differ significantly on the other three dimensions. Previous research indicates that men and women view immoral and/or unethical behaviors differently. According to Borkowski and Ugras [32] and Landry et al. [31] men are more utilitarian than women and women tend to demonstrate stronger responses with respect to situations involving unfairness, injustice, and moral wrongfulness.

There are numerous limitations to this study. First, the findings are not generalizable because the sample consisted of undergraduates enrolled in an introductory to sociology courses at a Midwestern university. Undergraduates are a great starting point, but future research should examine these issues on a larger, more heterogeneous sample. I agree with Gailey and Falk ([4]: 674) that future research should test all five of Shaver's [3] dimensions with a representative sample.

The second limitation of the study involves the measurement of the independent variables. Manipulating the variables in the vignette is appropriate; however, interval or ratio measures of the independent variables would allow for greater precision and would facilitate the use of more sophisticated analysis, such as structural equation modeling. Future research should employ both the dichotomous measures in the vignettes and continuous measures of the independent variables in the questions following the vignette. Moreover, future researchers should utilize a large enough sample size when manipulating multiple variables within the content of the vignette to increase the confidence in the results.

The third limitation involves the manipulation of the variable mental schemas. Other research [37] has found that mental schemas do impact how respondent's attribute responsibility. As such, it seems that the actual manipulation was problematic. However, that is telling because the language came from the oral histories conducted by the DOE with the scientists who conducted the experiments (see [38]).

Finally, the fourth limitation involves the fact that this study was only a partial test of the integrated model proposed by Gailey and Lee [1]. Many aspects of the model were omitted because of time and financial constraints; however, without a test of the entire model there is no way to say with confidence which factors matter most or what matters given specific circumstances. Therefore, future research should continue to test and refine Gailey and Lee's [1] theoretical model so that a coherent understanding of how people attribute responsibility to both individuals and organizations involved in wrongdoing can be achieved. Despite these limitations, I argue that this exploratory study does provide a good first step for future research.

Future research must incorporate the above suggestions, such as utilizing a larger and representative sample, continuous measures of the independent variables to serve as manipulation checks, the inclusion of a comparison vignette, modifying only one aspect of the vignette at a time to isolate the effect of each examined dependent variable (thanks to one of the anonymous reviewers for pointing this important limitation out), and changing the manner with which mental schemas are measured, for a more methodologically robust test of the integrated model.

The results of this study point to the importance of Gailey and Lee's [1] integrated model, namely, because the findings indicate that it is important to examine the effects of sociological, psychological, and organizational factors when attempting to understand how people attribute responsibility in cases of organizational wrongdoing. Results also point to the significance of using a multidimensional measure of responsibility [3]. The multidimensional measure allows scholars to examine the whole picture of how people attribute responsibility. Because definitions of responsibility can vary by context and from person to person, it is important to allow people to specify what they are assigning, whether causal, moral, or intentional responsibility or simply the recognition that the person or organization should have known better. The multidimensional measure used in this study has provided a clearer picture of how people attribute responsibility because it allows for the examination of each of the dimensions individually.

The present study also offers contributions to several bodies of literature. First, it adds increased support for Hamilton and colleagues' extensive research on AR over the last couple of decades. Hamilton's [9] "roles and deeds" model has not only been supported, but it has also been extended by this research. Prior to Hamilton and colleagues' research, structural and social factors were often not considered when examining how people attribute responsibility. This study reaffirms the value of including social role, which was the most powerful predictor, and contributes a new factor that is important to consider, SOP, when studying individual decision making and the attribution process.

Second, the present study has provided support for the inclusion of concepts from the organization studies literature. Until now, there has been little integration of concepts from the field of organization studies in AR research, although some attribution theorists have begun to inform research on organizations [39]. The literature on organizational wrongdoing indicates that people may view organizational misconduct differently than individual wrongdoing for a variety of reasons.

Ermann and Lundman [[40]: xvii] argue that organizational wrongdoing is not caused by "single-minded commitments to financial gain compelling the corporation to violate norms whenever rationally calculated corporate interests indicate that profit for stockholders would be increased." Organizational wrongdoing often results from interactions among complex role relations in an organization [41–43]. The present research indicates that the presence of organizational features (i.e., SOP) affects laypersons' judgments when asked to attribute responsibility for acts of wrongdoing. In other words, results indicate that organizational features influence people, consciously or not, which in turn affects how they make decisions in cases when an organization or a person in the organization is the defendant.

And finally, this research offers contributions to both social psychological and philosophical debates about responsibility. Exploring the meaning of responsibility dates back to ancient philosophy, as discussions of the concepts of responsibility began with Aristotle's theory of causes. Shaver [3] argues that it is important to understand and study philosophy to identify the dimensions of responsibility. Moral philosophy suggests which factors should be involved in judgments of responsibility, and social psychological research has identified some of the factors that influence AR. Synthesizing the two was the goal of his book where he initially introduced the multidimensional concept of responsibility. Gailey and Falk's [4] study furthered his work by providing empirical evidence that responsibility is a multidimensional concept and the present study has pointed to the importance of including a multidimensional, rather than unidimensional measure.

This manuscript offers the first empirical test, although only partial, of an integrated model outlined by Gailey and Lee [1]. Despite the limitations, the importance of testing this model is great because it can inform both scholars and policy makers of the key factors that people (often unconsciously) weigh when assigning responsibility for organizational wrongdoing. In cases of organizational wrongdoing, jurors are typically asked to determine if either, or both, the organization and individual are responsible, regardless of any contextual factors that might have influenced or allowed the wrongdoing to occur. Unfortunately, the law does not correspond well with how the average juror or layperson attributes responsibility, because jurors often consider contextual factors, often tacitly, which might decrease the likelihood of accountability. This research offers scholars a modest understanding of the factors that influence people (or potential jurors) when they are asked to attribute responsibility.

APPENDIX

Dave was a doctor on a research team working with the Atomic Energy Commission (AEC) to determine a safe level of exposure to radioactive plutonium for workers involved with the production of nuclear weapons. As part of this project, Dave decided [was ordered] to inject a hospital patient diagnosed as having a terminal illness with a potentially lethal dose of plutonium, in order to better understand how the human body will process it. Dave did not inform the patient of the injection in order to cover up the fact that the amount of plutonium was unsafe. [Dave did not cover up the fact that the injection was unsafe. Instead, he informed the patient and documented the injection in the patient's chart.] Dave did not believe that injecting the patient with plutonium was a problem because the patient was diagnosed as having a terminal illness and probably would not live very long anyway. [Previous sentence was omitted in half of the questionnaires.] Dave knew from past experience that using patients in this manner was typical [not typical] of AEC-funded research.

REFERENCES

1. J. A. Gailey and M. T. Lee, "An integrated model of attribution of responsibility for wrongdoing in organizations," Social Psychology Quarterly, vol. 68, no. 4, pp. 338–358, 2005. ·
2. F. Heider, Ed., The Psychology of Interpersonal Relations, John Wiley & Sons, New York, NY, USA, 1958.
3. K. G. Shaver, The Attribution of Blame. Causality, Responsibility, and Blameworthiness, Springer, New York, NY, USA, 1985.
4. J. A. Gailey and R. F. Falk, "Attribution of responsibility a multidimensional concept," Sociological Spectrum, vol. 28, no. 6, pp. 659–680, 2008.
5. B. Critchlow, "The blame in the bottle: attributions about drunken behavior," Personality and Social Psychology Bulletin, vol. 11, pp. 258–274, 1985.
6. M. D. Harvey and B. G. Rule, "Moral evaluations and judgments of responsibility," Personality and Social Psychology Bulletin, vol. 4, no. 4, pp. 583–588, 1978.
7. J. E. Krulewitz and J. E. Nash, "Effects of rape victim resistance, assault outcome, and sex of observer on attributions about rape," Journal of Personality, vol. 47, no. 4, pp. 557–574, 1979.
8. N. Vidmar and L. D. Crinklaw, "Attributing responsibility for an accident: a methodological and conceptual critique," Canadian Journal of Behavioral Science, vol. 6, no. 2, pp. 112–130, 1974.
9. V. L. Hamilton, "Who is responsible? Toward a social psychology of responsibility attribution," Social Psychology, vol. 41, no. 4, pp. 316–328, 1978.
10. V. L. Hamilton, "Intuitive psychologist or intuitive lawyer? Alternative models of the attribution process," Journal of Personality and Social Psychology, vol. 39, no. 5, pp. 767–772, 1980.
11. V. L. Hamilton, "Chains of command: responsibility attribution in hierarchies," Journal of Applied Social Psychology, vol. 16, no. 2, pp. 118–138, 1986.
12. V. L. Hamilton and J. Sanders, "The effect of roles and deeds on responsibility judgments: the normative structure of wrongdoing," Social Psychology Quarterly, vol. 44, no. 3, pp. 237–254, 1981. ·
13. V. L. Hamilton and J. Sanders, "Universals in judging wrongdoing: Japanese and Americans compared,"American Sociological Review, vol. 48, pp. 199–211, 1983.
14. V. L. Hamilton and J. Sanders, "Crimes of obedience and conformity in the workplace: surveys of Americans, Russians, and Japanese," Journal of Social Issues, vol. 51, pp. 67–89, 1995.
15. V. L. Hamilton and J. Sanders, "Corporate crime through citizens› eyes: stratification and responsibility in the United States, Russia, and Japan," Law and Society Review, vol. 30, no. 3, pp. 513–547, 1996.
16. J. Sanders and V. L. Hamilton, "Is there a "common law" of responsibility? The effect of demographic variables on judgments of wrongdoing," Law and Human Behavior, vol. 11, no. 4, pp. 277–297, 1987. ·
17. J. Sanders, V. L. Hamilton, G. Denisovsky et al., "Distributing responsibility for wrongdoing inside corporate hierarchies: public judgments in three societies," Law and Social Inquiry, vol. 21, no. 4, pp. 815–854, 1996.
18. J. A. Gailey and M. T. Lee, "Influences and the assignment of responsibility for wrongdoing in organizational settings," Sociological Focus, vol. 41, no. 1, pp. 71–86, 2008.
19. J. A. Gailey and M. T. Lee, "The impact of roles and frames on attributions of responsibility: the case of cold war human radiation experiments," Journal of Applied Social Psychology, vol. 35, no. 5, pp. 1067–1088, 2005.
20. J. Piaget, The Moral Judgement of the Child, Harcourt, New York, NY, USA, 1932.
21. D. L. Carper, N. J. Mietus, T. E. Shoemaker, and B. W. West, Understanding the Law, West Publishing Company, Minneapolis, Minn, USA, 1995.
22. R. Friedland and R. Alford, "Bringing society back in: symbols, practices, and institutional contradictions," in The New Institutionalism in Organizational Analysis, W. Powell and P. DiMaggio, Eds., pp. 232–263, University of Chicago Press, Chicago, Ill, USA, 1991.
23. R. Jackall, Moral Mazes: The World of Corporate Managers, Oxford University Press, New York, NY, USA, 1988.
24. D. R. Simon, Elite Deviance, Allyn and Bacon, Boston, Mass, USA, 5th edition, 1996.
25. P. DiMaggio, "Culture and cognition," Annual Review of Sociology, vol. 23, pp. 263–287, 1997.
26. W. W. Powell and P. J. DiMaggio, The New Institutionalism in Organizational Analysis, University of Chicago Press, Chicago, Ill, USA, 1991.
27. C. Perrow, Normal Accidents: Living with High-Risk Technologies, Basic Books, New York, NY, USA, 1984.
28. H. Laroche, "From decision to action in organizations: decision-making as a social representation,"Organization Science, vol. 6, no. 1, pp. 62–75, 1995.
29. S. M. Kriesberg, "Decision making models and the control of corporate crime," Yale Law Journal, vol. 85, pp. 1091–1129, 1976.
30. D. A. Gioia, "Pinto fires and personal ethics: a script analysis of missed opportunities," Journal of Business Ethics, vol. 11, no. 5-6, pp. 379–389, 1992.
31. R. Landry, G. D. Moyes, and A. C. Cortes, "Ethical perceptions among Hispanic students: differences by major and gender," Journal of Education for Business, vol. 80, no. 2, pp. 102–108, 2004.

32. S. C. Borkowski and Y. J. Ugras, "The ethical attitudes of students as a function of age, sex and experience," Journal of Business Ethics, vol. 11, no. 12, pp. 961–979, 1992.

33. V. P. Hans and M. D. Ermann, "Responses to corporate versus individual wrongdoing," Law and Human Behavior, vol. 13, no. 2, pp. 151–166, 1989.

34. R. McDonald, Factor Analysis and Related Methods, Lawrence Erlbaum Associates, Hillsdale, NJ, USA, 1985.

35. L. J. Cronbach and R. J. Shavelson, "My current thoughts on coefficient alpha and successor procedures," Educational and Psychological Measurement, vol. 64, no. 3, pp. 389–390, 2004.

36. B. G. Tabachnick and L. Fidell, Using Multivariate Statistics, Harper and Row, New York, NY, USA, 1989.

37. J. A. Gailey, How people attribute responsibility to individuals and organizations involved in wrongdoing: an empirical assessment of an integrated model [Ph.D. dissertation], The University of Akron, Akron, Ohio, USA, 2005.

38. Advisory Committee on Human Radiation Experiments (ACHRE), The Human Radiation Experiments: Final Report of the President's Advisory Committee, Oxford University Press, New York, NY, USA, 1996.

39. M. J. Martinko, Attribution Theory: An Organizational Perspective, St. Lucie Press, Delray Beach, Fla, USA, 1995.

40. M. D. Ermann and R. J. Lundman, Corporate and Governmental Deviance: Problems of Organizational Behavior in Contemporary Society, Oxford University Press, Oxford, NY, USA, 5th edition, 1996.

41. M. T. Lee and M. D. Ermann, "Pinto "madness" as a flawed landmark narrative: an organizational and network analysis," Social Problems, vol. 46, no. 1, pp. 30–47, 1999.

42. D. Vaughan, The Challenger Launch Decision: Risky Technology, Culture, and Deviance at NASA, University of Chicago Press, Chicago, Ill, USA, 1996.

43. C. D. Stone, Where the Law Ends: The Social Control of Corporate Behavior, Harper and Row, New York, NY, USA, 1975.

CHAPTER 8

THERE'S NO CODE OF ETHICS TO GOVERN DIGITAL FORENSICS – AND WE NEED ONE

INTRODUCTION

Let me begin with a disclaimer: I am neither a digital forensics practitioner nor do I play one on television.

I am, however, a professor in, and former chair of, an academic department at a research university that houses a graduate program in computer (digital) forensics I helped design. In 2011, I cofounded a computer forensics research center at my university. Finally, for more than 10 years, I have taught undergraduate and graduate courses on professional ethics for criminal justice and digital forensics students.

These experiences helped me to identify a glaring issue in the field of digital forensics: a lack of professional and ethical standards governing practitioners. And as digital forensics gains prominence in the legal landscape, the lack of agreed-upon standards is a big problem.

WHAT IS DIGITAL FORENSICS?

Digital or computer forensics involves the identification, recovery, analysis and presentation in court of relevant information taken from electronic devices such as computers and cellphones.

That information becomes digital evidence presented in court and designed to tie together people and events in time and space to establish causality for crimes or civil wrongs.

For example, imagine the police arrested a suspect on charges she murdered her husband by poisoning him. The police will seize and examine the suspect's computer to uncover incriminating evidence such as the suspect's history of visiting web pages that deal with poisons. Once retrieved, the prosecutor will likely introduce that evidence to gain a conviction.

Digital evidence is not trivial. If it leads to a conviction on criminal charges, the defendant may face prison time. In a civil case, it can lead to a defendant having to pay monetary damages. And the police officers, technicians and private contractors who testify in court about digital evidence can be the difference between justice served and justice denied.

THE "WILD WEST" OF DIGITAL FORENSICS

In some ways, the digital forensics landscape resembles the "Wild West." At least part of the reason for this is that digital forensics is not science-driven; instead, it is driven by its practitioners.

Those involved with determining the relevance of digital evidence are sometimes ill-equipped to make such assessments.

Problems, including inadequate training, use of outdated equipment, limited resources, few personnel and lack of a standardized protocol for analyzing digital evidence have all been documented. These shortcomings have led to evidentiary issues, improper conclusions by juries about digital evidence and doubtful outcomes. A good example would be the Casey Anthony trial, where improper analysis of her visits to websites dealing with murder was admitted as evidence.

Unlike DNA analysis, there's no standardized protocol for identifying, recovering, or processing digital evidence. As a result, two different technicians at different crime labs might reach different conclusions about a particular piece of evidence because they used different equipment or had divergent training.

These problems have implications for justice being served.

First Steps Toward Standards

Thankfully, the situation is changing as the National Institute of Standards and Technology (NIST) works to develop specific standards for analyzing digital evidence.

The courts have also begun paying attention to some of the legal issues involving digital evidence. For example, in Riley v California, the US Supreme Court ruled in 2014 that police must obtain a search warrant before they can seize electronic devices suspected of containing digital evidence. This ruling makes it somewhat harder for police to seize and analyze personal devices involved in crimes.

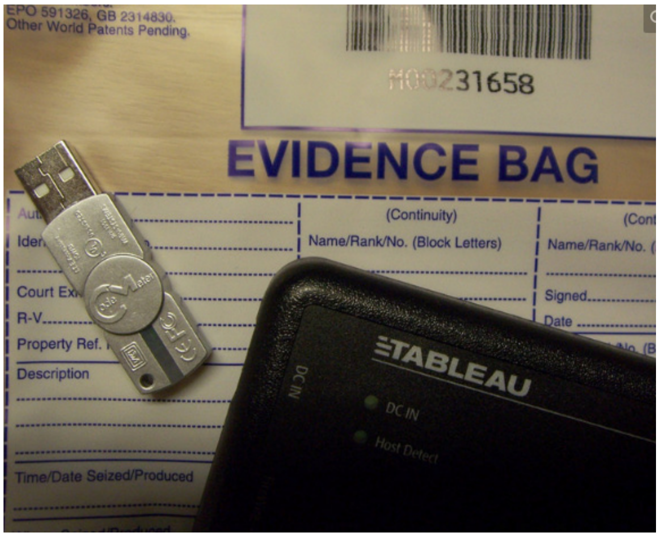
Lack of a Code of Ethics for PRACTITIONERS

Because the people who recover, analyze, process and testify about digital evidence are influential in court proceedings, they must be ethical in their dealings with the legal system.

However, the reality is this: not only is digital forensics the "Wild West" when it comes to protocols for processing evidence, there isn't a code of ethics that governs the professional behavior of digital forensics practitioners.

Instead, various professional associations have created a hodgepodge of codes of ethics for members. Some of them are very detailed; others, not so much.

Unlike medicine or law, each of which has a single, overarching code of professional ethics enforced by the states, there is no comparable code that describes how a digital forensics practitioner should (or must) behave in his or her professional life.



The Challenge of Creating a Code of Ethics

Last May, I co-organized a two-day workshop on professional ethics and digital forensics that was funded by, and held at, the National Science Foundation (NSF). Academics, researchers and practitioners attended.

The workshop explored the need for a code of ethics and the contours of what such a code might include. We also examined hurdles to establishing a code, and existing codes from other professions that could serve as models.

The consensus among participants was that the need is great for a code of professional ethics that governs digital forensics practitioners. Participants shared examples of ethical issues that cloud the profession. Conflicts of interest. Vendors producing research on their own products and using that to influence agencies to adopt their product(s). Some practitioners' lack of understanding of the mechanics of the software they use to process evidence (the "black box" problem).

However, just because participants agree a code of ethics is needed doesn't mean there aren't significant hurdles to overcome with creating one. What specific behavior would be covered? What themes would the code address (for instance, "fairness," "trust," "justice")? What agency or organization would enforce the code? (Suggestions included NIST or the American Academy of Forensic Sciences (AAFS).) To whom would the code apply? All practitioners involved with digital evidence or just those processing it?

Moving Forward

To raise awareness and continue working to create a code of ethics, this academic year we plan to replicate the workshop at various professional meetings including those of the Southern Criminal Justice Association, AAFS and the Academy of Criminal Justice Sciences.

We will also reach out to leaders in the AAFS and the American Bar Association for help with developing the code.

As digital evidence becomes more common in legal proceedings, ensuring that practitioners have the strongest professional ethics is not only sensible, it is imperative.

CHAPTER 9

HONOR ON DEATH ROW: APOLOGY, REMORSE, AND THE CULTURE OF HONOR IN THE U.S. SOUTH

Judy Eaton

Wilfrid Laurier University, Brantford, Ontario, Canada

ABSTRACT

The Southern United States is described as having a culture of honor, an argument that has been used to explain higher crime rates in the Southern United States than in the rest of the country. This research explored whether the combination of honor-related violence and traditional southern politeness norms is related to regional differences in the degree of remorse expressed by those who have committed violent crimes. It was proposed that different social norms regarding politeness and apologies in the Southern United States would be reflected in the narratives provided by offenders. The data came from the final statements that offenders on death row made before they were executed. Results showed that, compared with offenders executed in the non-Southern United States, offenders executed in the South more often apologized for their crimes in their final statements, but they were not necessarily more remorseful.

This is a blow to everything I believe in . . . I don't believe in hitting women. But for me to turn around and rape and murder two women . . . The point is I did it. We can blame it on my past, but that doesn't take away what I did. David Gibbs, a self-described "country gentleman," on being sentenced to death for capital murder in Texas. (Carson, 2000)

In 1985, David Gibbs was sentenced to death by the State of Texas for the rape and murder of 29-year-old Marietta Bryant. In the quote above, Gibbs notes the disconnect between his actions and his view of himself as a southern "country gentleman" (Carson, 2000). In his final statement before being executed, Gibbs apologized to his victim's family. "Mr. Bryant," he said, "I have wronged you and your family and for that I am truly sorry" (Texas Department of Criminal Justice [TDCJ], 2012). Although many offenders apologize to the victims of their crimes, Gibbs appeared to be motivated by proscribed notions of what was expected behavior from someone from the Southern United States.

The notion of southern politeness is well-documented (Kierner, 1996), and includes established social scripts for individuals from the U.S. South regarding generosity, politeness, and loyalty. The U.S. South has also been seen as being

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distinct from the rest of the United States in its adherence to the norms of a culture of honor. In cultures of honor, individuals tend to endorse retaliatory violence in response to insults that threaten their reputation. This "paradox of politeness" (Cohen & Vandello, 2004; Colson, 1975), whereby cultures of honor have strict codes of both politeness and defense of honor, raises interesting questions about how apologies might be used in these cultures. If individuals are more likely to respond to insults with aggression, how do they reconcile this with competing norms regarding politeness and kindness (and, hence, apologies)? Would this make apologies more or less likely in a culture of honor?

In those regions of the United States that support the death penalty, offenders who are about to be executed are permitted to make a final statement in front of a group of witnesses, which may include members of their family and their victim's family. These narratives, which are usually made available to the public, provide a unique opportunity to examine remorse for an extreme, usually unambiguous event (capital murder) in a situation where the transgressor arguably has nothing left to lose. When most of the factors that might influence an apology for a criminal transgression (e.g., the threat of harsher punishment or a hope for leniency, the threat of retaliation) are stripped away, is southern politeness still apparent in offenders from the U.S. South? This research examines the use of apologies in this national sample to discover if there is a distinct pattern of remorse in the Southern honor states.

THE CULTURE OF HONOR

Historically, more violence has been reported in the U.S. South than in the rest of the country. Research has shown, for example, that compared with the rest of the United States, the South has higher rates of homicide and other types of violent crime (Gastil, 1989), more of its citizens own weapons (Cohen & Nisbett, 1994), and it executes more prisoners under the death penalty (Snell, 2011). In examining these statistics more closely, however, both sociologists and psychologists have noted that homicide rates in the South are only higher than the rest of the country for argument- or insult-related conflict, and that regional differences disappear when this is taken into account (Ellison, 1991; Lee, Bankston, Hayes, & Thomas, 2007; Nisbett, 1993). The same is true of harsher Southern attitudes toward criminal offenders: There are no regional differences in punitiveness for crimes not resulting from arguments (Cohen & Nisbett, 1994).

Nisbett and colleagues (Cohen & Nisbett, 1997; Cohen, Nisbett, Bowdle, & Schwarz, 1996;Nisbett, 1993) propose that this is due to a distinct culture of honor in the Southern United States. According to this theory, the early settlers in the Southern United States, from Scotland and Ireland, had a long-standing herding culture. These settlers, whose livelihoods depended on the safety of their herds, became hypervigilant against any perceived threat to their herd, and thus they developed a reputation for toughness, and were known to defend their honor with extreme vigilance. In a series of archival, correlational, and experimental studies, Nisbett and his colleagues provide compelling evidence that Southerners, in general, respond more violently to insults and are more likely to resolve conflict with violence after being insulted (Cohen et al., 1996; Nisbett, 1993). This is also reflected in Southern social policies and laws: Cohen (1996) found that, compared with the Northern U.S. states, the U.S. South has less stringent gun laws and fewer policies regarding mandatory arrest for domestic violence. Recent research shows that those in honor states in the South are more approving of defensive violence (Hayes & Lee, 2005), that there are more weapons in schools and more school shootings in honor states (Brown, Osterman, & Barnes, 2009), and, in a novel study examining violence against the self, that antidepressant use is lower, and suicide rates higher, in honor states compared with non-honor states (Osterman & Brown, 2011).

Honor and Apologies

Individuals in honor cultures also tend to have a reputation for kindness, generosity, politeness, and hospitality (Abbott, 1847; Cohen & Vandello, 2004; Kierner, 1996), and there is empirical evidence of this kindness. Levine, Martinez, Brase, and Sorenson (1994)examined United Way contributions per capita in the United States, along with various friendly and helpful behaviors, and concluded that Southerners were more generous and helpful than those from any other region in the country. Cohen and Vandello (2004)reanalyzed these data with statistics on homicides in the same regions, and found that in comparison with the North, those counties in the South with higher friendliness ratings also had higher rates of argument-related (but not felony-related) homicides.

Cohen, Vandello, Puente, and Rantilla (1999) argue that one reason for Southern politeness is self-protective: As Southerners are quick to use violence to defend their honor, politeness is used to prevent or dispel conflict. Cohen et al. (1999) suggest that because of their established social scripts when it comes to conflict, Southerners do not signal their displeasure clearly (e.g., by displaying anger). This can result in sudden and violent responses to insult. In a series of experiments, Cohen and his colleagues (1999) found that Southerners, as compared with Northerners, not only displayed fewer anger cues and were more prone to unsignaled anger following an annoying stimulus but were also less able to recognize anger cues in others. Thus, being polite can prevent one from unintentionally raising the ire of a fellow Southerner. In a similar way, Southerners have been known to be vigilant about repaying social debts (Kierner, 1996), presumably to avoid future conflict.

It is unlikely that politeness when one is facing execution stems from a fear of retaliation for oneself, but it may be expressed out of concern for one's family. Those in honor cultures do not only seek to defend their own honor but are also concerned about the honor of their family (Wyatt-Brown, 1982). Research shows that family reputation is important in cultures of honor. For example, parents from honor cultures have been found to be less accepting of their children's relationships with those from ethnic outgroups, in part due to family reputation vulnerability (Munniksma, Flache, Verkuyten, & Veenstra, 2012), and male children from honor cultures in the U.S. South are more likely to be named after their father, which may serve, among other things, to strengthen kinship bonds (Brown, Carvallo, & Imura, 2014). Thus, politeness may serve as a form of impression management, not only for oneself but also for one's kin.

There is little research that addresses how these politeness norms might be manifested when it comes to an offender from a culture of honor having the opportunity to make a public statement after committing a transgression. On one hand, given that they are motivated to dispel conflict quickly to avoid retaliation, and given that they might also be concerned about tarnishing the reputation of their family, they might be more likely to apologize after committing a transgression. Indeed, certain cultures of honor, such as Japan, have well-defined rules regarding apologies (Haley, 1998; Wagatsuma & Rosett, 1986). On the other hand, to apologize is to admit to a mistake, which would be at odds with a desire to protect and maintain one's honor. Hayes and Lee (2005) describe honor is "an inner conviction of self-worth" (p. 601). Because such importance is placed on self-regard and pride in honor cultures, to apologize might be seen as a weakness. Ironically, even though being a member of an honor culture may be associated with having a strong self-image, the maintenance of that self-image can be costly for the individual (Baumeister, Smart, & Boden, 1996). When those in honor cultures are faced with a threat to their honor, they tend to respond with increased anger and shame (Rodriguez Mosquera, Manstead, & Fischer, 2002). Directing too many resources at defending their self-worth may leave individuals unable to admit to and apologize for their mistakes. Some anthropological accounts support this notion, and have noted the rarity of apologies in certain honor cultures (e.g., Campbell, 1964).

There is also little research that suggests how sincere these apologies, if they are offered, might be. True repentance involves more than just making an apology. Researchers generally agree that additional indicators of remorse must be present, such as accepting responsibility for one's actions, attempting to repair the damage, if possible, and expressing concern for the victim (Darby & Schlenker, 1982; Exline & Baumeister, 2000; Schmitt, Gollwitzer, Förster, & Montada, 2004). If those from a culture of honor are simply following established cultural scripts when they apologize, then their apologies would not necessarily be expected to be more sincere. In fact, some researchers have pointed out that Southern politeness may veil hostility. Johnstone (1992) suggests that Southerners are particularly prone to "linguistic politeness" (p. 5), such as using indirectness to place doubt on their true intentions or to mitigate their responsibility for perceived misdeeds. Johnstone (1992)argues that the combined politeness and belligerence present in Southern dialect may signal underlying hostility rather than a sincere form of politeness. This lack of sincerity is also suggested by Wyatt-Brown (1982), who claims that certain gestures of hospitality were more about showing oneself to be better than one's neighbors than about a genuine concern for helping others. Some historians suggest that the overt generosity of Southerners traditionally served to place them in a position of power over the recipients of their kindness (Kierner, 1996; Wyatt-Brown, 1982), and that in addition to making their guest indebted to them, public displays of hospitality could bolster their social image. Thus, even if they do apologize, Southerners' apologies might not be accompanied by true remorse.

Honor on Death Row

When an offender is on death row and is about to be executed, it is unlikely that the fear of retaliation would influence his or her decision to apologize. It may be more likely that his or her response would be guided by cultural norms. If Southerners have well-defined politeness scripts, then it is predicted that they would be more likely to apologize to their victims than those from other regions in the United States. Thus, the first hypothesis is that offenders executed in the South will be more likely to apologize than those from other regions. The second hypothesis is that, although they may be more likely to apologize, Southerners will not necessarily be more remorseful than those from non-honor states. If Southerners are simply following established cultural scripts regarding apologies, then these apologies would not necessarily be expected to be sincere.

The Data Set

In the United States, offenders on death row are given the opportunity to make a last statement immediately before they are executed. These final words, often made in the presence of the offender's family, the victim's family, and the media, are made available to the public through justice department websites, personal websites, and the news media. During the past decade, there has been growing interest in death row last statements and how they can expand our understanding of how offenders feel about their crimes, their victims, and their own impending death. One common finding in the research is that repentance and seeking forgiveness are key themes (Eaton & Theuer, 2009; Heflick, 2005;Rice, Dirks, & Exline, 2009; Schuck & Ward, 2008; Vollum, 2010), with approximately one third of offenders offering an apology in their last statement (Eaton & Theuer, 2009; Rice et al., 2009).

Most of the research on last statements has used data from Texas exclusively, in part because Texas executes more people than any other state and hence is a rich source of data, and in part because the TDCJ publishes on its website the full text of the last statements of all offenders executed since 1982; this information is not as freely available in other states with the death penalty. This study seeks to examine the last statements of all offenders executed throughout the entire United States. This not only provides an opportunity to replicate the Texas-based research but also makes it possible to test the current hypothesis regarding regional differences in apology and remorse. Although most executions have taken place in the Southern United States (Snell, 2011), there is enough geographical diversity to test the hypothesis that those from honor states will show different degrees of remorse than those from non-honor states.

METHOD

Participants

A total of 679 people were executed in the United States between January 2000 and December 2011. There were 670 men and 9 women, with a mean age of 28 years (*SD* = 8.29) at the time of the offense. They had been on death row for an average of 14 years (*SD* = 5.88) before being executed. The ethnic background of the offenders was 57% White, 34%

Black, 8% Hispanic, and 1% other. Before conducting the analysis, some individuals were removed from the data set. First, there were three offenders (Louis Jones, Juan Garza, and Timothy McVeigh) who were executed by the U.S. Federal Government (and not a specific U.S. state), and thus were not included in the analyses. Second, because the Southern culture of honor hypothesis relates only to White males from honor states (Nisbett, 1993), non-Whites and females were excluded from the main analyses; however, parallel analyses were conducted with the non-White males as a further test of the culture of honor hypothesis with this data set. This resulted in a sample size of 379 White males and 288 non-White males. Third, because the key variables in this study come from the last statements, only those who made a last statement were included in the analyses. Of the 379 White offenders, 279 (74%) chose to make a last statement, 92 (24%) declined, and the remaining 8 (2%) were not found. Of the 288 non-White offenders, 231 (80%) chose to make a last statement, 52 (18%) declined, and the remaining 5 (2%) were not found. For the final White sample (n = 279), 220 were from honor states and 59 were not from honor states. The mean age was 29.9 years (SD = 8.96) at the time of the offense and they were on death row for an average of 14.1 years (SD = 5.94) before they were executed. For the final non-White sample (n = 231), 206 were from honor states and 25 were not from honor states. The mean age was 25.5 years (SD = 6.94) at the time of the offense and they were on death row for an average of 13.3 years (SD = 4.92) before they were executed.

Procedure

The last statements were collected primarily from the website of the Prosecuting Attorney of Clark County, Indiana (www.clarkprosecutor.org). This website provides statistics on all U.S. executions, including the last statements, where available. In instances where the last statement was not available from this source, attempts were made to find it elsewhere, by checking the website of the relevant department of justice, conducting an Internet search of the offender's name, and searching news articles published within a week following the execution.

The website of the Prosecuting Attorney of Clark County, Indiana, while extensive, only includes last statements for offenders executed after 1999. In seeking out other sources for last statements, it soon became apparent that the only other consistently reliable source was the website of the TDCJ, which only publishes information on executions in Texas. Rather than risk skewing the data by oversampling from Texas for executions prior to 2000, the decision was made to only include executions that had taken place from January 2000 to December 2011.

Information about each offender was recorded, including the state in which they had been executed, their age, gender, how long they had spent on death row, and details about their crime and the victims. The last statements were compiled in a separate file, identified only by the offender's name.

Content analysis was used to code the last statements for remorse-related variables. Two independent researchers read each statement and coded for the presence (coded as 1) or absence (coded as 0) of each variable, using a predetermined coding scheme. Inter-rater reliability (Cohen's κ) was substantial or almost perfect, ranging from .61 to .96 (see Table 1), and any disagreements were resolved with discussion.

Table 1: Frequencies and Inter-Rater Reliability of Remorse-Related Content in Last Statements (n = 279).

	Last statement (%)	Cohen's κ
Apology	42	.93
Responsibility	24	.68
Ask for forgiveness	15	.96
Regret	15	.61
Earnestness	39	.70

Participants were classified as being from an honor state or not from an honor state. Data on where the offenders were from originally was not available; thus, an alternative (albeit flawed) method was to classify them in terms of the state in which they were executed. Some research on the culture of honor has included the Western states as honor states (e.g.,Brown et al., 2009; Cohen, 1998; Nisbett & Cohen, 1996). The total number of offenders from the Western states who fit the criteria for this study (i.e., they were male, White, and made a last statement) was 11, which was too low to conduct a separate analysis for the West. For this reason, the main analyses were conducted with the Western states removed, but additional analyses were conducted with the Western states combined with the Southern states and with the Western states combined with the non-Southern states. Any differences in the results of these analyses are noted in the Results section.

MEASURES

Apology

Offenders were recorded as having apologized if they specifically said they were sorry to the victim or the victim's family (e.g., "I do apologize to the Surace family . . . I am sorry for what I did," Ryan Dickson, executed April 26, 2007, Texas).

Responsibility

Offenders were recorded as having accepted responsibility if they explicitly said they took responsibility, or if they acknowledged what they had done without making excuses, for example, To the families of Leslie Roark, Pam Jones, Charles Smith and Sandra Wilson, I am profoundly sorrowful for taking their lives. I know that I have caused irreparable damage to each surviving family member. I also feel responsible for the unexpected deaths of Mrs. Charles Smith and Mr. Elba Roark. (James Johnson, executed January 9, 2002, Missouri)

Ask for forgiveness

If an offender specifically asked for forgiveness or expressed a desire to be forgiven in the future, they were coded as asking for forgiveness (e.g., "I wish to apologize to the people who I have hurt and I ask for their forgiveness. I don't deserve it, but I do ask for it," Jack Trawick, executed June 11, 2009, Alabama).

Regret

Offenders were considered to have expressed regret if they specifically said they felt remorseful or if they mentioned regretting or wishing to reverse their actions (e.g., "If there were any way I could change things and bring them back I would," Richard Dinkins, executed January 29, 2003, Texas).

Earnestness

If the offender expressed love or gratitude toward the victim's family, or if they appeared to be sincere in their statements, they were coded as being earnest (e.g., "I know I took someone very precious to you . . . I would pay it back a thousand times to bring back your loved ones. I would pay it gladly," Kevin Varga, executed May 12, 2010, Texas). An example of a statement that would be coded as not earnest is Okay I've been hanging around this popsicle stand way too long. Before I leave, I want to tell you all. When I die, bury me deep, lay two speakers at my feet, put some headphones on my head and rock and roll me when I'm dead. (Douglas Roberts, executed April 20, 2005)

Remorse

Remorse was calculated by adding the dichotomous scores on responsibility, ask for forgiveness, regret, and earnestness, for a total possible score of 4. The mean score on remorse was .93 (*SD* = 1.17).

Frequencies of the variables included in the content analysis of the last statements are shown in Table 1.

RESULTS

Demographic Variables

Before examining the variables related to the last statements (and before filtering out those who did not make a last statement), analyses were conducted to determine whether there were differences between Southerners (n = 299) and non-Southerners (n = 60) in demographic and offense-related variables. A logistic regression was performed with region (South; non-South) as the response variable and last statement (i.e., whether the offender chose to make one or not), the type of crime committed (i.e., whether it consisted of capital murder alone, or whether the crime also involved kidnapping or abduction, robbery, drugs, sex offense, or nonsexual assault), whether the victim was known to the offender or not, the number of victims, whether members of the victim's family were present at the execution, and the length of time the offender spent on death row before being executed as the explanatory variables.

A test of the full model against a constant-only model was not statistically significant, $\chi^2(11, n = 359) = 12.45$, p = .33, indicating that the set of predictors did not accurately distinguish between those from the South and those not from the South. Individually, none of the explanatory variables was significant except for the length of time the offender spent on death row before being executed, $\beta = -.056$, p = .03, odds ratio = .946. Those in the South spent an average of 13.98 years on death row (*SD* = 6.167), while those not in the South spent an average of 15.82 years on death row (*SD* = 6.11).

Main Analyses

Regression analyses were conducted to determine whether being executed in an honor state predicted apology and remorse in the last statements of those on death row. In each analysis, region (honor state, non-honor state) was included as an explanatory variable, with variables related to the crime and offender (whether the victim was known to the offender, the number of victims, whether the victim's family was present at the execution, the length of time the offender had been on death row, and whether the crime was murder alone, kidnapping, robbery, drugs, a sex offense, or nonsexual assault) included as possible covariates. The covariates were entered first, in two blocks: First, the variables related to the offender and victim, and second, the variables related to the crime. Region was entered last.

Apology

Because apology was a dichotomous variable (the offender either apologized or he did not), logistic regression was used to test the extent to which the explanatory variables predicted whether or not the offender apologized in his last statement. A test of the full model against a constant-only model was statistically reliable, $\chi^2(11, N = 279) = 24.083$, p = .012, indicating that the set of predictors accurately distinguished between those who apologized and those who did not. Overall predictive accuracy was 66%, with Nagelkerke's R^2 = .14. Table 2 shows regression coefficients, Wald statistics, and odds ratios for each of the predictors. Region was a significant predictor of apology. The odds ratio of 2.123 indicates that, holding other variables constant, offenders were approximately 2 times more likely to apologize in their last statement if they were executed in an honor state. Another way to examine this is to look at the frequencies: Almost half (46%) of offenders from honor states apologized, whereas only 29% of offenders from the non-honor states apologized. The only covariate that accurately distinguished whether an offender apologized or not was the length of time the offender had been on death row, whereby the longer the offender had been on death row, the less likely he was to apologize.

Table 2: Logistic Regression Predicting Southern Region from Remorse-Related Content in Last Statements

Variable	β	SE	Wald test	df	p	Odds ratio
Victim known to offender	−.252	.317	0.632	1	.426	0.777
Number of victims	−.048	.151	0.103	1	.749	0.953
Victim's family present at execution	.279	.403	0.479	1	.489	1.322
Time on death row	−.068	.027	6.270	1	.012	0.935
Murder alone	−.903	.508	3.166	1	.075	0.405
Kidnapping	.458	.386	1.404	1	.236	1.580
Robbery	−.505	.462	1.196	1	.274	0.603
Drugs	−.605	.547	1.224	1	.269	0.546
Sex offense	−.803	.441	3.318	1	.069	0.448
Nonsexual assault	.286	.311	0.829	1	.362	1.327
Region	.753	.394	3.652	1	.056	2.123
Constant	.602	.840	0.513	1	.474	1.826

As explained previously, these analyses were conducted without the Western states. The analyses were repeated with (a) the Western states included as honor states and (b) the Western states included as non-honor states. The overall findings were very similar, with only marginal differences. When the Western states were included as honor states, the explanatory power of the model was slightly lower, with Nagelkerke's R^2 = .12, and although the odds ratio for region still indicated that offenders were approximately 2 times more likely to apologize in their last statement if they were executed in an honor state, this relationship was only marginally significant (p = .07). When the Western states were included as non-honor states, the explanatory power of the model was similar, with Nagelkerke's R^2 = .13. The odds ratio for region indicated that offenders were approximately 2.3 times more likely to apologize in their last statement if they were executed in an honor state, p = .02.

As a further test of the applicability of the culture of honor theory to these data, identical analyses were conducted with the non-White offenders. Given that the theory only purports to explain the retaliatory behavior of White males from the South, differences in rates of apology and expressions of remorse would not be expected in the non-White sample. In line with this prediction, the model, when tested with the non-White sample, was not statistically reliable, and region did not significantly predict apology, regardless of how the Western states were categorized (ps > .70). None of the covariates were significant.

Remorse

Because remorse was a continuous variable, linear regression was used to test the extent to which the region in which the offender was executed predicted whether or not he appeared to be remorseful in his last statement. The same covariates were entered as the previous analysis, with remorse as the outcome variable. Table 3 shows the results of the regression analysis. Region did not account for unique variance in remorse, regardless of whether the Western states were excluded, included as honor states, or included with the non-honor states (ps > .15). However, the length of time the offender had spent on death row did significantly predict remorse, whereby the longer the offender had been on death row, the less likely he was to express remorse. Also, whether the victim's family was present at the execution predicted remorse, in that remorse was higher when the victim's family was present (M = 1.08, SD = 1.21) than when the victim's family was not present (M = .57, SD = .96). None of the other covariates significantly predicted remorse.

Table 3: Regression of Predictor Variables on Remorse

Predictor variable	B	SE	β	t	R^2	Adjusted R^2
Constant	1.177	.457		2.574		
Victim known to offender	−0.230	.173	−.096	−1.325		
Number of victims	0.079	.083	.065	0.954		
Victim's family present at execution	0.490	.218	.152	2.248*		
Time on death row	−0.036	.014	−.174	−2.516*	.068	.050
Murder alone	−0.348	.273	−.138	−1.273		
Kidnapping	0.243	.214	.091	1.137		
Robbery	−0.243	.248	−.101	−0.983		
Drugs	0.173	.297	.041	0.582		
Sex offense	−0.230	.235	−.083	−0.981		
Nonsexual assault	0.040	.171	.017	0.232	.091	.047
Region	0.140	.207	.046	0.678	.093	.045

*p < .05.

When these analyses were repeated with the non-White sample, region did not significantly predict remorse, regardless of how the Western states were categorized (ps > .70), and none of the covariates were significant.

DISCUSSION

These data indicate that there are regional differences in apologies offered in the last statements made by individuals on death row. In line with predictions, apologies were more likely from Southerners than from non-Southerners. This does not necessarily mean that Southerners were more remorseful, however. The analysis revealed that they were not more likely than non-Southerners to express remorse, defined as the extent to which they accepted responsibility, asked for forgiveness, expressed regret, and appeared to be earnest. Researchers generally agree that true remorse includes more than simply saying "I'm sorry"; it also must include, at a minimum, an acceptance of responsibility for the offense and an offer to make amends (Darby & Schlenker, 1982; Exline & Baumeister, 2000;Schmitt et al., 2004). Thus, the absence of any other indicators of remorse in the Southern sample suggests that their apologies, while more frequent than those of non-Southerners, were not necessarily more heartfelt.

One explanation for the higher likelihood of Southern apologies is that Southerners are more wedded to particular norms regarding politeness and kindness than those from the rest of the United States. The apparent lack of true remorse in their apologies supports the arguments of theorists who suggest that in the South politeness can be used to mask hostility (Johnstone, 1992) and/or to deflect anger (Cohen et al., 1999). It may also be that the Southern offender is more motivated than the non-Southern offender to protect, both publically and privately, his reputation as an honorable person. If, as noted by David Gibbs (the executed offender discussed at the beginning of this article), the act of murder creates dissonance with the Southern offender's views of himself as a "southern country gentleman," then a deathbed apology might serve to protect his private image (i.e., "I did a bad thing, but I apologized") and, through impression management, his public image. It may also serve to protect the reputation of his family and/or his culture.

The significant difference between apologies in Southerners and non-Southerners only held for White males. Nisbett (1993) argued that Southern violence comes from the original herding culture of the U.S. South, which was mostly composed of Scottish or Irish settlers. This culture of honor, then, should only be evident in their descendants, which would consist mainly of Whites. The fact that non-White Southerners were not more likely to apologize than the rest of the United States offers further support for culture of honor theory.

It should be noted that the data set is not without limitations. Whether offenders apologized to their victims' families was based solely on the last statements of offenders. There may have been offenders who apologized to their victims' families at some point before their execution (e.g., at their trial or by letter while they were incarcerated) and thus did not feel the need to do so in their last statement. While the number of these cases is likely quite small, it cannot be ruled out that there may be regional differences in apologies made prior to (and not included in) the last statement. Also, this data set relies on prison officials and journalists for written records of the last statements. While every attempt was made to cross-check the accuracy of the statements, some could not be verified.

Because the non-Southern states have fewer executions, in part because fewer of them endorse the death penalty but also because the top four states for number of executions from 1977 to 2010 are all Southern states—Texas, Virginia, Oklahoma, and Florida accounted for 60% of all executions (Snell, 2011)—it may be that the non-Southern offenders who were executed were in some way worse than those who were executed in the South. The argument could be made that one needs to be particularly hardened or considered to be beyond any hope of redemption to be executed in a non-Southern state. If this is true, then perhaps the non-Southerners were less likely to apologize simply because they consist only those extreme offenders who are incapable of remorse. Assessing the severity of the crime is challenging with this sample. Because all of the crimes involved capital murder, there would be a high degree of subjectivity in determining what constituted a more "severe" murder. In this study, the number of victims and the type of crime committed were used as covariates in an attempt to assess severity objectively, and they did not significantly predict apology or remorse. Future research might consider a qualitative analysis of the actual crimes to further test this hypothesis.

Data on where the offenders were originally from were not available, and thus offenders were classified as "Southern" or "non-Southern" based on the state in which they were executed. Clearly, this is a flawed technique, as it does not account for the fact that an offender who was raised in the South may have committed the crime in the North, and thus would be misclassified as "non-Southern." This is a limitation of using archival data. Given that the data supported the theoretically derived predictions, the argument could be made that if all offenders were classified correctly the significant difference between Southerners and non-Southerners would be even more pronounced. However, the findings should be interpreted with caution due to the potential misclassification of some offenders.

These findings are notable in that they provide further evidence of the Southern culture of honor using a nontraditional sample. While the data set does have limitations, it is unique in that it includes actual narratives from offenders convicted of extreme crimes, in a setting that could not be reproduced in an experimental study. This study extends the work on the southern culture of honor by examining a relatively untested aspect of honor (at least in North America): how the "paradox of politeness" (Cohen & Vandello, 2004) influences Southern apologies. These findings also add to the growing literature on the use of apologies in the criminal justice system, replicating previous research that has found that offenders are motivated to apologize (e.g., Sherman et al., 2005; Umbreit, Vos, Coates, & Brown, 2003), but also suggesting that there are cultural differences in offenders' motivations for apologizing. This may have implications for restorative justice programs, in that their effectiveness may be dependent, in part, on the cultural backgrounds of the offender and victim.

Finally, the findings reported here suggest that regional differences in apologies may not indicate real differences in remorse. However, it is important to note that these apologies may still serve a valuable function for victims. If Southern victims (or their families) adhere to the same politeness norms and social scripts as offenders, it may be that an apology from an offender, regardless of whether it is sincere, may make victims' families feel better.

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REFERENCES

1. (1847). *New England, and her institutions. By one of her sons*. Hartford, CT: S. Andrus.
2. (1996). Relation of threatened egotism to violence and aggression: The dark side of high self-esteem. Psychological Review, 103, 5-33.
3. (2014). Naming patterns reveal cultural values: Patronyms, matronyms, and the U.S. culture of honor. Personality and Social Psychology Bulletin, 40, 250-262.doi:10.1177/0146167213509840
4. (2009). School violence and the culture of honor. Psychological Science, 20, 1400-1405.
5. (1964). *Honour, family and patronage: A study of institutions and moral values in a Greek mountain community*. Oxford, UK: Clarendon.
6. (2000, September). *David Gibbs*. Texas Execution Information Centre. Retrieved
7. (1996). Law, social policy, and violence: The impact of regional cultures. Journal of Personality and Social Psychology, 70, 961-978.
8. (1998). Culture, social organization, and patterns of violence. Journal of Personality and Social Psychology, 75, 408-419.
9. (1994). Self-protection and the culture of honor: Explaining Southern violence.Personality and Social Psychology Bulletin, 20, 551-567.
10. (1997). Field experiments examining the culture of honor: The role of institutions in perpetuating norms about violence. Personality and Social Psychology Bulletin, 23, 1188-1199.
11. (1996). Insult, aggression, and the southern culture of honor: An "experimental ethnography." Journal of Personality and Social Psychology, 70, 945-960.
12. (2004). The paradox of politeness. In Anderson M. (Ed.), *Cultural shaping of violence: Victimization, escalation, response* (pp. 119-132). West Lafayette, IN: Purdue University Press.
13. (1999). "When you call me that, smile!" How norms for politeness, interactions styles, and aggression work together in southern culture. Social Psychology Quarterly, 62, 257-275.
14. (1975). *Tradition and contract*. Chicago, IL: Aldine.
15. (1982). Children's reactions to apologies. Journal of Personality and Social Psychology, 43, 742-753.
16. (2009). Apology and remorse in the last statements of death row prisoners. Justice Quarterly, 26, 327-347.
17. (1991). An eye for an eye? A note on the Southern subculture of violence. Social Forces,69, 1223-1239.
18. (2000). Expressing forgiveness and repentance: Benefits and barriers. InMcCullough M. E., Pargament K. I., Thoresen C. E. (Eds.), *The psychology of forgiveness* (pp. 133-155).New York, NY: Guilford Press.
19. (1989). Violence, crime and punishment. In Wilson C. R., Ferris W. (Eds.), *Encyclopedia of Southern culture* (pp. 1473-1476). Chapel Hill: University of North Carolina Press.
20. (1998). Apology and pardon: Learning from Japan. American Behavioral Scientist, 41, 842-867.
21. (2005). The southern culture of honor and violent attitudes. Sociological Spectrum, 25, 593-617.
22. (2005). Sentenced to die: Last statements and dying on death row. Omega, 51, 323-336.
23. (1992). Violence and civility in discourse: Uses of mitigation by rural Southern white men.The SECOL Review, 16, 1-19.
24. (1996). Hospitality, sociability, and gender in the southern colonies. The Journal of Southern History, 62, 449-480.
25. (2007). Revisiting the Southern culture of violence.The Sociological Quarterly, 48, 253-275.
26. (1994). Helping in 36 U.S. cities. Journal of Personality and Social Psychology, 67, 69-82.
27. (2012). Parental acceptance of children's intimate ethnic outgroup relations: The role of culture, status, and family reputation. International Journal of Intercultural Relations, 36, 575-585.
28. (1993). Violence and U.S. regional culture. American Psychologist, 48, 441-449.
29. (1996). *Culture of honor: The psychology of violence in the South*. Boulder, CO:Westview.
30. (2011). Culture of honor and violence against the self. Personality and Social Psychology Bulletin, 37, 1611-1623.
31. (2009). Of guilt, defiance, and repentance: Evidence from the Texas death chamber. Justice Quarterly, 26, 295-326.
32. (2002). The role of honour concerns in emotional reactions to offences. Cognition & Emotion, 16, 143-163.
33. (2004). Effects of objective and subjective account components on forgiving. Journal of Social Psychology, 144, 465-485.
34. (2008). Dealing with the inevitable: Strategies of self-presentation and meaning construction in the final statements of inmates on Texas death row. Discourse & Society, 19, 43-62.
35. (2005). Effects of face-to-face restorative justice on victims of crime in four randomized, controlled trials. Journal of Experimental Criminology, 1, 367-395.
36. (2011). *Capital punishment, 2010—Statistical tables* (NCJ236510). Washington, DC: U.S. Department of Justice.
37. Texas Department of Criminal Justice. (2012). *David Gibbs last statement*. Retrieved fromhttp://www.tdcj.state.tx.us/death_row/dr_info/gibbsdavidlast.html
38. (2003). *Facing violence: The path of restorative justice and dialogue*. Monsey, NY: Criminal Justice Press.
39. (2010). *Last words and the death penalty: Voices of the condemned and their co-victims*. New York, NY: LFB Scholarly Publishing.

40. (1986). The implications of apology: Law and culture in Japan and the United States. Law & Society Review, 20, 461-498.

41. (1982). *Southern honor: Politics and behavior in the old South*. New York, NY: Oxford.

CHAPTER 10

HONOUR, VIOLENCE AND HETERONORMATIVITY

Nicole Asquith

University of Western Sydney

ABSTRACT

Popular representations of Honour Based Violence (HBV) and honour killings construct this violence as an artefact of an uncivilised code of morality. Here ird, sharaf or izzat and shame are adhered to particular moral codes that are more likely to be found in the Quran. This clichéd version of HBV frames Muslim women's sexual autonomy as exceptionally regulated, most commonly by male family members with the complicity of female relatives. In its most extreme (and publicly known) form, HBV is epitomised by the 'honour' killings that come to the attention of the criminal justice system and, as a consequence, the media. Yet emerging research shows that HBV unfolds through increasingly punitive systems of social punishment, which is neither unique to Islam, nor religious communities more generally. In this paper, it is argued that the construction of HBV as a matter of deviant and antiquated Muslim honour codes is Islamophobic and that a more productive lens through which to understand collective familial violence may lie in the conceptual framework of heteronormativity.

INTRODUCTION

Popular representations of Honour Based Violence (HBV) and honour killings construct this violence as an artefact of an uncivilised code of morality, often conflated with Islamic codes of honour. Here ird, sharaf or izzat1 and the shame of transgressing these codes are adhered to particular normative values that most align to those in the Quran. This clichéd version of HBV frames Muslim women's sexual autonomy as exceptionally regulated, most commonly by male family members with the complicity of female relatives. In its most extreme and public forms, HBV is epitomised by the honour killings that come to the attention of the criminal justice system and, as a consequence, the media. Knowledge of these violent crimes is limited in Australia, with only the murder of Mohd Shah Saemin coming to the attention of Australian courts and media as an 'honour killing' (Souter 2012).2 Yet this type of violence has received growing scholarly and popular attention in other Western nations such as the UK, USA and Canada.3 This increased Western scrutiny of HBV, particularly in the UK, has led to a growing body of knowledge about the antecedents and characteristics of this type of interpersonal violence. This emerging research is beginning to highlight that HBV is not unique to Muslim communities. In particular, apart from the increased likelihood of the violence to occur in the honour cultures of southern- and western-Asia and northern-

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Africa, collective punishment is used to police transgressions in gender and sexuality in other 'moral' communities including Catholic, Hindu, Sikh, and Traveller/Roma communities (Araji 2000; Crown Prosecution Service 2013). Likewise, research is emerging on the use of violence to police other types of closed communities such as criminal enterprises – in the case of contemporary Australia, Outlaw Motorcycle Gangs being an ideal exemplar (Salter 2014) – and Indigenous Australian communities, where domestic violence and intimate-partner violence are reconceptualised as family violence to account for the collective familial and social punishment that often accommodates this violence (Daly and Stubbs 2006). Salter's (2014) research identifies that, as with the cultural violence commonly considered in relation to honour based violence, multi- perpetrator domestic violence emerges out of socio-economic deprivation, and that the violence is a technique for a collective re-affirmation of masculine control. Daly and Stubbs (2006), in their consideration of restorative justice approaches to domestic violence, argue that, whilst these approaches may be effective in mediating the binary relationships of conventional intimate partner violence, this approach is more difficult to adopt with Indigenous.

Australian communities. They suggest that this is because of the broader understanding of this violence as collective, familial and encapsulating a greater range of '… harmful, exploitative, violent and aggressive practices' (Blagg 2002: 193, cited in Daly and Stubbs 2006: 21) than are considered in domestic violence (including the violence of the colonial state in destroying Indigenous familial relationships). Similarly, in earlier research, the author identified collective familial violence in a dataset of hate crimes (Asquith 2012a; discussed in more detail below). These outlier cases to the conventional hate crime incidents were intrafamilial and clearly aimed at regulating and controlling sexual and gendered behaviours that transgress heterosexual norms. Contrary to popular representations, these examples of collective violence point to factors that exceed the normative values of Islam and of religious or cultural honour codes more generally. The continuing use of cultural models to explain honour based violence (for example, Dogan 2014), and the increased surveillance of this violence in Muslim communities have combined to create a public perception that HBV is a matter of deviant and antiquated Muslim belief systems.4 Explanatory frameworks that seek motivational factors in HBV primarily through a cultural lens are dangerous in an era when Muslim women's experiences have been so thoroughly politicised and demonised, and linked with those of annihilationist versions of Islam. This is epitomised most recently in the Australian debate about Muslim women's clothing and terrorism (Aly and Walker 2007; Hussein 2014). In contrast, when considered through the conceptual lens of heteronormativity, the violent policing of transgressive gender and sexuality at the centre of HBV becomes intelligible across cultures and is less able to be used in a politics of exclusion. As a framework, heteronormativity makes clear the social, familial and individual imperatives shared across extreme, organised heterosexist and intrafamilial violence against people who identify as LGBTIQ,5 individualised and habituated intimate partner violence of Western nuclear families, and the collective familial conspiracy at the heart of honour based violence. Seen through the lens of heteronormativity, each of these forms of interpersonal violence exists along a continuum of practices that aim to punish perceived breaches of collective norms relating to sexual, sexuality and gender performances.

Heteronormativity

The concept of heteronormativity lies at the centre of the arguments made in this paper. Coined in the early 1990s by Warner in his work on Fear of a Queer Planet, but with a theoretical legacy dating back to Rich's (1983) 'compulsory heterosexuality', the concept of heteronormativity captures the codes of conduct that normalise, privilege and reward acceptable performances of heterosexuality and cisgender. Lloyd (2013: 819) suggests that heteronormative violence is best understood as that which 'constitutes and regulates bodies according to normative notions of sex, gender and sexuality'. In the 'straight mind' (Wittig 1992), anatomical and hormonal sex proceeds in a straight line to specific gendered behaviours, which in turn line up with a compulsory heterosexuality. In addition to the identification of violence as gendered and sexualised, Lloyd (2013) also argues that the modalities of heteronormative violence are multiple. While Lloyd's work is focussed on the heteronormative order of violence against transgender people, and the concept has been more readily adopted in research on heterosexism and hate crimes against gay men and lesbians, the multiple modalities of heteronormativity can and do extend to subordinated heterosexualities and failed cisgender performances (Pitt and Fox 2012, 2013). For both men and women, in Western individualised nuclear units or extended patrilineal households in 'honour' cultures, the embodiment of sex, cultural performance of gender and libidinal desires of sexuality underlie a wide repertoire of violence 'on, through, and against bodies' (Lloyd 2013: 820). As a dominant trope through which all else is considered, heteronormativity is not just a norm but a normative principle, which Todd Weiss (2001: 124) suggests is an enculturated line-in-the-sand: 'a standard to be met, below which people are not permitted by society to deviate'. The power of heteronormativity is such that it is capable of compelling a particular sexualised and gendered order that is as much about those who comply with gender and sexuality norms as it is about those who deviate from those same norms (Lloyd 2013).

The Problems with 'Honour'

Just as there has been an extended and sustained critique of the motivational impulse of 'hate' in hate crimes,6 the use of 'honour' as an explanatory or taxonomic device in HBV has emerged as a critical point of debate in this newly-emerging field of enquiry (Baker et al. 1999; Cooney 2014; Gill 2008; Gill and Brah 2014; Payton 2014; Roberts, Campbell and Lloyd 2014). Honour can be a positive individual attribute and a negative social resource but, in discussions of HBV, a primary distinction is made between the 'status' crimes of individualised interpersonal violence (such as intimate partner violence) and the 'honour' crimes of collective familial violence (such as HBV). As symbolic capital (Bourdieu 1991), honour in HBV is constructed as a form of wealth that can secure the success of the family – which means all members have a stake in its maintenance – and, when damaged and families are dishonoured, can destroy the real life chances of the familial collective. In HBV, honour is not constructed as an individual asset to be bought, sold or exchanged: it is collective and gains meaning only in its social circulation and punishment (Roberts, Campbell and Lloyd 2014). The cultural model of HBV rests on the belief that, whilst a universal human characteristic, when presenting as a collective control, honour is a normative framework unique to some 'honour cultures' (Dogan 2014; Vandello and Cohen 2004; Vandello et al. 2009). These 'honour cultures' extend across the globe including Mediterranean and South American 'machismo' cultures, southern frontier cultures of the USA and religious cultures worldwide (Baker et al. 1999). Yet it is the subset of pathological collective violence exhibited by communities from southern- and western-Asia and northern- Africa that are demarcated as an exceptional case study of collective familial violence. Scholars and practitioners working within the field of HBV often go to great lengths to critique the language of 'honour' in HBV, stating that there is no honour in the crime of honour based violence. For example, Meetoo and Mirza (2011) entitle their paper around the claim that '[t]here is nothing "honourable" about honour killings'. Likewise, the Association of Chief Police Officers' (ACPO) (2012: 5) in their HBV strategy suggest: 'There is, of course, no honour in the abuse of individuals, including children's human rights or the exertion of power and control by some over other'. Negating the honour value appropriated by offenders in HBV is an important normative statement about the abhorrence of this type of violence. However, this construction of HBV as 'dishonour' relies on an appropriation of 'honour'; an act without symbolic power unless it is underwritten by a normative value that abhors violence against women and children (VicHealth 2014). While rhetoric from Western governments and their commitments via UN declarations and conventions have shifted violence against women from the margins to the public sphere, it is contestable that the elimination of violence against women has been normalised even in the most civilised of Western democracies. As a device to illuminate a particular set of practices, the focus on honour is problematic as it is only those expressions of 'honour' that are explicitly collective and generated within mechanical familial communities to which the label is affixed. In this sense, the meanings attached to 'honour' and 'dishonour' are fundamentally orientalised. Yet, simultaneously, in the appropriation of the term 'honour' to 'dishonour' HBV, non-collectivist – in fact, universal individual – human rights are invoked, which further problematises the cultural based attributions of honour in HBV. Just as researchers are compelled to appropriate honour to dishonour HBV, the conceptualisation of HBV is also reliant upon acknowledging that it is committed by individuals who imagine they act with honour. The offenders' motivation is conceived as honourable when the honour code becomes part of self-identity, and when the offender receives symbolic and normative support for their violent response to transgressive sexual and gender performance (Baker et al. 1999; Roberts, Campbell and Lloyd 2014). As with the appropriation of honour to dishonour HBV, ACPO (2012: 5) also exemplifies the secondary move of acknowledging the endurance of offenders' motivation to uphold an honour code: 'However unacceptable in their interpretation, the motivation of offenders is honour'. No matter how cacodoxical7 (Pitts and Fox 2012, 2013) this adherence to a pathological honour code may appear from the perspective of human rights, as with other heteronormative violence, it finds purchase within a wide variety of cultural and religious contexts including those of annihilationist Christianity that seeks to eliminate gay men and lesbians (see for example the Westboro Baptist Church's (2014) website, www.godhatesfags.com). Within the context of these two components – the appropriation of 'honour' to dishonour violence and the foregrounding of offenders' motivational 'honour' – and in line with the emerging research, ACPO (2012: 5) defines HBV as: 'a crime or incident, which has or may have been committed to protect or defend the honour of the family and/or community'. This collective control of sexual and gender codes is epitomised by 'honour killings', though it is largely accepted that even the most restrictive definitions of honour violence includes a range of criminal behaviours such as acidification, forced marriage, female genital mutilation and sex- selective forced abortion (ACPO 2012; Belfrage et al. 2012; Gill 2014; Roberts, Campbell and Lloyd 2014). Drawing on the work of Sen (2003) and Welchman and Hossain (2005), Gill suggests that HBV varies from other forms of violence against women by the fact that it:

> occurs within the framework of collective family structures, communities and societies involves a premeditated act [emphasis added], designed to restore a societal construction of honour as a value system, norm or tradition is based on men's putative right to control women's sexual and social choices, with a concomitant perception of women as the property of men [emphases added]. (Gill 2008: 246)

In the second half of this article, this definition of honour based violence is interrogated in terms of its proximity to existing feminist interpretation of violence against women, the existence of crime data that clearly demonstrate that these conditions are not unique to an orientalist account of violence in Muslim communities, and the consequences that stem from exceptionalising honour based violence.

A Study in Outliers

As is so often the case, outliers have the ability to fundamentally disturb established models for understanding a given problem. Honour based violence is no different. Honour based violence appears in many respects to complement other forms of violence against women, especially Western constructions of intimate partner violence and/or domestic violence. Yet HBV also exceeds the conventional Western boundaries used to demarcate intimate partner violence and domestic violence from other forms of interpersonal violence (such as the relationship – and level of intimacy – between victim and offender, number of offenders, and motivation attributed to and by offenders). As 'societal constructions of honour' and 'men's putative control [of] women's sexual and social choices' (Gill 2008: 246) are not unique to HBV, in effect, what is left of Gill's definition and what differentiates HBV from intimate forms of familial violence, is the collective conspiracy of family and community (Gill 2008; Roberts, Campbell and Lloyd 2014). The most extreme form of HBV – honour killings – has come to represent the category of HBV as a whole, perhaps as a consequence of a data vacuum of its sub-lethal varieties. Yet, as with domestic homicide, honour killings are an outlier to the outlier of HBV. The United Nations (2000) has estimated that over 5 000 women and girls are murdered each year in the name of 'honour' but, as with other intimate and familial violence, it is expected that this is a gross underestimation of the problem (Gill 2009), with some suggesting that this figure is more indicative of honour violence in Pakistan alone (Roberts, Campbell and Lloyd 2014). Aligning with those arguments made by Roberts, Campbell and Lloyd (2014) in relation to the situational variables of familial homicide, Lee (2011: 324-5) posits: 'That one may end up the victim of a homicide is but one outcome of many possibilities, depending on what resources both actors bring to the table'. Further, as Cooney (2014) argues, many more women, girls, boys and men are warned, persuaded, suppressed, banished, and controlled in other non-lethal means that rarely come to the attention of the media, police, governments or researchers and are rarely considered as constitutive of HBV in the same way that honour killings have been privileged. As an outlier of HBV, honour killings may not be an ideal case example from which to develop an explanatory model, even if this knowledge is essential to the assessment of risk of lethal collective violence. Homicide – even in the spontaneous violence of 'crimes of passion' or crimes of shame (Roberts, Campbell and Lloyd 2014) – is often preceded by a regime of incrementally more controlling and harmful punishments, leading in its criminal forms to grievous bodily harm such as acidification, infibulation or rape in marriage. Each of these punishments is designed to reinstate a sexual and gender order (Cooney 2014; Payton 2014). In addition to the outliers of HBV and honour killings, for this commentary, the outlier data of collective familial violence identified in a database of nearly 100 000 UK hate crime complaints (Asquith 2012a) has also been instrumental to a reconsideration of the current explanatory models which pivot between culture and violence against women. While this research was focussed primarily on the role of verbal-textual hostility in hate crime, in a small but significant set of outliers (6.7 per cent of 27 164 complaint files from 2003 and 2007), faith-based and sexuality-based incidents of hate crime were uncharacteristically familial. Unlike racist hate crimes, these outlier cases of familial hate crimes were 1.6 times more likely than other incidents with known offenders to result in violence against the person. Further, unlike conventional domestic, intimate-partner or family violence (and the majority of hate crimes reported to the London Metropolitan Police Service), these cases of intrafamilial hate crimes were also slightly more likely than racist hate crimes to include two or more offenders. These incidents – and arguably all hate crimes against gay men and lesbians – represent a form of collective (or social) punishment that mirrors the violence meted out to remedy a (perceived) transgression in sexual or gender codes of conduct in HBV cases (Asquith 2012a; Cooney 2014). When considered through these conceptual and empirical outliers, the efficacy of HBV exceptionalism is questionable, especially in light of its Islamophobic construction as a predominantly Muslim practice (Gill and Brah 2014).

Partial Views on Honour and Violence

What we know about HBV – and of honour in violence more generally – is shaped by the available data, and the conceptual and disciplinary lens through which these data are considered. Throughout the literature on HBV, researchers lament the lack of a shared language of HBV and reliable victimisation and offending data, particularly of the sub-lethal varieties of HBV. Large scale, transnational attitude and perception studies have been undertaken on honour and shame (see Rodriguez Mosquera's (2013) special edition of Group Processes and Intergroup Relations for a detailed discussion of these), which is increasingly used to contextualise the results from smaller qualitative studies of HBV victimisation (such as Payton's (2014) study of intimate partner violence and HBV case files opened with a UK advocacy organisation for women, IKWRO) and forensic studies of offenders' motivational drives (Dogan 2014). Yet the central term, honour, continues to be contested and operationalised in research in various ways, including as individual and community pathology, universal set of norms or values guiding men's violence against women, and culturally-specific honour codes. Most commonly, though, HBV is understood as a cultural artefact of some cultural expressions of men's violence or as the artefact of a pathologised offender's adherence to a culturally-specific and violent code of honour (Dogan 2014). Gill's (2008) definition cited above links and differentiates this violence from the existing wealth of knowledge about violence against women already integrated into policies and practices and, at least, partially recognised by the criminal justice system. But two critical problems arise when HBV is seen as a variant of violence against women alone, and both relate to the 'who' of honour violence. As Roberts (2014) identifies, labelling HBV as a variant of 'violence against women' – as opposed to more contemporary feminist analyses that conceptualise this as gendered violence (Carrington 2014) – elides women's violence against men and other women, and conversely men's violence against other men in the name of 'honour'. Western research on gendered violence is more likely to consider the outlier experiences of violence against men, particularly honour quests in the night-time economy and homophobic violence (Tomsen 2002, 2009; Tomsen and Crofts 2012). Yet, in the extant HBV research, these experiences are conventionally reduced to a single paragraph acknowledging – and quickly dismissing – the existence of honour based violence against men (Gill 2014; Meetoo and Mirza 2011; Welchman and Hossain 2005).8 Within the honour cultures stereotypically aligned to HBV, men and boys are also victims of collective violence, and women are instrumental in the lethal violence inflicted on some male and female victims. An explanatory model that excludes the significant minority of cases of male victims and the consistent presence, if not participation, of female offenders in HBV only partially captures this violence's aetiology. Additionally, without linking HBV to other forms of interpersonal violence that share similar victimisation processes (such as multiple offenders and premeditation), policing responses only partially capture the knowledge necessary to regulate and respond to all forms of collective familial violence. A feminist analysis of gender is critical in understanding honour based violence (Gill 2011). However, in viewing HBV solely through men's violence, without the integration of a much richer understanding of the normative power of gender and sexuality for both men and women in the existing research on HBV, the outcome is the exceptionalising of HBV as a distinct cultural practice. Irrespective of the intent of the explanatory model – in Gill's case (2008, 2011; Gill and Brah 2014) the use of 'violence against women' is strategically deployed to minimise the cultural imperative aligned with HBV and in Roberts, Campbell and Lloyd (2014) to posit a situational theory of planned behaviour – the outcome is the same. Even though Roberts (2014) attempts to account for violence against men in his conceptual framework, as with Gill's (2008, 2011) conceptualisation, religious or ethnic culture ultimately delineates who is perceived at risk of victimisation and who are 'seen' by frontline officers as victims of honour violence.

What we know of HBV from the institutional knowledge of Roberts and colleagues from the London Metropolitan Police Service is generated from a rich source of case files, investigations and frontline policing encounters. Roberts, Campbell and Lloyd (2014) provide a framework that facilitates the identification of increased risks of honour based violence, especially in its extreme manifestations. But who is policed – and police gatekeeping at the point of complaint- making – can fundamentally skew what is known about HBV. By its very nature, the criminal justice system is deployed by the state and victims when the behaviour under question is understood by both as sufficiently deviant or harmful to warrant more than social punishment (Cooney 2014). Who is recognised and thus subject to a specific set of risk assessments and service enhancements is shaped by not only the policy and practice contests within policing services (who counts in resource allocation), but also the shifting relationships between policing services and the communities of interest that move through the policing process (Asquith 2012b). Under- and over-policing can bring some experiences of victimisation to the forefront of innovative policing, or it can obscure shared experiences in an increasingly siloed set of practices based on a normative categorisation of victims and offenders (Bartkowiak- Théron and Asquith 2012). In the case of HBV, this normative categorisation of 'who counts' too readily moves from a generalisable discussion of the individual and collective norms that regulate sex and gender transgressions – which exceed Muslim honour codes linked to HBV – to a practice framework that privileges specific cultural expressions of this violence. While this account of HBV may assist in identifying some forms of collective familial violence, as with the 'violence against women' approach advocated by Gill (2008), the focus on the adherence to particular pathological types of collective norms obscures how similar normative imperatives lie at the heart of Western intimate partner violence and heterosexist violence against gay men and lesbians.

Heteronormative Violence

Rather than a culturally distinct form of violence against women or the result of a pathological integration of collective norms of honour in an individual's identity, the violence captured in the category of HBV is a case study of lethal heteronormative violence (Lloyd 2013). This heteronormative violence can be understood as a continuum of violent practices, from the inculcation of gender and sexuality norms through a compulsory socialisation in pink and blue, to prohibitions on some male or female behaviour, to violence 'on, through, and against bodies' (Lloyd 2013: 820). Additionally, the responsibility for reinscribing heteronormativity is widely dispersed, from the individual curfews imposed by a parent or home detention imposed by an intimate partner, to the public harassment – wolf-whistles and abuse – from strangers for (in)appropriate attire, to the imposition of punishment by collective or institutional actors. While cultural variations exist in the way heteronormativity is integrated into individual, social and institutional life, in most respects heteronormative violence is lived 'on, through, and against bodies' (Lloyd 2013: 820) in similar ways. Heteronormativity is doxa in its purest form (Bourdieu 1977). It is a normative type of power that is so taken-for-granted that it is unrecognised as a form of discipline of individuals' actions and perceptions. Heteronormativity, in this sense, is integrated as a habituated performance of perception and praxis that is durable yet mutable. The mutability of the heteronormative doxa lies in the social space between a normative code of conduct and an individual way of being in the world. The individual imperative to violently police transgressions of heteronormativity is variably taken up depending on the support received for their views and the individual and collective rewards that can be expected for acting as a delegate empowered with the authority to police transgressions of heteronormativity. What can be known of gender and sexuality – what can be accommodated within the heteronormative doxa – is socially constituted and institutionally embodied but it is given life in the minds and bodies of individuals who differentially wrestle with transgressions and reinscribe hetero-norms (Todd Weiss 2001). Punishments for breaches in the heteronormative order are as likely to be punitive and corporal as they are to be lethal. Further, as these norms are the result of a continual social contestation, the collective pressure for violent action can be and is most often rejected (Cooney 2014), irrespective of differences in cultural expressions of heteronormativity. The social circulation of heteronormativity may be more visible in, and appear more endemic to, the control of some collectivities such as LGBTIQ communities and relationships. But the orientalist and Islamophobic conceptualisation of honour based violence as a product primarily of deviant cultural and religious practices obscures the heteronormative violence underlying honour based violence, and the links between HBV and other interpersonal violence. Honour based violence as a cultural artefact misses the collective familial exile – and subsequent homelessness and criminalisation (Robinson et al. 2014) – imposed as a form punishment against those who come out as non-heterosexual and non-cisgender. It also misses the explosive group and individual violence of heteronormative honour contests in the code of the streets of US cities (Anderson 1999), the favelas of South American cities (Dietrich and Schuett 2013) and the night-time economy in most Australian cities. It also misses similar cultural advance and panic defences made to justify the social imposition of heteronormative violence (De Pasquale 2002; Lloyd 2013; Tomsen and Crofts 2012; Westbrook and Schilt 2014). These expressions of heteronormative violence are produced in and through collective understandings of sexuality and gender irrespective of whether the violence unfolds as multiple-perpetrator domestic violence (Salter 2014), intrafamilial hate crime against gay men and lesbians (Asquith 2012a) or collective honour based violence. While policing services and criminal justice agencies are attempting to embed intelligence- and research-led practices into their repertoire, too often exceptional violence shapes the policies developed to remedy a perceived problem. To date, however, criminal justice responses to honour based violence have been stalled by policy contestations shaped by popular misrepresentations of both honour, and the violence perceived to be adhered to some forms of collective honour. When the gaze shifts beyond the aggrandised accounts of families killing their daughters, and the underlying normative frameworks are considered separate from the cultural expressions of those norms, it has been argued in this paper that honour based violence may be more productively considered through the lens of heteronormativity. This shift allows researchers to consider that the regulation and control of sexuality and gender is a communal act requiring collective maintenance irrespective of the specific cultural norms of any given society. Shifting the debate to practices of heteronormativity also enables us to make links between different forms of interpersonal violence and ensures we do not get mired in a particularly dangerous form of cultural relativism that feeds into and reinscribes Islamophobic and orientalist constructions of intrafamilial violence.

REFERENCES

1. AlyAandWalker D(2007) Veiledthreats:Recurrentc ulturalanxietiesinAustralia.Journal of Muslim Minority Affair27(2):203-14
2. Anderson E (1999) Code of the Street: Decency, Violence and the Moral Life of the Inner City. New York:
3. WW Norton & Company. Araji SK (2000) Crimes of honor and shame: Violence against women in non-Western and Western societies. Journal of Postmodern Criminology 8: 1-15.
4. Asquith NL (2012a) The Role of Verbal-Textual Hostility in the Regulation of Hate Crime. London: Metropolitan Police Service.
5. Asquith NL (2012b) Vulnerability and the art of complaint making. In Bartkowiak-Théron I and Asquith NL (eds) Policing Vulnerability: 147-162. Annandale, New South Wales: Federation Press.
6. Association of Chief Police Officers (ACPO) (2012) Honour Based Violence Strategy. London: Association of Chielf Police Officers of England, Wales and Northern Ireland.
7. Baker NV, Gregware PR and Cassidy MA (1999) Family killing fields: Honor rationales in the murder of women. Violence Against Women 5(2): 164-184.
8. Bartkowiak-Théron I and Asquith NL (2012) Vulnerable people policing: A preparatory framework for operationalising vulnerability. In Bartkowiak-Théron I and Asquith NL (eds) Policing Vulnerability: 278-292. Annandale, New South Wales: Federation Press.
9. Warner M (ed.) Fear of a Queer Planet – Queer Politics and Social Theory. Minneapolis, Minnesota: University of Minnesota Press.
10. Welchman L and Hossain S (2005) Introduction: ‘Honour’, rights and wrongs. In Welchman L and Hossain S (eds) ‘Honour’ Crimes, Paradigns and Violence against Women: 1-20. London and New York: Zed Books.
11. Westbrook L and Schilt K (2014) Doing gender, determining gender: Transgender people, gender panics, and the maintenance of the sex/gender/sexuality system. Gender & Society 28(1): 32-57.
12. Wittig M (1992) The Straight Mind and Other Essays. Boston: Beacon Press.

CHAPTER 11

MEASURING SCIENTIFIC MISCONDUCT—LESSONS FROM CRIMINOLOGY

Felicitas Hesselmann [1], Verena Wienefoet[1] and Martin Reinhart[1,2]

[1] Institute for Research Information and Quality Assurance, Schützenstraße 6a, 10117 Berlin, Germany; E-Mails: hesselmann@forschungsinfo.de (F.H.); wienefoet@forschungsinfo.de (V.W.)

[2] Humboldt-Universität zu Berlin, Institut für Sozialwissenschaften, Unter den Linden 6, 10099 Berlin, Germany

ABSTRACT

This article draws on research traditions and insights from Criminology to elaborate on the problems associated with current practices of measuring scientific misconduct. Analyses of the number of retracted articles are shown to suffer from the fact that the distinct processes of misconduct, detection, punishment, and publication of a retraction notice, all contribute to the number of retractions and, hence, will result in biased estimates. Self-report measures, as well as analyses of retractions, are additionally affected by the absence of a consistent definition of misconduct. This problem of definition is addressed further as stemming from a lack of generally valid definitions both on the level of measuring misconduct and on the level of scientific practice itself. Because science is an innovative and ever-changing endeavor, the meaning of misbehavior is permanently shifting and frequently readdressed and renegotiated within the scientific community. Quantitative approaches (i.e., statistics) alone, thus, are hardly able to accurately portray this dynamic phenomenon. It is argued that more research on the different processes and definitions associated with misconduct and its detection and sanctions is needed. The existing quantitative approaches need to be supported by qualitative research better suited to address and uncover processes of negotiation and definition.

INTRODUCTION

Studying a problem scientifically involves measuring things quantitatively [1]. Approaching a problem quantitatively promises to establish two foundations from which further research will be possible and justifiable. First a valid and reliable measurement shows the extent of the problem and helps estimating whether more scientific attention is warranted. Second, knowing the extent of a problem from scientific measurement is helpful in convincing other scientists and the public that more research on the problem is needed and should be supported (intellectually and financially). This strategy is as frequently used to introduce research on scientific misconduct as on many other topics. However, our argument will be that especially for research on scientific misconduct this strategy is problematic. It is problematic because statistics on misconduct are prone to biases well-known from Criminology, which find little attention in the literature on scientific misconduct. The measurement of the prevalence of retracted papers will serve as a case in point. The aim of this paper is, thus, to present an argument why measuring scientific misconduct quantitatively should not be first on our research agenda. Decades of research

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in Criminology and the Sociology of Deviance will serve as a background to support this argument.

MEASURING MISCONDUCT

Researchers seeking to appraise the prevalence of scientific misconduct try to do so by either looking at known instances of fraud and error, such as retracted articles, or by conducting surveys of scientists asking about their experience with misconduct. These strategies are comparable to the methods and resulting statistics in Criminology that are used to uncover the unknown "dark figure" of crimes in a population. Both the rate of retractions and the number of scientists admitting to or suspecting their colleagues of misconduct are subject to systematic errors. Because Criminology, with its long-standing tradition of investigating these errors [2], has produced notable insights into the problems associated with these methods, the knowledge gained by criminological research will serve as a reference point for our further argument. Calculating some form of a retraction rate to assess the prevalence of misconduct constitutes a prevailing line of research [3–13]. Many studies focus on data of retracted articles retrieved via databases such as the Web of Science, PubMed, and the like. As with a crime rate, these observed data do not accurately characterize the true rate of scientific misconduct [2,14], but are the joint outcome of a number of distinct data generating processes that each produce a characteristic distortion (see also [15,16]). For the retraction rates, there are at least four different processes that need to be separated: First, there is the actual occurrence of misconduct, the process many studies seek to explain or measure and that will result in fraudulent publications. Drawing an analogy to Criminology, this process represents the occurrence of criminal acts, which is at the heart of many theories trying to explain why some people resort to crime while others do not [2]. Second, there is the process of detection of misconduct. This process entails arising suspicions, allegations, and subsequent investigations and is comparable to the reporting of crimes to the police and the subsequent recording of these crimes by the police [15]. Thus, in addition to the crimes that form the official police statistics, there are infractions that are never detected by anyone, crimes detected but not reported, and crimes reported but not recorded by the police [14,15,17]. Hence, crimes officially recorded by the police pose only a fraction of all crimes committed. Moreover, the crimes detected and recorded might misrepresent the structure of incidents, because some crimes or forms of misconduct can be more difficult to detect, minor infringements might simply be shrugged off and show up nowhere in the data [14,15,18], or because some people are more successful at obscuring their deeds or intimidating possible witnesses. In science, there is evidence that many researchers who witness scientific misconduct refrain from reporting the incident [19–21]. To our knowledge, no research has investigated whether reported infractions differ systematically from unreported infractions. The third process is the retraction of a publication, which can be compared to the sentencing in criminal procedure. There are many factors that determine the outcome of a trial, of which the actual crime is only one. For the case of scientific misconduct, many factors associated with the decision to retract an article (or not) remain unclear: A number of studies show that many journals do not have clear policies for dealing with misconduct [22–25] and handle allegations inconsistently and mostly on a case-by-case basis [26–28]. Additionally, even though resources such as the Committee on Publication Ethics (COPE) guidelines do exist, a notable number of editors are unaware of these guidelines [27]. Even in cases when a finding of misconduct has been established by the Office of Research Integrity (ORI), some affected articles are neither retracted nor corrected [29–32]. Criminological research shows that the aggregate rate of incarceration in a country varies independently from the rate of crimes recorded by the police [33] and exhibits varying and mostly inconsistent patterns of correlation with other measures of crime [34]. It seems optimistic to assume that this would not hold for scientific misconduct and to conclude that the development of retractions was directly relational to the development of misconduct. Many researchers thus acknowledge the fact that there is no way of knowing whether for instance, retractions have risen over the past decades due to a rising prevalence of misconduct or a rising awareness and scrutiny. The fourth process that ultimately influences the records of retractions and is often overlooked is the way in which journals and databases identify retracted publications once an article has been retracted. To a lesser extent, data entry errors or misidentification also influence official police records [17], but rigid regulations and guidelines for record-keeping and considerable efforts for harmonizing international data (e.g., by EUROSTAT) make this problem less severe for criminological research as compared to research on scientific misconduct. There can be major inconsistencies as to how retracted articles are marked in the databases and whether they are marked at all. It is currently far from clear how many of the publications that were formally retracted will show up as "retracted articles" in one of the databases and how many remain to appear unmarked and "valid". Moreover, some journals may label a retraction by adding the term "retraction" to the title, while others may use different terms [29]. The number of retracted articles will, hence, vary greatly by the search term researchers use to locate retractions in the database. We can, thus, learn from Criminology that measuring rates of misconduct should separate at least four different processes related to misconduct. What we can measure depends on the actual occurrence of misconduct (1); the detection of misconduct (2); the sentencing of misconduct (3); and the recording of misconduct (4). The problem posed by the entanglement of these four processes reaches much further than just an underestimation of the prevalence of misconduct. As every process systematically influences the probability that a given instance of misconduct will be selected into the sample of studied retracted articles, this selection bias will result in biased estimates in a regression analysis [35]. Because these selection rules are currently unknown, both the size, as well as the direction, of this bias remain unknown, rendering the analyses mostly meaningless. The concurrence of these processes alone makes inferences about scientific misconduct extremely difficult, however, the current measurements also suffer from the fact that misconduct seems to be a moving target. In the absence of a generally valid definition of misconduct, both official institutions [36] and researchers apply a variety of definitions with differing scopes. Hence studies of scientific misconduct often do not measure the same thing. Looking at the analysis of retractions, researchers differ, e.g., as to whether they include plagiarism as a form of misconduct [7,11,37] or not, rather defining it as a form of error [12,38]. This inevitably results in differing numbers of retractions due to misconduct (see also [39]). Accordingly, numbers of retractions are not comparable across studies. Differing definitions of prohibited acts also trouble criminological research; hence many researchers consider it futile to compare raw crime rates across countries or even within a country over long periods of time. Growing (or declining) rates of retractions may not only be caused by greater (lesser) scrutiny or propensity to act on the part of reviewers and editors [6], but also by a changing range of behaviors that are considered to be misconduct. Because there is so little information on what behaviors exactly prompt journals to retract articles [5,28], we do not know if and how this definition has changed over time. In the current situation, given only the retractions as they appear in the databases it is impossible to untangle these influences to make any statement about the prevalence or structure of either misconduct, the risk of its detection, or the probability that detected misconduct is sanctioned. It is crucial to gain a better insight into these distinct mechanisms, both in the form of theoretical consideration and empirical evidence, before analyses based on the rate of retractions can be meaningful. As one reaction to the outlined shortcomings of official measures of crimes, criminological research has turned to self-report measures to gauge the true extent of criminal behavior [40,41]. This strategy is also applied when examining scientific misconduct [42,43]. The problems associated with self-report measures of delinquency continue to be of great interest in Criminology, as they may result both in under-reporting [17,40,41] and over-reporting of misbehavior [17,40]. Respondents might not want to tell the truth about their actual involvement in criminal behavior [40], or they might simply have forgotten about some acts [17]. Accurate recall of own behaviors poses a very serious problem in the research of misconduct using self-reports: Questions pertaining to only vaguely defined periods (i.e., "ever" [44]) or to very large time-spans (i.e., "during the last 10 years" [45]; "since entering medical school" [46]) will generally not produce very reliable or, for that matter, comparable answers ([41]; see [47] for a short overview). The difference between self-reports and official records furthermore varies, among others, by number of arrests [40,41], gender, and type of offense [41], hence producing systematically biased estimates. Additionally, for the case of self-reports, the problem of definition becomes crucial. The phenomenon of over-reporting arrests is commonly seen as resulting from respondents misleadingly counting all contacts with the police as arrests, even if they were not officially arrested [17,40]. Particularly, with regard to scientific misconduct, the absence of a stable definition might result in different people reporting the same act under different names. What might seem as falsification of data in one discipline, might be considered only sloppiness or even accepted practice in another discipline. This problem becomes obvious in the study by Titus, Wells, and Rhoades [20], where 24% of reported incidents did not actually meet the federal criteria of misconduct.

DEFINING MISCONDUCT

The problems associated with defining scientific misconduct thus need further elaboration. Following Becker that "deviant behavior is behavior that people so label" ([48]: p. 9) and that the simplest conception of deviant behavior is a statistical one which defines everything as different, which lies too far from the average [48], presents us with problems regarding definition on two different levels. One level is represented by observers of scientific misconduct (e.g., Science Studies or administrators) and the other by the daily practices of scientists. On both levels, labeling occurs with specific restrictions but not independent of one another. For the level of observation of misconduct the most severe restriction seems to lie in the fact that the labels for misconduct must come from scientific practice itself. Politicians, administrators or Science Studies scholars lack authority to label a specific scientific practice as deviant since only scientists themselves possess the necessary qualifications to do so. We are not talking about forms of misconduct that can be defined rather easily like outright plagiarism or fabrication here but about the many routine scientific practices that operate in a "grey zone". For such practices to become problematic and labeled as deviant the scientific community on the level of scientific practice has to act first and only then are we able to use the same label on the level of observation. To give an example, before certain forms of image manipulation could be labeled as misconduct, e.g., by journals, funding organizations or the ORI the scientists themselves had, first, to engage in these practices and then, second, to negotiate what the community rejects as too much "beautification" [49]. On the level of observation, definitions of deviance are thus always dependent on scientific practices and, in some sense, too late [50]. This aspect raises problems especially for research on misconduct because it cannot rely on an external source for distinguishing misconduct from regular behavior. Furthermore, labels for misconduct vary from one discipline to the next, presenting Science Studies with a difficult task in establishing a precise and generalizable terminology [49,51]. This may, in part, explain the variance in terminology in research on scientific misconduct presented above. When switching to the level of scientific practice and the ways scientists negotiate the permissible and non-permissible forms of behavior on a day-to-day basis, the picture becomes more complicated. Here, these problems of definition can pose restrictions for scientific practice in that the capacity to innovate may be affected. In Criminology a classical idea is that innovation often comes along with the rejection of institutional norms and the establishment of new forms of behavior which, over time and through negotiation, become permissible forms of behavior ([52]: p. 231). This is not to say that for innovation to occur norms must always be broken. However, there is a tradeoff between rigid control of behavior according to institutional norms and the possibilities for innovation. Especially for the case of science, where we expect scientists to deliver new and innovative knowledge, that we sometimes call "revolutionary", a context that does not allow for non-conformist approaches may stifle innovation. Only the resulting processes of negotiation separating the permissible from the non-permissible will establish what can count as new and regular facts, theories, and methods [53]. Again, this is not to say that plagiarism, fabrication, and falsification should be tolerated but rather that efforts to prevent or sanction misconduct may have the non-intended consequence of rendering certain forms of scientific innovation more unlikely. One can, thus, see that the problems associated with defining scientific misconduct lead to questions of labeling and ultimately to the processes of negotiation in different scientific fields about the boundaries of permissible practice. The dynamics of these processes and their specificity to certain research fields should deter from prematurely committing to overly precise or general definitions of scientific misconduct. Otherwise, research on scientific misconduct may suggest a more objective picture of scientific practice than it actually can deliver. One conclusion that can be drawn from this and from the experiences from Criminology is that more qualitative approaches are needed to analyze the processes of occurrence, detection, punishment, and recording of scientific misconduct in the places where these processes happen. The line drawn between scientific misconduct and accepted research practice can be seen as a divide not between two types of research but essentially between science and non-science. "Boundary work" [54] can be a useful concept to study the ways scientists separate the permissible from the non-permissible. Cases of (alleged) misconduct, like the one by Cyril Burt, a famous psychologist who was posthumously accused of having falsified and fabricated data, give a rich picture of the complex social processes that lead to questionable practices and the ways these are detected and labeled as misconduct. In the case of Burt, his studies on the cognitive capabilities of twins, arguing that intelligence is mainly determined by genes, seem to have highly unlikely samples and results. However, even within Psychology, consensus has not been forthcoming on whether this qualifies as misconduct or not. It seems that cases of possible misconduct can be highly contested because they stand for more than just the one case. They are always also cases where the limits of the cognitive authority of a discipline or science in general are questioned [55]. We would thus suggest to continue existing research from Science and Technology Studies dealing with boundary-work [54], which not only broaches the issue of scientific misconduct but also the demarcation between science and non-science ([56]: p. 16). This line of research, as well as the literature on retractions and scientific misconduct, could benefit from including criminological approaches.

CONCLUSIONS

Making use of an analogy to criminological research and criminal statistics, this article addressed the problem of confounding different processes that influence the final number of retractions that appear in scientific databases. Moreover it discussed the problem of changing and fuzzy definitions of misconduct that can hardly be represented by quantitative data. Because currently very little is known both about the outlined processes of occurrence, detection, punishment, and publication of misconduct and about the negotiation of definitions within the scientific fields, raw numbers of retractions or self-reported misbehaviors are not very telling. Every process systematically influences the probability that a given instance of misconduct will be selected into the sample of studied retracted articles and causes amongst others biased estimates. They will most likely paint an inaccurate picture both of the amount and the characteristics of misbehaviors and the scientists committing them. More research is needed to illuminate these intermediary processes. Because of the explorative nature of such research and because the objectives of research are dynamic and deeply embedded within structures of everyday action, reasoning, tacit knowledge and sense-making, the methods of choice at this point would have to be qualitative (see, e.g., [57–59]). The definitions of misconduct, for instance, cannot be addressed by imposing pre-established definitions on the phenomenon in question, as is necessary in statistical analyses, but call for an open-ended approach that aims at discovering rather than confirming the various meanings of the label "misconduct". Qualitative research can deliver an empirically grounded overview that should serve as a starting point for further quantitative analyses. Moreover we argue to altogether shift the research focus to address the processes of negotiation at the various levels—in the scientific community (micro), in institutions like universities and journals (meso), and in more general public discourses (macro)—more prominently. Instead of being solely conceptualized as error or noise that will taint quantitative analyses and that more research simply seeks to partial out, it could be noted that, just like the processes influencing criminal statistics, they are "an aspect of social organization and cannot, sociologically, be wrong." ([14]: p. 734). Social processes that shape definitions of scientific misconduct are not just sources of error or noise for researchers who are trying to measure misconduct but should be seen as an important resource and topic for further research. In fact, it is these very processes of negotiating definitions and boundaries of scientifically correct and scientifically fraudulent (or erroneous) behavior that lie at the heart of the scientific enterprise and therefore should be a major focus of the study of scientific misconduct [54,60]. An analysis of these processes should not simply aim at producing more reliable statistics in the end, but seek to shed light on the structures and mechanisms of scientific knowledge production.

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REFERENCES

1. Porter, T.M. Trust in Numbers; Princeton University Press: Princeton, NJ, USA, 1996.
2. Biderman, A.D.; Reiss, A.J. On Exploring the "Dark Figure" of Crime. Ann. Am. Acad. Pol. Soc. Sci. 1967, 648, 1–15
3. Budd, J.M.; Sievert, M.; Schultz, T.R. Phenomena of retraction. Reasons for retraction and citations to the publications. JAMA 1998, 280, 296.
4. Davis, P.M. The persistence of error: A study of retracted articles on the Internet and in personal libraries. J. Med. Libr. Assoc. (JMLA) 2012, 100, 184–189.
5. Decullier, E.; Huot, L.; Samson, G.; Maisonneuve, H. Visibility of retractions: A cross-sectional one-year study. BMC Res. Notes 2013, 6, doi:10.1186/1756-0500-6-238.
6. Fanelli, D. Why growing retractions are (mostly) a good sign. PLoS Med. 2013, 10, e1001563.
7. Fang, F.C.; Steen, R.G.; Casadevall, A. Misconduct accounts for the majority of retracted scientific publications. Proc. Natl. Acad. Sci. USA 2012, 109, 17028–17033.
8. Foo, J.Y. A Retrospective Analysis of the trend of

retracted publications in the field of biomedical and life sciences. Sci. Eng. Ethics 2011, 17, 459–468.
9. Furman, J.L.; Jensen, K.; Murray, F. Governing knowledge in the scientific community: Exploring the role of retractions in biomedicine. Res. Policy 2012, 41, 276–290.
10. Grieneisen, M.L.; Zhang, M.; von Elm, E. A Comprehensive Survey of Retracted Articles from the Scholarly Literature. PLoS One 2012, 7, e44118.
11. Nath, S.B.; Marcus, S.C.; Druss, B.G. Retractions in the research literature: Misconduct or mistakes? Med. J. Aust. 2006, 185, 152–154.
12. Redman, B.K.; Yarandi, H.N.; Merz, J.F. Empirical developments in retraction. J. Med. Ethics. 2008, 34, 807–809.
13. Steen, R.G. Retractions in the scientific literature: Is the incidence of research fraud increasing? J. Med. Ethics 2011, 37, 249–253.
14. Black, D.J. Production of Crime Rates. Am. Sociol. Rev. 1970, 35, 733–748.
15. Boivin, R.; Cordeau, G. Measuring the impact of police discretion on official crime statistics: A research note. Police Q. 2011, 14, 186–203.
16. O'Brien, R.M. Police productivity and crime rates: 1973–1992. Criminology 1996, 34, 183–207.
17. Kirk, D.S. Examining the divergence across self-report and official data sources on inferences about the adolescent life-course of crime. J. Quant. Criminol. 2006, 22, 107–129.
18. Agnew, R.; Brezina, T. Juvenile Delinquency: Causes and Control, 4th ed.; Oxford University Press: New York, NY, USA, 2012.
19. Fanelli, D.; Tregenza, T. How Many Scientists Fabricate and Falsify Research? A Systematic Review and Meta-Analysis of Survey Data. PLoS One 2009, 4, e5738.
20. Titus, S.L.; Wells, J.A.; Rhoades, L.J. Repairing Research Integrity. Nature 2008, 453, 980–982.
21. Pryor, E.R.; Habermann, B.; Broome, M.E. Scientific misconduct from the perspective of research coordinators: A national survey. J. Med. Ethics 2007, 33, 365–369.
22. Atlas, M.C. Retraction policies of high-impact biomedical journals. J. Med. Libr. Assoc. (JMLA) 2004, 92, 242–250.
23. Bosch, X.; Hernández, C.; Pericas, J.M.; Doti, P.; Marušić, A.; Manzoli, L. Misconduct policies in high-impact biomedical journals. PLoS One 2012, 7, e51928.
24. Resnik, D.; Peddada, S.; Brunson, W. Research misconduct policies of scientific journals. Account. Res. 2009, 16, 254–267.
25. Resnik, D.; Patrone, D.; Peddada, S. Research Misconduct Policies of Social Science Journals and Impact Factor. Account. Res. 2010, 17, 79–84.
26. Enders, W.; Hoover, G.A. Whose line is it? Plagiarism in economics. J. Econ. Lit. 2004, 42, 487–493.
27. Wager, E.; Fiack, S.; Graf, C.; Robinson, A.; Rowlands, I. Science journal editors' views on publication ethics: Results of an international survey. J. Med. Ethics 2009, 35, 348–353.
28. Williams, P.; Wager, E. Exploring Why and How Journal Editors Retract Articles: Findings from a Qualitative Study. Sci. Eng. Ethics 2013, 19, 1–11.
29. Elia, N.; Wager, E.; Tramèr, M.R.; Wray, K.B. Fate of Articles That Warranted Retraction Due to Ethical Concerns: A Descriptive Cross-Sectional Study. PLoS One 2014, 9, e85846.
30. Neale, A.V.; Dailey, R.K.; Abrams, J. Analysis of Citations to Biomedical Articles Affected by Scientific Misconduct. Sci. Eng. Ethics 2010, 16, 251–261.
31. Neale, A.V.; Northrup, J.; Dailey, R.; Marks, E.; Abrams, J. Correction and Use of Biomedical Literature Affected by Scientific Misconduct. Sci. Eng. Ethics 2007, 13, 5–24.
32. Resnik, D.B.; Dinse, G.E. Scientific retractions and corrections related to misconduct findings. J. Med. Ethics 2012, 39, 46–50.
33. Lappi-Seppälä, T. Penal policy in Scandinavia. In Crime, Punishment, and Politics in Comparative Perspective; Tonry, M., Ed.; The University of Chicago Press: Chicago, IL, USA, 2007; Volume 36, pp. 217–295.
34. Lappi-Seppälä, T. Explaining imprisonment in Europe. Eur. J. Criminol. 2011, 8, 303–328.
35. Heckman, J.J. Sample Selection Bias as a Specification Error. Econometrica 1979, 47, 153–161.
36. Macilwain, C. Scientific Misconduct: More Cops, More Robbers? Cell 2012, 149, 1417–1419.
37. Mongeon, P.; Larivière, V. The Collective Consequences of Scientific Fraud: An Anlysis of Biomedical Research; Gorraiz, J., Ed.; In Proceedings of the International Conference on Scientometrics and Informetretrics; Austrian Institut of Technology: Vienna, Austria, 2013; pp. 1897–1899.
38. Steen, R.G. Retractions in the scientific literature: Do authors deliberately commit research fraud? J. Med. Ethics 2011, 37, 113–117.
39. Bilbrey, E.; O'Dell, N.; Creamer, J. A novel rubric for rating the quality of retraction notices. Publications 2014, 2, 14–26.
40. Krohn, M.D.; Lizotte, A.J.; Phillips, M.D.; Thornberry, T.P.; Bell, K.A. Explaining Systematic Bias in Self-Reported Measures: Factors that Affect the Under- and Over-Reporting of Self-Reported Arrests. Justice Q. 2013, 30, 501–528.
41. Maxfield, M.G.; Luntz Weiler, B.; Spatz Widom, C. Comparing Self-Reports and Official Records of Arrest. J. Quant. Criminol. 2000, 16, 87–110.
42. Martinson, B.C.; Anderson, M.S.; de Vries, R. Scientists behaving badly. Nature 2005, 435, 737–738.
43. Böhmer, S.; Neufeld, J.; Hinze, S.; Klode, C.; Hornbostel, S. Wissenschaftlerbefragung 2010. Forschungsbedingungen von Professorinnen und Professoren in Deutschland, iFQ-Working Paper No.8; Institut für Forschungsinformation und Qualitätssicherung: Bonn, Germany, 2011.
44. List, J.; Bailey, C.; Euzent, P.; Martin, T. Academic

economists behaving badly? A survey on three areas of unethical behavior. Econ. Inq. 2001, 39, 162–170.

45. Gardner, W.; Lidz, C.W.; Hartwig, K.C. Authors' reports about research integrity problems in clinical trials. Contemp. Clin. Trials 2005, 26, 244–251.
46. Geggie, D. A survey of newly appointed consultants' attitudes towards research fraud. J. Med. Ethics 2001, 27, 344–346.
47. Schwarz, N. Cognitive aspects of survey methodology. Appl. Cogn. Psychol. 2007, 21, 277–287.
48. Becker, H.S. Outsiders: Studies in the Sociology of Deviance; Free Press: New York, NY, USA, 1973.
49. Frow, E.K. Drawing a line: Setting guidelines for digital image processing in scientific journal articles. Soc. Stud. Sci. 2012, 42, 369–392.
50. Vaughan, D. The Dark Side of Organizations: Mistake, Misconduct, and Disaster. Annu. Revie. Sociol. 1999, 25, 271–305.
51. Knorr-Cetina, K. Epistemic Cultures: How the Sciences Make Knowledge; Harvard University Press: Cambridge, MA, USA, 1999.
52. Merton, R.K. Social Theory and Social Structure; Free Press: New York, NY, USA, 1968.
53. Collins, H.M. Changing Order: Replication and Induction in Scientific Practice; University of Chicago Press: Chicago, IL, USA, 1992.
54. Gieryn, T.F. Boundary-work and the demarcation of science from non-science: Strains and interests in professional ideologies of scientists. Am. Sociol. Rev. 1983, 48, 781–795.
55. Gieryn, T.F.; Figert, A.E. Scientists protect their cognitive authority: The status degradation ceremony of Sir Cyril Burt. In The Knowledge Society; Böhme, G., Stehr, N., Eds.; Sociology of the Sciences; Springer: Dordrecht, The Netherlands, 1986; pp. 67–86.
56. Gieryn, T.F. Cultural Boundaries of Science: Credibility on the Line; University of Chicago Press: Chicago, IL, USA, 1999.
57. Flick, U. Qualitative Sozialforschung: Eine Einführung; Rororo Rowohlts Enzyklopädie; Orig.-Ausg., vollst. überarb. und erw. Neuausg; Rowohlt-Taschenbuch-Verl.: Reinbek bei Hamburg, Germany, 2007; Volume 55694.
58. Denzin, N.K.; Lincoln, Y.S. The SAGE Handbook of Qualitative Research, 3rd ed.; Sage Publications: Thousand Oaks, CA, USA, 2005.
59. King, G.; Keohane, R.O.; Verba, S. Designing Social Inquiry: Scientific Inference in Qualitative Research; Princeton Paperbacks; Princeton University Press: Princeton, NJ, USA, 1994.
60. Pinch, T.J. Normal Explanations of The Paranormal: The Demarcation Problem and Fraud in Parapsychology. Soc. Stud. Sci. 1979, 9, 329–348.

CHAPTER 12

CONFIDENTIALITY IN CRIMINOLOGICAL RESEARCH AND OTHER ETHICAL ISSUES

Marvin E. Wolfgang

A. Turk, Legal, Polemical, and Empirical Definitions of Criminality (paper presented at the Conference on Ethics, Public Policy and Criminal Justice, Center for the Study of Values, University of Delaware, Newark, Delaware, Oct. 23, 1980).

INTRODUCTION

This article is intended to stimulate discussion of ethical issues involved in research in criminology and criminal justice. I will touch on related issues bearing on the teaching of those subjects as well, for many who face moral dilemmas in acquiring knowledge also face such dilemmas in attempting to impart knowledge. Criminology is the systematic, scientific study of crime, criminals, and society's reaction to both. The belief system of the canons of science inheres in my reference to research. The acquisition of knowledge, for its own sake or for some other utilitarian end, is achieved by means of relatively detached and dispassionate perspectives. I suppose that in Austin Turk's' terms, this approach is predominantly empirical, although not necessarily devoid of or insensitive to the legal or polemical definitions of reality. Applied in its common sense to the actions of the professional researcher in criminology, the term "ethics" refers to the set of principles governing conduct. I am applying that term to the professional researcher in criminology. Some of the issues I shall raise are also issues in other disciplines of research and teaching; some are peculiarly specific to criminology; all, I am asserting, are ethical issues. But some observers may challenge their ethicality and claim instead that these may be only dilemmas of decisions that have no right or wrong, good or bad quality. I think they do, else I would not raise them. The most common and classical issues have been addressed many times in essays, in litigation, and in codes of ethics drawn up by professional organizations like the American Sociological Association and the American Psychological Association, to which codes I shall refer later. The classical issues relate to protection of human subjects, invasion of privacy, confidentiality of records and interviews, accessibility to data, and immunity of researchers from prosecution. I will expand on one or two of these familiar issues and raise others that are less widely discussed.

RESEARCH STYLES

Research style raises a variety of classical ethical issues. Four episodes of court cases involving social scientists illustrate the serious issues of legal protection of rights of investigators to protect their sources of information and of immunity from being questioned by public agencies. Case /.2 In November, 1972, Samuel Popkin, a Harvard political scientist, became the first American scholar jailed for not revealing his confidential sources of information about the unauthorized release of the Pentagon Papers. When he declined to identify his sources to a federal grand jury before which he appeared for ten hours, he spent one week in jail until the jury was dismissed. Case 2. 3 A private research firm conducted a major social experiment designed to measure the impact of various negative income tax plans on labor force behavior

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and other activities of low income families in New Jersey for the Office of Economic Opportunity (OEO). Respondents filled out detailed questionnaires with information about their income, expenditures, and living arrangements after researchers had promised absolute confidentiality. The Mercer County prosecutor subpoenaed the research firm to submit individual case records to ascertain which recipients of federal aid programs had received illegal double payments from New Jersey Welfare. A U.S. senator crusading against welfare reform demanded individual files from researchers, and the Government Accounting Office wanted the same for reanalysis of the data. Researchers convinced some of these agencies that they did not need identified case histories and substituted the aggregate data instead.

Researchers had, however, no legal grounds for denying the requests if the government agencies insisted on this information. Case 3.4 A commission appointed by the Governor of New York to investigate the riot and deaths which occurred at Attica Prison in 1971 interviewed thousands of witnesses under a pledge of confidentiality and published its report. The New York State Attorney General's office, which had been investigating criminal liability resulting from the riot, issued a subpoena for the commission's complete records. A trial court granted the commission's motion to quash the subpoena. However, in a future criminal trial, another court might compel disclosure of a witness' statements. Case 1.5 Lewis Yablonsky, a criminologist/practitioner, while testifying in defense of one of his main informants in his hippy study, was asked by the judge nine times if he had witnessed the informant smoking marijuana. Yablonsky refused to answer on fifth amendment grounds. Although he was not legally sanctioned, he said the incident was humiliating and suggested that researchers should have guarantees of immunity. Along these same lines, I have a more personal example, fortunately not one that has gone, or is likely to go, to court.6 Deinqueny in a Birth Cohort7 was a study of approximately ten thousand boys born in 1945 who lived in Philadelphia from ages 10 to 18. No ethical problems in collecting and analyzing data were encountered, for we had complete cooperation from the Board of Education, the Archdiocese, and private schools with regard to access to school records. Moreover, the Philadelphia Police Department and Selective Service granted us permission to compare names and birthdates in order to determine which boys who registered for selective service had a delinquency record. In 1970 we obtained a research grant from the National Institute of Mental Health (NIMH) to study a ten percent sample of the birth cohort and to interview those members we could locate. After diligent investigative work we located approximately sixty percent of the sample and asked them questions requiring interviews of an hour or more. None whom we found refused to be interviewed. We had no informed consent form in those days. We asked many questions concerning their education, occupation, family, military service, gang memberships, and other personal history. Of special interest to us in analyzing their histories up to age twenty-six were self-reporting of both delinquencies prior to age eighteen and crimes committed from ages eighteen to twenty-six. We asked if they had committed any of thirty offenses before and after age eighteen and whether the crimes they committed resulted in their arrest.8 Many of the young men revealed to the interviewers that they had committed a variety of crimes. This study did not mark the first use of the self-report technique. 9 However, most previous studies in the United States had drawn subjects from juniors and seniors in high school who reported in mostly anonymous questionnaires or protected interviews relatively innocuous juvenile status offenses such as stealing from their mothers' pocketbooks, truancy, or petty larceny. Even the relatively sophisticated studies conducted in Denmark, Norway, and Sweden dealt mostly with petty offenses. The birth cohort follow-up in Philadelphia explored a much wider range of criminal offense behavior, including serious crimes such as robbery, burglary, rape, and even criminal homicide.

Many of the young men in the Philadelphia study revealed to the interviewers that they had committed a variety of crimes. Four respondents informed us that they had been involved in criminal homicideone before reaching eighteen-and seventy-five respondents claimed to have committed forcible rapes. Neither these offenses nor the other less serious admitted offenses resulted in any respondent's arrest. There are several major ethical, scientific, and legal issues involved in the collection of these offense data:

Should we have had written informed consent?

Each cohort member who was located for an interview generally cooperated. Interviews were conducted in 1971, a period just prior to the intensive concern for research using human subjects, prior to the requirement of the Department of Health, Education and Welfare that research proposals contain forms about such research, before university committees in research ethics were established, and before screening commitees at HEW were functioning formally. Interviewers informed members orally that responses would be strictly confidential, used only for research purposes, and analyzed in the aggregate, with no single individual identified or identifiable in the final research report. We interpreted cooperation in replying to questions, many of which were personal and sensitive, as consent to the uses we announced at the outset. Laws on privacy, informed consent, confidentiality, and accessibility to records were yet undeveloped. Nevertheless, there were sound reasons against requesting written consent. Consider the psychology of the interview. Although researchers generally contacted cohort subjects first by mail or telephone, sometimes initial contact was at the subject's front door. In that event had the interviewer asked for written consent, the subject might have wished to be more fully apprised of the mechanics and ultimate use of the interview. For example, he could have asked to see the interview schedule. Compliance with such a request would have nullified the advantages of proceeding gradually from neutral to sensitive questions. It is impossible to know how many refusals such a process would have promoted. Moreover, the form of the written consent could or could not have contained reference to the refusal of the research staff to reveal information to the police. We did not know then and still do not know whether a court order could indeed impound the records, whether any member of the staff who had access to specific information could suffer prosecution and imprisonment for protecting records, or whether any effort to conceal data would be successful. Without the reference, the form would have been inadequate and therefore misleading. With the reference, without admitting that one or more of these agencies might have the authority to confiscate, or impound our records, the form again would have been misleading. If the form admitted that justice authorities could impound our records refusals to participate would have been so abundant that the project would have been impossible. Either lies or agnostic replies would have been the interviewees' responses to a variety of hypothetical questions. The former would be unethical; the latter would invite refusals to be interviewed. On the other hand, the oral request for participation in a sociological research maintained a minimum of formality, permitted the respondent to refuse to answer any specific question (of course, a written consent does not preclude specific question refusals), and permitted employment of the pretested question positioning intended to maximize the likelihood of response. The result was rapport and cooperation.

Should the Results of the Interview be Published?

Our Center unequivocally supports publication of the results with the protections announced in letters and orally by the interviewers. No single individual will be identified or identifiable and all data will be aggregated. Undeniably, publication in professional journals or books produces a new layer of visibility of the research. Newspapers and other media summarizing our earlier original birth cohort study thereby made the police and courts aware of the character of the study. The same certainly will occur with publication of the follow-up reporting not only many of the personal, sociopsychological variables in the lives of cohort members, but also the self-reported delinquencies and crimes. At that point, police and other agencies could exert pressure on the research team" at the Center to reveal the names of those cohort members who informed us of their crimes. The danger of publication would then become a function of the degree to which threats of such pressure are real. We still intend to publish, under the assumptions that (1) pressure to disclose names is an unlikely event, and (2) our Center can effectively function as a buffer between our research subjects and the acquisition of our files by outside persons.

Are Members of the Research Staff Accessories after the Fact?

Having obtained information about criminal offenses from identified subjects, the researchers stand in a posture of harboring information, if not hiding individuals or abetting escape. The researcher does not have the mantle of the clergy or of medical practitioners for protection. Probably the "crime," if any here, is misprision of a felony, which is obsolete in most jurisdictions but still an offense under federal law. The traditional research response to the charge of being an accessory is that he or she is a neutral, disinterested recipient of data collected only for scientific research purposes. The purpose for obtaining the information is to aid the scholarly enterprise and to provide guidance for a rational social policy. Data obtained that could have direct untoward consequences to subjects are not the possession of the state but of science. Research is not designed to treat, help, or harm individual subjects, and the social scientist is not a representative of any branch of government with an obligation to execute certain police or judicial duties. It may be argued that technically he ir, but the social definers do not perceive or define him as such. The scientist might contend that he is not even sure that the information given him is valid or correct; the rebuttal is that it gives cause for official investigation.

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Unwillingness to report reflects an uncompromising respect for the conditions of scientific research that explicitly provide for confidentiality. Moreover, the research neither helps nor hinders the police and prosecutory functions of society for were it not for the scientist's inquiry, the information would not be available to authorities anyway.

Is there, Nonetheless, an Obligation to society and Criminal Justice to report this Knowledge, Transcending the ethics of Confidentiality or the Interests of science?

Putting aside questions of legality, this question asks whether the scientific researcher has broader moral responsibilities than his research perimeters. Does the absence of written informed consent minimize the impropriety of revealing criminal behavior by respondents, or would revelation be ethically worse than not revealing the information? The scientist may be viewed as ethically accountable only to the myopic limits of his scientific vision. Over its long history, science has created codes of conduct possessing deep traditions. Thus, in the Philadelphia study the scientist values protecting the individual used for his research above the interests of capture for criminal justice. Society until now has generally permitted the scientist his priority allocation. Again, the scientist seeks neither to help nor harm the individual respondent per se, nor to help nor hinder the criminal justice system. His role is neither benevolent nor malevolent. If a medical laboratory research project unrelated to cancer research inadvertently discovered that a volunteer subject had cancer, the researcher might feel rightly obligated to inform the subject, because such information might save a diseased person's life. Many other examples are imaginable in which revelations to the research subject and to others could have beneficial effects. Is it conceivable that a piece of information about a research subject may be discovered that would be harmful to him but of considerable benefit to many others? If so, no such situations exist in the criminological research under discussion. It may be said that if any researcher doubts the moral obligation to maintain confidentiality, he should abstain from this kind of research. He would thereby satisfy his sense of ethics that lie outside the framework of those of science.

What Should A Research Center Do If The Police, Prosecutor, Or Court Requests The Files?

Our position is clear: we would not honor the request. We would make every effort, short of using aggressive force, to prevent the files from being examined or taken from the Center's premises. We would, if necessary, enter into litigation to protect the confidentiality of the records. There is no United States Supreme Court case affirming or rejecting this position. Even if the staff is not viewed as accessory after the fact or as obstructing justice for refusing to identify subjects, a court may still hold staff members in contempt if they do not submit the files to examination or impounding upon a court order. Whether a research staff is immune from contempt remains undecided in the caselaw. Nevertheless, were our Center's staff declared by the courts as not immune from prosecution, we would still maintain a posture of unwillingness to reveal names.

Can A Research Staff Develop A Technique That Can Provide A Fail-Safe Protection Against Identification Of Individual Subjects In A Research File?

There are techniques that surely would delay, if not forever prevent, subject identification. Researchers might use computer tapes on cards that show only identification numbers representing names for the file that is to be analyzed statistically in the aggregate.' 2 Number-name combinations might be on a separate computer tape which can be deposited in a bank account in a foreign country where accounts are secret. Although no law prohibits this procedure, the account owner (in our example the Center) may still be subject to charges of contempt for failing to produce the tape.'3 Nevertheless, considering the paramount purpose of confidentiality, such a process is both pragmatically expedient and ethical. However researchers decide to catalogue their data, in studies such as that conducted in Philadelphia they should not record the names of victims or other identifying facts about specific crimes unless absolutely essential for the research. Without such details, the files are less useful to law-enforcement officials.

PUBLIC POLICY STATEMENTS

Another ethical issue pertains to the issuance of public or social policy statements. Increasingly, public decisionmakers are listening to social scientists in general and criminologists in particular. Even if these officials do not always take our advice, they often request our testimony. The efficacy of such testimony is unclear. Having been involved in some of these dramas, I have felt keenly the pressure of considering the ethics of presenting scientific evidence vulnerable to criticism before bodies that intend to act on the testimony. Scientific evidence is presentable in a relatively bland, descriptive fashion without explicit leaps to interpretation beyond the data. Absent interpretation, however, an audience usually will receive the data in ways that conform to their own predilections. If the researcher offers his own conclusions, he should do so with a clearance to his conscience that he has done his best work with the available material at his command. If the testimony bears on social policy, the researcher must struggle with determining when a Sumnerian (William Graham Sumner) description moves to a Wardian (Lester F. Ward) prescription. The scientific issues of reliability and validity can reach the threshold of an ethical issue when statements relating to crime and punishment could affect the lives of many thousands of persons: how many replications of one good study are required for firm prescriptive conclusiveness? This and similar questions continue to disturb the scientific community, especially in light of conflicting and contradictory findings on such topics as deterrence, incapacitation, plea bargaining, and the death penalty. If one has a posture on a particular policy issue and the scientific evidence is equivocal, should the researcher avoid offers to testify? Is self-imposed silence an ethically acceptable position to science? I think not, even if there is fear that the presentation of findings may be abusively employed or distorted in interpretation by others. Allow me again to give an example from my own research experience on the topics of race, rape, and the death penalty. Science deals with probabilities, not certainties. At what point a probability state ment can become-morally prescriptive is not clear, despite our reliance on tests of statistical significance. In one instance research was performed to determine whether there was dirential sentencing based on race of the offender and victim. When the carefully collected data revealed differential treatment by race, I finally concluded in official judicial testimony that such a differential was inferentially diLcrminatoy. The difference between these two terms--"differential" and "discriminatory"-signified a prescriptive leap.' 5 Most people's attitudes about the death penalty rest fundamentally upon one or more ethical assertions. Teachings from social or behavioral science may be a factor in these determinations, but research from these disciplines is often selectively used to buttress pre-existing beliefs and moral postures. The judiciary, especially at the federal level, has increasingly admitted social science research in testimony by expert witnesses and in Supreme Court briefs. Over ten years ago, Michael Finkelstein traced the history of judicial reasoning in jury discrimination cases and showed that for some time the Supreme Court had been reasoning according to its intuition of probabilities.' 6 Finkelstein argued that statistical support should replace intuition in judicial reasoning. The Court later cited him in its Whitus v. Georgia 1 7 decision which, as de Cani noted,"' marked the beginning of the Court's "willingness to listen to a probabilistic argument that the group from which the jury was chosen was not a representative cross-section of the community." My own initial involvement in the presentation of social science research was in the Maxwell v. Birhop' 9 case in the Arkansas district court, which involved a black convicted of raping a white and sentenced to death. Research had demonstrated that out of twenty-eight legal and extralegal variables concerned with the offense of rape, the offender, and the victim, the only variable that emerged as overwhelmingly statistically significant was that of blacks raping whites, relative to the sentence of death. Now, permit me to refer to my previous account: I was asked under cross-examination if I had ever been in Arkansas before my appearance as an expert witness for the Legal Defense Fund. Iresponded in the negative. The Assistant Attorney General used this reponse to imply that I did not fully understand the social conditions or the litigation processes in Arkansas. It was further brought out under crossexamination that Garland County, in which Maxwell had been tried, was not included in the survey sampling of Arkansas counties. The state argued that failure to include Garland County was a fatal error, that the generalized conclusions drawn from the Arkansas rape-death penalty study could not apply to the Maxwell case. Based upon my research, this conclusion was absurd. We had taken a carefully drawn random sample of counties in Arkansas, as well as in the other ten Southern states, without attention to the counties in which specific cases for litigation may finally occur. Our primary interest had been to determine whether there had been a customary, institutionalized, systematic process of differential sentencing to the death penalty based on race; hence, the specific litigated cases were of no consequence to our random selection. If we had drawn our sample counties purposefully to pick counties in which cases like Maxwell had occurred, we would have destroyed the statistical randomness of the selection of counties and would also have distorted the character of the scientific inquiry. Yet, this fact and this kind of reasoning had little impact on either Assistant Attorney General Fletcher Jackson or Judge J. Smith Henley. The social scientist who becomes involved in testifying and displaying research evidence must also be prepared for opinions that contravene the traditional specific canons of response. For example, Judge Henley accepted my conclusion that sentencing patterns of Arkansas Negroes convicted of raping white victims "could not be due to the operation of the laws of chance." He accepted the conclusion that a black convicted of raping a white woman had about a 50 per cent chance of receiving a death sentence, and that any man convicted of raping a woman of his own race stood only a 14 per cent chance. But Judge Henley thought the difference could be explained on grounds other than race, and contended that the imposition of the death sentence might be due to some factor for which statistical analysis had not been possible or presentable. He announced in his decision that the "variables which Dr. Wolfgang considered are objective. . . broad in instances. . . imprecise. . . .Discrimination moreover is a highly subjective matter [and might not] be detected by a statistical analysis . . . .Statistics are elusive things at best, and it is a truism that almost anything can be proven by them." These are common assertions made by persons who are not social scientists trained in statistics. Yet, the social scientist who becomes involved in testifying in this area must be prepared for arguments and decisions that are political or that reside in legal vicissitudes outside the framework of social science inquiry and evidence.20 Upholding the conviction in Maxwell, the United States Court of Appeals for the Eighth Circuit 2' acknowledged the extensive and sophisticated research, yet concluded that "nothing has been presented in Maxwell's case which convinces us, op causes us to seriously wonder, that, with the imposition of the death penalty, he was the victim of discrimination based on race." The court's resistance to social science research is blatant: Whatever value [the statistical] argument may have as an instrument of social concern, whatever suspicion it may arouse with respect to southern interracial rape trials as a group over a longer period of time, and whatever it may disclose with respect to other localities, we feel that the statistical argument does nothing to destroy the integrity of Maxwell's trial. Although the investigation and study made by Professor Wolfgang in the summer of 1965 is interesting and provocative, we do not, on the basis of that study, upset Maxwell's conviction and, as a necessary consequence, cast serious doubt on every other rape conviction in the state courts of Arkansas.

The court was unwilling both to accuse a state of discriminatory conduct in sentencing proportionately more blacks than whites to the death penalty over a twenty-year period and to acknowledge that Maxwell may have been a victim of such a practice, despite its statement that "we do not say that there is no ground for suspicion that the death penalty for rape may have been discriminatorily applied over the decades in that large area of states whose statutes provide for it. There are recognizable indicators of this."'23 Michael Meltsner recounted in his book Cruel and Unusual that "if race were not related to capital sentencing in Arkansas, the results observed in the twenty-year period study could have occurred fortuitously in two (or less) twenty-year periods since the birth of Christ. '24 Juxtapose this statement against the court's use of such phrases as "we do not say that there is no ground for suspicion" and "there are recognizable indicators." How different the language of science and the court! A probability of 0.02 becomes "recognizable indicators." Although recognizing social science research in its 1976 death penalty decisions, the Supreme Court was careful to minimize its use.25 As Hugo Bedau noted: One of the most galling features of the Gregg, Projitt, and jurek decisions is the way the court reacted, or rather failed to react, to the social science research published in the years since Furman. With perhaps one exception, the court passed it by without significant acknowledgement, discussion, or rebuttal. This was especially conspicuous in the Gregg ruling. . . .For social scientists and jurists who had expected that this round of death penalty cases would find the Supreme Court resting its decision, at least in part, on the results of careful and relevant empirical investigations, the Gregg decision can be viewed only as a bitter disappointment. Four years ago, in his dissent in Furman, Chief Justice Burger complained of the 'paucity' of evidence relied on by the majority ruling in favor of abolition. This year's ruling in Gregg rests on even less. Until the Supreme Court can come to grips with probabilistic and inferential statistics, intuitive, clinical, and vague judgments will continue, as will ethical decisions.

EVALUATION RESEARCH AND THE P < .05

Norval Morris raised an interesting question about the "burglar's nightmare. '27 We ordinarily think of random representative samples or assignments as scientifically acceptable, even ethically proper. But suppose burglars alike in all important particulars were assigned randomly to experimental and control groups, the experimentals to be released six months or a year earlier than they ordinarily would be and the controls at their regularly appointed time. How would the burglar assigned to the control group respond? He could say that it is unjust and unethical to be put into the control group and that he deserves to be released early also. Can science, for the sake of determining whether early release produces no more recidivism, justify retention of some subjects in prison? The burglar says no, the scientist says yes. Evaluation research presents a whole series of ethical issues, far more than we can explore here. But there is at least one overriding commentary I wish to make. Scientists and researchers have an ethical obligation to know about the most robust and sophisticated research techniques available, else their findings may be faulty and fall far short of a conclusion on the basis of the best available evidence. The newest and most complex techniques are not always applicable to certain kinds of data; hence, the researcher should seek to fit his analyses to the quality of his material. Moreover, as probability statistics have become increasingly admitted into litigation both in civil and criminal proceedings, some judges have come to accept the P value of .05 as nearly sacred in determining what is acceptable and what is unacceptable science. Neither scientists nor judges should be so rigorously wedded to the notion of .05 to ignore consistent patterns and trends of P values a bit more than .05. The ethics of our findings are not bound by an invariable obedience to such limited notions of reality.

RESEARCH FUNDS

The source of research funds may not pose a moral dilemma for many recipients. Nevertheless pressure to adopt unpalatable suggestions, unmanageable time constraints, or politicization of the funding agency may put into question the ethics of accepting funds from that source. It is unlikely that the researcher will seek or accept funds from a group whose views he considers unacceptable or intolerable, irrespective of the imposition of those views on the research. Some researchers would not accept funds from major corporations because of presumed unethical practices in the acquisition of wealth. Others, opposing the power of government, may likewise refuse government funds for research, however free from interference in the research. In either case the danger of manipulation of research findings by the funding agency often provides an additional disincentive to accepting research funds. Where the agency does impose its views on the research; say by conditioning publication of results on their conformity with the agency's views, the scientist who values freedom of publication and scientific inquiry prostitutes his integrity by accepting such conditions. Recognizing the possibility that research will facilitate the misuse of power in both the private and public spheres, the Code of Ethics of the American Sociological Association affirm[s] the autonomy of sociological inquiry. The sociologist must be responsive, first and foremost, to the truth of his investigation. Sociology must not be an instrument of any person or group which seeks to suppress or misuse knowledge. The fate of sociology as a science is dependent upon the fate of free inquiry in an open society

TEACHING CRIMINOLOGY

I am indebted to Professor Jerome Hall for the provocative suggestion that it is ethically good and sound for a criminology professor to disclose to new students his ideological preferences within the subject matter to be discussed. Such disclosures permit the students to take those perspectives into account when digesting hypotheses, findings, and interpretations offered by the professor. An instructor controls the interactive dynamics of the classroom through the choice of topics, selection of readings, and the approaching and concluding of a topic. I should think that topics such as free will and determinism, consensus versus conflict, correctional treatment versus retribution, and the just deserts model and others are proper candidates for the presentation of one's perspectives. Whether the perspectives are based on the best available scientific evidence may be of some consequence; but, however they are derived, teachers should display them explicitly. Scientists and teachers in other disciplines such as astronomy, biology, and even mathematics must sense this same disclosure obligation. But in criminology and criminal justice, where the law, ethics, and science converge on so many topics, disclosure is vital. Revealing personal biases in a textbook may fulfill a teacher's obligation to disclose. But can a professor ethically require his own students to purchase the textbook? The book is, after all, nothing more than the written, usually more elegant and comprehensive, presentation of the professor's learning. Arguably, the process of putting such a book together is itself a claim that the book is the best in the field. Moreover, students need not elect to take the course. Therefore, requiring its purchase is reasonable and logical. To further insulate the ethical propriety of requiring one's own textbook, the professor might divest himself of the royalties and thereby reduce the cost to students.

CONCLUSION

I conclude by referring to a reply by Professor Stephen J. Morse to Judge Bazelon's argument for more welfare programs in order to reduce poverty and ultimately crime. Professor Morse argues against what he calls "welfare criminology" and for a firm sentencing policy in criminal justice. He raises a number of ethical issues: Is it immoral to ask that the cost of reducing crime be borne by the morally responsible agents who have been convicted of crimes beyond a reasonable doubt, rather than by innocent persons? If mandatory sentences of humane duration significantly reduce the crime rate (in contrast to poverty programs which have not done so), can it reasonably be claimed that such a program is amoral or immoral? To be sure, we cannot be certain which would be more effective, increased social welfare or criminal justice reform. But given this uncertainty and the past failures of social justice solutions, it does seem clear the social justice adherent is not entitled to claim that his position is the moral one, and that alternative analyses and suggestions are immoral.

The Report of the Task Force on the Role of Psychology in the Crminal Justice System speaks eloquently about the reasons for the importance of ethics in this field: While other institutions, such as mental hospitals, also restrict individual freedom, the criminal justice system is the principal locus of legitimate force in American society. The consequences of its misapplication may be severe and irreversible. An additional reason for placing a high priority on ethical consensus in criminal justice is that the people processed by that system are likely to be poor or minorities and thus to have little access to conventional means for redressing their grievances.3 0 Scientific research and ethics are interrelated, especially in criminal justice. Ethical decisions are made and changed based on subjective perceptions of good and evil, right and wrong. Changes in science are mostly cumulative and, within the sustained value system of the canons of science, change is improvement in the understanding and the acquisition of knowledge. When ethics and science intersect, the historical moment is important. For when the qualitative difference of our ethics meets the quantitative maturation of our science, each impinges on the other in ways that require constantly new interpretations. The ethical issues of justice today are little different from those raised by Plato, Aristotle, Kant, and others. The science of today is little understood by a demographic generation removed from today. To mesh the two is our perennial problem.

CHAPTER 13

POLICE CORRUPTION

Police corruption is a form of police misconduct in which law enforcement officers break their social contract and abuse their power for personal or department gain.

One common form of police corruption is soliciting or accepting bribes in exchange for not reporting organized drug or prostitution rings or other illegal activities. Another example is police officers flouting the police code of conduct in order to secure convictions of suspects—for example, through the use of falsified evidence. More rarely, police officers may deliberately and systematically participate in organized crime themselves.

In most major cities there are internal affairs sections to investigate suspected police corruption or misconduct. Similar entities include the British Independent Police Complaints Commission. Police corruption is a significant widespread problem in many departments and agencies worldwide.

CORRUPT ACTS BY POLICE OFFICERS

Police officers have several opportunities to gain personally from their status and authority as law enforcement officers. The Knapp Commission, which investigated corruption in the New York City Police Department in the early 1970s, divided corrupt officers into two types: *meat-eaters*, who "aggressively misuse their police powers for personal gain", and *grass-eaters*, who "simply accept the payoffs that the happenstances of police work throw their way."[1]

The sort of corrupt acts that have been committed by police officers have been classified as follows:[2]

- **Corruption of authority**: When police officers receive free drinks, meals, and other gratuities, because they are police officers, whether intentionally or unintentionally, they convey an image of corruption.[3][4][5][6]
- **Extortion/Bribery**: Demanding or receiving payment for criminal offenses, to overlook a crime or a possible future crime. Types of bribery are protection for illegal activities, ticket fixing, altering testimony, destroying evidence, and selling criminal information. Bribery is one of the most common acts of corruption.
- **Theft and burglary** Is when an officer or department steals from an arrest and crime victims or corpses. Examples are taking drugs for personal use in a drug bust, and taking personal objects from a corpse at the scene of a crime. A theft can also within a department. An officer can steal property from the departments evidence room or property room for personal use.[*citation needed*]
- **Shakedowns**: Can be classified under theft and burglary. Stealing items for personal use from a crime scene or an arrest.
- **"Fixing"**: undermining criminal prosecutions by withholding evidence or failing to appear at judicial hearings, for bribery or as a personal favor.

- **Perjury**: Lying to protect other officers or oneself in a court of law or a department investigation.
- **Direct criminal activities** a law enforcement officer engages in criminal activity themselves.[7]
- **Internal payoffs**: prerogatives and perquisites of law enforcement organizations, such as shifts and holidays, being bought and sold.
- **The "frameup"**: the planting or adding to evidence, especially in drug cases.
- **Ticket fixing**: police officers cancelling traffic tickets as a favor to the friends and family of other police officers.

Corrupted Behavior

Corrupted behavior can be caused by the behavioral change of the officer within the department's "subculture." A subculture is a group of individuals within a culture that share the same attitudes and beliefs. Police officers within the department share the same norms and that new behavioral development can be attributed through psychological, sociological, and anthropological paradigms.[8]

- **Psychological paradigm**: The Psychological Paradigm suggests that behavior is based and structured through an individual's early stages of life. Those attracted to the police occupation, tend to be more "authoritarian." The Authoritarian personality is characterized by conservative, aggressive, cynical, and rigid behaviors.[9] Corruption may involve profit or another type of material benefit gained illegally as a consequence of the officer›s authority. Psychological corruption can be apart of a departments culture or from the certain individual.
- **Sociological Paradigm**: The Sociological Paradigm focuses on individual exposure to a police training academy, regular in-service training, and field experience all shape occupational character. Police learn how to behave, discretion, morals and what to think from their shared experiences with other police officers.[9]New recruits develop definitions with their peers either positive or negative. These definitions are then reinforced, positively or negatively, by the rewards or punishments (either real or perceived) that follow their behavior.[10] For example, a new recruit given an order by his peer to arrest an individual sitting in the passenger seat for a DUI. This action can end up negatively or positively for the officer depending on how the situation is perceived by the court later on.

Anthropological Paradigm: When an individual's social character is changed when an officer becomes part of the occupational culture. The term culture is often used to describe differences among large social groups where they share unique beliefs, morals, customs, and other characteristics that set them apart from other groups.[9] Within the police culture, officers learn to be suspicious of the public. Police culture can also be quite racist, and shot through with assumptions about the criminal tendencies of certain minority groups, such as African Americans, or the competency of fellow officers from minority backgrounds[11] which can lead officers to make corrupted choices for personal benefits or gains.

Prevalence of Police Corruption

Accurate information about the prevalence of police corruption is hard to come by, since the corrupt activities tend to happen in secret and police organizations have little incentive to publish information about corruption.[12]Police officials and researchers alike have argued that in some countries, large-scale corruption involving the police not only exists but can even become institutionalized.[13] One study of corruption in the Los Angeles Police Department (focusing particularly on the Rampart scandal) proposed that certain forms of police corruption may be the norm, rather than the exception, in American policing.[14] In the UK, an internal investigation in 2002 into the largest police force, the Metropolitan Police, Operation Tiberius found that the force was so corrupt that "organized criminals were able to infiltrate Scotland Yard "at will" by bribing corrupt officers ... and that Britain's biggest force suffered 'endemic corruption' at the time".[15]

Where corruption exists, the widespread existence of a Blue Code of Silence among the police can prevent the corruption from coming to light. Officers in these situations commonly fail to report corrupt behavior or provide false testimony to outside investigators to cover up criminal activity by their fellow officers.[16] The well-known case of Frank Serpico, a police officer who spoke out about pervasive corruption in the NYPD despite the open hostility of other members, illustrates how powerful the code of silence can be. In Australia in 1994, by 46 votes to 45, independent politician John Hatton forced the New South Wales state government to override the Independent Commission Against Corruption and the advice of senior police to establish a ground-breakingRoyal Commission into Police Corruption[17] However, in a number of countries, such as China,[18] Pakistan,Malaysia, Russia, Ukraine, Brazil or Mexico, police corruption remains to be one of the largest social problems facing their countries.

"Noble Cause Corruption" and Police

Main article: Noble cause corruption

Noble cause corruption, as ethical corruption, is a departure from conventional discussions on police corruption, which typically focus on monetary corruption. According to the field of Police Ethics, noble cause corruption ispolice misconduct «committed in the name of good ends.» In *Police Ethics* it argued that some of the best officers are often the most susceptible to noble cause corruption.[19] According to professional policing literature, noble cause corruption includes «planting or fabricating evidence, lying or the fabrication and manipulation of facts on reports or through testimony in court, and generally abusing police authority to make a charge stick.»[20]According to Robert Reiner, a professor at the London School of Economics, stops based on statistical discrimination are also a form of noble cause corruption.

Effects of Police Corruption

Police corruption affects society, including political, economic, and sociological. The social aspect is perhaps easiest to define, because even one corrupt officer in a department can generate an overall distrust of the department (the Rotten Apple theory).[22] This negative outlook on policing by citizens helps maintain an “us versus them” mentality among police, which only serves to further the rift between police and the public.

Police corruption, when brought to the public eye, increases pressures on departments by lawmakers to enact change from within. In 2013, the West Valley City, Utah police›s narcotics unit was disbanded due to rampant corruption among its officers. These officers were found stealing small items from seized vehicles, taking evidence, and placing tracking devices on potential suspects› vehicles without warrants.[23] This action, like many others, not only increases distrust among the public, but lawmakers begin to feel pressure from the masses to remove officers and revamp entire departments.

POLITICAL EFFECTS

Citizen Involvement

Citizens within the jurisdiction look to lawmakers and justice officials to enact justice against the officers involved. If the instance of corruption happens to fall on an election year, their re-election campaign may be lost.

In areas such as Afghanistan, media exposure and citizen involvement in combating corruption is rarely seen. Rather, international officials step in to help eliminate corruption in the department.[24]

Top-Down Discipline

Depending on the number of people involved and severity of the acts, the state executive or legislature may be compelled to demand that the department be scrutinized and its policies corrected. This can involve replacing individual officers, mid-level leadership, or asking for a resignation by the department chief. Disciplinary actions depend on the severity of the act, but typically result in disciplinary actions by the department and negative media coverage for the department.[25] In 1970, the New York City Knapp Commission began holding officers and supervision accountable and institute real disciplinary actions for police corruption. In countries where corruption is a major issue, such as China and Russia, state government is often directly involved in investigating and disciplining cases of corruption, such as in the Chongqing gang trials, where police chief Wen Qiang was detained and put on trial for accepting bribes, rape, and other crimes during the Chongqing gang crackdown.[26]

SOCIAL EFFECTS

General distrust of Police in the Community

While political issues can easily be worked through, the social effect of police corruption is much harder to overcome. Citizens, especially those who or know someone who has been victimized by certain types of corruption, tend to see the police as more of an enemy.[27] Similarly, police view citizens in the same light. Both issues have only been exacerbated by the War on Crime and War on Drugs. The «us versus them» mentality is especially prevalent among inner city minorities, where stereotyping and racial targeting seem to be the norm.

Rotten Apple Theory

This theory suggests that one bad cop ruins the entire department. A single officer can not only cause leadership to initiate investigations over entire sections or the department as a whole, but that one corrupt officer can bring a generally appreciated department to its knees in terms of public relations. People look at that one bad cop and assume, sometimes correctly (especially in this case, where several other officers were found to be committing similar violations) the entire department is corrupt and committing similar or worse acts

Reduced Effectiveness

Police corruption not only generates distrust among the populace, but undermines the criminal justice system as a whole. Judges and prosecutors may develop a negative opinion of officers who come to testify in cases, especially those who have a history of disciplinary action related to corrupt acts. The trustworthiness of officers who work in departments where corruption has been discovered is severely diminished, and even if the testimony they provide in court is an exact recollection of the events in question, a prosecutor or judge may choose to simply ignore these facts because of their association with a seemingly corrupt department. In the case of the Waldo, FL police, the entire department was disbanded partly due to allegations of corruption, meaning county law enforcement must take over where the city failed.[28]

ECONOMIC EFFECTS

Officer Training

Should the corrupt act not be extremely severe, or the department decide discharge of the officer is unnecessary, those involved in corrupt acts may be charged to undergo remedial training. This could be inside or outside the department, and becomes another red mark on the already strapped budget of most departments. The cost of this remedial training pales in comparison to the cost of having to train new officers to replace those who are relieved of their duties, since these new hires will need to undergo initial academy training as well as whatever additional training the officer would require as they advanced in their career.[29]

Investigations

Investigation and litigation costs may be high. These investigators are either part of their own department or taken from other squads (county sheriff investigating a city department, for example), or can be private entities. The department must also invest in retaining attorneys for both themselves and the officers involved.

REFERENCES

1. «H-Net Reviews». *h-net.org*.
2. Newburn, 1999, p. 4
3. “Preferential treatment to businesses that offer gratuities may lead to an environment conducive to police corruption.” Chambliss, William J (2011). *Police and Law Enforcement*. Key Issues in Crime & Punishment

Series. SAGE. p. 130.

4. "...the acceptance of gratuities and the like presents a bad image of the officers and the agency to the public. Citizens who witness or learn of officers receiving special treatment or gratuities can understandably feel a degree of resentment toward not only the officers involved but the police agency as a whole." *IACP Model Policy on Standards of Conduct*, Alexandria, VA: International Association of Chiefs of Police, 1998

5. "Most police officers draw the line between accepting gratuities without 'strings' and taking bribes to compromise their policing duties, but gratuities can influence police to spend their time unequally among establishments that do and do not offer them gratuities." Feldberg, M (1985), «Gratuities, Corruption, and the Democratic Ethos of Policing The Case of the Free Cup of Coffee», *Moral Issues in Police Work*: 267–268, retrieved April 19, 2015

6. Gratuities and the Slippery Slope Delattre, Edwin J (2011). *Character and Cops: Ethics in Policing*. Rowman & Littlefield. pp. 87–.

7. ^ Jump up to:[a] [b] «Met Commander Ali Dizaei guilty of corruption». BBC News. 2010-02-08. Retrieved2010-02-08.

8. Belmonte, Joseph. [(1) (http://www.sheldensays.com/policedeviance.htm) «Police Deviance: How Law Enforcement Administrators Can Address Police Misconduct and Corruption»]. *Shelden Says*. Retrieved April 5, 2015.

9. ^ Jump up to:[a] [b] [c] Kappeler, V.E., Sluder, R. & Alpert G.P. (2010).Breeding Deviant Conformity The Ideology and Culture of Police. In Dunham R. G. & Alpert G. P. (Eds.) *Critical Issues in policing.* (PP. 266). Long Grove: Waveland Press.

10. Chappell, Allison; Piquero, Alex (2004). «Applying Social Learning Theory». *Deviant Behavior* **25** (2): 89–108. doi:10.1080/01639620490251642.

11. Smith, P.D.; Natalier, K (2005). *Understanding Criminal Justice*. London: SAGE Publications Ltd. p. 89.

12. Sanja Kutnjak Ivkovic, «To Serve and Collect: Measuring Police Corruption», *The Journal of Criminal Law and Criminology* 93, no. 2/3 (2003): 600.

13. Peter Kratcoski, «International Perspectives on Institutional and Police Corruption», *Police Practice and Research* 3, no. 1 (2002): 74.

14. "I am simply saying that the current institution of law enforcement in America does appear to reproduce itself according counter-legal norms, and that attempts to counteract this reproduction via the training one receives in police academies, the imposition of citizen review boards, departments of Internal Affairs, etc. do not appear to mitigate against this structural continuity between law enforcement and crime. Specifically the continuity between the breaking of procedural rules as a matter of routine and the kind of large scale criminal corruption we saw in Rampart bears further investigation." Judith Grant, "Assault Under Color of Authority: Police Corruption as Norm in the LAPD Rampart Scandal and in Popular Film», *New Political Science* 25, no. 3 (2003): 404.

15. Tom Harper (2014-01-10). «Exclusive: Scotland Yard's rotten core: Police failed to address Met›s 'endemic corruption' - Crime - UK». The Independent. Retrieved 2014-03-20.

16. Jerome Skolnick, "Corruption and the Blue Code of Silence", *Police Practice and Research* 3, no. 1 (2002): 8.

17. «Anti-corruption campaigner eyes NSW». *ABC News*.

18. Wang, Peng (2013). «The rise of the Red Mafia in China: a case study of organised crime and corruption in Chongqing». *Trends in Organized Crime* **16** (1): 49–73. doi:10.1007/s12117-012-9179-8.

19. Crank, J., Caldero, M., *Police Ethics: The Corruption of Noble Cause*, IBSN-13: 978-1-59345-610-8

20. Thomas J. Martinelli, «Unconstitutional Policing: The Ethical Challenges in Dealing with Noble Cause Corruption», The Police Chief, 2006.http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=1025&issue_id=102006

21. Robert Reiner, The Politics of the Police, Oxford University Press, 2010, ISBN 0199283397.

22. ^ Jump up to:[a] [b] «Police Deviance - Police Ethics». *policecrimes.com*.

23. http://www.nytimes.com/2013/05/18/us/drug-cases-put-utah-towns-police-force-under-scrutiny.html?pagewanted=all&_r=0

24. Gretel C. Kovach. «Corruption enemy No. 1 for Afghan police». *U-T San Diego*.

25. «nationalpoliceresearch.org» (PDF). Retrieved25 April 2015.

26. «China executes top Chongqing official for corruption». *BBC News*.

27. Webmaster. «Not Victimless: Understanding the harmful effects of police corruption». Retrieved25 April 2015.

28. FOX 13 Tampa Bay Staff (1 October 2014).»Speed ticket quotas led to demise of Waldo Police Department». *myfoxtampabay.com*.

29. http://www.emich.edu/cerns/downloads/papers/PoliceStaff/Police%20Personnel%20(e.g.,%20Selection,%20%20Promotion)/Police%20Recruiting%20and%20Its%20Impact%20on%20Corruption.pdf

30. «Police Chief Magazine - View Article». *policechiefmagazine.org*.

CHAPTER 14

FALSE CONFESSIONS: REASONS PEOPLE CONFESS TO CRIMES THEY DO NOT COMMIT

Quentin Bushon

Angelo State University

ABSTRACT

In criminal trials, a person's admission of guilt usually results in a sure conviction and sentence. End of story. The perpetrator takes responsibility and we move on. Sometimes though, that is not the end of the story. Often, and more times than one would think, a person will confess to a crime they did not commit. People intuitively feel that they would never confess to something they did not do. But, for one reason or another, it happens. When we hear of something like this, it is simply hard to comprehend. We ask, why would a person do such a thing? In high profile cases, such as the John Mark Karr confession in the JonBenet Ramsey murder, forever etched in our memory as a result of 24/7 media coverage, we can somewhat understand the motivation, publicity. The reasons become bizarre and somewhat surreal when fame is not the issue. Saul Kassin, a professor of psychology at the John Jay College of Criminal Justice, and Gisli Gudjonsson, a professor of forensic psychology at the Institute of Psychiatry at King's College in London, have found that while some people make voluntary false confessions for secondary motives, such as Karr, the majority are brought on by some type of coercion in the interrogation process. False confessions are often given after intense questioning, many times using deceit and trickery on an already isolated and sleepdeprived suspect. Under the pressure, people cave and confess even though they know they 2 are innocent. Thinking everything will get sorted out later, little do they know, a confession usually trumps evidence in most cases.

INTRODUCTION

Anyone who has ever watched television or read a supermarket tabloid remembers the name of JonBenet Ramsey. One might not remember John Mark Karr, but he was the person who confessed to her sensationalized murder. More recently, there is the bizarre case of Amanda Knox, an American exchange student convicted of murdering her roommate in Italy. Then, there is Antonio Yarbough, Michael Crowe, Eddie Joe Lloyd, Paul Ingram, and Chris Ochoa, who are not as well known. These individuals all belong to the same club, confessors to murders they did not commit. Why would anyone confess to a crime he or she did not commit? In a few cases, attention is the motivation, but in the majority of false confession cases, the reasons are more complicated. A sequence of events occurs, usually beginning at the police station in an interrogation room and ending with a jury trial resulting in a wrongful

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conviction. There are a multitude of factors that contribute to false confessions and have become a challenge to our criminal justice system.

TYPES OF FALSE CONFESSIONS

A search of the literature indicates there are a number of different ways a person can falsely confess to a crime, seeking attention being just one. Saul Kassin, a professor of psychology at the John Jay College of Criminal Justice, has categorized these into three general areas: voluntary false confessions, compliant false confessions, and internalized false confessions.1 Along with Kassin, another researcher, Gisli Gudjonsson, a professor of forensic psychology at the Institute of Psychiatry at King's College in London, has identified a range of important emotional and psychological factors that make it easier to place false confessors into one of the three categories.

Voluntary False Confessions

People sometimes do strange things to gain the limelight, or get their "fifteen minutes of fame." Confessing to a crime, especially a capital crime seems to be a little extreme, but there are those who do. Kassin describes it as, "a pathological need for attention."3 If attention is truly the motivation, it is not a phenomenon that just recently emerged with blanket, 24/7 news coverage, such as seen on CNN or MSNBC where the transmission of instantaneous live satellite images guarantees a person can become a household name overnight. In 1932, over two hundred people voluntarily confessed to the kidnap/murder of Charles Lindbergh's son.4 In 1947, the murder of Elizabeth Short, the subject of a popular movie, Black Dahlia, produced dozens of voluntary confessions.5 The case remains unsolved, no convictions. Individuals who are voluntary false confessors usually do so with little or no external pressure or prompting from police, and the classic example is John Mark Karr. He truly may fit the pathological desire for notoriety as Kassin suggested. Moffa and Plantania chronicled the story of Karr, a 41-year-old elementary school teacher living in Bangkok, Thailand.6 Approximately ten years after the murder, which had gone cold, Karr began corresponding with Michael Tracey, a journalism professor at the University of Colorado. The emails and phone calls became more and more bizarre, eventually resulting in Karr confessing that he accidentally killed JonBenet while inducing asphyxia for his sexual gratification. Claiming he could not revive her, he struck her in the head with a blunt object. Knowing that Tracey was 5 writing a book on the Ramsey case, Karr said if the book became a movie, he wanted to be played by Johnny Depp. Tracey eventually alerted the district attorney's office. Thinking they finally had their man, the Boulder police working with Thai police arrested Karr charging him with first degree murder. Karr immediately objected, saying the killing had been accidental and the charge should be only second degree murder, confessing again. After just four days in Boulder, the wind went out of the police sails when it was discovered that Karr's DNA did not match the crime scene evidence. Karr was released, no Johnny Depp and his fifteen minutes of fame gone. While attention is one factor that characterizes this type of confession, there are certainly other factors. Among them, a conscious or unconscious need for self-punishment to expiate feelings of guilt over prior transgressions; an inability to distinguish fact from fantasy due to a breakdown in reality monitoring; or a desire to aid and protect the real criminal are three other scenarios posed by Kassin and Gudjonsson.7 Even though people in this group are not pressured to confess, they obviously have "emotional and psychological" issues that lead them down this path.

Compliant False Confessions

The second category, compliant false confessors, is an interesting mix. Prominent in this group are those who are induced through police interrogation to confess to a crime they did not commit. When reading about someone confessing like this, the first thing that comes to mind is "no way." How could someone possibly confess if they were not guilty of something? People do not confess to crimes they do not commit. Unfortunately, the literature is filled with stories of "ordinary" people who served long sentences, and have even been executed, for crimes confessed, but not committed. According to Kassin and Gudjonsson, this group confesses for one of three reasons: "to escape an aversive situation, to avoid an explicit or implied threat, or to gain a promised or implied reward."8 In 1936, three black men in Mississippi were charged with the murder of a white farmer. The sheriff who conducted the interrogation was convinced of the men's guilt to the point of stripping each and beating them with a leather strap with heavy metal buckle. The three eventually signed a "police written confession" to the murder.9 Even though these confessions were given to "escape an aversive situation" which was illustrated at trial, they were still convicted by an all-white jury. The Supreme Court eventually overturned their death sentences, but the men spent many years in prison before being released with the Brown vs. Mississippi decision that banned violence-induced interrogations in order to obtain a confession. In the decision, the court concluded that Mississippi authorities had conspired to extract a coerced and untruthful confession and held that confessions obtained through physical coercion violate suspects' fundamental rights and constitute a violation of the Due Process Clause of the Fourteenth Amendment.10 Additionally, the Court explained that reliance on unreliable confessions creates the risk that innocent individuals will be condemned to lengthy terms of imprisonment or even death. This case, of course, is an extreme example, but one that illustrates what can happen if someone is in the wrong place at the wrong time with insufficient means of a defense. In 1944, the Supreme Court extended the protection of the Due Process Clause to include psychological coercion. Joe Ashcraft confessed to soliciting the murder of his wife after having being detained and subjected to incommunicado interrogation for thirty-six hours (with one five minute break) by a tag team of police officers. The Supreme Court concluded in Ashcraft v. Tennessee that his confession was the product of a coercive set of circumstances that overwhelmed his ability to exercise a rational choice (discussed later) and observed that the "efficiency of the rack and the thumbscrew" is matched by equally effective techniques of psychological persuasion.11 Stambor, studying this phenomenon, describes an example of another false confession that happened in Austin, Texas, in the late 1980's.12 Chris Ochoa was working at a Pizza Hut and saving up money to attend college. At another Pizza Hut, an employee was raped and murdered one evening. Employees at the victim's Pizza Hut claimed they had heard Ochoa and his roommate, Richard Danziger, toasting their co-worker's death. They were picked up and interrogated for over twelve hours. The interrogators basically told them to confess and get a life sentence or refuse and get the death penalty. When Ochoa asked for an attorney, interrogators told him he didn't have the right to one because he hadn't been charged with anything. They shoved photos of death row cells in his face and told him that this was where he was going to spend the remainder of his life. To avoid "an explicit or implied threat" Ochoa confessed, thinking things would get sorted out at trial. Little did he know that a signed confession generally outweighs evidence in nearly all murder trials. He and his roommate were convicted and spent the next twelve years in prison before someone else confessed to the crime.

In another case, and one recently back in the headlines, involves the interrogation induced false confession of Amanda Knox in Italy. The circumstances involved in this murder and eventual conviction were highly sensationalized in the media, 24/7 coverage. Miss Knox, a twenty year old student from Seattle was accused of participating in the gruesome murder of her roommate, Meredith Kercher. The Italian police had DNA evidence on the actual murderer, but still went after Knox. The interrogators, similar to what happened to Ochoa, used many of the same tactics. She was not allowed to have an attorney and was told that things would be worse if she demanded one. She was slapped repeatedly, called a liar, and told she would be spending the next thirty years in prison if she did not confess. Kassin describes one technique where she was asked to imagine hypothetical scenarios while the interrogators fed her information that they wanted her to imagine. After five days with little sleep, water, or food, she caved. Two "confessions" were produced on the fifth day detailing what Knox called a dreamlike "vision." Both were typed by police, one at 1:45 am, the second at 5:45 am. She recanted the confession a day later, but it was too late. On December 5, 2009, an eight-person jury convicted Amanda Knox for murder, sentencing her to twenty-six years in prison.13 It appears that the younger a person, the more vulnerable they are to interrogationinduced confessions. Considering the young accused, Kassin describes another sensationalized case from 1989 in which five African and Hispanic American boys, fourteen to sixteen years old, were accused of the beating and sexual assault of the "Central Park Jogger." These young boys were "intimidated, lied to, and coerced into giving confessions."14 Among the lies, the boys were told that their fingerprints had been found at the crime scene; hair samples were found that linked them to the crime scene; that one of the boys had implicated the other two; and were told they could go home if they confessed. Even though there was DNA evidence excluding the five teenagers, prosecutors and the press dismissed this powerful evidence because the false confessions had already "trumped their innocence." In 2002, the charges were vacated by District Attorney Robert Morgenthau after a convicted murderer and rapist admitted that he alone was responsible for the attack on the jogger. Another case involving teenagers is one of the most recent false confession exonerations. On June 18, 1992, Antonio Yarbough, 18, came home to find the dead bodies of his mother, sister, and one his sister's friends. All three victims had been stabbed multiple times and choked with electric cords. After calling police, he was taken to interrogation along with a friend who was with him earlier in the day, Sharrif Wilson, 15. During intense interrogation without council, both were lied to, slapped, and told things would go easier on them if they signed a confession, even go home. Wilson caved, signed the confession and in the process implicated Antonio. Wilson was tried first and despite explaining in detail to the jury how the police coerced him into falsely confessing to the crime, but he was convicted. Likewise for Yarbough, a conviction without a shred of evidence linking either of them to the crime scene. Lucky for them, DNA found under his mother's fingernails revealed that the real killer went on to kill again in 1999 while Tony and Sharrif were locked up. Despite protests and delays from the prosecutor's office, the DNA was eventually tested and revealed the boys, now men, were innocent.15 A classic study conducted by Drizin and Leo shows young people, especially teenagers like Wilson and Yarbough, are over-represented in false confession cases. In their examination of proven false confessions between 1971 and 2002, 63% were under the age of twenty-five. As can be seen from Table 1, teenagers comprised about a third of the sample.

Table 1: Age of Proven False Confessors (N=113)

Age Range	# People	Percentage
Under 10	2	2%
10-13	5	4%
14-15	15	13%
16-17	18	16%
18-24	31	27%
25-39	34	30%
40-54	7	6%
Over 55	1	1%

Kassin and Gudjonsson have identified some very specific incentives for the type of compliance that teenagers often exhibit, such as being "allowed to sleep, eat, make a phone call, go home, or, in the case of drug addicts, even feed a drug habit."17 Many personality types cannot stand up to such interrogations, especially the young or mentally handicapped, as was illustrated in the case of the Central Park teenagers. Juveniles are more compliant, especially when pressured by adult authority figures. Clearly, juveniles tend to be more susceptible to confess in response to police interrogation, especially a coercive interrogation.

Internalized False Confessions

The previous examples illustrate that perfectly sane people who know they are innocent can confess under certain conditions. They simply want to escape the interrogation process. The third category of confessions deal with individuals who for one reason or another are induced to believe they are guilty, the internalized false confession. In this scenario, interrogators may suggest that the person has simply repressed the memory of the event. Sometimes, interrogators lead the suspect by filling in evidence details for them. Eventually, some individuals, vulnerable to such tactics, become convinced of their guilt and offer an "internalized" false confession. The strange case of

Eddie Joe Lloyd, convicted of the murder of a sixteen-year-old girl in Detroit in 1984, illustrates this category of confession.18 While in a hospital receiving treatment for his mental illness, Lloyd wrote to police with suggestions on how to solve various murders in the city, including the murder of the teenage girl. Police officers visited and interrogated him several times in the hospital. During the course of the interrogations, police officers allowed Lloyd to believe that, by confessing and getting arrested, he would help them "smoke out" the real perpetrator. Police fed him details that he could not have known, including the location of the body, the type of jeans the victim was wearing, a description of earrings the victim wore, and other specific details from the crime scene. Lloyd signed a written confession and even gave a tape recorded statement, which he later retracted saying the police had tricked him into a confession. At trial, the prosecution played the confession to the jury and after deliberating for less than an hour, convicted him of first degree felony murder. He served seventeen years in prison before being exonerated in 2002 by DNA testing after the Innocence Project took his case. In a similar case described by Kassin and Gudjonsson, 14-year-old Michael Crowe confessed to the stabbing death of his sister, Stephanie.19 He at first denied involvement, but after three intense interrogation sessions, lasting twenty-seven hours, in which he was told his hair was found in his sister's grip, his blood in her bedroom, and that he failed a lie detector test, all false information, he confessed. Michael was lead to believe that he had a split personality and that the "good Michael" had simply blocked out the incident. Luckily, a vagrant was later found with Stephanie's blood on his clothing and the charges against him were dropped, giving Michael a new lease on life.

The two above cases involved confessions that were primarily induced by interrogator deceit and trickery, a perfectly legal tactic. There are also instances where other influences come into play. Take the strange case of a sheriff's deputy in Olympia, Washington. Paul Ingram was accused of the sexual abuse of his two teenaged daughters who were counseled to do so by church officials. According to Wright, Ingram was "subjected to twenty-three interrogations over a period of five months and was coerced by his church minister to confess."20 As a member of the Church of Living Water, Ingram was told that Satan could cause a person to "commit terrible acts, and then wipe their memory clean afterwards." Ingram confessed how he might have abused his daughters even though he had no memory of having actually done so. He attempted to recant his confession, but as we know by now, no one was buying it. He was sentenced to twenty years in prison. He was paroled in 2003 after serving the majority of his sentence.

HAPPY ENDINGS

The cases cited above represent only a few of the dozens that appear in the literature. Many are well known by nearly everyone because of intense media coverage, such as the Ramsey, Knox, and Central Park Jogger cases. Others, such as the case involving Chris Ochoa, may have been known only in the local area where it occurred. Many may have briefly caught the public's attention as a result of being featured on a network program, such as 48 Hours or 20/20. Most though, are not well publicized and never see the light of day until an exoneration and release from jail or prison occurs. Usually then, it is only a one or two day news story, then fades away. All of the cases cited so far have had relatively happy endings, meaning the person was eventually released from prison, or like Michael Crowe, never convicted, but still had to endure such a harrowing experience at a very young age. What about those cases that did not have such happy endings? For instance, has anyone ever been executed and later found to have given a false confession? Are there still people who gave false confessions still sitting in prison waiting for a miracle to occur that might one day set them free? Robert Perske chronicles the story of Joe Arridy, who most likely false confessed to a murder, then was later executed.21 In Pueblo, Colorado, Dorothy Drain, 15, was raped and murdered and her sister, Barbara, bludgeoned, but survived. Barbara identified Frank Aguilar, who had recently been fired by her father, as the attacker and he was charged and later tried and convicted. Arridy, a mentally retarded man, was arrested in Wyoming for vagrancy, but questioned regarding the Pueblo murder. The sheriff, feeding Arridy with details of the crime, elicited a confession. According to the sheriff, Arridy said he "did it with Frank."

The sheriff immediately called the press revealing the confession, despite the fact that the Pueblo police had an eyewitness suspect. Nevertheless, Arridy was taken back to Pueblo to stand trial. Based on the confession, he was found guilty and sentenced to death. In a separate trial, Aguilar was also found guilty and sentenced to death. Both men, who never knew each other, were executed by the State of Colorado. Arridy was posthumously pardoned by then governor Bill Ritter after the publication of Perske's book and the subsequent public uproar.22 On July 13, 1980, three young men died in a bowling alley shooting in Houston. A few weeks later, the police stopped Max Soffar for speeding and arrested him for driving a stolen motorcycle. On the way to the police station, Soffar told the officers he had information about the bowling alley murders. That set off a chain of events that eventually landed him in the Polunsky Unit, death row, where he currently resides. After three days of intense interrogation, Soffar gave a sleep-deprived, coming down from drug use, video-taped confession which was used at trial to convict him. He is currently appealing the conviction.23 One pattern that emerges from the above cases is that they all involve males. For some reason or another, a literature search does not produce many female false confessors.

No doubt, there is a reason for this. The explanation for the gender difference is likely to reflect the greater involvement of males than females in delinquency and criminal acts and get targeted more frequently. Nevertheless, there is the strange case of Karlyn Eklof. On March 21, 1993, James Salmu was reported missing after a pizza party at his house in Springfield, Oregon. His housemate, Karlyn Eklof, was eventually questioned. After eight to ten hours of daily interrogation for nine days, Eklof recited on videotape a police-invented scenario in which she stabbed Salmu with a plastic knife. Eklof was prosecuted for Salmu's murder based on this confession, despite the fact Salmu's body was still missing. At trial, testimony was presented indicating that Salmu had been stabbed. The prosecution then presented Eklof's confession, which appeared to agree with the cause of death, even though there was not a body. Following Eklof's conviction, Salmu's body was found, shot, and not stabbed. Eklof is currently serving a life sentence.

Rationale Choice Theory

Of the three types documented in the literature, compliant and internalized false confessions are by far the most common and troubling. Offering an explanation for this, Leo and Ofshe developed the "rationale choice theory" which presumes that some suspects falsely confess because interrogation convinces them that confessing is the most rational choice.25 This occurs when an innocent suspect believes that the police have strong evidence and that confessing is the only way to avoid severe punishment. It can also occur when an innocent suspect, wanting to end a stressful interrogation, believes that it will be impossible to shake the interrogator's belief in guilt, but proof of innocence will emerge later, such as what happened in the Pizza Hut case.

Interrogation Techniques

In television and movies, we have all seen the "good cop, bad cop" hammering away at a suspect. In real life though, a more commonly used and confrontational technique is what is commonly referred to as the Reid. Kassin describes the procedure and why it results in so many false confessions.26 The Reid is a two-stage process begins with a non-accusatory interview, followed by an accusatory interrogation. During the non-accusatory session, the interviewer generally asks open-ended questions and evaluates the suspect's truthfulness focusing on things such as lack of eye contact, shifting posture, and fidgeting to determine deceptive behavior. If guilt is suspected, the interviewer then conducts an accusatory interrogation, with the intent of getting the suspect to incriminate themselves. An accusatory interrogation typically begins with a process designed to break down the suspect making the situation seem hopeless by suggesting that conviction is inevitable. The interrogator repeatedly states the absolute certainty of the suspect's guilt, cutting off all denials of guilt, and confronts the suspect with evidence, whether real or fabricated. After a while, the strategy changes to convince the suspect that, given the irrefutable evidence, confessing is the best option available. These strategies may consist of either minimizing the seriousness of the offense or convincing the suspect that confessing will minimize the consequences. There is no doubt that the Reid, and other interrogation techniques, has been successful in gaining confessions from thousands of legitimate criminals. On the other hand, we now know, some people will admit guilt to escape this aversive, interrogation process which may eventually lead to a wrongful conviction.

Noble Cause Corruption

As we have seen, interrogation techniques, such as the Reid, sometimes contribute to or result in a false confession. This is especially true when interrogators cross the line and violate the rights of a suspected criminal offender. This can take many forms, especially when police are under intense pressure to solve a crime. They conclude that a suspect must be guilty and focus on obtaining a confession, such as what happen in the Central Park Jogger case. "I am entirely justified in my means because my end was noble" is a quote found in Delattre's book on policing ethics which illustrates one aspect of the problem.27 Everyone is aware of instances of police corruption, the "bad apples" if you will. When one is in a position of authority there are many temptations to which some succumb. When thinking of police corruption, it usually involves personal benefit and gain, such as accumulation of wealth or sexual favors. Delattre's quote puts the onus on another type of corruption, one just as serious. One, that does not involve gain or favors. This is corruption when officers do bad things because they believe that the outcomes will be good. They sometimes cross an ethical line when making an arrest or gaining a confession. Convinced they have the perpetrator, they may lie; plant, hide, or manufacture evidence; threaten the person with a ridiculous prison sentence; or a host of other issues we see played out in many false confession cases. Noble cause is an area of corruption that is not entirely clear to the lay public. It is mostly an "in house" police issue, one that has become a part of the subculture. Crank and Caldero sum the problem up in a couple of sentences when they describe it as "corruption committed in the name of good…corruption that happens when police officers care too much about their work…corruption committed in order to get the bad guys off the streets."

The Prosecutor's

Office Given the fact that false confessors, once convicted, have the system stacked against them, the best scenario in preventing them would be to stop the process before it ever gets to the courtroom and a jury. This might happen if prosecutors paid better attention to suspicious confessions and rejected some questionable interrogation tactics which lead to many of these confessions. This begs the question; would a prosecutor recognize a false confession obtained from police interrogation if he or she was confronted with one? If so, would anything change? Just as police are under pressure to obtain a confession to close a case and move on the next, prosecutors earn their spurs with convictions. Wins and losses define a prosecutor's career. To the prosecutor once at trial, its "guilty until proven innocent." In the zeal for convictions, Grometstein argues that prosecutors suffer from the noble cause as well. Like police, prosecutors sometimes violate rules not for graft, but to get the bad guys off the street. According to Grometstein, occasionally evading ABA's Model Rules of Professional Conduct is a small price to pay to accomplish this goal.29 With the number of embarrassing, high profile exonerations surfacing in the media, many states are attempting to strengthen laws which will minimize prosecutorial misconduct. Texas passed the Michael Morton Act which stemmed from the aftermath of a case in which a man, Morton, was wrongfully convicted of murdering his wife in 1987 as a result of blatant prosecutorial misconduct. Morton served more than twenty-four years in prison before being exonerated on DNA evidence that the prosecutor's office fought years to produce. Although, this is not a false confession case, it illustrates what can happen when a rogue prosecutor is injected into the system. A fascinating and detailed account of Morton's case is found in a twopart article written by Pamela Colloff in Texas Monthly. 30 In a false confession case involving prosecutorial misconduct, in 1987, Robert Lee Miller, Jr. suggested to the police that he had some kind of psychic link to a murderer who had raped and killed a number of elderly women in Oklahoma City. In twelve hours of interrogation, Miller attempted to answer questions as if he were clairvoyant and could see how the crime took place through the killer's eyes. He believed he was helping police solve the crime by telling them pertinent details. Police eventually led him to what the state called an admission of guilt, despite multiple instances in which Miller adamantly denied involvement in the crimes. Miller was convicted of the murders and sentenced to death. In 1991 and 1993, DNA tests proved that Miller could not have been the rapist. Despite this and the fact that another man had been arrested and convicted for the murders, Miller was not freed until 1998. The reasons for the delay was prosecutorial heal dragging, filing one appeal after another to keep Miller incarcerated.

Sadly, whether it is a case of not recognizing a false confession or knowingly hiding evidence, the fact remains that prosecutors' jobs are dependent on having a high conviction rate. In reality, their jobs should be to keep the public safe by putting away the guilty and letting the innocent go free. The consequences of convicting the innocent is that the guilty walk away and are free to potentially commit more crimes as happened in the Wilson and Yarbough case.

The Jury

It is jurors who must evaluate the credibility of disputed confessions when making verdict decisions. Anyone who has ever served on a jury knows that each arrive at the courthouse with beliefs, preconceptions, expectations, and biases. These beliefs shape how they process and interpret evidence presented by the two sides at trial. Not a lot is known about how juries view false confessions, especially when a defendant claims at trial that the confession was coerced. A study by Costanzo did reveal that about half the jurors in his sample believed that if someone falsely confessed to a crime, they could be convicted, even if there was no other evidence against them.32 Unfortunately, this is a much lower percentage than what actually happens. The previously mentioned Leo and Drizin study showed that when suspects falsely confessed and then pled "not guilty" and proceeded to trial, the conviction rate was 81 percent.

The Confession

From what we now know, a confession offered at trial is very compelling and persuasive evidence of a defendant's guilt. Prosecutors avidly seek confessions as the most persuasive evidence to win cases. It is the gold standard. Confessing to someone else's crime is clearly one of the most counterintuitive aspects of human behavior. One would think it almost never happens, but as we have seen, it happens with great regularity. There is a misconception in the criminal justice system that anyone would recognize a false confession. Surely, it would sound different or look different. Not so. Kassin did a study of male inmates in a Massachusetts state correctional facility who were recruited and paid to take part in a pair of videotaped interviews. He asked each to confess to the crime(s) they had committed. They were then asked to confess to crime they did not commit. Kassin showed these videos to seasoned detectives, prosecutors, judges, and lay people. Invariably, they could not tell the difference between the true and false confession.34 Results of this study show that it is virtually impossible to discern a false confession by looking or listening to it, despite what one might otherwise think. Once the confession is given, interrogators, prosecutors, judges, and juries see other evidence around that confession differently. It matters little that there might be contradicting or exculpatory evidence available. In other words, a confession has the power to corrupt other evidence; and has a compelling influence on jurors who they are more likely to convict on the basis of a confession than anything else, including eyewitness identification, alibis, forensic evidence, even DNA, as was illustrated in the Leo and Drizin study.

False Confessions in the Lab

One obviously cannot perform a lab experiment on false confessions in the police station, but it can be been done in academia. Some researchers have managed to set up laboratory experiments that attempt to mimic some of the conditions involved in an interrogation. The question: will someone confess to something they did not do without the pressures that can be brought to bear in a police station in an interrogation situation? Surprisingly, Perillo and Kassin found that it is easy to produce in a lab situation.35 The researchers used a group of 71 university students who were told they were taking part in a test of their reaction times. Participants were asked to press keys on a keyboard as they were read aloud by another person, who was secretly part of the ruse. The volunteers were informed that the ALT key was faulty, and that if it was pressed the computer would crash and all the experimental data would be lost. The experimenter watched the proceedings from across the table. The computer was actually set up to crash about a minute into the test. When this happened the experimenter asked each participant if they had pressed the illicit key, acted as if he was upset when it was "discovered" that the data had disappeared, and requested that the participant sign a confession. Only one person in the sample actually hit the ALT key by mistake, but a quarter of the innocent participants were so disarmed by the shock of the accusation that they confessed to something they had not done. In a second experiment, Perillo and Kassin put another person in the room with the examiner. This person was playing the role of a witness or snitch, and would say he saw the students hitting the ALT key. In this case the confession rate jumped to 80 percent of innocent participants. In another twist of the experiment, the researchers tested the impact of bluffing, a common police interrogation tactic. Two participants sat in the same room and were asked to complete what appeared to be an academic test. Halfway through, the investigator accused them of helping each other, or cheating. The investigator went on to bluff that there was a video camera in the room. Presumably, the innocent participants knew such a tape would eventually show they did not cheat. Even so, half still confessed. Why did so many students confess? Kassin offers the suggestion that participants may simply be naïve and that their innocence will emerge in the end, particularly in the case of the alleged video evidence. One participant, for example, told him, "it made it easier (to sign the confession) because I had nothing to hide…the cameras would prove it." Kassin added, "The results suggest that the phenomenology of innocence can lead innocents to confess even in response to relatively benign interrogation tactics."

DISCUSSION

Studying the prevalence of what is and is not a false confessor obviously presents a multitude of problems in quantification. As we have seen, a person who false confesses usually recants the confession at some point, but in more cases than not, is convicted anyway. To disprove, or exonerate a false confessor, regardless of whether it fits in one of the three categories, one must first determine actual innocence. Something has to happen. The most obvious being, the real perpetrator admits to the crime either before or after the false confessor's conviction. A second situation would be where DNA evidence proves the false confessor could not have possibly committed the crime. Through research on the phenomenon, Kassin estimates that 20 to 25% of all DNA exonerations involve innocent people who gave a false confession.37 Unfortunately, as seen in the Michael Morton case, getting DNA tested after the fact can be a very slow process, sometimes taking years. Similar to DNA disproving a confession would be a situation where it could be objectively established at some point that it would have been physically impossible for the confessor to have committed the crime. This, plus DNA, is what eventually eliminated John Kerr as a suspect, luckily, before a trial and conviction.

Another problem is how an innocent person even gets the opportunity to prove that the confession was false after the fact. Once confessed, the genie is out of the bottle. Even if evidence strongly suggests that the person might be innocent, it is hard to remove all possible doubt about the confession. Some fortuitous event has to happen, such as someone walking in off the street admitting to the crime and providing inconclusive details to support that claim. Or, as in the Yarbough and Wilson case, the perpetrator killed several years later and left matching DNA which eventually raised a red flag on the boy's earlier convictions. The most likely scenario would be that some organization, such as the Innocence Project, pursue the case and successfully disproves the false confession. One thing though is certain, when evidence of a false confession comes to light; the integrity of the justice system is implicated. Presented in this paper were real-life cases, all determined to be false confessions, and the cases that went to trial, defendants were found to be guilty. Many were the product of a coercive police interrogation, not supported by any other evidence. Researchers we have come to know, Kassin, Gudjonsson, Leo, and Drizin, have called for policy changes which are believed would reduce the risk of false confessions. Many have argued that interrogation practices need to be changed. Most scholars agree that eliminating lying (which is perfectly legal) in an interrogation would minimize the chance of mistakes. As we have seen, interrogations can last for hours, sometimes days. Interrogators can say they have the person's fingerprints on the murder weapon, hair samples on the victim, a failed polygraph, positive identification by witnesses, and a host of other deceptive tactics. The suspect, confused and/or disoriented, begins to question his or her innocence. Questions may turn to memory and consciousness. Eventually, the suspect might infer that they could have committed the crime. As we have seen in many of the cases reviewed, untrue statements regarding the presence of incriminating evidence or a person's mental state played a part in the false confession. Another policy change frequently mentioned is requiring mandatory electronic recording of interrogations, preferably a video record focused on both the suspect and interrogator. This is simply the only way to create an objective record of what transpired during the course of the interrogation process. This would allow prosecutors and judges to review questionable confessions before going forward. If at trial, rules might prevent a jury from viewing a video, but at the very least, they could be provided with audio or transcripts generated from a videotape. In many of the cases reviewed, a confession was the only thing presented at trial. Logic would tell us there needs to be something else, such as a confession corroborated by independent evidence of some type. In the large number of exoneration cases, only a fraction presented in this paper, provide irrefutable proof that false confessions resulting in wrongful convictions are not isolated or rare events. They arise from systemic defects in the criminal justice system that have been clearly identified, and someday need to be addressed.

REFERENCES

1. Saul M. Kassin, "Psychology of Interrogations, Confessions & Testimony," Criminal Justice and Behavior, 35, Issue 10, (Oct 2008): 1309-1322.
2. Gisli H. Gudjonnsson, Psychology of Interrogations, Confessions & Testimony, (Chichester, UK: John Wiley & Sons, 1992), 271.
3. Saul M. Kassin, "Why Confessions Trump Innocence," American Psychologist, 67, Issue 6, (Sep 2012): 431-445.
4. Richard P. Conti, "The Psychology of False Confessions," The Journal of Credibility Assessment and Witness Psychology, 2, No. 1, (1999): 14-36.
5. Ibid.
6. Morgan Moffa & Judith Plantania, "From Obsession to Confession: A False Confession Paradigm in the Murder of JonBenet Ramsey," Applied Psychology in Criminal Justice, 4, Issue 2, (Jan 2008): 228-242.
7. Saul M. Kassin & Gisle H. Gudjonsson, "The Psychology of Confessions: A Review of the Literature and Issues," Psychological Science in the Public Interest, 5, No. 2, (Nov 2004): 33-67. 8 Ibid.
8. Conti, "The Psychology of False Confessions."
9. Richard C. Cortner, A Scottsboro Case in Mississippi: The Supreme Court and Brown v. Mississippi, (Jackson: University Press of Mississippi, 1986), 98.
10. shcraft et al. v. State of Tennessee, 322 U.S. 143 (1944), Justia, accessed 7 Feb 2014, http://supreme.justia.com/cases/federal/us/322/143/case.html
11. Zak Stambor, "Can Psychology Prevent False Confessions?" Monitor On Psychology, 37(8). (Sep 2006): 23-28.
12. Kassin, "Why Confessions Trump Innocence," p. 431.
13. Saul M. Kassin, "On the Psychology of Confessions: Does Innocence Put Innocents at Risk?" American Psychologist, 60 Issue 3, (Apr 2005): 215-228
14. Hannah Beery, "Anthony Yarbough and Sharrif Wilson Exonerated in Brooklyn," Innocence Project of Florida, 11 Feb 2014, accessed 12 Feb 2014, http://floridainnocence.org/ ?p=10903
15. Richard A. Leo & Steven A. Drizin, "The Problem of False Confessions in the Post-DNA World," North Carolina Law Review, Vol. 82, (2004): 924.
16. Saul M. Kassin & Gisle H. Gudjonsson, "The Psychology of Confessions: A Review of the Literature and Issues"
17. " DNA Evidence Frees Man Whose Confession Put Him

Behind Bars for 17 Years," Forensic Examiner, 15, Issue 1, (Spring 2006): 71-71.

18. Saul M. Kassin & Gisle H. Gudjonsson, "The Psychology of Confessions: A Review of the Literature and Issues"
19. Lawrence Wright, Remembering Satan, (New York: Alfred A. Knopf, Inc., 1994), 8.
20. Robert Perske, Deadly Innocence?, (Nashville: Abingdon Press, 1995), 15.
21. Michael Yoanna, "Sorry, Joe," Colorado Springs Independent, (Colorado Springs, CO), Jun 7, 2007.
22. "Max Alexander Soffar v. The State of Texas," Justia, 18 Nov 2009, accessed 23 Sep 2013, http://law.justia.com/cases/texas/court-of-criminal-appeals/2009/19002.html
23. Erma Armstrong, "Anatomy of a Murder Frame-up—The Karlyn Eklof Story," Justice Denied, Issue 35, (Winter, 2007): 3, 34-35.
24. Richard J. Ofshe & Richard A. Leo, "The Decision to Confess Falsely: Rationale Choice and Irrational Action," Denver University Law Review, 74, 4, (1997): 981-1029.
25. Saul M. Kassin, "False Confessions: Causes, Consequences, and Implications for Reform," Current Directions in Psychological Science, 17, No. 4, (2008): 249-253.
26. Edwin J.Delattre, Character and Cops: Ethics in Policing, (Lanham Md, Rowman & Littlefield Publishing Group, 2011), 230.
27. Michael A. Caldero and John P. Crank, Police Ethics: The Corruption of Noble Cause, (Burlington, MA: Elsevier, 2011), 31.
28. Randall Grometstein, "Prosecutorial Misconduct and Noble Cause Corruption," Criminal Law Bulletin, Vol. 43, Issue 1, (Jan/Feb 2007): 63-75.
29. Pamela Colloff, "The Innocent Man: Part Two," Texas Monthly, Dec 2012, accessed 6 Feb 2014, http://www.texasmonthly.com/story/innocent-man-part-two/page/0/1
30. Barry Scheck, Peter Neufeld & Jim Dwyer, Actual Innocence: Five Days to Execution, and Other Dispatches From the Wrongly Convicted, (New York, Doubleday, 2000), 194.
31. Mark Costanzo, Netta Shaked-Schroer, & Katherine Vinson, "Juror Beliefs About Police Interrogations, False Confessions, and Expert Testimony," Journal of Empirical Legal Studies, Vol. 7, Issue 2, (June 2010); 244.
32. Richard A. Leo & Steven A. Drizin, "The Problem of False Confessions in the Post-DNA World."
33. Saul M. Kassin, Christian A. Meissner, & Rebecca J. Norwick, "I'd Know a False Confession if I Saw One: A Comparative Study of College Students and Police Investigators," Law and Human Behavior, 29, No. 2, (April 2005): 211-227.
34. Jennifer Perillo & Saul Kassin, "Inside Interrogation: The Lie, the Bluff, and False Confessions," Law and Human Behavior, 35, No. 4, (Aug 2011): 327-337.
35. Ibid.
36. Saul M. Kassin, "False Confessions: Causes, Consequences, and Implications for Reform."

CHAPTER 15

THE ROLE OF SUBSTANCE USE AND MORALITY IN VIOLENT CRIME - A QUALITATIVE STUDY AMONG IMPRISONED INDIVIDUALS IN OPIOID MAINTENANCE TREATMENT

Ingrid Amalia Havnes[1,2], Thomas Clausen[2] , Christina Brux[3] and Anne-Lise Middelthon[3]

[1] Division of Mental Health and Addiction, Oslo University Hospital, PO Box 4956, Oslo, Nydalen 0424, Norway.

[2] SERAF - Norwegian Centre for Addiction Research, University of Oslo, PO Box 1039, Oslo, Blindern 0315, Norway.

[3] Institute of Health and Society, University of Oslo, PO Box 1130, Oslo, Blindern 0318, Norway.

ABSTRACT

Background

Opioid maintenance treatment (OMT) is regarded as a crime control measure. Yet, some individuals are charged with violent criminal offenses while enrolled in OMT. This article aims to generate nuanced knowledge about violent crime among a group of imprisoned, OMT-enrolled individuals by exploring their understandings of the role of substances in violent crime prior to and during OMT, moral values related to violent crime, and post-crime processing of their moral transgressions.

Methods

Twenty-eight semi-structured interviews were undertaken among 12 OMT-enrolled prisoners. The interviews were audio recorded and transcribed verbatim. An exploratory, thematic analysis was carried out with a reflexive and interactive approach.

Findings

Prior to OMT, substances and, in particular, high-dose benzodiazepines were deliberately used to induce 'antisocial selves' capable of transgressing individual moral codes and performing non-violent and violent criminal acts, mainly to support costly heroin use. During OMT, impulsive and uncontrolled substance use just prior to the violent acts that the participants were imprisoned for was reported. Yet, to conduct a (violent) criminal act does not necessarily imply that one is without moral principles. The study participants maintain moral standards, engage in complex moral negotiations, and

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struggle to reconcile their moral transgressions. Benzodiazepines were also used to reduce memories of and alleviate the guilt associated with having committed violent crimes.

Conclusions

Substances are used to transgress moral codes prior to committing and to neutralize the shame and guilt experienced after having committed violent crimes. Being simultaneously enrolled in OMT and imprisoned for a (violent) crime might evoke feelings of 'double' shame and guilt for both the criminal behavior prior to treatment and the actual case(s) one is imprisoned for while in OMT. Treatment providers should identify individuals with histories of violent behavior and, together with them, explore concrete episodes of violence and their emotional reactions. Particular attention should be given to potential relationships between substance use and violence and treatment approaches tailored accordingly. What appears as severe antisocial personality disorder may be partly explained by substance use.

BACKGROUND

Violent behavior cannot be attributed to any single factor; rather, a complexity of individual and environmental factors is involved [1, 2, 3]. Previous research identifies the following as among important factors associated with increased violence risk: earlier violent crime [4], 'history of problems with other antisocial behavior' [3], severe personality disorders [5, 6, 7], and substance abuse [8, 9]. Most psychoactive substance use occurs among individuals who do not behave violently [8]. Nonetheless, the relationship between psychoactive substances and violence warrants attention and can be conceptualized as a tripartite model [10, 11]: the systemic violence involved in the illegal drug market [10, 12, 13, 14], the economic compulsive violence enacted to support costly drug use, and heroin use in particular [15], and thepsychopharmacological violence that can occur during substance use, including acute intoxication, drug-seeking behavior associated with withdrawal, and episodes of drug-induced psychosis and paranoid symptoms [8, 9].

Research suggests that alcohol is the substance most closely associated with aggression and violent behavior [8, 9, 16]. Violence has also been associated with the influence of stimulants like amphetamines/methamphetamines [17, 18] and cocaine/crack cocaine [19, 20]. Heavy and frequent use of amphetamines is also related to violence [17]. Disinhibitory benzodiazepine reactions, such as hostility, agitation, and loss of impulse control, have been reported [21, 22], and high-dose benzodiazepine use is found to be a high risk factor for interpersonal violent crime [23]. Opioid use depresses activity and, thereby, temporarily inhibits violent behavior. During withdrawal, physical discomfort and agitation can result in violent behavior [8].

Opioid dependence is often associated with criminal activity [24, 25, 26]. Reductions in acquisitive and drug-related crime during opioid maintenance treatment (OMT) are widely reported [27, 28, 29]. Violent crime is found to be relatively uncommon among heroin users [30, 31, 32] and to decrease during OMT [33, 34]. However, one group of individuals in OMT who had been convicted of violent crime prior to enrollment was found to have a higher risk of both violent and non-violent criminal convictions during OMT [34].

There is a need to gain a deeper understanding of criminal behavior among persons enrolled in OMT and, in particular, among those who exhibit violent behavior during treatment, thereby enabling treatment providers to tailor their treatment approaches accordingly and strategically incorporate violence risk management. This article aims to generate multifaceted and nuanced knowledge about violent crime among a group of imprisoned, OMT-enrolled individuals by exploring their understandings and articulations of the role of substances in violent crime prior to and during OMT, moral values related to violent crime, and post-crime processing of their moral transgressions.

METHODS

The exploratory, qualitative study upon which this and two other articles [35, 36] are based formed part of a larger study focusing on criminal convictions in a national OMT cohort [29, 34]. Violence, in this study, is defined as actual, attempted, or threatened bodily harm to another person [3].

Setting

The Norwegian OMT program started in 1998 and was intended to reach a population of severely dependent heroin users who were not benefiting from other types of treatment [37]. Imprisoned, opioid-dependent individuals, including those serving long sentences, may enter the national OMT program. For individuals who are already enrolled in OMT when imprisoned, the treatment is continued [38].

Sampling and Recruitment

The inclusion criteria were that the study participants were of or above legal age, in a state to provide informed consent and enrolled in OMT at the time of imprisonment for suspected crime. To minimize recall bias, the study design set a short time span between the arrest and the first interview in prison, thereby targeting remand prisoners. Recruitment occurred in prisons; prison staff contacted the prisoners and those who agreed to meet the first author were given written and verbal information about the study. Three individuals chose not to participate, explaining that they needed time to prepare for court or did not want to discuss negative life experiences or sensitive matters.

Data collection and analysis

28 one-hour long interviews were carried out in prison with the 12 participants. The interviews were conducted by IAH, who is a trained specialist in psychiatry. Most of the participants were interviewed between two and four times, though two individuals were interviewed only once due to short notice release from the remand wing. Given the exploratory character of the study, the interview guide was regularly revised [39, 40]. We sought to narrativize topics [41] in order to facilitate nuanced, detailed, and concrete accounts of participant experiences, from their own perspectives.

To access normative responses on sensitive subjects, we sometimes utilized vignettes [42] and individualized guides were developed for subsequent interviews to validate findings from previous interviews [39] and facilitate cross-case analysis. Among the topics explored were the following: experiences with OMT, understandings of crime and violent behavior, understandings of substance use and its role in violent crime prior to and during OMT, norm systems and moral codes, life situations before imprisonment, and mental and physical health. The interviews were audio recorded, with the exception of one individual who preferred note-taking. Identification and analysis of emerging themes was jointly carried out by IAH and ALM as a ceaseless task that was integrated throughout the entire research process [43], and CB took part in the final stages of thematic analysis.

The biosocial model of violence and antisocial behavior [2] suggests that genes, environment, social, and biological factors can predispose individuals to aggression and violence and that biological and social risk factors can be linked to dysregulation of cognitive (thinking), affective (emotions), and motor (behaviors) brain processes. The findings from the thematic analysis have a special focus on how substance use were experienced by the participants to affect thinking, emotions, and behavior related to violent crime.

Sample Characteristics

Twelve persons, nine men, and three women between 22 and 50 years of age, participated in the study. Ten individuals were formerly convicted of several accounts of violent crime. Four of the individuals had been released from prison between 1 week and 1 month prior to being reinstated in prison when they were included in this study. There were eight cases of imprisonment for violent offenses during the study period. Though we are obliged to remain vague for the sake of upholding ethical standards, the types of violence they were imprisoned for during OMT vary, including violent threats and physical violence towards family members and staff in the treatment system, threats and physical violence against police officers during arrest, grievous robberies, severe interpersonal violence, and interpersonal violence resulting in death.

Time previously served in prison ranged from 1.5 to 20 years. All participants had been opioid dependent and poly-drug users for nearly 10 years or more prior to OMT. Half the sample was homeless and, at the time of our first interview, time spent in OMT varied from a few months to nearly 10 years. All participants had tight medication control regimes due to non-compliance with treatment regulations at the time of imprisonment [36].

Ethics

The study was approved by the Regional Committee for Medical Research Ethics, the Norwegian Social Science Data Services and the Norwegian Correctional Service Region East. All participants provided voluntary and written informed consent. In addition to the formal requirements, emphasis was placed on ensuring anonymity throughout the publication process.

Findings

This exploratory study generated rich, empirical material on a number of phenomena related to criminal and, in particular, violent behavior among OMT-enrolled individuals prior to imprisonment. In this article, we focus on the participants' experiences and understandings of substance use and altered perceptions of reality and behavior related to violent behavior, mostly prior to OMT, and experiences of uncontrolled substance use and violence during OMT. The last part of this section explores moral principles related to violent behavior, and particular attention is given to how the participants understand, rationalize, and/or struggle to reconcile their violent behavior.

Drug use and Altered Perceptions of Reality and Behavior Prior to OMT

The participants of this study commonly recognized the ways in which various substances influence their behavior and contribute to violent crime. While many reported having induced violent and criminal behavior through instrumental drug use prior to OMT, they explained that, while enrolled in OMT, their substance use, though still contributing to violent behavior, is most often impulsive. Victor had been a drug dealer and debt collector for several years prior to enrolling in OMT. He has served nearly a decade in prison for property crimes, drug-related crimes, robberies, and interpersonal violence. He is well aware of his ability to temporarily alter his 'personality' by taking pills and, in an effort to enable criminal behavior, deliberately sought certain changes prior to OMT. He continues to do so while enrolled in OMT, but to a lesser extent:

> I could eat 20–30 pills [flunitrazepam and clonazepam]. [..] – Then you change… poor contact with others and reality. Even though I'm well aware of how I change, I do it sometimes every now and then, that's why I get imprisoned, like now… When I take these pills, I change personality completely. I am not a nice person then. I get mean. My reality… I become unconcerned. I don't give a damn about what people say. If you try to stop me, don't wear a uniform or happen to be two persons… then you have to watch out, because you restrict me in my world - inside my head. Because inside my head this is normal. And when I come home, I sit down to watch TV and start to think: 'shit, what have I done now?' Then it's too late, and you might use pills the next day or later because you'd rather forget about it.

Victor participates in an anger management program and recognizes that he has a problem with violent behavior in general and, particularly, when his perception of reality is altered due to the influence of high-dose flunitrazepam. Based on his description above, he could then be temporarily characterized as callous, unempathetic, and hostile; but, after committing a violent crime, he is compelled to use more pills to reduce guilt, alleviate remorse, and attempt to forget.

Impulsivity is a personality trait that several of the participants claim to have, and one that several experience to be enhanced while using substances and, particularly, high-dose benzodiazepines.

Simon has a long history as a drug dealer prior to OMT and provides yet another example of altered behavior while under the influence of drugs. He had, at the time of the interview, served several sentences for convictions of violence. Prior to OMT, Simon frequently used flunitrazepam instrumentally to decrease inhibitions and enable himself to commit crimes. During OMT, this happened on a few occasions:

Pills get you damn impulsive… I've usually taken pills if I commit crimes. I don't have the nerve to do it when I'm sober.

He claimed that his criminal behavior was greatly reduced following OMT enrollment. However, when collecting his daily methadone dose from the pharmacy, he was accessible to illicit drug dealers who offered him 'pills' on a daily basis. He explained that, on a bad day, he might accept, even though he knew that this impulsive flunitrazepam use may subsequently lead to violence and crime. He defines a 'relapse' as taking 10 mg or more of flunitrazepam and, when asked how this drug affects him, responds:

I get damn aggressive. Rude. When it comes to crime and such, I overcome barriers, lose inhibitions… I've always been high [on flunitrazepam and alcohol], when I've been convicted of violence.

Finally, Simon was also clear that regular use of benzodiazepines makes him more aggressive. But, as he saw it, the manner and dose in which benzodiazepines are used is of importance for instrumentally reducing inhibitions and/or inducing impulsivity and aggressive behavior:

One valium [diazepam] doesn't get you high. It's the way you eat it. There's a difference between shaving your head and cutting it off.

Several participants described the ways in which they can deliberately lower their inhibitions, induce temporary antisociality and thereby enable themselves to commit violent and other crimes through strategic drug intake informed by the experience and knowledge obtained from years of carefully monitored substance use.

Experiencing and Understanding Uncontrolled Substance use and Violence During OMT

Participants of the study explain that their moral principles are also compromised by impulsive substance use during OMT. When discussing this matter, they demonstrate keen awareness of the ways in which various substances influence them and their behavior. Frederic had, at the age of 30, served several years in prison due to a pattern of crime, multisubstance use, and violent behavior. He then decided to enroll in OMT to reduce criminal behavior and avoid being imprisoned. However, at the time of the first interview, he had been imprisoned several times during OMT and recalls his most recent prison release. He had been offered a room in an institution but soon broke a house rule and was forced to leave immediately. Fredric despaired:

OK, I'll go all the way [I thought]. I got high - on everything. [..] The police came and I was taken into custody again. I think [this time] I'll get almost a year - violence against a public officer. I kicked his leg and spat on his face. Possession of drugs; resisted arrest violently; was carried to the car. I don't remember it all, I was so high. I black out when I take pills.

When asked if certain drugs make him violent, he responds:

It isn›t amphetamine, but pills that make me mad and aggressive. Heroin is not my main problem [regarding violence]… But I also have a somewhat aggressive way of being without drugs. It is mainly because of intoxication that I serve sentences. [..] Every time I get arrested for details I resist. That is a problem when I›m high on pills. I feel that I am treated unfairly and resist, and that is what I am sentenced for.

Frederic demonstrates insight into the relationship between his drug intake, hot-tempered character, and violent behavior. He knows well the diverse ways that different drugs affect him and contribute to violence. He has learned that, for him, heroin is protective against violence and amphetamine neutral, and that, in high doses, benzodiazepines increase the risk of becoming violent by reinforcing his otherwise 'somewhat aggressive way of being'. While he holds intoxication to be instrumental to his violent behavior and subsequent incarcerations, he neither eradicates himself as a subject nor externalizes his violent acts. On the contrary, he draws attention to aggression as a general feature of his mode of being in the world and pattern of reacting violently to unjust 'details' when 'high on pills'. He explains that, in the absence of high-dose benzodiazepine use, he would have a higher tolerance for unjust experiences. As a result of still being imprisoned for violent crimes when enrolled in OMT, Frederic plans to discontinue OMT before being released from prison and instead continue outpatient treatment for benzodiazepine dependence.

While Fredric recalled and, to a certain extent, rationalized what had happened, others have experienced episodes of impulsive and uncontrolled drug use and/or blackouts during which they have violated what they hold to be important moral principles. Afterwards, they have struggled to recall, understand, and reconcile their moral transgressions.

Morten experienced an episode of what he describes as massive and unplanned drug intake, which led to a loss of control and blackout during which he committed a serious violent crime. He had been opioid dependent for nearly two decades and, though he was convicted of several violent and non-violent crimes prior to OMT, claimed to have discontinued all criminal behavior upon OMT enrollment. He had moved out of Oslo to limit his access to illicit drugs and committed himself to avoiding illicit drugs and sedatives in his new hometown to prevent destroying the new life he had built up. For some time prior to imprisonment, he had clean urine tests, worked, and maintained an apartment. However, he experienced increasing social and economic stress and purposively traveled to Oslo to use benzodiazepines on a few occasions. When he felt that he was losing control, he applied for institutional treatment. Meanwhile, he again went to Oslo deliberately to temporarily relieve stress by using benzodiazepines:

I was going to the capital [Oslo] to buy some pills and then [had planned to go] back home again. And I took more and more [pills] plus other things and lost it completely. I don›t remember anything, had a real blackout, terrible, and got into deep shit. When I came to my senses I understood nothing, was arrested and in hell. [..] I have spent the entire time of my first two weeks in custody trying to collect myself in order to avoid a complete collapse.

Prior to OMT, Morten had violated his moral standards when financially desperate and, though he managed to accept these transgressions, this was not the case in the situation described above. Rather, Morten found it impossible to understand how he could lose control, relapse completely, and experience a blackout during which he committed a morally off-limits act that he could otherwise never imagine himself capable of. He neither remembered the violent act nor his motive for it, and this seriously threatened his sense of self and led him to the brink of a breakdown.

Ulf, who had previously served several long-lasting sentences for drug, property, and violent crimes, and who organized smuggling of buprenorphine into prison prior to OMT enrollment [36], offers another example of uncontrolled drug use and violence in OMT. While imprisoned, he feels that he can control his drug use. This control, however, was compromised shortly after his most recent release, prior to which he had used central stimulants in prison. He describes his loss of control and substance use as follows:

They wanted to release me to an institution, but I didn't want that. I didn't want to be a part of the treatment system… I wanted to run my own life. Well, I had taken cocaine in prison the last two weeks. When I got out, I went through the last gram of cocaine and a quarter of heroin, plus pills and alcohol. I took it all, plus amphetamine. I went berserk and was taken back to prison.

Going 'berserk', in this case, involved committing a severe violent crime, for which he is now imprisoned. Ulf thinks a lot about this episode of uncontrolled and indiscriminate substance intake and, not the least, about the violent crime he committed.

When I think about those days, it eats me, my body twists in disgust. But I know that if I was released now, I would do the same again.

Ulf has undergone several forensic psychiatric evaluations, concluding with an antisocial personality disorder diagnosis. His own understanding of his personality, which he regards as a permanent condition independent of drug use, is based on the years he spent in prison.

I have come to realize that I don't always send good signals … I am immature and have a low development of empathy.

Although Ulf states that he has a low level of empathy, he regrets his violent crime and worries about doing it again if released. Ulf relates the diagnosis to his antisocial behavior, but the diagnosis is not used to disclaim responsibility for his violent behavior and he does not believe that there is a possibility for change. Ulf explains that he can manage life in prison and thinks that he will probably spend most of his adult life incarcerated. So far, by committing high profile crimes, he has, in effect, ensured that his time spent outside of prison is limited. In a way, his unplanned execution of violence might be paradoxically seen as his way of preventing more of the same.

Moral Principles related to Violent Behavior

As almost all the participants had been imprisoned for violence against others, conceptualizations of violence and crime were among the interview themes. None of the participants regarded violence as external to the law. However, while some regarded the law as the undisputable authority in defining crime, others held that situational needs, such as self-defense, motive, or maintenance of subcultural order, should have consequences for whether or not particular acts of violence constitute crime. Erik, for example, made concessions for cases in which he considered physical force to be a rightful and necessary disciplinary reactionwithin drug culture:

You do not cheat, you do not sell bad drugs to the ones you have around you and think of as friends. [..] If someone breaks those rules, then he will be punished - usually. That›s the reaction… and he will be beaten up.

Other participants would, as a general principle, recognize violence as a crime but, at the same time, define the crime›s severity in accordance with the degree of harm inflicted. For a few, like Frederic, whether or not violence should be regarded as crime depended upon the motive. More concretely, he does not consider self-defense a crime:

I don›t feel like a criminal. To me fighting isn›t a crime [but] that›s what they put me in prison for. Blind violence is a crime. I get pressured and pushed several times. Then I finally hit. To me that is self-defense.

All of the study participants operate according to moral principles, with a few identifying all and the rest identifying certain forms of violence as morally off-limits. Victor provides an example:

Never break into people›s homes… Never rob families, old people. I do not rob people on the street. I never beat up people for money, unless they owe me money.

Victor has served many sentences in prison for drug, property, and violent crime. Nevertheless, he explains that, upon each release, he must readjust to life outside of prison and ease back into criminal activity, negotiating and eventually transgressing his moral principles.

He has thus developed a routine of beginning with minor criminal acts and gradually habituating himself to more serious, potentially violent, and exhilarating criminal behavior that leads to an excitement rush comparable to the high achieved through substance use. As he explains:

When I come out, I begin carefully. I must do something, because I need to get going again… Yes, you begin to steal a little in stores and you begin to feel the warmth again. You get comfortable with that and eventually begin to think bigger. [..] It is much more exciting to wear a robber's mask and do something than to buy a half kilogram of heroin and stand and sell it. It provides a different type of 'high' or kick.

Other study participants try to maintain a high threshold for enacting violent behavior. For example, Paul had been a heroin dealer for many years prior to OMT and had experienced that the demand for heroin declined as OMT became available for a large proportion of opioid-dependent individuals, which made it difficult for him to support himself. When enrolled in OMT, he struggles to avoid being a part of the drug distribution system, but, in certain periods, he still is. He explains why disrespecting certain drug culture norms, such as honoring deals and paying debt, may justify violent consequences:

It takes a lot, at least in my case, for me to use violence and such. But, sometimes, one must do so. One must send signals to others that it is not acceptable. If you do not do so within a certain time frame, more and more will take advantage of you. This is how it is in on the street. If you give a little, they will take everything. Other times, however, the study participants violate their moral principles without such justifications. The majority of the participants, for example, have experienced that the desperation associated with withdrawal interferes with their ability to uphold all moral principles and increases their vulnerability for committing violent crimes. While heroin dependent, Mona had served several sentences for drug, property, and violent crimes. Some years prior to entering OMT, she made a decision to sell sex [35] as to avoid both violent and non-violent criminal behavior. While enrolled in OMT and using mainly OMT medications, Mona finds it difficult to think about her former life. She describes her experiences and emotions related to many years of heroin use and continuously breaking her own moral codes like this:

When you're high, you lose inhibitions. You have the same moral, I think, somewhere deep inside. And then you get so desperate, mentally - but also physically, especially with heroin…you get so sick and you are so afraid that you'll stay there forever… Then you break your own rules: that you shouldn't steal, that you shouldn't do this and that… even if you know that it's terribly wrong… To justify these actions is one thing, but to understand it is harder. To accept that I was like that and maybe that it's a part of me since I was like that…. That is something I will have to live with the rest of my life. That is something that will never disappear: that feeling of shame and the bad conscience.

DISCUSSION

Prior to OMT, the participants intentionally induced an 'antisocial self' by use of substances - high-dose benzodiazepines, in particular, but also central stimulants and alcohol or combinations of substances. They did so to reduce inhibitions, empathy, and impulse control and, thereby, enable themselves to transgress individual moral codes and perform economically compulsive violent and non-violent crimes, mainly to support costly heroin use. During OMT, impulsive and uncontrolled substance use and subsequent unplanned violent crime was reported. Post-violence use of benzodiazepines was reported to reduce memories of and alleviate the emotional unease and guilt associated with this violence.

The participants operate according to moral codes that often parallel logics of morality commonly found throughout both mainstream and drug cultures that serve important functions within drug culture and that designate the conditions under which violent crime is and is not justified and the types of violence that are and are not permissible. While some participants rationalize their violent behavior, others struggle to reconcile the resulting shame, guilt, and fractured sense of self. This study's findings suggest that a violation of one's moral principles cannot be read as a lack of moral principles entirely; on the contrary, in order to break a rule, the rule needs to exist in the first place.

Shame and guilt are 'self-reflective' moral emotions [44]. Rather than using cognitive neutralization techniques described by other researchers, such as using self-talk to deny responsibility, injury, and the victim, condemning the condemners, and appealing to higher loyalties to reduce feelings of guilt before they break the law [45, 46, 47], the participants in this study report substance use and use of high-dose benzodiazepines, in particular, prior to committing (violent) crimes to achieve the same effect. Use of 'unusually high doses of benzodiazepines' was found to be related to high violence risk, and a low dose was found to reduce the violence risk in a sample of remand prisoners where the most commonly reported motivation for taking benzodiazepines were 'reduced anxiety' and 'feeling better [23]. Benzodiazepines are also known to affect memory [48, 49, 50], and use of flunitrazepam is reported to lead to anterograde amnesia [51]. In this study, we find that the study participants deliberately use these substances to reduce memory and feelings of guiltafter having committed a violent crime.

A study among imprisoned violent offenders found research interviews of importance for the participants to 'construct themselves as morally decent persons' [52]. This was also of importance for our study participants. But, for these study participants, to morally justify violent and non-violent behavior seemed to be easier while using heroin prior to OMT, as some individuals found it difficult to be enrolled in OMT and no longer able to use substances to reduce thinking and emotions related to previous criminal behavior. We suggest that some individuals might experience simultaneous OMT enrollment and imprisonment for a (violent) crime to elicit feelings of 'double' shame and guilt for both their criminal behavior prior to treatment and the actual case(s) they are imprisoned for while in treatment.

Some study limitations should be recognized. The participant sample was highly selective and the findings cannot be generalized in a statistical sense, but should instead be considered for the ways that they contribute to a more nuanced understanding of some OMT-enrolled individuals' experienced relationship between substance use and violent crime and the potential clinical implications. The interviews took place in prison, were conducted by a mental health practitioner, and addressed sensitive topics—all of which may have influenced the participants' retrospective reflections, their decisions to share particular experiences, and their understandings of these events and their consequences [53], possibly encouraging them to provide a positive self-presentation, as seen from their perspective.

CONCLUSIONS

In a clinical OMT setting, treatment providers may take measures to identify individuals with histories of violent behavior while under the influence of substances, intoxicated, or in a state of blackout. These individuals may be capable of reflecting upon and problematizing their violent behavior in treatment. Violent behavior is situational, and the concrete situations that precede, motivate, and contextualize violence, as well as the potential role of substances, should be matters of joint exploration between treatment providers and OMT patients to tailor individual treatment approaches accordingly. Some individuals may be at risk for further violent behavior if they continue to use substances while in OMT, and treatment for poly-substance dependence and, in particular, benzodiazepine dependence, may be provided. Furthermore, feelings of remorse, guilt, and shame related to violent and non-violent crimes both prior to and during OMT are of importance throughout treatment and especially among (remand) prisoners. When assessing personality disorders in OMT populations, the identification of dysfunctional traits should demand stability over time and consistency across situations.

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REFERENCES

1. Krug EG, Mercy JA, Dahlberg LL, Zwi AB: The world report on violence and health. Lancet. 2002, 360 (9339): 1083-1088. 10.1016/S0140-6736(02)11133-0.
2. Raine A: The Anatomy of Violence: The Biological Roots of Crime. 2013, New York: Random House LLC
3. Douglas KS, Hart SD, Webster CD, Belfrage H: HCR-20 V3: Assessing Risk of Violence – User Guide. 2013, Burnaby, Canada: Mental Health, Law, and Policy Institute, Simon Fraser University
4. Monahan J: The Clinical Prediction of Violent Behavior. 1995, New Jersey: Rowman & Littlefield
5. Salekin RT, Rogers R, Sewell KW: A review and meta analysis of the psychopathy checklist and psychopathy checklist revised: predictive validity of dangerousness. Clin Psychol Sci Pract. 1996, 3 (3): 203-215. 10.1111/j.1468-2850.1996.tb00071.x.
6. Yu R, Geddes JR, Fazel S: Personality disorders, violence, and antisocial behavior: a systematic review and meta-regression analysis. J Personal Disord. 2012, 26 (5): 775-792. 10.1521/pedi.2012.26.5.775.
7. Coid JW, Ullrich S, Kallis C: Predicting future violence among individuals with psychopathy. Br J Psychiatry. 2013, 203 (5): 387-388. 10.1192/bjp.bp.112.118471.
8. Boles SM, Miotto K: Substance abuse and violence: a review of literature. Aggress Violent Behav. 2003, 8: 155-174. 10.1016/S1359-1789(01)00057-X.
9. Kuhns JB, Clodfelter TA: Illicit drug-related psychopharmacological violence: the current understanding within a causal context. Aggress Violent Behav. 2009, 14 (1): 69-78. 10.1016/j.avb.2008.11.001.
10. Goldstein PJ: Drugs, violence, and federal funding: a research odyssey. Subst Use Misuse. 1998, 33 (9): 1915-1936. 10.3109/10826089809059326.
11. Goldstein PJ: The drugs/violence nexus: a tripartite conceptual framework. J Drug Issues. 1985, 15 (4): 493-506.
12. Sandberg S, Pedersen W: Street Capital: Black Cannabis Dealers in a White Welfare State. 2011, Bristol: The Policy Press
13. Bourgois P: The moral economies of homeless heroin addicts: confronting ethnography, HIV risk, and everyday violence in San Francisco shooting encampments. Subst Use Misuse. 1998, 33 (11): 2323-2351. 10.3109/10826089809056260.
14. Topalli V, Wright R, Fornango R: Drug dealers, robbery and retaliation. Vulnerability, deterrence and the contagion of violence. Br J Criminol. 2002, 42 (2): 337-351. 10.1093/bjc/42.2.337.
15. Chaiken JM, Chaiken MR: Drugs and predatory crime. In Drugs and Crime. Edited by Tonry M, Wilson JQ. 1990, Chicago: University of Chicago Press
16. Haggård Grann U, Hallqvist J, Långström N, Möller J: The role of alcohol and drugs in triggering criminal violence: a case crossover study. Addiction. 2006, 101 (1): 100-108. 10.1111/j.1360-0443.2005.01293.x.
17. McKetin R, Lubman DI, Najman JM, Dawe S, Butterworth P, Baker AL: Does methamphetamine use increase violent behaviour? Evidence from a prospective longitudinal study. Addiction. 2014, 109 (5): 798-860. 10.1111/add.12474.
18. Cartier J, Farabee D, Prendergast ML: Methamphetamine use, self-reported violent crime, and recidivism among offenders in California who abuse substances. J Interpers Violence. 2006, 21 (4): 435-445. 10.1177/0886260505285724.
19. MacDonald S, Erickson P, Wells S, Hathaway A, Pakula B: Predicting violence among cocaine, cannabis, and alcohol treatment clients. Addict Behav. 2008, 33 (1): 201-205. 10.1016/j.addbeh.2007.07.002.
20. Chermack ST, Blow FC: Violence among individuals in substance abuse treatment: the role of alcohol and cocaine consumption. Drug Alcohol Depend. 2002, 66 (1): 29-37. 10.1016/S0376-8716(01)00180-6.
21. Paton C: Benzodiazepines and disinhibition: a review. Psychiatr Bull. 2002, 26: 460-462. 10.1192/pb.26.12.460.
22. Bramness JG, Skurtveit S, Morland J: Flunitrazepam: psychomotor impairment, agitation and paradoxical reactions. Forensic Sci Int. 2006, 159 (2–3): 83-91.
23. Lundholm L, Haggård U, Möller J, Hallqvist J, Thiblin I: The triggering effect of alcohol and illicit drugs on violent crime in a remand prison population: a case crossover study. Drug Alcohol Depend. 2013, 129 (1): 110.115-
24. Degenhardt L, Gisev N, Trevena J, Larney S, Kimber J, Burns L, Shanahan M, Weatherburn D: Engagement with the criminal justice system among opioid-dependent people: a retrospective cohort study. Addiction. 2013, 108 (12): 2152-2165. 10.1111/add.12324.
25. Bukten A, Skurtveit S, Stangeland P, Gossop M, Willersrud AB, Waal H, Havnes I, Clausen T: Criminal convictions among dependent heroin users during a 3-year period prior to opioid maintenance treatment: a longitudinal national cohort study. J Subst Abuse Treat. 2011, 41 (4): 407-414. 10.1016/j.jsat.2011.06.006.
26. Milloy MJ, Wood E, Small W, Tyndall M, Lai C, Montaner J, Kerr T: Incarceration experiences in a cohort of active injection drug users. Drug Alcohol Rev. 2008, 27 (6): 693-699. 10.1080/09595230801956157.
27. Mattick RP, Breen C, Kimber J, Davoli M: Methadone maintenance therapy versus no opioid replacement therapy for opioid dependence (Intervention Review). Cochrane Libr. 2009, 3: 1-31.
28. Gossop M, Stewart D, Browne N, Marsden J: Methadone treatment for opiate dependent patients in general practice and specialist clinic settings: outcomes at 2-year

follow-up. J Subst Abuse Treat. 2003, 24 (4): 313-321. 10.1016/S0740-5472(03)00040-0.

29. Bukten A, Skurtveit S, Gossop M, Waal H, Stangeland P, Havnes I, Clausen T: Engagement with opioid maintenance treatment and reductions in crime: a longitudinal national cohort study. Addiction. 2012, 107 (2): 393-399. 10.1111/j.1360-0443.2011.03637.x.
30. Farabee D, Joshi V, Anglin D: Addiction careers and criminal specialization. Crime Delinquency. 2001, 46 (2): 196-220.
31. Haynes P: Drug using offenders in South London. J Subst Abus Treat. 1998, 15 (5): 449-456. 10.1016/S0740-5472(97)00307-3.
32. Kinner SA, George J, Campbell G, Degenhardt L: Crime, drugs and distress: patterns use and harm among criminally involved injecting drug users in Australia. Aust N Z J Public Health. 2009, 33: 223-227. 10.1111/j.1753-6405.2009.00379.x.
33. Gossop M, Trakada K, Stewart D, Witton J: Reductions in criminal convictions after addiction treatment: 5-year follow-up. Drug Alcohol Depend. 2005, 79 (3): 295-302. 10.1016/j.drugalcdep.2005.01.023.
34. Havnes I, Bukten A, Gossop M, Waal H, Stangeland P, Clausen T: Reductions in convictions for violent crime during opioid maintenance treatment: a longitudinal national cohort study. Drug Alcohol Depend. 2012, 124 (3): 307-310. 10.1016/j.drugalcdep.2012.02.005.
35. Havnes IA, Clausen T, Middelthon A-L, Middelthon A-L: ‘Diversion’ of methadone or buprenorphine: ‘harm’ versus ‘helping’. Harm Reduction J. 2013, 10 (1): 24-10.1186/1477-7517-10-24.
36. Havnes IA, Clausen T, Middelthon A-L: Execution of control among ‘non-compliant’, imprisoned individuals in opioid maintenance treatment. Int J Drug Policy. 2014, 25 (3): 480-485. 10.1016/j.drugpo.2014.01.018.
37. Waal H: Merits and problems in high-threshold methadone maintenance treatment. Eur Addict Res. 2007, 13 (2): 66-73. 10.1159/000097935.
38. The Norwegian Directorate for Health: Norwegian Guidelines for Opioid Maintenance Treatment, OMT. 2010, Oslo, Norway: The Norwegian Directorate of Health
39. Maxwell JA: Qualitative Research Design: An Interactive Approach. 2013, Thousand Oaks: SAGE Publications
40. Kvale S, Brinkmann S: Interviews: Learning the Craft of Qualitative Research Interviewing. 2009, London: SAGE Publications
41. Hollway W, Jefferson T: Doing Qualitative Research Differently: A Psychosocial Approach. 2012, London: Sage
42. Greene J, Thorogood N: Qualitative Methods for Health Research. 2009, London: SAGE Publications
43. Pope C, Ziebland S, Mays N: Qualitative research in health care: analysing qualitative data. BMJ. 2000, 320 (7227): 114-116. 10.1136/bmj.320.7227.114.
44. Tangney JP, Stuewig J, Mashek DJ: Moral emotions and moral behavior. Annu Rev Psychol. 2007, 58: 345-372. 10.1146/annurev.psych.56.091103.070145.
45. Topalli V: When being good is bad: an expansion of neutralization theory. Criminology. 2005, 43 (3): 797-836. 10.1111/j.0011-1348.2005.00024.x.
46. Sykes GM, Matza D: Techniques of neutralization: a theory of delinquency. Am Sociol Rev. 1957, 22 (6): 664-670. 10.2307/2089195.
47. Maruna S, Copes H: What have we learned from five decades of neutralization research?. Crime Justice. 2005, 32 (1): 221-320.
48. Lader M: Benzodiazepines revisited—will we ever learn?. Addiction. 2011, 106 (12): 2086-2109. 10.1111/j.1360-0443.2011.03563.x.
49. Curran HV: Benzodiazepines, memory and mood: a review. Psychopharmacology. 1991, 105 (1): 1-8. 10.1007/BF02316856.
50. Beracochea D: Anterograde and retrograde effects of benzodiazepines on memory. Sci World J. 2006, 6: 1460-1465.
51. Daderman AM, Fredriksson B, Kristiansson M, Nilsson L-H, Lidberg L: Violent behavior, impulsive decision-making, and anterograde amnesia while intoxicated with flunitrazepam and alcohol or other drugs: a case study in forensic psychiatric patients. J Am Acad Psychiatry Law Online. 2002, 30 (2): 238-251.
52. Presser L: Violent offenders, moral selves: constructing identities and accounts in the research interview. Soc Prob. 2004, 51 (1): 82-101. 10.1525/sp.2004.51.1.82.
53. Schlosser JA: Issues in interviewing inmates navigating the methodological landmines of prison research. Qual Inq. 2008, 14 (8): 1500-1525. 10.1177/1077800408318325.

CHAPTER 16

THE WORK ETHICAL BEHAVIOUR OF NIGERIAN POLICE OFFICERS AS A FUNCTION OF SELF-ESTEEM, GENDER AND AGE

Ngozi Sydney-Agbor [1], Barnabas Ekpere Nwankwo[2], Manasseh N. Iroegbu[3] and Ezuruike Wisdom[1]

[1] Department of Psychology, Imo State University, Owerri, Nigeria

[2] Department of Psychology, Caritas University, Enugu, Nigeria

[3] Department of Psychology, University of Uyo, Uyo, Nigeria

ABSTRACT

This study investigated the influence of self-esteem, gender and age on work ethical behaviour of police officers. 200 Police Officers comprising of one hundred and six (106) males (53%) and ninety four (94) females (47%) with their ages ranging from 18-51 from the Imo State Police Command in the South Eastern region of Nigeria were selected using convenience sampling technique. They were administered with a self developed work ethic questionnaire and index of self-esteem questionnaire developed by Hudson (1982). Three hypotheses were tested; (i) Self-esteem will not be a statistical significant factor affecting work ethical behaviour of police officers; (ii) Gender will not be a statistical factor affecting work ethical behaviour of police officers. (iii) Age will not be a statistical significant factor affecting work ethical behaviour of police officers. A cross sectional survey was adopted, while F-test for 3-way ANOVA was used to analyze the data. Results showed that self-esteem and gender influenced adherence to work ethics (P<.05) while age did not. Officers with high self-esteem in

INTRODUCTION

The Nigeria Police Force was formed in the year 1930 and later enshrined in section 194 of the 1979 constitution [1]. Their roles include the enforcement of law, protection of lives and properties as well as the maintenance of internal peace and security. However, the Force has drawn great attention from a vast majority of the Nigerian population following a spate of total collapse in the adherence to its work ethics. Thus, great attention has shifted from the ethical behavior of those in the economic sector, administrative and other spheres of social life to individuals in the Nigerian Police Force, thereby putting heavy ethical demand on the work of police officers. These demands include a number of norms which the police officers have to abide by in their day-to-day work incase their activities are appraised as professionals according to public expectations. Ethical behavior as used in this work involves refraining from negative acts/behavior that is contrary to the code of conducts of the Nigerian Police Force. It is characterized by honesty, fairness and equity in interpersonal, professional and relationships. An officer who espouses ethical behavior will respect the rights of the citizens. Generally, there has been a negative perception of the Nigeria Police Force (NPF) which emanated from their poor performance in handling crimes and

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poor work ethics exhibited by some of its members. This has lowered the level of confidence and trust the Nigerian citizens have on the NPF. As [2] pointed out, resident cooperation with police can only improve if residents' perceptions of police legitimacy and trustworthiness are increased. Westmarland [3] opined that people are interested more on what the police do than how they do it.

This statement is true especially in the Nigerian context. The media and the public have not shown interest in how the NPF do their job as well as identifying some of the factors that may have deterred their efficiency. Presently the NPF is understaffed, under eqquipped with the necessary logistics like sophisticated arms, communication gadgets and vehicles needed for the successful execution of their misssion to serve and protect [4] For example, Nigeria has a population of over 150,000,000; it requires 375,000 police men to meet the United Nations recommended strength. Unfortunately, what Nigeria has today is 310,177 given a shortfall of 64,823 whereas the recommended United Nations Police ratio in any given population is 400:1 (400 citizens for one policeman). Nevertheless, the Nigerian government is currently making efforts to reform the police. A White Paper with 79 recommendations for improving the police force, known as Police Reform Bill is ongoing. Key reforms such as: Police officers who receive as little as \$40 (£26) a month, should be raised to \$100 for police constables, Deal with the estimated 10,000 officers with criminal records hired between 2001 and 2004, Establish a reliable system for the public to complain about the police, better educated recruits should attain a certain level of qualification before being considered, job applications should be transparently managed, policemen should not have to buy their own uniforms, the police are in dire need of an up-to-date communication network, and the police should be given better investigating tools and the training to use them [5]. The willingness to abide to ethical norms by police officers depends on their attitude toward work. Given the diversity of the workforce of the police in terms of demographic variables such as gender, age educational level, rank and length of service; the ethical attitude of police officers cannot be said to be homogenous, rather it appears far more complex. But this research is particularly interested in self-esteem, gender and age composition of the workforce. Though there are no available statistics regarding the self-esteem, gender and age composition of the workforce, available evidence shows an increase in the number of women and youths in the police force. It is also worth stating that work ethic is also changing as workplace diversity, generational and cultural differences make the work ethic more complex. Thus, ethical attitude based on a more homogenous work environment may not apply in tomorrow's workplace. Based on the above, it is therefore imperative to examine how self-esteem, gender and age difference affect the workplace ethical attitudes of individuals in the Nigeria Police Force (NPF).

The image of Nigeria to the rest of the world is that Nigerians are corrupt. There is corruption everywhere in Nigeria that the President, Goodluck Jonathan in his inaugural speech acknowledged corruption as the country's biggest problem. The federal government established the Economic and Financial Crime Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) as agents for fighting corruption in the country. Corruption has brought untold hardship to Nigerians, a high rate of poverty inequality and total collapse of essential services like electricity, education and water. Some of the corrupt acts in Nigeria includes: bribery, Frauds, embezzlement, extortion, favoritism and nepotism to mention but a few. The Nigerian police force, in spite of its pivotal role in criminal justice system is not immune to this virus that ravages the nation. It is unimaginable that an institution saddled with the responsibility of enforcing law could rank among the most corrupt institutions in the country. However, there seems to be an existing inverse relationship between the effort being made by the government to boost sanity and performance in the Nigeria Police Force. It is to this effect that the Inspector general (I.G) of Police warned commissioners against unlawful detention and unhealthy work ethic. Thus, it is for this reason that this research is being proposed to provide answers to the problem of unhealthy work ethic among police officers of the Nigeria police force. One attribute that may determine how an individual responds to work ethic is self esteem. According to [6], it is generally accepted that people seek to maintain, enhance and protect their self-esteem. Also, the manner in which they foster their self-esteem has a great deal to do with their behavior and the consequences to others. Thus, their level of self-esteem influences their ethical behavior as regards to work. Self-esteem rises and falls in response to successes and failures in domains on which one has staked self worth [6]. Although there may be cultural variability in its expression, the tendency to seek self-esteem is well established in western cultures. Steele [7] stated that individuals with high self-esteem have integrity which they try as much as possible to protect by strictly adhering to their work ethic. This quest to protect their integrity is bedrock on the axiom which states; "whatever reduces a man's dignity reduces his authority". Integrity here is generally considered to be "uprightness" within an individual. A person who has high self-esteem does not only obey the law but also adheres to rules and standards. This kind of behavior is usually referred to as ethical behavior.

Conversely, those with low self esteem seem not to care much about ethical behavior since they are in the struggle to get to ''the top'', they believe they have very little or nothing to lose. Unfortunately, it is often difficult to judge the extent to which one adheres to high ethical principles/behaviour. For example, a decision regarding a particular course of action might be based on ethical standards, fear of punishment or enlightened self-interest. There is this belief that men are more likely to consider rules, right and fairness, while, females are more likely to be concerned with relationships, compassion and caring [8]

That is to say, they are emotional. This difference is basically considered to be the result of gender socialization in early childhood. Traditional girls game involve indirect competition, and are more concerned with inclusion and turn-taking while traditional boys games tend to have more complex and rigid rules, and involved competing against others within the parameter of these rules. Gilligan's Theory of Moral Development posits that women think and speak in different ways and in different voices than men when faced with ethical issue [9]. She presented two contrasting ways of resolving ethical dilemmas. Feminine ethics is based on care and compassion whereas masculine ethics is based on universal justice. Under the former, she contends that individuals (women in particular) who knowingly allow another person to feel pain blame themselves for not doing something to prevent or act as a palliative to their pains. While under the latter, individuals judge each other guilty if they do something wrong to one another. Gillgan and Attanucci [10] attributed the differences in resolving dilemmas between men and women to difference in the socialization process. This is because women have been taught to be reserved and relationship oriented and for this reason, they tend to develop a caring ethical behavior. Men on the other hand, having being socialized to be tough and achievement oriented tend to develop an ethic of justice and fairness. These gender differences in ethical decision making are thought to have implications for adult's attitudes and interactions. Men are more likely to break rules given their competitive orientation. Women on the other hand are more likely to abide by rules and be less tolerant to rule breakers because of their concern for relationships [11] A number of studies on police attitude towards ethical issue conducted in the western world have reported that female officers on average expressed higher ethical standard than males. For example, in a longitudinal survey of law enforcing officers in the United States, [12] found that female officers gave significantly more ethical responses for both idealistic and realistic situations than their male counterparts. In Australia, [13] investigated the attitude to police officers and recruits towards breaches of ethics and found that females appeared to have higher ethical personal standard than male officers of equivalent rank. Similarly, [14] examined the influence of gender and age on attitude towards professional ethic among a sample of the Nigeria police officers using a cross-sectional survey, data was collected from a total of 163 participants and the results revealed that gender and age were significant predictors of unethical beliefs; females and older police officers were more ethical than their male and younger counterparts. Again [15] reported the findings of a meta-analysis of 47 students showing that female students consistently exhibit stronger ethical attitudes than their male counterparts. In a survey using a series of vignettes across different settings in the US, [16], found that, among business professionals females displayed higher ethical judgment than the male folks. Another variable which may significantly influence the extent in which an individual adheres to the ethical demands of his/her work place is age. In the contemporary Nigerian society, old age is usually likened to wisdom, uprightness and adherence to norms [17]. This is because, the more advanced in age one becomes the more experience he/she acquires and for this reason, they think, talk and act out of their wealth of past experiences. Thus, their actions are compelled by positive reasoning. The younger police officers on the other hand, may act out of youthful exuberance without considering the consequences of their actions. However, younger officers who are in close contact with the older colleagues may be influenced by their attitudes. This study seeks to empirically confirm the influence of the age of police officers on their work ethical behaviours. According to the observational theory of Bandura [18], much of what we learn are obtained by observing others, and this is much more efficient than learning through direct experience because it spares more countless responses that might be followed by either punishment or no reinforcement of any kind. The people whose behavior is observed are referred to as models. [18] identified four (4) main processes that are crucial for observational learning. Attention, retention/representation, behavior production and motivation. In order to learn through observation you must attend to the model. Factors that regulate attention include whether we think the behavior is important and can yield some profit to us. Secondly, we must learn to make some mental representation of what we have witnessed in memory, since we may not have the occasion to use an observed behavior for up to several years. Behavior production on the other hand, involves the process of converting the mental representations into appropriate actions. For instance, you may remember that someone cheated on his taxes or embezzled money that was entrusted under his care but can you perform the feat? Lastly, observational learning is most effective when observers are motivated to enact the model behavior. Your motivation may depend on whether you encounter a situation in which you believe that the response is likely to lead to favorable consequence(s) for you. From the above, it is therefore, deduced that every officer in the Nigeria police force has a role model, and severe punishment to this model (as a result of negligence to work ethic and/ or non adherence to code of conduct) will restrain the officer from emulating him/her. If on the contrary, the model gets away with his/her wrong deeds, the obsever will therefore, have every cause to emulate him/her. Thus, to ensure that police officers eschew unhealthy work attitude, anyone caught espousing it should be severely punished, to serve as a deterrent to others who may wish to emulate him or her. Afolabi and Omole [4] conducted a study on personality and workforce diversity as predictors of ethical behavior and job satisfaction among Nigerian Police officers. They upheld their hypothesis which predicted that age, gender, educational attainment and work experience of Police officers will independently and jointly predict their ethical behaviour .The results showing the contribution of each of the predictor variables in the joint prediction revealed that age contributed significantly with older police officers scoring higher on professional ethical scale than the younger ones. The contribution of gender was also significant, thus male police officers scored higher on professional ethical scale than their female colleagues. The present study therefore seeks to find out if self esteem, gender, and age can predict police officers work ethical behaviour.

Hypotheses

Self-esteem will not be a statistical significant factor affecting work ethical behaviour of police officers.

Gender will not be a statistical significant factor affecting work ethical behaviour of police officers. There will be no statistical significant effect of age on work ethical behaviour of police officers.

METHODS

Participants

A total number of 200 volunteered police officers comprising of 106 males (53%) and 94 females (47%) with their ages ranging from 18-51, took part in this study. They were selected using the convenience sampling technique. One hundred police officers (participants), were drawn from Imo State Police Headquarters, 60 from Fire Service Police Station Owerri, and 40 participants were drawn from the New Owerri police station (area "A").

Measures

The researchers made use of two questionnaires in the course of carrying out this study. The first instrument which measured the ethical behavior of the participants was a self developed 21 item Likert Scale.This questionnaire was developed after going through the "Police Act" (CAP 359) which was made available to the researchers through the help of the Police public relation officer (PPRO), Imo state police command, Owerri so as to be abreast with the expected ethical behaviours of police officers in Nigeria. Some items on the questionnaire are; "At checkpoints, I delay motorists who refuse to appreciate me monetarily", "It is generally not wrong for an officer to accept bribe from business people" and "I intimidate the public with my uniform". Before the main study, a pilot study was carried out using thirty-three (33) police officers drawn from shell camp police station to ascertain the validity of the questionnaire. The item analysis reduced the items from the original developed twenty-eight (28) items to twenty-one (21). These twenty-one (21) items yielded a Cronbach's alpha level of .83 and a mean score of 65.58. Hence, the questionnaire is reliable. The second questionnaire which was the Index of Self Esteem" (ISE) questionnaire developed by Hudson [19] was used to measure the self esteem of the participants. It comprises of twenty five (25) items and uses the likert scoring format. Positive statements were scored directly while the negative ones were scored in the reverse order. The Nigerian norm of the second scale is 31.47 (30.89 for males and 32.04 for females), while the reliability is .93 and a two (2) hour test-retest coefficient of .92.

Procedure

It took exactly two working weeks to carry out the main research work which included collection of data. At the various police stations visited, there were officers on hand that helped out in the study. Two hundred copies of the questionnaire where distributed at the 3 selected Police Stations in Owerri metropolis which are as follows: one hundred questionnaires at the Police Headquarters; fourty questionnaires at the New Owerri Police Station; while sixty questionnaires at the Fire Service Police Station. At the end of the whole exercise, the two hundred questionnaires were properly filled and used for the analysis. These police stations were randomly selected from the five police stations in Owerri metropolis, the state capital of Imo state (Nigeria), these police stations include the State police headquarters which was part of the study. Information on the number of police officers in these stations were not revealed due to security reasons.

Design and Statistics

The design for this work is a cross-sectional survey design and the statistics adopted is the F-test for 3-Way analysis of variance (2x2x4 ANOVA). This was predicated on the two (2) levels of each of the first two independent variables, viz: Self-esteem (high vs low), gender (male vs female);and the third independent variable Age with four levels each (18-25,26-35, 36-45 & 45+).

RESULTS AND DISCUSSION

Table 1: The descriptive statistics of variables studied which includes the mean, standard deviation and number of participants respectively

Variables	Mean	Standard Deviation	N
Low self –esteem	56.90	8.72	108
High self-esteem	64.32	5.79	92
Male	57.83	8.73	106
Female	63.11	6.99	94
26-35	58.36	8.92	58
36-45	60.12	7.37	74
18-25	60.89	9.18	45
46+	64.70	6.86	23

The descriptive statistics of the scores of the police officers work ethical behaviour

The above table shows that the first hypothesis which stated that self esteem will not be a statistical significant factor affecting work ethics of police officers is rejected, F (1, 184) =34.648, P <.05. This means that self esteem influenced the work ethical behaviour of police officers. Police with high self esteem (M =64.32, SD=8.72.) espoused high ethical behaviour than their counterparts of low self-esteem (M =56.90, SD=5.79). Similarly, the second hypothesis is also rejected, F (1,184) = 9.541, P =.002. Thus gender played a significant role in work ethic. The female police officers (M=63.11, SD=63.11) exhibited high work ethic than their male counterparts (M = 57.83, SD=57.83). However, the third hypothesis which stated that there will be statistical significant effect of age on work ethic of police officers was upheld, F (1,184) =1.634, P=.183.

Table 2: A 3-way ANOVA summary table (Dependent variable: work ethical behaviour)

Source	Type III sum of squares	Df	Mean square	F	Sig
Corrected model	4563.7072	15	304.247	5.976	.000
Intercept	521387.459	1	521387.459	10241.758	.000
Self-esteem (A)	1763.848	1	1763.848	34.648	.000
Gender (B)	485.691	1	485.691	9.541	.002
Age (C)	249.476	3	83.159	1.634	.183
A* B	22.680	1	22.680	.446	.505
A*C	386.624	3	128.875	2.532	.059
B * C	242.739	3	80.913	1.589	.193
A *B*C	104.569	3	34.856	.685	.562
Error	9367.073	184	50.908		
Total	741390.000	200			
Corrected total	13930.780	199			

R squared = .328 (adjusted R squared = .273)

Three hypotheses were statistically tested in the research work and the results drawn from these constitute the findings according to the hypotheses tested. The first (null) hypothesis speculated that "self-esteem will not be a statistical significant factor affecting the work ethical behaviour of police officers". This result corroborated the finding of [20], who conducted a study on employees' self-esteem and found out that an individual's self-esteem formed around play and organizational experiences would play a significant role in determining employee motivation, work related attitude and behaviour. The second result also rejected the null hypothesis that gender will not be a statistical significant factor affecting work ethical behaviour of police officers. Thus, gender played a significant. The female police officers were more ethical in their behaviour than their male counterparts. This is in consonance with the research made by Adebayo (2005); his result revealed that gender and age were significant predictors of unethical beliefs. Females and older police officers were more ethical than their male and younger counterparts. On the other hand, age was not a determinant of work ethical behaviour of police officers. This result is not in line with that of Afolabi and Omole (2011) who found that age and gender jointly and independently predicted Police officers ethical behavior. The results of this study imply that: (i) The level of an officer's self-esteem determines to a large extent how he/she will exhibit ethical behaviour. Therefore, a screening process for officers with high levels of self esteem and competency may help. (ii) Due to the fact that female police officers were ethical in their behaviour than their male counterparts, it becomes imperative to encourage more females to join the NPF. Also, more female officers may help address the crisis of legitimacy in Nigerian policing and restore back the image of the NPF. (iii) Age should not be considered an important variable during recruitment provided the applicant has the basic requirements and is above the minimum age required for entry into the force.

Limitations of the Study

One of the major limitations of this study is the use of convenience sampling. It is possible that only police officers who are ethical may have responded to the questionnaire. This method also does not allow the researcher to have any control over the representativeness of the sample. That is, the researcher did not control how well the characteristics of the sample (gender, age, race, education, etc.) match the characteristics of the larger population it is intended to represent. Similarly, the number of participants used does not adequately represent the population of police officers in Imo state. Therefore caution should be made when making generalizations from the findings of this study.

CONCLUSION

This study revealed the theoretical and practical aspects of self-esteem, gender and age in relation to the work ethical behaviour of officers in the Nigeria Police Force. In view of the study, it was discovered that self-esteem and gender had influences on the work ethical behaviour of police officers, whereas age did not. It will also enable the general public, the senior police officers in charge of recruitment and most importantly the government to know that police officers with low self-esteem in general and the male police officers in particular are more likely to be involved in unhealthy work ethics. This will encourage management not to discriminate against women during recruitment into the Police Force and also not to generalize that all police officers espouse unethical behaviour. The researchers hereby recommend that the Nigeria police Force should encourage researchers to carry out research on their organization so that they can know their Achilles heels and work hard towards sanitizing the force and wining the trust and confidence of the general public and the government. Professionals like Psychologists should be engaged to take full charge of the recruitment and selection processes of individuals into the Force. By so doing, only individuals that are more likely to espouse ethical behaviour/abide by the ethics of the force will be recruited, thus enhancing their corporate image and achieving their mission to serve and protect.

REFERENCES

1. Can Nigeria's police be reformed? BBC News. 2009-07-30. Retrieved 2013-05-28.
2. Hawdon J, Ryan J, & Griffin. Policing tactics and perceptions of police legitimacy. Police Quarterly. 2003;6:469-491.
3. Westmarland L. Police ethics and integrity: Breaking the blue code of silence. Policing and Society. 2005;15(2):145-165.
4. Afolabi OA, Omole EO. Personality type and workforce diversity as predictors of a. ethical behavior and job satisfaction among Nigerian policemen. Current Research Journal of Social Sciences. 2011;3(5):381-388.
5. Osuji C. Nigeria Police: most misunderstood, under-rated and vilified- why? Daily Independence Newspaper. Wednesday, May; 2013.
6. Reasoner R. The true meaning of self-esteem; National Association of self-esteem www.self –esteem-nase.org. 2006.
7. Steele CM. The psychology of self-affirmation: Sustaining the integrity of the self. In Berkowitz, L. (Ed.) Advances in experimental social psychology (Vol. 21, pp. 261-302). New York: Academic Press; 1988.
8. Lefton LA. Child Development. In Psychology, (7th ed.) pp. 350-351, Allyn & Bacon publishing; 2000.
9. Gilligan C. In a different voice: Psychological theory and women's development. Harvard University Press: Cambridge; 1982.
10. Gilligan C, Attanucci J. Two moral orientations; Gender differences and similarities: Merill -Palmer Quaterly. 1988;34:223-237.
11. Ni H, Jihong Z, Carol AA. Gender and police stress: The convergent and divergent impact of work environment, work-family conflict, and stress coping mechanisms for female and male police officers. Policing: An International Journal of Police Strategies and Management. 2002;25(4):687-708.
12. Miller LS, Braswell MC. Police Perceptions of Ethical Decision-Making: The Ideal vs. the Real. American Journal of Police. 1992;11(4):27
13. Huon G, Hesketh B, Frank M, McConkey K, McGrath G. Perspectives of Ethical Dilemmas: Ethics and Policing. Study 1, National Police Research Unit, Payneham, South Australia; 1985.
14. Adebayo C. Trouble with Nigeria. Heinemann. London; 2005.

15. Borkowski SC, Ugras YJ. The ethical attitudes of students as a function of age, sex and experience. Journal of Business Ethics. 1992;11:(12):961–979.
16. Hunt J. The Logic of Sexism Among Police. Women and Criminal Justice. 1990;1(2):3-30.
17. Ogbonna P. Essentials of philosophy and Logic. IMSU Press: Oweeri; 2000.
18. Bandura A. Social Foundations of Thought and Action: A social cognitive theory. Englewood Cliffs, NJ; Prentice –Hall; 1986.
19. Hudson WW. Index of Self-esteem the clinical Measurement Package: A field manual. Chicago Dorsey Press; 1982.
20. Dorman SM, Foulk DF. Characteristics of School Health Education Advisory Councils. Journal of School Health. 1987;57(8):337–339.

CHAPTER 17

BODY-WORN CAMERAS ASSOCIATED WITH INCREASED ASSAULTS AGAINST POLICE, AND INCREASE IN USE-OF-FORCE IF OFFICERS CHOOSE WHEN TO ACTIVATE CAMERAS

Preliminary results from eight UK and US police forces reveal rates of assault against officers are 15% higher when they use body-worn cameras. The latest findings, from one of the largest randomised-controlled trials in criminal justice research, highlight the need for cameras to be kept on and recording at all stages of police-public interaction – not just when an individual officer deems it necessary – if police use-of-force and assaults against police are to be reduced.

It may be that in some places it's a bad idea to use body-worn cameras, and the only way you can find that out is to keep doing these tests in different kinds of places Barak Ariel New evidence from the largest-yet series of experiments on use of body-worn cameras by police has revealed that rates of assault against police by members of the public actually increased when officers wore the cameras.

The research also found that on average across all officer-hours studied, and contrary to current thinking, the rate of use-of-force by police on citizens was unchanged by the presence of body-worn cameras, but a deeper analysis of the data showed that this finding varied depending on whether or not officers chose when to turn cameras on. If officers turned cameras on and off during their shift then use-of-force increased, whereas if they kept the cameras rolling for their whole shift, use-of-force decreased.

The findings are released today across two articles published in the European Journal of Criminology and the Journal of Experimental Criminology.

While researchers describe these findings as unexpected, they also urge caution as the work is ongoing, and say these early results demand further scrutiny. However, gathering evidence for what works in policing is vital, they say.

"At present, there is a worldwide uncontrolled social experiment taking place – underpinned by feverish public debate and billions of dollars of government expenditure. Robust evidence is only just keeping pace with the adoption of new technology," write criminologists from the University of Cambridge and RAND Europe, who conducted the study.

For the latest findings, researchers worked with eight police forces across the UK and US – including West Midlands, Cambridgeshire and Northern Ireland's PSNI, as well as Ventura, California and Rialto, California PDs in the United States – to conduct ten randomised-controlled trials.

Over the ten trials, the research team found that rates of assault against officers wearing cameras on their shift were an average of 15% higher, compared to shifts without cameras.

The researchers say this could be due to officers feeling more able to report assaults once they are captured on camera – providing them the impetus and/or confidence to do so.

The monitoring by camera also may make officers less assertive and more vulnerable to assault. However, they point out these are just possible explanations, and much more work is needed to unpick the reasons behind these surprising findings.

In the experimental design, the shift patterns of 2,122 participating officers across the forces were split at random between those allocated a camera and those without a camera. A total of 2.2 million officer-hours policing a total population of more than 2 million citizens were covered in the study.

The researchers set out a protocol for officers allocated cameras during the trials: record all stages of every police-public interaction, and issue a warning of filming at the outset. However, many officers preferred to use their discretion, activating cameras depending on the situation.

Researchers found that during shifts with cameras in which officers stuck closer to the protocol, police use-of-force fell by 37% over camera-free shifts. During shifts in which officers tended to use their discretion, police use-of-force actually rose 71% over camera-free shifts.

"The combination of the camera plus the early warning creates awareness that the encounter is being filmed, modifying the behaviour of all involved," said principal investigator Barak Ariel from the University of Cambridge's Institute of Criminology.

"If an officer decides to announce mid-interaction they are beginning to film, for example, that could provoke a reaction that results in use-of-force," Ariel said. "Our data suggests this could be what is driving the results."

The new results are the latest to come from the research team since their ground-breaking work reporting the first experimental evidence on body-worn cameras with Rialto PD in California – a study widely-cited as part of the rationale for huge investment in this policing technology.

"With so much at stake, these findings must continue to be scrutinised through further research and more studies. In the meantime, it's clear that more training and engagement with police officers are required to ensure they are confident in the decisions they make while wearing cameras, and are safe in their job," said co-author and RAND Europe researcher Alex Sutherland.

Ariel added, "It may be that in some places it's a bad idea to use body-worn cameras, and the only way you can find that out is to keep doing these tests in different kinds of places. After all, what might work for a sheriff's department in Iowa may not necessarily apply to the Tokyo PD."

CHAPTER 18

STRENGTHENING DEMOCRATIC POLICING AND ACCOUNTABILITY IN THE COMMONWEALTH PACIFIC

Devika Prasad

Prasad has a bachelor's degree in political science, and a master's in Comparative Legal Studies from the School of Oriental and African Studies of the University of London.

ABSTRACT

Nine island countries make up the Commonwealth Pacific - Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. Across the region, issues around policing and importantly police reform are key governance priorities, as well as being human rights concerns. Policing in this particular region contends with large geographical distances within countries often spread over many islands, heterogeneous societies, violent crime, and sporadic political crises. The police must be equipped to meet these myriad challenges in support of democracy and human rights. This paper seeks ways to strengthen democratic policing in Commonwealth Pacific countries, by examining accountability over the police in particular. It outlines the legal frameworks, and institutional processes and mechanisms already in place to hold the police accountable - a key element of democratic policing. Focusing mainly on police accountability, the aim of this paper is to describe how entrenched democratic policing is in the countries of the region, and also highlights strategies to better solidify democratic policing.

INTRODUCTION

Nine island countries make up the Commonwealth Pacific - Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. Across the region, issues concerning policing and, importantly, police reform are key governance priorities, as well as human rights concerns. Policing is a central and vital function of the state, vested with the duty to ensure an environment of safety and security. Policing in this particular region contends with large geographical distances within countries often spread over many islands, heterogeneous societies, violent crime, and sporadic political crises. The police must be equipped to meet these myriad challenges in support of democracy and human rights.

The only legitimate policing is one that helps create an environment free of fear and conducive to the fulfilment of people's human rights, particularly those that promote unfettered political activity, which is the hallmark of democracy. Unfortunately, the post-independence histories of many Pacific countries have shown that the police are not consistently unbiased and rights-affirming. Police agencies in many of these countries have played a central role in violent government overthrows, protracted internal conflicts, and

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suppression of democracy. These experiences have led to extensive police reform initiatives across the Commonwealth Pacific, some led by international donor agencies and others by national governments. In this way, this region offers varied examples of policing problems as well as insights into reform of the police.

Democratic nations need democratic policing. The police reform initiatives occurring across the Pacific are tremendously encouraging and have set an immensely important precedent for strengthening good governance and democracy across the region. But entrenching sustainable police reform requires a shift from "regime" policing to "democratic" policing. Regime policing, embedded as a tool of colonial rule in many Commonwealth countries, is characterised by the police answering predominantly to the regime in power and not to the people; controlling rather than protecting the public; and steadfastly remaining outside the community. In contrast, democratic policing grounds itself on an approach founded on principles of accountability, transparency, participation, respect for diversity, and the protection of individual and group rights. Democratic policing not only protects democratic institutions and supports an environment where democratic rights and activities can flourish, but also embodies democratic values in its own institutional processes and structures. Ongoing police reform initiatives in the Pacific go some way to democratise the police from within, but perhaps a greater push is needed to establish the protection of democratic and human rights as a central practice of policing.

This paper seeks ways to strengthen democratic policing in Commonwealth Pacific countries, by focusing police accountability in particular. It outlines the legal frameworks, institutional processes and mechanisms already in place to hold the police accountable - a key element of democratic policing. With the information available and analysis provided, this paper describes how entrenched democratic policing is in the countries of the region, and also highlights strategies to better solidify democratic policing.

PROBLEMS IN POLICING

Challenges to cement democratic policing in the region are complex and sizeable. Many of the Commonwealth Pacific countries are struggling with chronic crime and violence, fuelled by the widespread circulation of illegal small arms. Many of the countries in the region have had turbulent post-independence political histories. Just a superficial overview: Fiji has experienced three coups d'état since the late 1980s; the Solomon Islands government was toppled in 2000 by paramilitary police acting with militia groups; violent crime and endemically bad governance haunt Papua New Guinea; the stability of democracy in Vanuatu repeatedly contends with shifting political alliances; and democracy has yet to take root in Tonga. Across the region, governance and control institutions are weak, while the security sector tends to be powerful and highly militarised, resulting in fragile democracies prone to crises. Alarmingly, during the most turbulent periods in the Fiji and the Solomon Islands, civilians were largely abandoned and left to fend for themselves, with any semblance of police protection conspicuously absent. In the Solomon Islands particularly, following the coup in 2000, the police disintegrated as a functioning organisation and police officers were pulled in different directions - either officers were biased, co-opted into the ethnically driven militancy, or just entirely unable to take action. The charged environment meant that police officers could not carry out investigations in territory controlled by a rival ethnic group, or simply did not act due to fear of reprisal. The police organisation of Papua New Guinea, called the Royal Papua New Guinea Constabulary (RPNGC), has consistently come under the radar over the last five years due to incidents and allegations of brutality, excessive use of lethal force and cover-ups leading to impunity for its officers. Worryingly, much of the police brutality in Papua New Guinea seems to occur in the course of routine policework, as reflected in the reports of international observers and human rights organisations.

Police Reform Initiatives

Along with grave policing problems, the Commonwealth countries of the Pacific also provide lessons in police reform. There are a number of police reform projects in place at present, domestically in some countries, as well as region-wide. Many of the reform programmes are driven by international donor assistance, particularly from the Australian and New Zealand governments, though there are specific domestic initiatives as well. Whether as an external donor-driven programme or a national government initiative, police reform is usually included as one aspect of a broader *sector-wide* reform programme, and is often associated with reform of the judiciary or key government supervision bodies such as the Ombudsman or Auditor General. The agenda for police reform in the region includes, among other things, replacement of outdated police acts with legislation that provides a sound basis for modern democratic policing; organisational restructuring to make the police less militaristic and hierarchical; revamping the training curricula to reflect new skills requirements and human rights standards; and providing technology to police officers to enhance their performance. As always, these initiatives for reform must be underpinned by the guarantee of increased accountability - both internally in police organisations, and through external means.

The Nuts and Bolts of Democratic Policing

The ongoing reform programmes are contributing to bring elements of democratic policing to the Pacific police organisations. Democratic policing is both a process - the way the police do their work - and an outcome. The democratic values of the Commonwealth lay down a sound framework for this.

A 'democratic' police organisation must:[1]

- be accountable to the law, and not a law unto itself. The police, like all government agencies and employees, must act within the law of the country and within international laws and standards, including human rights obligations. Police officials who break the law must face the consequences, both internally through the disciplinary systems within police organisations, and externally, in the criminal justice system.
- be accountable to democratic government structures. The police are an agency of government, and must report to the government their adherence to

governmental policy and for their use of government resources. However, the police are expected to remain politically neutral and to enforce the law without bias. They remain primarily accountable to the law of the country, and not merely to the political party, that holds power.

- be transparent in its activities. Accountability is facilitated by greater transparency. In a democratic system, most police activity should be open to scrutiny and regularly reported to outside bodies. This transparency applies to information about the behaviour of individual police officers as well as the operation of the police organisation as a whole.
- give top operational priority to protecting the safety and rights of individuals and private groups. The police must be accountable to the people, and not just to governments, for their decisions, actions and performance. The police should be responsive to the needs of individual members of the community - especially to people who are vulnerable; instead of merely to orders issued by the government.
- protect human rights, especially those that are required for the sort of unfettered political activity characteristic of a democracy. Democratic policing implies policing in a manner which is supportive and respectful of human rights, and which prioritises the protection of life and dignity of the individual. It also requires the police to make a special effort to protect the freedoms that are characteristic of a democracy - freedom of speech, freedom of association, assembly and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law. Prioritising the protection of human rights in policework calls for the skilful exercise of professional police discretion.
- adhere to high standards of professional conduct, while delivering a high-quality service. Police are professionals, with huge powers, in whom the public place enormous trust. Hence police behaviour must be governed by a strong professional code of ethics and conduct, against which they can be held accountable for the way that they conduct themselves. At the same time, the police are a service organisation, and they must deliver their services to the community at the highest possible level of quality, and be accountable for the results they deliver.
- be representative of the communities it serves. Police organisations, which reflect the populations they serve, are able to better meet the needs of those populations, and to earn the trust of vulnerable and marginal groups who most need their protection. Recruitment by the police must aim to create a more representative and diverse police institution, especially where the communities are heterogeneous.
- Critical to strengthening democratic policing is the principle that the police should be held accountable: not just by government, but by a wider network of agencies and organisations, working on behalf of the interests of the people, within a human rights framework. An effective system of police accountability - in line with the checks and balances that shape democratic systems of governance - is characterised by multiple levels of accountability. Commonly, accountability over police organisations comes from four sources:
- government (or 'state') control - The three branches of government - legislative, judicial and executive - provide the basic architecture for police accountability in a democracy. In fact, across the Commonwealth, police leaders answer directly to elected public representatives in the executive branch, for instance Ministers responsible for police. Police chiefs are often required to appear before the legislature to answer questions. Where there is a strong and independent judiciary, cases may be brought against the police in courts that can result in fresh jurisprudence and policy guidance on accountability issues or increased channels for redress.
- independent external control - The complex nature of policing and the vast powers accorded to the police require that additional controls are put in place. In any democracy, at least one independent civilian supervision body adds tremendous value in extending accountability of the police towards those outside police and government circles. Institutions such as Human Rights Commissions, Ombudsmen and public complaints agencies can play a valuable role in overseeing the police and limiting police abuse of power.
- internal control within the police organisation, in the form of disciplinary systems, training and supervision, proper systems for recording performance or crime data are required in any police organisation. The challenge in many Commonwealth jurisdictions is that internal policies and procedures are simply not implemented properly, or in some cases, not implemented at all.
- social control or 'social accountability' - in a democracy, the police are publicly held accountable by the media, as well as by individuals and by a variety of groups (such as victims of crime, business organisations, local civic or neighbourhood groups). In this way, the role of holding the police accountable is not merely left to the democratic institutions that represent the people, but ordinary people themselves play an active part in the system of accountability. There are only a small number of institutions that facilitate this type of accountability in the Commonwealth, rather, it is expected that police and communities will negotiate appropriate - and diverse -arrangements.

Police Accountability in the Region

The police agencies of Commonwealth countries in the region are centralised forces; they are all constitutionally established and governed by Police Acts. All of them are led by a Commissioner of Police, who in turn reports to a designated Minister responsible for police. Importantly, the Commissioner of Police is responsible for day-to-day administrative, operational and financial matters. It is only in Tonga where this may not be the case - Section 8 of Tonga's Police Act vests the "command, superintendence and direction" of the police in the Minister of Police, "who may depute the Superintendent of Police to exercise this responsibility on his behalf".[2] In this case, the Minister is responsible to Cabinet. By and large, this region's police agencies come under the purview of the Ministries of either Home Affairs, Internal Security or in the cases of the Solomon Islands and Tonga, a specific Minister for Police.

Legal frameworks of accountability

The need for the police to be accountable is clearly recognised in international law. Numerous United Nations declarations and treaties have defined norms of accountability, and these are reflected in Commonwealth, regional and domestic standards. The Commonwealth countries in the Pacific are all members of the United Nations and thereby recognise the UN system of international laws and standards along with Commonwealth declarations and communiqués. While the Pacific does not have regional standards that speak direct for police accountability, a regional organisation called the Pacific Islands Forum that seeks to enhance cooperation between member states, of which almost all are also Commonwealth members, has produced Forum declarations to strengthen regional governance and security, with implications for policing.

While international instruments provide a significant framework for democratic policing, in day-to-day practice, national Constitutions, Police Acts and other relevant legislation are more immediately pertinent to the conduct of individual officers and police organisations as a whole. Across the Commonwealth, Constitutions are the supreme law of the land, establish the structure of states, and reflect national aspirations. Notably, across the region, by and large, the police, through the Police Commissioner, are accorded operational autonomy through the Constitution (with Tonga as the exception). Police Acts and supporting legislation (such as Police Rules or Regulations) set out the objectives of policing, create the structure and hierarchy of the police organisation, and define the functions and powers of the police. As such, it is vital that national legislation establish a sound and sturdy foundation of accountability to entrench democratic policing domestically.

International, Commonwealth and Pacific regional standards

Various United Nations conventions and standards provide clear principles to moderate the conduct of police officers, by placing specific legal obligations on law enforcement officials, providing channels for accountability and redress, and guiding the exercise of difficult police powers such as the use of force. Unfortunately, Commonwealth Pacific governments have not exhibited a good track record of signing on to international human rights treaties, which means, largely, they have not adopted international standards into domestic practice.[3] The Commonwealth, as expressed in the documents since the 1991 Harare Declaration (the most significant of the Commonwealth statements, membership to the Commonwealth requires countries to abide by this declaration) is committed to the development of democratic institutions that respect the rule of law and principles of good governance. Democratic policing is one such institution. Existing regional declarations, which have all come out of the Pacific Islands Forum, do not address accountability or human rights standards; their focus is largely on facilitating cooperative, trans-national law enforcement.

Constitutional framework around police

Most of the Constitutions of the region have been amended numerous times, due to political tensions or crises, or the introduction of new states in growing federations. For instance, the Constitution of Fiji was significantly amended in 1997, and the Constitution of the Solomon Islands is currently undergoing a thorough review.

Importantly, the Constitutions establish accountability frameworks - made up of both processes and structures - that apply directly to the police. In addition to establishing specific accountability mechanisms, constitutional provisions also guide such important processes as the appointment of the police chief, pinpoint responsibility for certain disciplinary actions, and lay down legal and rights guarantees which must be respected by the police. It is tremendously important that human rights are constitutionally protected and independent oversight institutions such as human rights commissions and ombudsman offices are given a constitutional basis, as Constitutions are more difficult to amend than normal legislation.

Fundamental Rights and Liberties

The Constitutions of this region entrench fundamental rights and liberties, and require that they be protected by all agencies of the state. Relating to the exercise of police powers, in Fiji, Papua New Guinea, Vanuatu, Kiribati, and Tuvalu, the Constitution includes the rights to life, personal liberty, protection from inhuman treatment, and protection of law as fundamental rights, among others. Notably, in the interest of a smooth criminal justice system, the right to secure the protection of law sets out internationally accepted fair trial principles, such as the presumption of innocence until proven guilty, the right to an adequate defence, and fair, impartial proceedings. The Constitutions of Fiji, Papua New Guinea, the Solomon Islands, and Kiribati contain a specific section on the rights of arrested or indicted persons, which include such necessary directives to law enforcement officials such as informing persons of the reasons of their arrest, that they be promptly released if not charged, allowing access to a lawyer of their choice, and to be treated with dignity and respect. Freedom from arbitrary search and seizure is also enshrined in almost all of the Constitutions. This kind of constitutional safeguard goes further in directing the police to practice democratic policing.

Police Acts

Many of the Police Acts across the region are in the process of being revised, as part of the Law & Justice sector reform programmes conducted by international donor agencies. This is entirely necessary, as the current Acts retain colonial and heavily militaristic underpinnings. The concept of democratic policing implies an approach based on norms and values derived from democratic principles and a Police Act that is shaped by these democratic norms and human rights standards can lay a firm foundation for democratic policing. Taking examples from the most progressive police legislation in the Commonwealth, key elements of a strong legal framework for democratic policing and effective accountability include:

- a human rights mandate in the definition of police

duties and functions;
- fair, adequate and strong internal disciplinary systems;
- cooperation between internal and external mechanisms of police accountability;
- at least one independent, preferably civilian-dominated, agency to investigate public complaints against the police;
- multiparty supervision over the police by elected representatives in parliaments, legislatures or local councils;
- mandatory interaction between the police and the public.

Generally, the Police Acts in the Pacific do not make reference to the protection of human rights and civil liberties but focus on the functions of the police related to colonial style "maintenance of law and order". As stated above, basic fundamental rights and liberties are enshrined in the Constitutions of the region, but this is only one step in the protection of human rights. It is equally important that violations of human rights by police officers in the course of their duty are held as offences in the Police Act. The current Acts all predate the creation of external, civilian dominated supervision bodies, which means that the law governing the police relies almost exclusively on internal police disciplinary systems to investigate police misconduct.

Working of Disciplinary Regimes as Laid Down in Police Acts: Problems and Challenges

Internal processes of accountability represent the first line of defence against police misconduct and also the degree of commitment of a police force to maintain accountability and exert effective supervision. Disciplinary offences of police officers appear in the Police Acts and supporting legislation such as Police Regulations, Police Rules, or Police Service Commission Regulations - in fact, the supporting legislation usually holds a more exhaustive list than the Police Act. In almost all of the police organisations of these countries, disciplinary processes follow a similar pattern - discipline for junior officers is imposed primarily through senior officers and the Commissioner of Police, and the "gazetted" or senior officers are dealt with through the Service Commissions (autonomous government bodies dominated by representatives of the executive branch who exercise disciplinary control over senior police officers, and also have input in the appointment of the Police Commissioner). Papua New Guinea is one exception where the disciplinary regime appears to be uniform irrespective of rank; and in Tonga, the Minister of Police exercises full disciplinary control over the police. Discipline is largely realised through police investigating and punishing other police, and civilian supervision is marginalised due to overburdened external oversight bodies. All police forces have procedures and processes in place for conducting internal and disciplinary inquiries, with disciplinary action ranging from oral warnings, fines, demotions, suspensions, to dismissals. An abiding rule across most jurisdictions is that an officer equal or senior in rank to the officer in question must carry out the inquiries, and also that the officer is given a fair hearing. In addition to disciplinary action, criminal prosecution can also be initiated depending on the nature and severity of the offence.
One major problem that runs through all the Police Acts is that they do not always articulate distinctions between "minor" and "major" offences, leaving that distinction up to the discretion of officers themselves. For instance, in Vanuatu, the Police Act establishes punishments - a fine, confinement to barracks for 14 days, reprimand - [4] which can be imposed by senior officers when dealing with disciplinary offences by junior officers without prescribing which offence fits each punishment. The Police Commissioner can review the decision, and has the power to impose even harsher punishments (though only after giving the implicated officer the opportunity to be heard), including dismissal from the Force, reduction in rank, loss of seniority, or a fine not exceeding 15 days pay.[5] This basic pattern stands in Fiji, Kiribati, and the Solomon Islands - though there are provisions for officers to appeal any final decision externally, generally to the Service Commission. In Papua New Guinea, the Commissioner and assigned "disciplinary officers" are accorded the authority to decide what constitutes a minor or a serious offence for junior officers, seemingly on a case-by-case basis - [6] though the **penalties** for "minor" and "serious" offences defined in the Police Act. The considerable discretion given to senior officers in disciplining junior officers can be left open to abuse, without a clear and fair legislative basis outlining the severity of different offences. It is important to establish definitions and categories of misconduct, and the corresponding disciplinary sanctions in law and policy, as well as to implement channels for appeal.

In addition, in particular areas, disciplinary provisions are harsher for junior officers. Almost all of the Police Acts contain a section which holds any police officer «other than a gazetted officer» liable to punishment for the commission of an offence under the Act. The implicated officer can be arrested without a warrant by any officer of a rank higher than his own and brought before a more senior, preferably gazetted, officer. In Fiji, the Commissioner of Police is vested with the power to impose punishments for any inspectorate officer[7] and any subordinate officer - [8] including dismissal - following proper investigation by designated gazetted officers and subject to the agreement of the Disciplined Services Commission. In contrast, Section 21 of the Police Service Commission Regulations allows gazetted officers some leeway to escape formal proceedings with respect to minor acts of misconduct. If the Commission decides that disciplinary proceedings are not required, the officer will simply receive a letter of warning. A copy of the letter will be attached to the officer›s annual confidential report, which carries weight in internal decisions involving promotions. In Papua New Guinea, Section 27 of the Police Act denies junior officers any right to appeal findings of guilt or penalties imposed for serious offences.

There are also larger contextual problems with these disciplinary regimes. For instance, the Police Acts of Fiji, the Solomon Islands, Vanuatu, Kiribati, and Tonga list desertion and mutiny as major disciplinary offences for police officers. The section is similarly worded in all of the Police Acts. Military-style offences like mutiny and desertion have no place in a modern, accountable and democratic police service. The offences are leftovers from the regime-style policing employed by colonial governments and indicate both a disturbing tendency towards partiality and an inappropriate level of militarization of the police. In a similar vein, the Police Acts of Fiji, Vanuatu, Kiribati, and the Solomon Islands[9] all contain a provision that allows the Head of State to unilaterally declare, when faced with what s/he considers a grave threat to the defence or internal security of the country, that the police will be used as a military or internal security force and in doing so will comply with military orders. A danger here is that the decision to invoke a state of emergency is left to the sole discretion of the executive, with no input from Parliament or any other governmental agency. Also, taking the vast differences in the roles of the military and the police into account, subjecting the police to military rules and law (even for a short time) may inadvertently «militarise» individual officers and perhaps instil a greater proclivity in officers to resort to brute force. Inevitably, there will also be complications over the lines of accountability and supervision when the police falls within the military fold.

Accountability Processes and Mechanisms

The success of police reform initiatives rests on the institutionalisation of accountability with effective methods. Police accountability is not absent in the Commonwealth Pacific, and there are processes and mechanisms in place that work to hold the police accountable in the different countries of the region. CHRI advocates that the basics of sound accountability are vigilant internal processes coupled with the necessary control by other branches of government and at least one independent civilian supervision body. The following section contains an appraisal of the extent to which this model of sound accountability has developed in the Commonwealth Pacific, by examining a selection of key accountability processes and mechanisms.

Police Accountability to the Executive

Across the Commonwealth Pacific, key representatives of the executive branch of government play specific and important roles in governing and supervising the police. Importantly, the highest position in the police hierarchy - the Commissioner of Police - is appointed by the Head of State. As mentioned above, the police in all of these countries answer directly to a specially designated Minister, who is part of the executive wing of government and can be seen as the political spokesperson, or head, of the police. In addition, the structure of Pacific states includes Service Commissions. Through these processes and mechanisms, the police leadership particularly shares a close relationship with the executive branch of government. It is important to scrutinise select aspects of the police-executive relationship, to determine how far truly democratic control is practiced.

Appointment of the Commissioner of Police

The power to hire and fire the head of the police is a key accountability device and must be supplemented by transparent and fair procedures and supervision by effective accountability instruments, to prevent any inappropriate relationships of patronage from developing. In this light, it becomes important that the Head of State be not granted **sole power** to appoint the Commissioner. Across the Pacific, one trend in appointment procedure is that the Head of State decides either in consultation with, or at the recommendation of, the Service Commission, but this is by no means the only procedure employed to appoint the Commissioner. In the Solomon Islands and Vanuatu, the Head of State appoints the police chief after consulting the Police Service Commission. In Kiribati, the President, acting in accordance with the advice of Cabinet after consultation with the Public Service Commission, appoints the Police Commissioner. In Tuvalu, the Chief of Police is appointed by the Head of State on the advice of Cabinet, given after consultation with the Public Service Commission. There are other sources of appointment as well. In Fiji, the Constitutional Offices Commission appoints the Police Chief following consultation with the Minister responsible for Police. In Tonga, the Minister of Police with the approval of Cabinet recruits and appoints every police officer, including the Superintendent of Police. And in Papua New Guinea, the Commissioner of Police is appointed by the National Executive Council (NEC), which is a constitutionally established body representing the executive. Unlike the Service Commissions, the NEC is not an independent entity with a specific mandate related to the police.

It is positive to note that the legal basis of the appointment procedure in much of the Pacific does not grant the Head of State sole discretion to pick the police chief, requiring consultation with other entities. Tonga and Papua New Guinea are the exceptions here, where appointment is made by only one source. In Tonga, it is a dangerous precedent that the Minister is empowered basically to handpick, not just the Superintendent of Police, but also all police staff. This leaves room wide open for police officers depending for their job security on the patronage of the Minister. Serious breaches of law and accountability arise out of precisely these kinds of inappropriate relationships of patronage. With reference to the practice in Papua New Guinea, Transparency International (an international anti-corruption organisation) argues that, since the appointment comes from the National Executive Council, this implies that the Commissioner is a political appointee.[10] Between 1997 and 2002, the Papua New Guinea police had five different police commissioners. Division 4 of the Constitution, that contains special provisions in relation to the police force, specifically states that the police force is subject to the control of the National Executive Council through a Minister, further diluting the independence of the police leadership.

Even in the other countries, where at least the decision is collaborative, and the police is accorded operational autonomy in the law, appointment of the Commissioner is still made only by government bodies representative only of the executive branch, with the complete absence of any civilian, public input. In other Commonwealth jurisdictions, appointment of the Commissioner is significantly more collaborative, requiring input from civilian control bodies. In the Australian state of Queensland, for example, the Commissioner of the Queensland Police Service is appointed by the Governor, «on a recommendation agreed to by the chairperson of the Crime and Misconduct Commission»,[11] which is an independent police supervision agency. The agreement of the Minister for Police for the State also has to be sought. While there are no universal formulas, the power to appoint the Commissioner must, at minimum, be prescribed by clear and fair procedures, and where possible, by the input of independent institutions such as Service Commissions or civilian control bodies. The highest police post must also be protected by secure tenure.

Service Commissions

Service Commissions, predominant in the Commonwealth Caribbean and Pacific small states, are autonomous government bodies that supervise disciplinary and management matters in the public sector and in some cases specifically police agencies. Experience in many Commonwealth countries shows that many instances of illegitimate political interference in policing arise through politicians manipulating disciplinary or management powers for political purposes. Service Commissions were established precisely to limit undue political interference in selection, promotion, transfer and removal of police officers - and thereby act as mechanisms of accountability. In some cases, they also double as appeal mechanisms for police officers seeking redress from internal disciplinary or labour disputes.

Service Commissions were envisaged as government bodies with an independent voice. Their role involves appointing, dismissing and generally disciplining senior-level police officers. In this respect, their appointing authority and composition - as measures of independence - become important in gauging the extent to which they can truly represent buffer bodies. Wherever they exist in the Pacific, members of Service Commissions are appointed by the Head of State, and are predominantly public servants. In almost all cases, there is space for what are seemingly independent members, though there are no given criteria to match the best people to the job. Without objective criteria, there is a greater possibility that personal preferences will carry too much weight. In Fiji for instance, the Disciplined Services Commission consists of a chairperson and two other members appointed by the President. In Tuvalu, the Public Service Commission consists of a chairperson and three other members. In both cases, the law is silent on the desired qualities and experience of the “other members”. It is also true that in all of the Pacific countries, a constitutional provision to maintain the independence of Service Commissions does exist, establishing that a person is disqualified for appointment to any Service Commission if s/he is a Member of Parliament, holds any public office, or a position deemed to be of “a political nature”. This is an important provision that strengthens the envisaged objective that the Service Commissions are not subject to any other control or authority.

In comparison with newer models of Service Commissions in Commonwealth countries like Nigeria and Sri Lanka however, the Pacific model does fall short. In both Nigeria and Sri Lanka, the Police Service Commissions include citizen representation and have wider powers to shape policy. Importantly, both Commissions can invite public complaints against the police and have the power to conduct the corresponding investigations. This is a key benchmark in strengthened democratic policing. None of the mandates of the Pacific Service Commissions allow them to accept complaints from the public; therefore, acts of police misconduct which affect the public (more serious acts, such as brutality and corruption and other human rights violations) are not “disciplined” by the Commissions.

Internal Accountability Mechanisms

In addition to addressing police discipline and misconduct specifically through the chain of command, some of the Pacific police organisations also have specialised internal disciplinary units. These units provide a forum to receive complaints from the public against police officers; and importantly also facilitate police complaining about and investigating other police. Known as either offices of professional responsibility, internal affairs, or ethical standards departments, these units generally receive complaints from the public and police officers and carry out investigations to decide what, if any, disciplinary action to take in individual cases.[12] Some may examine only specific categories of misconduct complaints, such as corruption or brutality.

It is difficult to make conclusive comments on the strengths and weaknesses of internal disciplinary units due to lack of information. The Solomon Islands experience reveals how larger conflicts can drastically jeopardize internal policy accountability. In other cases, it may be that disciplinary processes and procedures are just not adhered to. In Papua New Guinea, a Review Committee tasked to appraise the police found that the Constabulary›s Disciplinary Manual as well as the disciplinary provisions of the Police Act are simply not enforced, which means the disciplinary processes in place are not being utilised - the Committee proceeds to recommend that the Commissioner issue a directive to instruct all Constabulary staff to immediately put the existing Disciplinary Code into effect.[13] This negligence leads only to the complete ineffectiveness of the disciplinary system and severe lack of public faith - as many as 85% of complaints against the police go unresolved.[14] In the Pacific, shortcomings within internal discipline systems result from political pressure exerted to protect certain individuals. Problems may also stem from a serious lack of capacity within the police themselves, including a shortage of good investigators to collect evidence. For instance, the Administrative Review Committee in Papua New Guinea recommended strengthening the resources and skills available to the Internal Affairs department staff, particularly by recruiting individuals with significant experience in conducting investigations. Looking across similar jurisdictions in the Commonwealth, in the Pacific, it may be that the most common problems stem from the way discipline is managed within the police. Three interrelated factors play the biggest part in this: lack of commitment to disciplinary systems among senior officers, opacity about the way these systems work, and a clash between disciplinary systems and the prevailing “culture” in many police organisations which is often negative towards questions of discipline.

External Oversight: Human Rights Commissions and Ombudsman Offices

Internal management mechanisms - if well implemented - can be a powerful way of holding police organisations to account. But on their own, they are not enough. No internal discipline system can completely prevent incidents of police misbehaviour, and even the best-managed systems will never command the full confidence of the public. Recognising this reality, many countries across the Commonwealth have sought to balance internal accountability mechanisms with some system of external, non-police (civilian) supervision. With one system complementing and reinforcing the other, this approach creates a web of accountability in which it becomes increasingly difficult for police misconduct to take place without consequences. External accountability systems also create channels for public complaints to be pursued independently of the police, helping to end impunity for corrupt and abusive elements within Commonwealth police organisations.

In the Pacific, there are no established agencies dedicated solely to the investigation and supervision of complaints against the police. Existing control bodies - human rights commissions and ombudsman offices - investigate cases of police misconduct as part of larger mandates to uncover human rights abuses, corruption and maladministration on the part of government agencies. In Fiji, there is a Human Rights Commission and Office of the Ombudsman, while Papua New Guinea, the Solomon Islands and Vanuatu all have Offices of the Ombudsman. All of these bodies are constitutionally established, and some are additionally governed by their own legislation. The Human Rights Commission of Fiji is the only national Human Rights Commission among the Commonwealth Pacific countries. The project of the Constitution of the Solomon Islands makes provision for the creation of a Human Rights Commission, though the constitutional reform process is still in progress.

Section 42 of Fiji's 1997 Constitution establishes a national human rights commission, and the Fiji Human Rights Commission Act was approved in 1999. The Fiji Human Rights Commission has emerged as a leading player among civil societies in the Pacific by proving itself to be independent and active. In part, this is due to the fact that the legal basis accorded to the Commission abides by the minimum requirements prescribed by the Paris Principles - [15] a set of internationally recognised standards laid down to guide states in the setting up of strong and effective national human rights institutions - providing minimum requirements for a truly empowered National Human Rights Institution, and also applying equally to any supervision agency. Much of how effectively Ombudsman Offices and Human Rights Commissions perform depends on an autonomous and well-embedded status for them in national legal architecture.[16]

Fiji's Human Rights Commission Act 1999 is designed to ensure the Commission's independence and effectiveness by prescribing a broad, flexible mandate, equipping the Commission with extensive powers and meeting the necessity of adequate funding. Under this legal framework, the Fiji Human Rights Commission is mandated to protect and promote the human rights of all persons in the Fiji Islands, following the Paris Principles. As mentioned earlier, the full gamut of human rights to be enjoyed by every person in Fiji is laid down in the constitutional Bill of Rights. The Bill of Rights is progressive, covers a full range of civil and political, as well as economic, social and cultural rights, and also stipulates that any other consistent rights and freedoms conferred by common and customary law, even if they do not appear in the Bill of Rights, must also be protected. Thus the Commission is obliged to protect and promote a wide range of human rights. The 1999 Act assigns both reactive and proactive powers to the Commission - which is again a very positive legal precedent for establishing vigilant control. Section 7 of the Act requires the Commission to promote human rights in several important ways, such as making public statements on the state's human rights obligations, educating public officials on their human rights responsibilities to promote better compliance with international standards, to encourage ratification of international human rights instruments and to advise the Government on its reporting obligations also, to make recommendations on the implications of any proposed legislation or policy for human rights, and to publish guidelines for the avoidance of acts or practices that may be inconsistent with human rights. More directly in terms of supervising police and other government agencies, under the same section, the Commission has the following proactive powers:

- to invite and receive representations from members of the public on any matter affecting human rights;
- to inquire generally into any matter, including any enactment or law, or any procedure or practice whether governmental or non-governmental, if it appears to the Commission that human rights are, or may be, infringed thereby;
- to investigate allegations of contraventions of human rights and allegations of unfair discrimination, of its own motion or on complaint by individuals, groups or institutions on their own behalf or on behalf of others;
- to resolve complaints by conciliation and to refer unresolved complaints to the courts for decision;
- the Commission may, from time to time, in the public interest or in the interests of any person or department, publish in any manner it thinks fit, reports relating generally to the exercise of its functions or to any particular case or cases investigated under this Act.

The Commission is accorded full investigative capacity - it is allowed to make any enquiries it believes to be necessary, and can summon any person or demand any piece of information it may require in the course of investigation. For the purposes of an investigation, the Commissioner and Commission have the same powers as a judge of the High Court with respect to the production of documents, and the attendance and examination of witnesses.

Importantly, the Act is also designed to ensure independence of the Commission's staff. The appointing authority is informed by diverse voices - the members of the Commission are appointed by the President on the advice of the Prime Minister, following consultation with the Leader of the Opposition and the standing committee of the House of Representatives for matters concerning human rights. Section 8 of the Act specifically states that in advising the President, the Prime Minister must have regard not only to the personal attributes of applicants, but also to "their knowledge or experience of the different aspects of matters likely to come before the Commission". Further, a person is not qualified to be a Commissioner if s/he is a Member of Parliament, a member of a local authority, or an office holder in any political party. All Commissioners are legally prohibited from actively engaging in politics or business for profit.

From 1999, Fiji's Human Rights Commission has received approximately 700 requests for assistance, most complaints involving alleged abuse by police and prison officers.[17] The Commission has conducted many training sessions with the police to spread awareness of human rights within the force. Recently, the Commission launched a handbook for the disciplined forces of Fiji (including the police) entitled "National Security and Human Rights",[18]and provides guidelines on the legal obligations and accountability arrangements relevant to the conduct of the country's security agencies.

The general mandate of Ombudsman offices across the region is to investigate complaints of maladministration across government agencies, and by and large, these agencies are empowered with sufficient powers in law. The existing Offices of the Ombudsmen consistently do their best to live up to their role as watchdog bodies and guardians of government accountability, but they face an acute shortage of resources, funding, technical knowledge, and at times government obstruction. Papua New Guinea, Fiji, Vanuatu and the Solomon Islands all have an office of the Ombudsman. In countries like Papua New Guinea and Vanuatu, the Ombudsman is the sole independent control body and thereby an important channel for members of the public to seek accountability and redress.

In Papua New Guinea, the Ombudsman Commission includes both the office of the ombudsman and the office implementing the Leadership Code.[19] The recent move of the Papua New Guinea Ombudsman to set up a dedicated Human Rights Unit points to the trend of Ombudsman bodies enlarging their traditional anti-corruption, maladministration mandate to include complaints of human rights violations. On paper, the Ombudsman in Papua New Guinea, Vanuatu and the Solomon Islands has the power to initiate investigations on its own, and has jurisdiction over a wide range of official bodies, as well as substantial powers of investigation. In Vanuatu, the Ombudsman can investigate all public servants, public authorities and ministerial departments, except the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies. Constitutional provisions allow for inquiries to be initiated at the discretion of the Ombudsman, upon receiving a complaint from a member of the public, or at the request of a minister, a Member of Parliament, of the National Council of Chiefs or of a local government council. The Ombudsman has full authority to request any Minister, public servant, administrator, and authority concerned to provide any information or documents related to an inquiry. The Ombudsman in the Solomon Islands holds the power of summons accorded to a magistrate. In Papua New Guinea, the Office can consider deficiencies in the law and challenge official decisions.

In some ways, the law also limits the scope of Ombudsman powers. For instance, the Ombudsman Commission of Papua New Guinea cannot inquire into the «justifiability» of National Executive Council (NEC) decisions,[20]ministerial policy or court decisions.[21] The NEC is the body that appoints the Police Commissioner, and the sole external watchdog over the government is prevented from challenging this decision. In all of these countries, the Ombudsman has no powers to enforce its recommendations, though in Vanuatu the Office can submit special reports to Parliament concerning action taken on its findings. The watchdog function of the Ombudsman is also hampered by a severe lack of resources, in terms of funding, staff, infrastructure and the required technical knowledge, particularly for the Ombudsman and Leadership Code Commission of the Solomon Islands and the Ombudsman Offices in Fiji and Samoa.[22] Lack of investigative skills, legal capacity, or essential personnel means most Ombuds offices cannot cope with the caseload. Limited operational autonomy can also play a part in crippling independent supervision. The Ombudsman of the Solomon Islands has been sorely disabled by being administered by the Prime Minister›s Office. After repeated and ignored appeals to the Prime Minister›s Office for separate office space, the Solomon Islands Ombudsman closed its own office for the bulk of 2003. At that time, there was a massive backlog of cases dating from 1999. In 2004, Transparency International commented: «at present the Leadership Code and Public Service Commissions and the office of the Ombudsman are all administratively within the Prime Minister›s Office. This makes them all extremely exposed to political pressures, either direct and immediate, or more gradual, such as the resource pressure that has been applied to all of them over a period of years». [23]

As a fiercely individualistic office in these countries, the efficacy of the Ombudsman is often dependent on "personality". The first Ombudsman of Vanuatu, Marie Noelle Ferrieux-Patterson, the first Ombudsman of Vanuatu, enjoyed tremendous public confidence for her fierce campaign against corruption, despite strong opposition. During her tenure, not only did the Office of the Ombudsman vigorously publish public reports, it used innovative ideas to ensure that they were disseminated widely. As Vanuatu's literacy levels were at 50-60%, the Office of the Ombudsman used radio and public speaking to disseminate information contained in the published reports. Since 1996, the release of every new public report was followed by a press release and an interview with the official(s) implicated in the report on Radio Vanuatu. She also initiated radio campaigns against domestic violence by encouraging women to report incidents to the police and also to report police inaction to the Ombudsman's Office. In a 1997 report, she criticised the police as incompetent and doing too little too late.[24] This report revealed persistent slackness, indiscipline, arrogance and ignorance of legitimate duty by members of all ranks of the police. Despite her good work and public support, the government refused to renew her contract in 1999. After her successor finished his term in August 2004, it took the government over eight months to fill the vacancy for the sole external control agency in the country.

In contrast, one Ombudsman in the Solomon Islands did not produce any annual report between 1991 and 1995, though the office did deal with complaints. An Ombuds office is also sometimes flooded with administrative matters, which can mean less time and resources to spend on complaints against the police. In the Solomon Islands, an estimated 60% of the 8062 cases handled by the Ombudsman›s office since establishment in 1981 have been brought by public servants as grievances of employment and workplace relations within the public service.[25] In practice, most complaints come from public service employees themselves. While this is a positive step to clean up the endemic corruption steeped in most Pacific governments, it deflects the attention of the Ombudsman from controlling agencies such as the police, whose supervision is increasingly being relegated to external donors rather than to national bodies.

It is heartening that many Pacific governments recognise the need for an external, independent civilian agency, even if many are yet to function as effectively as they should. The existence of such bodies mandated to carry out autonomous investigations into allegations of police abuse can send the message that the police will be held accountable for wrong-doing. It is clear that a well defined and broad legal mandate is important to cement the independence and powers of an effective supervision body. However, the most essential factor is the necessary political will to truly bring about reform and the strong leadership of both the police and control bodies to build an accountable and responsive policing system.

CONCLUSION

Clearly, policing in the Commonwealth Pacific cannot be seen in isolation from the larger political, economic and social context of each country. The complexity of the problems of political instability, chronic violence, crime, and social strife all impact on policing. In some cases, this combined effect led to serious breakdowns in policing and required external intervention to restore peace and a climate of security.

Fortunately, police reform has reached the Pacific, and many governments have demonstrated their commitment by putting reform initiatives into motion, whether through domestic strategies or international donor assistance. These are very encouraging moves toward establishing elements of democratic policing, but there remains much work to be done to establish the practice of democratic policing in the Commonwealth countries in the Pacific.

To truly achieve democratic policing in practice, accountability mechanisms particularly will have to be implanted in legal and policy frameworks. Reform will not be durable without the establishment of new, independent accountability institutions, legal reform to consolidate the values and processes of democratic policing, and invigorated internal accountability procedures. With the requisite will and effort, and using the current momentum to move forward, democratic policing can become a reality for citizens of the Commonwealth Pacific.

NOTES

1. This section is adapted from D. Bayley, *Democratising the Police Abroad: What to Do and How to Do It*, National Institute of Justice, US Department of Justice, Washington, 2001, pp 11-15; Bruce D. & Neild R., *The police that we want: a handbook for oversight of police in South Africa,* Center for Study of Violence and Reconciliation, Johannesburg, and Open Society Justice Initiative, New York, 2004; and C.E Stone & H.H. Ward,*Democratic policing: a framework for action*, Policing and Society, Vol. 10, number 1, 2000, p 36.
2. Tonga Police Act, Section 9.
3. Nauru is the *only* country in the Commonwealth Pacific that has signed both the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT). Solomon Islands is the only signatory in the Pacific to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been signed by Fiji, Vanuatu, Kiribati, Papua New Guinea, Samoa, the Solomon Islands, and Tuvalu - leaving out Tonga and Nauru. Fiji, Papua New Guinea, Nauru, the Solomon Islands and Tonga have signed the Convention on the Elimination of All Forms of Racial Discrimination (CERD). While Fiji has not signed on to many core international human rights treaties, the domestic Bill of Rights allows the application of international human rights conventions where relevant, and perhaps without ratification.
4. Vanuatu Police Act, Section 59(1).
5. Vanuatu Police Act, Section 62(1).
6. Papua New Guinea Police Act, Section 21(1), entitled *Dealing with minor offences,* reads “Where the Commissioner, or a disciplinary officer, has reason to believe that a member of lesser rank has committed a disciplinary offence which, in the opinion of the Commissioner or that officer, could properly be dealt with under this section…” and Section 23(1), *Dealing with serious offences*, states “where there is reason to believe that a member of the Force has committed a disciplinary offence other than an offence that is or is intended to be dealt with as a minor offence, it shall be dealt with as a serious offence”.
7. Fiji Police Act, Section 32A(a).
8. Fiji Police Act, Section 32A(b).
9. Kiribati Police Act, Section 8; Vanuatu Police Act, Section 5; Solomon Islands Police Act, Section 6; Fiji Police Act, Section 6.
10. Transparency International, *National Integrity Systems 2003: Papua New Guinea,* p. 27.
11. Police Service Administration Act 1990 (Queensland, Australia), Section 4.2(1).
12. In the Solomon Islands, it was previously the Criminal Investigation Department (CID) that handled all allegations of corruption by police officers. During the prolonged internal conflict which radically factionalised the police force, the CID was absolutely railroaded and disabled in its work. The CID was refashioned into the Professional Standards Unit, which was established in 1998 within the police. The Unit investigates complaints and allegations and recommends disciplinary action to be taken by the Police Commissioner or senior officers, as well as the Police and Prison Services Commission. The Fiji Police also has a Professional Standards Unit, and in Papua New Guinea a dedicated Internal Affairs department investigates shootings by the police and addresses public complaints.
13. Government of Papua New Guinea and the Institute of National Affairs, *Report of the Royal Papua New Guinea Constabulary Administrative Review*, 2004, p. 78
14. S. Dinnen, «Building Bridges: Law and Justice Reform in Papua New Guinea», *State, Society and Governance in Melanesia*, Discussion Paper 02/2, Canberra, 2002.
15. United Nations, Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (The Paris Principles), 1993, available at <http://www.ohchr.org/english/law/parisprinciples.htm>, access on March 10, 2006.
16. According to the Paris Principles, their effectiveness will also hinge on the width and clarity of their mandate, the scope of their investigative powers, the composition

and competence of their leadership and staff, and the adequacy and sources of financing.

17. United States of America, Bureau of Democracy, Human Rights and Labour, *Country Reports on Human Rights Practices 2002: Fiji,* United States Department of State, 2003.

18. Fiji Human Rights Commission, *National Security and Human Rights Handbook, 2003*, available at <http://www.humanrights.org.fj/pdf/inside_pages_changes.pdf >, access on 10 March 2006.

19. The Leadership Code is an anti-corruption tool set up to monitor the wealth and assets of public figures, compelling particularly leaders in the public service to submit an annual return to a delegated Leadership Code Commission detailing sources of income and a statement of wealth. This is an accountability instrument particular to the Pacific countries, and is hugely relevant for the endemic corruption in ruling circles in most countries of the region. Generally, police chiefs fall under the definition of leader.

20. Section 219(3).

21. Section 219(5).

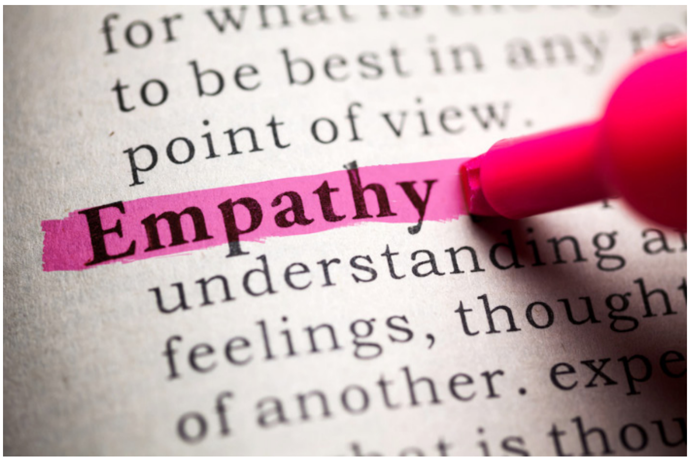
22. Centre for Democratic Institutions and Tony Regan of the State, Society and Governance in Melanesia Project,*Evaluation of the Accountability and Corruption in Melanesia Workshop*, p. 1.

23. Transparency International, *National Integrity Systems: Solomon Islands*, 2004, p. 11.

24. Transparency International, *National Integrity Systems: Solomon Islands,* 2004, p. 24.

CHAPTER 19

EMPATHY ON THE STREET: HOW UNDERSTANDING BETWEEN POLICE AND COMMUNITIES MAKES US SAFER



By now, no one is insulated from hearing about incidents of police shootings or violence against police officers. While fatal shootings are thankfully still rare events, this does not diminish the emotional impact of hearing about a violent death.

All of us want to see our law enforcement officers come home to their families and friends at the end of the day – and we want to see our citizens come home to theirs.

In the most recent incident, which was caught on camera, we see the tragic last moments of one man's life as he flees the police. Walter Scott of Charleston, South Carolina, ran from the police after a traffic stop. Presumably, Scott took off because he was wanted on a bench warrant for outstanding child support. As he was fleeing, a bystander caught Officer Michael Slager fire eight times - hitting and killing Scott. Walter Scott did not come home.

In the recent past, Michael Brown and Tamir Rice did not come home to their parents and Eric Garner did not return to his family. New York City police officers Rafael Ramos and

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Wenjian Liu, killed on duty, did not go home at the end of the day. Along with Walter Scott and the individuals in these other notable incidents, the FBI reports that almost 100 African-Americans and 30 officers are killed each year (in recent years) during police-citizen encounters.

Right now, it might seem impossible to eliminate the us-versus-them mindset that permeates society, but optimistically, I do not think that we are at an impasse.

What we have to do is look at a trait that all humans already possess: empathy.

EMPATHY: A BASIC HUMAN TOOL WITH GREAT POTENTIAL

Empathy has evolved in humans and other mammals over time. It allows us to understand the emotions of others and share in those emotions. Expressing empathy has many advantages: it increases cooperation (we like to help each other out when we feel that we are understood), reduces stress and it may even feel good.

Recent research has examined the role of empathy in police-community relations and reveals that when officers listened and expressed understanding during their interactions with citizens, they were more likely to be trusted, legitimized and deemed effective in protecting the community.

Citizens with whom police empathized were also more likely to believe that the outcome of their interaction was deserved and fair, even if they eventually received a ticket. This was especially true for those who were highly emotional during and after their encounter with the police.

A lack of empathy can also have many undesirable consequences.

Neuroscientist Tania Singer shows that empathy is greatly reduced when someone believes that he or she has been treated unfairly (especially males). Subsequently, the individual is much less likely to cooperate with the person who has wronged them. This is easily translated to findings from police studies which show that when police are unempathetic during encounters, citizens believe that they were treated unfairly.

Over time, the belief that the police are unfair and untrustworthy leads citizens to begin to view the police as less legitimate, making cooperation less likely. What remains from these encounters is an us-versus-them mentality with police on one side and citizens on the other. It is hard to imagine a world where public safety is achieved this way.

WALTER SCOTT'S ACTION WARRANTS UNDERSTANDING

It might be hard to imagine why someone would run from the police, as Walter Scott apparently did, or resist arrest or disobey an officer's orders. An understanding of the history of police-community relations is required in order to comprehend recent incidents. Running from the police is not acceptable, but it is understandable.

Walter Scott was stopped for a broken taillight – something both white and black drivers have likely experienced, but this type of zero-tolerance policing is much more common in poor, minority communities.

The video of Eric Gardner being questioned by officers for selling loose cigarettes on Staten Island demonstrates that over-policing (perhaps with little empathizing) ignores a long history of abuse and neglect in poor minority communities.

One must put oneself in another person's shoes to understand the fear and dread that is felt when being stopped by a police officer. It takes a little bit of empathizing to understand the challenge of replacing a taillight without money to do so or to pay the ticket that is sure to come.

We can criticize Walter Scott's actions and even his failure to pay child support which led to his warrant. Or we can put ourselves in his shoes – or in those of someone like him – and try to understand what it's like being in tough times and why we too might try to evade the police.

Alice Goffman, in her book On the Run: Fugitive Life in an American City writes that "The police and courts become dangerous to interact with" …leading citizens to "avoid dangerous places, people, and interactions entirely."

This is all too common. Without understanding the context in which many people live, there is little hope we can emerge from these incidents as a stronger society.

TAKING SIMPLE STEPS TO START

Simple steps, such as listening and communicating, can help transform stressful situations into community-building exercises.

Police training should take seriously the importance of empathy and incorporate it into their core curricula. Officers should be trained to recognize and respond appropriately to concerns expressed by citizens and communities.

Such a process should not replace traditional safety and enforcement training, but rather should be a focal point of additional training.

As David Fallon, a deputy chief of police in Somerville, MA, told a reporter:

"Officers need to have empathy today — that's what society expects from officers and it's what they deserve, and it's what people need."

Civilians should also be encouraged to empathize with officers. Police jobs are potentially dangerous and officers face difficult decisions about the use of force.

It is through this mutual understanding that we can build a society together that is less dangerous, less violent and more equitable.

CHAPTER 20 EXCESSIVE OR REASONABLE FORCE BY POLICE? RESEARCH ON LAW ENFORCEMENT AND RACIAL CONFLICT

Allegations of the use of excessive force by U.S. police departments continue to generate headlines more than two decades after the 1992 Los Angeles riots brought the issue to mass public attention and spurred some law enforcement reforms.

On Staten Island, N.Y., the July 2014 death of Eric Garner because of the apparent use of a "chokehold" by an officer sparked outrage. A month later in Ferguson, Mo., the fatal shooting of teenager Michael Brown by officer Darren Wilson ignited protests, and a grand jury's decision not to indict Wilson triggered further unrest. In November, Tamir Rice was shot by police in Cleveland, Ohio. He was 12 years old and playing with a toy pistol. On April 4, 2015, Walter L. Scott was shot by a police officer after a routine traffic stop in North Charleston, S.C. The same month, Freddie Gray died while in police custody in Baltimore, setting off widespread unrest. The policeman in the South Carolina case, Michael T. Slager, was charged with murder based on a cellphone video. In Baltimore, the driver of the police van in which Gray died, Caesar Goodson, was charged with second-degree murder, with lesser charges for five other officers. There have been no indictments in the earlier cases.

These follow other recent incidents and controversies, including an April 2014 finding by the U.S. Department of Justice Department of justice (DOJ), following a two-year investigation, that the Albuquerque, N.M., police department "engages in a pattern or practice of use of excessive force, including deadly force, in violation of the Fourth Amendment," and a similar DOJ finding in December 2014 with regard to the Cleveland police department. In March 2015, the DOJ also issued a report detailing a pattern of "clear racial disparities" and "discriminatory intent" on the part of the Ferguson, Mo., police department.

Citation: Devika Prasad, Strengthening Democratic Policing And Accountability In The Commonwealth Pacific, doi.org/10.1590/S1806-64452006000200006.

As the *Washington Post* reported in July 2015, a pervasive problem that is only now beginning to be recognized is the lack of training for officers dealing with mentally ill persons, a situation that can often escalate to violent confrontations.

The events of 2014-2015 have prompted further calls by some police officials, politicians and scholars for another round of national reforms, in order to better orient "police culture" toward democratic ideals.

TWO SIDES, DISPARATE VIEWS

Surveys in recent years with minority groups — Latinos and African-Americans, in particular — suggest that confidence in law enforcement is relatively low, and large portions of these communities believe police are likely to use excessive force on suspects. A 2014 Pew Research Center survey confirms stark racial divisions in response to the Ferguson police shooting, as well, while Gallup provides insights on historical patterns of distrust. According to a Pew/ *USA Today* poll conducted in August 2014, Americans of all races collectively "give relatively low marks to police departments around the country for holding officers accountable for misconduct, using the appropriate amount of force, and treating racial and ethnic groups equally." Social scientists who have done extensive field research and interviews note the deep sense of mistrust embedded in many communities.

Numerous efforts have been made by members of the law enforcement community to ameliorate these situations, including promising strategies such as "community policing." Still, from a police perspective, law enforcement in the United States continues to be dangerous work — America has a relatively higher homicide rate compared to other developed nations, and has many more guns per capita. Citizens seldom learn of the countless incidents where officers choose to hold fire and display restraint under extreme stress. Some research has shown that even well-trained officers are not consistently able to fire their weapon in time before a suspect holding a gun can raise it and fire first; this makes split-second judgments, even under "ideal" circumstances, exceptionally difficult. But as the FBI points out, police departments and officers sometimes do not handle the aftermath of incidents well in terms of transparency and clarity, even when force was reasonably applied, fueling public confusion and anger.

In 2013, 49,851 officers were assaulted in the line of duty, with an injury rate of 29.2 percent, according to the FBI. Twenty-seven were murdered that year.

FBI Director: No "Reliable grasp" of Problem

How common are such incidents of police use of force, both lethal and non-lethal, in the United States? Has there been progress in America? The indisputable reality is that we do not fully know. FBI Director James B. Comey stated the following in a remarkable February 2015 speech:

> Not long after riots broke out in Ferguson late last summer, I asked my staff to tell me how many people shot by police were African-American in this country. I wanted to see trends. I wanted to see information. They couldn't give it to me, and it wasn't their fault. Demographic data regarding officer-involved shootings is not consistently reported to us through our Uniform Crime Reporting Program. Because reporting is voluntary, our data is incomplete and therefore, in the aggregate, unreliable.
>
> I recently listened to a thoughtful big city police chief express his frustration with that lack of reliable data. He said he didn't know whether the Ferguson police shot one person a week, one a year, or one a century, and that in the absence of good data, "all we get are ideological thunderbolts, when what we need are ideological agnostics who use information to try to solve problems." He's right.
>
> The first step to understanding what is really going on in our communities and in our country is to gather more and better data related to those we arrest, those we confront for breaking the law and jeopardizing public safety, and those who confront us. "Data" seems a dry and boring word but, without it, we cannot understand our world and make it better.
>
> How can we address concerns about "use of force," how can we address concerns about officer-involved shootings if we do not have a reliable grasp on the demographics and circumstances of those incidents? We simply must improve the way we collect and analyze data to see the true nature of what's happening in all of our communities.
>
> The FBI tracks and publishes the number of "justifiable homicides" reported by police departments. But, again, reporting by police departments is voluntary and not all departments participate. That means we cannot fully track the number of incidents in which force is used by police, or against police, including non-fatal encounters, which are not reported at all.

Without a doubt, training for police has become more standardized and professionalized in recent decades. A 2008 paperin the *Northwestern University Law Review* provides useful background on the evolving legal and policy history relating to the use of force by police and the "reasonableness" standard by which officers are judged. Related jurisprudence is still being defined, most recently in the 2007 *Scott v. Harris* decision by the U.S. Supreme Court. But inadequate data and reporting — and the challenge of uniformly defining excessive versus justified force — make objective understanding of trends difficult.

A 2015 report conducted for the Justice Department analyzed 394 incidents involving deadly police force in Philadelphia from 2007-2014. It found that "officers do not receive regular, consistent training on the department's deadly force policy"; that early training among recruits is sometimes inadequate in regard to these issues; that investigations into such incidents are not consistent; and that officers "need more less-lethal options."

For perhaps the best overall summary of police use-of-force issues, see "A Multi-method Evaluation of Police Use of Force Outcomes: Final Report to the National Institute of Justice," a 2010 study conducted by some of the nation's leading criminal justice scholars.

Available Statistics, Background on use of Force

The Justice Department releases statistics on this and related issues, although these datasets are only periodically updated: It found that in 2008, among people who had contact with police, "an estimated 1.4% had force used or threatened against them during their most recent contact, which was not statistically different from the percentages in 2002 (1.5%) and 2005 (1.6%).” In terms of the volume of citizen complaints, the Justice Department also found that there were 26,556 complaints lodged in 2002; this translates to “33 complaints per agency and 6.6 complaints per 100 full-time sworn officers.” However, “overall rates were higher among large municipal police departments, with 45 complaints per agency, and 9.5 complaints per 100 full-time sworn officers.” In 2011, about 62.9 million people had contact with the police.

In terms of the use of lethal force, aggregate statistics on incidents of all types are difficult to obtain from official sources. Some journalists are trying to rectify this; and some data journalists question what few official national statistics are available. The Sunlight Foundation explains some of the data problems, while also highlighting databases maintained by the Centers for Disease Control (CDC). The available data, which does not paint a complete national picture, nevertheless raise serious questions, Sunlight notes:

[A]ccording to the CDC, in Oklahoma the rate at which black people are killed per capita by law enforcement is greater than anywhere else in the country. That statistic is taken from data collected for the years 1999-2011. During that same time period, Oklahoma’s rate for all people killed by law enforcement, including all races, is second only to New Mexico. However, Oklahoma, the District of Columbia, Nevada and Oregon are all tied for the rate at which people are killed. (The CDC treats the District of Columbia as a state when collecting and displaying statistics.) In Missouri, where Mike Brown lived and died, black people are killed by law enforcement twice as frequently as white people. Nationwide, the rate at which black people are killed by law enforcement is 3 times higher than that of white people.

As mentioned, the FBI does publish statistics on “justifiable homicide” by law enforcement officers: The data show that there have been about 400 such incidents nationwide each year. However, FiveThirtyEight, among other journalism outlets, has examined the potential problems with these figures. News investigations suggest that the rates of deadly force usage are far from uniform. For example, Los Angeles saw an increase in such incidents in 2011, while Massachusetts sawmore officers firing their weapon over the period 2009-2013.

The academic community has also provided some insights in this area. A 2008 study from Matthew J. Hickman of Seattle University, Alex R. Piquero of the University of Maryland and Joel H. Garner of the Joint Centers for Justice Studies reviewed some of the best studies and data sources available to come up with a more precise national estimate for incidents of non-lethal force. They note that among 36 different studies published since the 1980s, the rates of force asserted vary wildly, from a high of more than 30% to rates in the low single digits. The researchers analyze Police-Public Contact Survey (PPCS) data and Bureau of Justice Statistics Survey of Inmates in Local Jails (SILJ) data and conclude that an estimated 1.7% of all contacts result in police threats or use of force, while 20% of arrests do.

A 2012 study in the *Criminal Justice Policy Review* analyzed the patterns of behavior of one large police department — more than 1,000 officers — and found that a “small proportion of officers are responsible for a large proportion of force incidents, and that officers who frequently use force differ in important and significant ways from officers who use force less often (or not at all).” A 2007 study in *Criminal Justice and Behavior,* “Police Education, Experience and the Use of Force,”found that officers with more experience and education may be less likely to use force, while a review of case studiessuggests that specific training programs and accountability structures can lower the use of violence by police departments.

Researchers continue to refine analytical procedures in order to make more accurate estimates based on police reports and other data.

Characteristics of Suspects

A widely publicized report in October 2014 by ProPublica, a leading investigative and data journalism outlet, concluded that young black males are 21 times more likely to be shot by police than their white counterparts: “The 1,217 deadly police shootings from 2010 to 2012 captured in the federal data show that blacks, age 15 to 19, were killed at a rate of 31.17 per million, while just 1.47 per million white males in that age range died at the hands of police.”

Research has definitively established that “racial profiling” by law enforcement exists — that persons of color are more likely to be stopped by police. FBI Director James Comey’s 2015 comments are again relevant here:

[P]olice officers on patrol in our nation’s cities often work in environments where a hugely disproportionate percentage of street crime is committed by young men of color. Something happens to people of good will working in that environment. After years of police work, officers often can’t help but be influenced by the cynicism they feel.

A mental shortcut becomes almost irresistible and maybe even rational by some lights. The two young black men on one side of the street look like so many others the officer has locked up. Two white men on the other side of the street—even in the same clothes—do not. The officer does not make the same association about the two white guys, whether that officer is white or black. And that drives different behavior. The officer turns toward one side of the street and not the other. We need to come to grips with the fact that this behavior complicates the relationship between police and the communities they serve.

While the cases of Rodney King in 1991 and Amadou Diallo in 1999 heightened the country’s awareness of race and policing, research has not uniformly corroborated the contention that minorities are more likely, on average, to be subject to acts of police force than are whites. A 2010 paper published in the *Southwestern Journal of Criminal Justice* reviewed more than a decade’s worth of peer-reviewed studies and found that while many studies established a correlation between minority status and police use of force, many other studies did not — and some showed mixed results.

Of note in this research literature is a 2003 paper, “Neighborhood Context and Police Use of Force,” that suggests police are more likely to employ force in higher-crime neighborhoods generally, complicating any easy interpretation of race as the decisive factor in explaining police forcefulness. The researchers, William Terrill of Northeastern University and Michael D. Reisig of Michigan State University, found that "officers are significantly more likely to use higher levels of force when encountering criminal suspects in high crime areas and neighborhoods with high levels of concentrated disadvantage independent of suspect behavior and other statistical controls." Terrill and Reisig explore several hypothetical explanations and ultimately conclude:

Embedded within each of these potential explanations is the influence of key sociodemographic variables such as race, class, gender, and age. As the results show, when these factors are considered at the encounter level, they are significant. However, the race (i.e., minority) effect is mediated by neighborhood context. Perhaps officers do not simply label minority suspects according to what Skolnick (1994) termed "symbolic assailants," as much as they label distressed socioeconomic neighborhoods as potential sources of conflict.

In studying the Seattle and Miami police departments, the authors of the 2010 National Institute of Justice report also conclude that "non-white suspects were less likely to be injured than white suspects … where suspect race was available as a variable for analysis. Although we cannot speculate as to the cause of this finding, or whether it is merely spurious, it is encouraging that minority suspects were not *more likely* to be injured than whites."

Use of Tasers and other "Less Lethal" Weapons

A 2011 report from the National Institute of Justice, "Police Use of Force, Tasers and Other Less-Lethal Weapons,"examines the effectiveness and health outcomes of incidents involving CEDs (conducted energy devices), the most common of which is the Taser. The report finds that: (1) Injury rates vary widely when officers use force in general, ranging from 17% to 64% for citizens and 10% to 20% for officers; (2) Use of Tasers and other CEDs can reduce the statistical rate of injury to suspects and officers who might otherwise be involved in more direct, physical conflict — an analysis of 12 agencies and more than 24,000 use-of-force cases "showed the odds of suspect injury decreased by almost 60% when a CED was used"; and (3) A review of fatal Taser incidents found that many involved multiple uses of the device against the suspect in question.

A 2011 study, "Changes in Officer Use of Force Over Time: A Descriptive Analysis of a National Survey," documents trends in the use of non-lethal force by law enforcement officers (LEAs). The results indicate that CED use has risen significantly (to about 70% of LEAs), while baton use is down to 25% in 2008. "CED use was ranked among the most-used tactics from 2005 to 2008," the scholars conclude. "Excessive-force complaints against LEAs, internally generated, have more than doubled from 2003 to 2008. Officer injuries varied little from 2003 to 2008, but they are still only about half as common as suspect injuries. Also, only 20% of LEAs collect injury data in a database, complicating future research."

Potential Impact of Body Cameras

Video recordings of interactions between the police and the public have increased significantly in recent years as technology has improved and the number of distribution channels has expanded. Any standard smartphone can now make a video — as was the case in the Walter L. Scott shooting — and dash-mounted cameras in police cars have become increasingly common. The mandatory adoption of body cameras by police has been suggested to increase transparency in interactions between law-enforcement officials and the public. A 2014 study from the U.S. Department of Justice, "Police Officer Body-Worn Cameras: Assessing the Evidence," reviews available research on the costs and benefits of body-worn camera technology. The author, Michael D. White of Arizona State University, identified five empirical studies on body cameras, and assesses their conclusions. In particular, a year after the Rialto, Calif., police deparment began requiring all officers to wear body cameras, use of force by officers fell by 60% and citizen complaints dropped by nearly 90%. The searcher notes:

The decline in complaints and use of force may be tied to improved citizen behavior, improved police officer behavior, or a combination of the two. It may also be due to changes in citizen complaint reporting patterns (rather than a civilizing effect), as there is evidence that citizens are less likely to file frivolous complaints against officers wearing cameras. Available research cannot disentangle these effects; thus, more research is needed.

The studies also noted concerns about the cost of the required devices, training and systems for storing video footage; potential health and safety effects; and especially privacy concerns, both for citizens and the police. In April 2015, a bill being considered in the Michigan State legislature would exempt some body-camera footage from the state's Freedom of Information (FOI) laws. Those who spoke in favor of the law included a conservative Republican legislator and an ACLU representative.

Public Opinion and Media

The coverage of such incidents by mass media has been studied by researchers, some of whom have concluded that the press has often distorted and helped justify questionable uses of force. Finally, survey data continue to confirm the existence of undercurrents of racism and bias in America, despite demonstrable social progress; a 2014 Stanford studyshows how awareness of higher levels of black incarceration can prompt greater support among whites for tougher policing and prison programs.

CHAPTER 21

REPORTS OF POLICE BEATING AND ASSOCIATED HARMS AMONG PEOPLE WHO INJECT DRUGS IN BANGKOK, THAILAND: A SERIAL CROSS-SECTIONAL STUDY

Kanna Hayashi[1,2], Lianping Ti[1,3], Joanne Csete[4], Karyn Kaplan[5], Paisan Suwannawong[5], Evan Wood[1,6] and Thomas Kerr[1,6]

[1] Urban Health Research Initiative, British Columbia Centre for Excellence in HIV/AIDS, St. Paul's Hospital, 608-1081 Burrard Street, Vancouver, BC V6Z 1Y6, Canada

[2] Interdisciplinary Studies Graduate Program, University of British Columbia, Green Commons, 6201 Cecil Green Park Road, Vancouver, BC V6T 1Z1, Canada

[3] School of Population & Public Health, University of British Columbia, 2206 East Mall, Vancouver, BC V6T 1Z3, Canada

[4] Global Drug Policy Program, Open Society Foundations, 7th Floor Millbank Tower, 21-24 Millbank, London SW1P 4QP, United Kingdom

[5] Mitsampan Harm Reduction Center / Thai AIDS Treatment Action Group, 18/89 Vipawadee Rd., soi 40 Chatuchak, Bangkok 10900, Thailand

[6] Faculty of Medicine, University of British Columbia, 317-2194 Health Sciences Mall, Vancouver, BC V6T 1Z3, Canada

ABSTRACT

Background

Thailand has for years attempted to address illicit drug use through aggressive drug law enforcement. Despite accounts of widespread violence by police against people who inject drugs (IDU), the impact of police violence has not been well investigated. In the wake of an intensified police crackdown in 2011, we sought to identify the prevalence and correlates of experiencing police beating among IDU in Bangkok.

Methods

Community-recruited samples of IDU in Bangkok were surveyed between June 2009 and October 2011. Multivariate log-binomial regression was used to identify factors associated with reporting police beating.

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Results

In total, 639 unique IDU participated in this serial cross-sectional study, with 240 (37.6%) participants reporting that they had been beaten by police. In multivariate analyses, reports of police beating were associated with male gender (Adjusted Prevalence Ratio [APR] = 4.43), younger age (APR = 1.69), reporting barriers to accessing healthcare (APR = 1.23), and a history of incarceration (APR = 2.51), compulsory drug detention (APR = 1.22) and syringe sharing (APR = 1.44), and study enrolment in 2011 (APR = 1.27) (all $p < 0.05$). Participants most commonly reported police beating during the interrogation process.

Conclusions

A high proportion of IDU in Bangkok reported having been beaten by the police. Experiencing police beating was independently associated with various indicators of drug-related harm. These findings suggest that the over-reliance on enforcement-based approaches is contributing to police-perpetrated abuses and the perpetuation of the HIV risk behaviour among Thai IDU.

BACKGROUND

In many countries, illicit drug use remains a significant problem, and the dominant response continues to be the enforcement of drug laws that criminalize illicit drug use and trafficking [1]. However, a burgeoning body of international literature suggests that the overreliance on law enforcement-based approaches produces unintended negative consequences, including the perpetuation of human immunodeficiency virus (HIV) epidemics among people who inject drugs (IDU), as these approaches have been associated with an unwillingness to carry sterile syringes and risky injection behaviour among this population [2, 3, 4]. The reliance on drug law enforcement continues despite international guidelines issued by agencies of the United Nations that recommend a public health approach to problematic drug use (e.g., harm reduction services such as sterile syringe programs) [5].

Thailand has experienced longstanding epidemics of illicit drug use and HIV among IDU, with an estimated 5% of the population using illicit drugs in 2007 and an estimated 30–50% of IDU living with HIV/AIDS over two decades [6, 7]. Although Thailand enacted a new law that reclassified people who use drugs as "patients" not "criminals" in 2002, the criminal laws governing drug use remain in effect, and the Thai government has continued to support intensive police crackdowns, as well as compulsory detention and incarceration of people who use drugs [8]. Between 2008 and 2011, Thai drug policies were revised several times, and the number of people who use drugs targeted to undergo mandatory rehabilitation programs has increased from 60,000 in 2008 to 400,000 in 2011 [9, 10, 11, 12]. It has been reported that during the Thai "war on drugs" in 2003, the government's strong emphasis on drug suppression efforts led the Thai police to commit various forms of violence, including over 2,800 extrajudicial killings of alleged drug dealers and users [13, 14]. Although the Thai government promised that the police would not breach due process again, recent reports suggest that police misconduct has continued during subsequent crackdowns. For example, a 2008 study showed that almost half of a sample of IDU in Bangkok reported having drugs planted on them by police [15]. Further, other reports documented police misconduct and fatal shootings of suspects during drug suppression operations in 2012 [16, 17].

Despite ongoing concern regarding the renewed and intensified crackdowns on drug use in Thailand, few studies have endeavored to identify the extent and impact of specific forms of police violence among IDU. Although many detailed narratives on police violence were documented during the "war on drugs" in 2003 [13], few studies have been undertaken in the post-2003 period [15, 18]. As well, while international literature indicates that aggressive drug law enforcement practices increase vulnerability to HIV infection and other harms among IDU [4, 19, 20, 21], these studies have tended to focus on the aggregate impact of police crackdowns of relatively short duration, and the impact of specific forms of police misconduct has seldom been quantified. Moreover, most of the previous academic research in this field has been conducted in Western countries, not in Southeast Asia where the legal and social environments surrounding illicit drug use are distinct from those in Western settings [22]. Therefore, we sought to identify the prevalence and correlates of experiencing police beating among a community-recruited sample of IDU in Bangkok, Thailand.

METHODS

Study Design

Data for this study were derived from the Mitsampan Community Research Project, a collaborative research effort involving the Mitsampan Harm Reduction Center (MSHRC; a drug user-run drop-in centre in Bangkok, Thailand), Thai AIDS Treatment Action Group (Bangkok, Thailand), Chulalongkorn University (Bangkok, Thailand), and the British Columbia Centre for Excellence in HIV/AIDS/University of British Columbia (Vancouver, Canada). This is a serial cross-sectional study that aims to investigate drug-using behaviour, healthcare access, and other drug-related harms among IDU in Bangkok. Between June 2009 and October 2011, the research partners undertook two waves of surveying, which involved a total of 757 community-recruited IDU in Bangkok (317 IDU between June and July of 2009 and 440 IDU between July and October of 2011). Potential participants were recruited through peer outreach efforts and word-of-mouth, and were invited to attend the MSHRC or O-Zone House (another drop-in centre in Bangkok) in order to be part of the study. Adults residing in Bangkok or in adjacent provinces who had injected drug(s) in the past six months were eligible for participation.

All participants provided oral informed consent and completed an interviewer-administered questionnaire eliciting a range of information, including socio-demographic characteristics, drug use patterns, and experiences with drug law enforcement and accessing healthcare. Most of the question items used for this study were consistent with those utilized in previous studies of IDU in Bangkok [23, 24]. All interviews were conducted in private rooms inside the MSHRC and O-Zone House by a total of 11 trained peer interviewers (i.e., former or active drug users at the MSHRC, including seven interviewers in 2009 and six interviewers in 2011), who underwent extensive training focused on interview techniques and research ethics. In addition, research staff checked the administered questionnaires for consistency across both interviews and interviewers on an ongoing basis. Each interview lasted between 45 and 90 minutes. Upon completion of the questionnaire, participants received a stipend of 350 Thai Baht (approximately US$12). The study was approved by the research ethics boards at Chulalongkorn University and the University of British Columbia.

Participants and Measures

Participants who completed the interview in 2009 or 2011 were eligible for inclusion. Given that some individuals were interviewed in both 2009 and 2011, we included all participants from the first wave and only new participants from the second wave in order to ensure the independence of the observations analysed in the present study. The sample of each survey wave was further restricted to individuals who had complete data for the present analyses. For the present analyses, the primary outcome of interest was reporting a history of police beating, defined as answering “Yes” to a question: “Have you ever been beaten by police?” In addition, in 2011 a follow-up question was added to the survey, which asked participants reporting episodes of police beating about the circumstances of police beatings (e.g., where and when they occurred). Although many forms of police violence exist [25], police beating was selected as the primary outcome of interest because it was identified as one of the major forms of police violence by a group of peer researchers during the process of developing survey instruments, and yet little was known about the prevalence and correlates of experiencing police beating among IDU in Bangkok.

Informed by previous studies exploring the impacts of aggressive drug law enforcement on IDU [19, 20, 21], explanatory variables that were hypothesized to be potentially associated with the outcome were selected. They included median age (<37 years *vs.* ≥37 years); gender (male *vs.* female); drug-dealing involvement in the past six months (yes *vs.* no); a history of injecting each of the four kinds of drugs that are commonly used among IDU in Bangkok: heroin, midazolam (a short-acting benzodiazepine), methamphetamine (locally called*yaba*), and crystal methamphetamine (locally called *ice*); a history of incarceration; a history of compulsory drug detention; a history of accessing methadone treatment; reporting barriers to accessing healthcare (any*vs.* none); a history of syringe sharing; HIV serostatus (positive *vs.* negative or unknown); a history of non-fatal overdose; and calendar year of study enrolment (2011 *vs.* 2009). Drug-dealing involvement was ascertained by asking whether drug dealing (i.e., selling or delivering illicit drugs) constituted a source of personal income for the respondent in the past six months. As in our previous work [24], our barriers to accessing healthcare variable included a range of potential barriers, including but not limited to: fear of sharing information of drug using status with the police, not wanting healthcare providers to know one injects or uses drugs, being treated poorly by healthcare providers, and transportation issues.

Statistical Analyses

For the bivariate and multivariate analyses, the prevalence ratio was used as a measure of association, rather than the odds ratio, as the frequency of the outcome exceeded 10% [26]. First, we used a simple binomial regression with a log link function to examine bivariate associations between reports of police beating and the explanatory variables [27]. Next, we used an *a priori*-defined statistical protocol based on examination of the Akaike Information Criterion (AIC) and *p*-values to construct an explanatory multivariate log-binomial regression model using the COPY method in SAS (SAS Institute Inc., Cary, NC, USA) [28]. First, we constructed a full model including all variables analysed in bivariate analyses. After examining the AIC of the model, we removed the variable with the largest *p*-value and built a reduced model. We continued this iterative process until no variables remained for inclusion. We selected the multivariate model with the lowest AIC score. Because median age, which was not significantly associated with the outcome at the $p<0.05$ level in bivariate analyses, became significantly associated with the outcome in the full multivariate log-binomial regression model, we assessed two-way interactions between median age and the explanatory variables by creating interaction terms. Interaction was deemed as present if the interaction term was associated with the outcome at the $p<0.05$ level. All *p*-values were two-sided.

As a sub-analysis, we used descriptive statistics to examine at what point during interactions with police that participants experienced beatings. All statistical analyses were performed with SAS version 9.3.

RESULTS

Among 644 unique IDU recruited between June 2009 and October 2011, 639 individuals (307 individuals in 2009 and 332 individuals in 2011) had complete data and were eligible for inclusion in the present analyses. The median age of eligible participants was 37 years (interquartile range: 33–47 years), and 153 (23.9%) were female. In total, 240 participants (37.6%) reported having ever been beaten by police. The unadjusted prevalence of experiencing police beating increased from 31.3% in 2009 to 43.4% in 2011 ($p = 0.002$). Twenty-one individuals (3.3%) reported having been beaten by police in the past six months (6 individuals [2.0%] in 2009 and 15 individuals [4.5%] in 2011; $p = 0.082$).

The results of bivariate analyses are shown in Table 1. Reports of police beatings were significantly and positively associated with male gender (prevalence ratio [PR]: 5.50; 95% confidence interval [CI]: 3.24–9.33); a history of heroin injection (PR: 2.45; 95% CI: 1.45–4.15), midazolam injection (PR: 1.52; 95% CI: 1.10–2.10), and crystal methamphetamine injection (PR: 1.47; 95% CI: 1.17–1.84); a history of syringe sharing (PR: 1.93; 95% CI: 1.52–2.45); a history of incarceration (PR: 3.00; 95% CI: 1.98–4.56); a history of compulsory drug detention (PR: 1.33; 95% CI: 1.06–1.66); a history of methadone treatment enrolment (PR: 1.74; 95% CI: 1.30–2.33); reporting barriers to accessing healthcare (PR: 1.55; 95% CI: 1.25–1.93); HIV seropositivity (PR: 1.35; 95%

CI: 1.08–1.67); a history of non-fatal overdose (PR: 1.60; 95% CI: 1.32–1.95); and study enrolment in 2011 (PR: 1.39; 95% CI: 1.13–1.71).

Table 1: Bivariate analyses of factors associated with reports of police beatings among IDU in Bangkok, Thailand (*n* = 639)

Characteristic	**Ever beaten by police**		**Prevalence ratio (95% CI)**	***p* -value**
	Yes	**No**		
	240 (37.6%)	**399 (62.4%)**		
Calendar year of study enrolment				
2011	144 (43.4%)	188 (56.6%)	1.39 (1.13–1.71)	0.002
2009	96 (31.3%)	211 (68.7%)		
Sociodemographic characteristics				
Age				
< 37 years old	119 (38.3%)	192 (61.7%)	1.04 (0.85–1.27)	0.720
≥ 37 years old	121 (36.9%)	207 (63.1%)		
Gender				
Male	227 (46.7%)	259 (53.3%)	5.50 (3.24–9.33)	<0.001
Female	13 (8.5%)	140 (91.5%)		
Income from drug dealing*				
Yes	21 (43.8%)	27 (56.3%)	1.18 (0.84–1.65)	0.335
No	219 (37.1%)	372 (62.9%)		
Drug use behaviour				
Heroin injection ever				
Yes	228 (40.3%)	338 (59.7%)	2.45 (1.45–4.15)	<0.001
No	12 (16.4%)	61 (83.6%)		
Midazolam injection ever				
Yes	210 (40.0%)	315 (60.0%)	1.52 (1.10–2.10)	0.011
No	30 (26.3%)	84 (73.7%)		
Methamphetamine injection ever				
Yes	180 (39.6%)	274 (60.4%)	1.22 (0.96–1.55)	0.097
No	60 (32.4%)	125 (67.6%)		
Crystal methamphetamine injection ever				
Yes	48 (51.6%)	45 (48.4%)	1.47 (1.17–1.84)	<0.001
No	192 (35.2%)	354 (64.8%)		

Characteristic	Ever beaten by police		Prevalence ratio (95% CI)	*p* -value
	Yes	No		
	240 (37.6%)	399 (62.4%)		
Syringe sharing ever				
Yes	175 (47.0%)	197 (53.0%)	1.93 (1.52–2.45)	<0.001
No	65 (24.3%)	202 (75.7%)		
Experiences with criminal justice system				
Ever in prison				
Yes	220 (43.8%)	282 (56.2%)	3.00 (1.98–4.56)	<0.001
No	20 (14.6%)	117 (85.4%)		
Ever in compulsory drug detention				
Yes	56 (47.1%)	63 (52.9%)	1.33 (1.06–1.66)	0.012
No	184 (35.4%)	336 (64.6%)		
Healthcare access				
Ever accessed methadone treatment				
Yes	200 (42.2%)	274 (57.8%)	1.74 (1.30–2.33)	<0.001
No	40 (24.2%)	125 (75.8%)		
Reporting barriers to accessing healthcare				
Any	158 (44.6%)	196 (55.4%)	1.55 (1.25–1.93)	<0.001
None	82 (28.8%)	203 (71.2%)		
Health outcomes				
HIV serostatus				
Positive	61 (47.3%)	68 (52.7%)	1.35 (1.08–1.67)	0.007
Negative or unknown	179 (35.1%)	331 (64.9%)		
Non-fatal overdose ever				
Yes	81 (52.6%)	73 (47.4%)	1.60 (1.32–1.95)	<0.001
No	159 (32.8%)	326 (67.2%)		

IDU people who inject drugs, *CI* Confidence Interval.

* denotes events/activities in the previous 6 months.

Table 2 shows the results from the final multivariate log-binomial regression model. As shown, an interaction was found with median age and a history of methamphetamine injection. Reports of police beatings were independently and positively associated with younger age (< 37 years) among those who never injected methamphetamine (adjusted prevalence ratio [APR]: 1.69; 95% CI: 1.17–2.43); male gender (APR: 4.43; 95% CI: 2.63–7.49); a history of syringe sharing (APR: 1.44; 95% CI: 1.15–1.80); a history of incarceration (APR: 2.51; 95% CI: 1.68–3.77); a history of compulsory drug detention (APR: 1.22; 95% CI: 1.05–1.40); reporting barriers to accessing healthcare (APR: 1.23; 95% CI: 1.01–1.49); and study enrolment in 2011 (APR: 1.27; 95% CI: 1.07–1.49).

Table 2: Multivariate log-binomial regression analysis of factors associated with reports of police beatings among IDU in Bangkok, Thailand (*n*=639)

Variable	Adjusted PR	95% CI	*p* -value
Calendar year of study enrolment			
(2011 *vs.* 2009)	1.27	(1.07–1.49)	0.005
Younger age among those who ever injected methamphetamine			
(< 37 years *vs.* ≥ 37 years old)	1.18	(0.99–1.41)	0.062
Younger age among those who never injected methamphetamine			
(< 37 years *vs.* ≥ 37 years old)	1.69	(1.17–2.43)	0.005
Gender			
(Male *vs.* Female)	4.43	(2.63–7.49)	<0.001
Syringe sharing ever			
(Yes *vs.* No)	1.44	(1.15–1.80)	0.002
Ever in prison			
(Yes *vs.* No)	2.51	(1.68–3.77)	<0.001
Ever in compulsory drug detention			
(Yes *vs.* No)	1.22	(1.05–1.40)	0.008
Reporting barriers to accessing healthcare			
(Any *vs.* None)	1.23	(1.01–1.49)	0.043
Non-fatal overdose ever			
(Yes *vs.* No)	1.14	(0.97–1.34)	0.115

IDU people who inject drugs, *PR* prevalence ratio, *CI* Confidence Interval.

In sub-analysis, among participants completing surveys in 2011 (*n*=144), 68.1% reported experiencing police beating while being interrogated, 43.1% reported being beaten during their arrest, 22.9% were beaten while being searched, and 22.9% reported having been beaten while in police holding cells.

DISCUSSION

We found that over one-third of a sample of IDU in Bangkok reported having ever been beaten by police. Reports of police beating were independently associated with study enrolment in 2011, male gender, younger age among those who never injected methamphetamine, a history of incarceration, compulsory drug detention and syringe sharing, and reporting barriers to accessing healthcare. Participants most commonly experienced police beating during the interrogation process.

To our knowledge, the present study is the first to quantitatively examine the prevalence and correlates of experiencing physical violence at the hands of police among IDU in Thailand. The findings that the overall prevalence was as high as 37.6% in 2009–2011, and the majority of the victims (68.1%) experienced it during the interrogation process raise serious concern about widespread police-perpetrated abuses against this population. Our findings are consistent with previous reports during the 2003 “war on drugs” campaign indicating that police beating was used as a tactic to extract confessions of drug-related crimes from suspected drug users [13]. We also found persistent reports of recent experiences with police beatings during the two-year study period. Furthermore, in a multivariate analysis, after extensive adjustment for social, demographic and behavioural factors, study enrolment in 2011 remained independently associated with reports of police beatings. Although the present study did not set out to assess the incidence of police beatings, these findings suggest that this form of police violence has continued in recent years.

We also found that male IDU experienced police beating more often than women. Thai police are believed to profile IDU based on factors such as track marks [13]. As the great majority of Thai IDU population is believed to be comprised of males [29], male IDU may be more susceptible to police profiling of IDU and police-perpetrated physical violence. However, it is also important to note that women may have been susceptible to other forms of police violence, such as sexual violence, which were not examined in the present study. We also found that younger IDU who never injected methamphetamine were more likely to have been beaten by police. Given that young people are a major target of drug demand reduction efforts in Thailand [30], young IDU may be more vulnerable to police beatings. However, the reasons why this association was found only among those who never injected methamphetamine remain unknown. Future research should seek to explore the context of police beatings in more depth.

Of particular concern is the finding that reports of police beating were independently associated with a history of incarceration and compulsory drug detention. This finding, considered alongside our data concerning the circumstances of police beatings, suggests that IDU in this setting may typically experience police beating before being sent to prison or compulsory drug detention. This is concerning because these institutions may be ill equipped to deal with physical and psychological manifestations of traumatic injuries [8]. Alternatively, the finding may suggest that individuals with a history of incarceration or compulsory drug detention are easier targets for police. Indeed, previous reports documented widespread use of "blacklists" by the Thai police during the 2003 "war on drugs" campaign, on which individuals with records of drug-related arrests were listed as suspected drug users or traffickers [13]. More recent reports also suggested the continued use of blacklists by police [18, 31], indicating that the latter interpretation may be also plausible.

Importantly, episodes of police beating were also independently associated with syringe sharing and reporting barriers to accessing health services. Consistent with previous studies from other settings indicating the negative impact of aggressive drug law enforcement on seeking health and harm reduction services by IDU [2,19, 20], our findings may suggest that individuals who experienced police beating may have retreated into more hidden settings where it was difficult to obtain sterile syringes, making the adoption of harm reduction practices become difficult or impossible. Several lines of evidence support such negative impacts of police beatings on HIV risk behaviour among IDU. Specifically, previous studies from Ukraine also found a significant association between police beatings and syringe sharing among IDU [32, 33], and mathematical modelling showed that the elimination of police beatings could substantially avert HIV infection in this population [33]. In addition, a recent study of IDU in Bangkok demonstrated that past experiences with police beatings were independently associated with recent syringe sharing, indicating a lasting effect of police beatings on HIV risk behaviour among IDU in this setting [34]. It may also be that acts of violence by police create environment that promotes fear and constrains Thai IDUs' access to healthcare. However, as the present study did not assess the temporal relationship between police beatings and health-seeking practices, future research should further examine this relationship in this setting.

Our findings have implications for policies and programs related to drug law enforcement in Thailand. First, the extent of police beating reported in the present study raise concern about widespread violations of basic human rights of IDU in this setting, including the rights to security of the person (Article 9) and to freedom from torture and cruel, inhuman, and degrading treatment (Article 7) under the International Covenant on Civil and Political Rights, to which Thailand became a party in 1996. The use of torture is also prohibited under Section 32 of the *Constitution of the Kingdom of Thailand B.E. 2550*[35]. In keeping with the law, a greater oversight of police operations should be a priority for the Thai government. Second, given the findings that police beating may be undermining HIV prevention among IDU in this setting, more efforts should be made to harmonize drug law enforcement activities and public health goals. Some examples of such efforts proposed and made in other settings include encouraging police officers to exercise discretion or cautioning or other measures instead of arresting street-level drug users [36]; training police officers to engage in or at least not undermine harm reduction activities [37, 38]; and establishing multi-sectoral partnerships between police and health agencies [38, 39]. However, evaluations of these efforts showed some mixed results, pointing out various barriers to implementation, including personnel transfers, police culture, variations in public perception of the role of police, and ongoing police corruption [2, 39, 40]. There is clearly a need for more work in this area. Lastly, ensuring access to legal services among IDU is important in order to help victims of police abuse obtain redress and compensation in this setting. In addition, a recent review indicated that expanded legal services also have potential to prevent police abuse and promote health benefits among IDU [41].

This study has several limitations. First, due to the cross-sectional study design, we were unable to assess temporal relationships between the outcome and explanatory variables. Second, the self-reported data may have been affected by socially desirable responding or recall bias. Third, as the study sample was not randomly selected, our findings may not be generalizable to other populations of IDU in Thailand.

Conclusions

In sum, we found that a high proportion of a community-recruited sample of IDU in Bangkok reported having been beaten by police. Experiencing police beating was independently associated with indicators of drug-related harm, including syringe sharing and barriers to accessing healthcare. These findings suggest that the over-reliance on law enforcement-based approaches may be contributing to human rights violations at the hands of police and exacerbating HIV risk among IDU in this setting. Therefore, they indicate the need for greater police oversight and a shift toward the implementation of evidence-based policies and programs specific to HIV/AIDS and illicit drug use.

Declarations

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REFERENCES

1. United Nations Office on Drugs and Crime: 2008 World drug report. 2008, Vienna: United Nations Office on Drugs and Crime
2. Kerr T, Small W, Wood E: The public health and social impacts of drug market enforcement: a review of the evidence. Int J Drug Policy. 2005, 16 (4): 210-220. 10.1016/j.drugpo.2005.04.005.
3. Global Commission on Drug Policy: The war on drugs and HIV/AIDS: how the criminalization of drug use fuels the global pandemic. 2012, Rio de Janeiro, http://globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/GCDP_HIV-AIDS_2012_REFERENCE.

pdf,

4. Jürgens R, Csete J, Amon JJ, Baral S, Beyrer C: People who use drugs, HIV, and human rights. Lancet. 2010, 376 (9739): 475-485. 10.1016/S0140-6736(10)60830-6.

5. World Health Organization, United Nations Office on Drugs and Crime, Joint United Nations Programme on HIV/AIDS: WHO, UNODC, UNAIDS technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users. 2009, Geneva: World Health Organization

6. Assanangkornchai S, Aramrattana A, Perngparn U, Kanato M, Kanika N, Na Ayudhya AS: Current situation of substance-related problems in Thailand. J Psychiatr Assoc Thai. 2008, 53 (Supplement 1): 24S-36S.

7. National AIDS Prevention and Alleviation Committee: UNGASS country progress report Thailand: reporting period: January 2008 - December 2009. 2010,http://data.unaids.org/pub/Report/2010/thailand_2010_country_progress_report_en.pdf,

8. Pearshouse R: Compulsory drug treatment in Thailand: observations on the Narcotic Addict Rehabilitation Act B.E. 2545 (2002). 2009, Toronto: Canadian HIV/AIDS Legal Network

9. Office of the Narcotics Control Board of Thailand: Roadmap of drug surveillance and establishment of sustainable victory over drugs 2006–2008. 2006, http://en.oncb.go.th/document/Roadmap06-08.pdf,

10. Narcotics Control Board of Thailand: Narcotics Control Board's Order No. 1 / B.E. 2552 (2009) on national narcotics control mechanisms under the five fences strategy. 2009, http://en.oncb.go.th/document/NCB%20ORDER1-52.pdf,

11. Vejjajiva A: Prime Minister's Order No. 249/2552 (2009): the national strength to overcome drugs under five-defensive fences strategy phase II (November 2009 – September 2010). 2009, http://en.oncb.go.th/document/ORDER249-2552.pdf,

12. Office of the Narcotics Control Board of Thailand: National narcotics control policy on kingdom's unity for victory over drugs strategy. 2011, http://en.oncb.go.th/file/information_policy.html,

13. Human Rights Watch: Not enough graves: the war on drugs, HIV/AIDS, and violations of human rights. 2004, New York: Human Rights Watch, Volume 16.

14. Harm Reduction International, Human Rights Watch: Thailand's 'war on drugs'. 2008,http://www.hrw.org/news/2008/03/12/thailand-s-war-drugs,

15. Fairbairn N, Kaplan K, Hayashi K, Suwannawong P, Lai C, Wood E, Kerr T: Reports of evidence planting by police among a community-based sample of injection drug users in Bangkok. Thailand. BMC Int Health Hum Rights. 2009, 9: 24-10.1186/1472-698X-9-24.

16. Rakrun N: Husband relives hell of wife's killing. 2012, Bangkok: Bangkok Post

17. Human Rights Watch: Thailand: police blamed for killing drug suspect: parliamentary findings demand strong action to combat police brutality. 2012, New York: Human Rights Watch, http://www.hrw.org/news/2012/03/16/thailand-police-blamed-killing-drug-suspect,

18. Human Rights Watch, Thai AIDS Treatment Action Group: Deadly denial: barriers to HIV/AIDS treatment for people who use drugs in Thailand. 2007, New York: Human Rights Watch, Volume 19.

19. Cooper H, Moore L, Gruskin S, Krieger N: The impact of a police drug crackdown on drug injectors' ability to practice harm reduction: A qualitative study. Soc Sci Med. 2005, 61 (3): 673-684. 10.1016/j.socscimed.2004.12.030.

20. Small W, Kerr T, Charette J, Schechter MT, Spittal PM: Impacts of intensified police activity on injection drug users: evidence from an ethnographic investigation. Int J Drug Policy. 2006, 17 (2): 85-95. 10.1016/j.drugpo.2005.12.005.

21. Maher L, Dixon D: The cost of crackdowns: policing Cabramatta's herion market. Current Issues Crim Just. 2001, 13 (1): 5-22.

22. HIV and AIDS Data Hub for Asia□Pacific: Law, policy & HIV in Asia and the Pacific: implications on the vulnerability of men who have sex with men, female sex workers and injecting drug users. 2009,http://aidsdatahub.org/dmdocuments/Law_Policy_HIV_2009_HADH.pdf,

23. Hayashi K, Milloy MJ, Fairbairn N, Kaplan K, Lai C, Wood E, Kerr T: Incarceration experiences among a community-recruited sample of injection drug users in Bangkok. Thailand. BMC Public Health. 2009, 9 (1): 492-10.1186/1471-2458-9-492.

24. Ti L, Hayashi K, Kaplan K, Suwannawong P, Fu E, Wood E, Kerr T: HIV testing and willingness to get HIV testing at a peer-run drop-in centre for people who inject drugs in Bangkok. Thailand. BMC Public Health. 2012, 12 (1): 189-10.1186/1471-2458-12-189.

25. Cooper H, Moore L, Gruskin S, Krieger N: Characterizing perceived police violence: implications for public health. Am J Public Health. 2004, 94 (7): 1109-1118. 10.2105/AJPH.94.7.1109.

26. McNutt LA, Wu C, Xue X, Hafner JP: Estimating the relative risk in cohort studies and clinical trials of common outcomes. Am J Epidemiol. 2003, 157 (10): 940-943. 10.1093/aje/kwg074.

27. Spiegelman D, Hertzmark E: Easy SAS calculations for risk or prevalence ratios and differences. Am J Epidemiol. 2005, 162 (3): 199-200. 10.1093/aje/kwi188.

28. Deddens JA, Petersen MR: Approaches for estimating prevalence ratios. Occup Environ Med. 2008, 65 (7): 481-501–486

29. Barrett ME, Perngparn U: Rapid assessment and response: preparation for the scale-up of comprehensive harm reduction services in Thailand: Bangkok province. 2010, Bangkok: Asian Harm Reduction Network & Public Health Sciences College, Chulalongkorn University, http://new.ahrn.net/wp-content/uploads/2010/06/RAR2010_Pub_ENG_BKK.pdf,

30. Hoonsara S, Kijchalong T, Jaichalard P: Govt to respond to Queen's concerns about drugs. 2011, Bangkok: The Nation

31. Bangkok Post: Top cop orders blitz on drugs. 2011, Bangkok: Bangkok Post

32. Booth RE, Dvoryak S, Anderson C, Brewster JT, Strathdee SA: Police brutality is independently associated with sharing injection equipment among injection drug users in Odessa, Ukraine. Presented at The 18th International AIDS Conference. 2010, Vienna, Austria, http://www.iasociety.org/Abstracts/A200737978.aspx,

33. Strathdee SA, Hallett TB, Bobrova N, Rhodes T, Booth R, Abdool R, Hankins CA: HIV and risk environment for injecting drug users: the past, present, and future. Lancet. 2010, 376 (9737): 268-284. 10.1016/S0140-6736(10)60743-X.

34. Hayashi K, Ti L, Buxton JA, Kaplan K, Suwannawong P, Kerr T: The effect of exposures to policing on syringe sharing among people who inject drugs in Bangkok, Thailand. AIDS Behav. 2013, [Epub ahead of print]

35. Constitution Drafting Commission: Constitution of the Kingdom of Thailand B.E. 2550 (2007). 2007, Bangkok: Bureau of Printing Services, Secretariat of the House of Representatives

36. Maher L, Dixon D: Policing and public health: law enforcement and harm minimization in a street-level drug market. Br J Criminol. 1999, 39 (4): 488-512. 10.1093/bjc/39.4.488.

37. Burris S, Blankenship KM, Donoghoe M, Sherman S, Vernick JS, Case P, Lazzarini Z, Koester S: Addressing the "risk environment" for injection drug users: the mysterious case of the missing cop. Milbank Q. 2004, 82 (1): 125-156. 10.1111/j.0887-378X.2004.00304.x.

38. Sharma M, Chatterjee A: Partnering with law enforcement to deliver good public health: the experience of the HIV/AIDS Asia regional program. Harm Reduct J. 2012, 9 (1): 24-10.1186/1477-7517-9-24.

39. Midford R, Acres J, Lenton S, Loxley W, Boots K: Cops, drugs and the community: establishing consultative harm reduction structures in two Western Australian locations. Int J Drug Policy. 2002, 13 (3): 185-192. 10.1016/S0955-3959(02)00031-2.

40. Jardine M, Crofts N, Monaghan G, Morrow M: Harm reduction and law enforcement in Vietnam: influences on street policing. Harm Reduct J. 2012, 9 (1): 27-10.1186/1477-7517-9-27.

41. Csete J, Cohen J: Health benefits of legal services for criminalized populations: the case of people who use drugs, sex workers and sexual and gender minorities. J Law Med Ethics. 2010, 38 (4): 816-831. 10.1111/j.1748-720X.2010.00535.x.

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Criminal Justice Ethics: Theory and Practice

Ethics give us system of moral principles. Many people tend to equate ethics with their feelings. But being ethical is clearly not a matter of following one's feelings. Being ethical is also not the same as following the law. Law is often opposite to what is ethical, as history showed us many times. Ethics refers to well-founded standards of right and wrong. Ethics is important for all participants in the legal system and for those who struggle for justice. Immoral person cannot apply the law because that person essentially does not understand it. But it is not so easy, great wisdom and objectivity is required so one would be able to say that he is an ethical and moral judge, even harder is when we are talking about whole legal system(s). In the beginning we will start from the foundation, and get acquainted with the most important ethical systems, from the Greek Virtue ethics to the modern Feminist ethics and Egoism on the other hand. Connection of Ethics and religion is also very important, and researcher needs to understand it well before entering the world of philosophy and moral. First next step is understanding the Natural law and Social Contract Theory and then we can start revealing the complex world of ethical and moral dilemmas. In Chapter 2. we will ask the question of what you will do when being endangered or hurt. Do you blame or do you forgive? Where to draw the line between vengeance and forgiveness, the two opposite worlds. We will try the ethic "outsider" viewpoint in Chapter 3. The ability to take this attitude will make many hidden facts obvious. We may in the future be able to predict the crime risk and stop growing victimization rates. Chapter 4. is here for us to stop and think for a while. Is enabling weapons to citizens and making it available while being concerned with crime rates ethical move of legal authorities? Community-oriented policing strategies and new approaches to ensure public safety are always welcome in aspiration to make moral society driven by moral principles. Because of this we are dealing with new approaches for the police but also considering for new rules and codes of ethics in Chapters 5-8. Constantly advancing civilization is entering new areas and new fields of operation. Are existing rules universal and sufficient? Culture of honor might be responsible for higher crime rates. Chapters 9 and 10 will be dealing with this theme. How is this correlating to what we know about crime and ethics so far? In any case, ethical norms must be seen on both sides of the bars. Of course we did not forget the third party involved in the process beside police and inmates- legal scientist. We will read more about the ethical side of their work in Chapters 11 and 12. We will separately address the greatest moral affliction of every system itself- systematic corruption. Corruption exists in every society, and under every system, incurable, but we must strive to find out which factors executes any influence on it. Whether a person would be harder to give in to corruption in a richer society? More religious? In that with stricter laws? Or commonly accepted state rules in the population? Chapter 14. shed some light on one more controversial subject. Although many will think that false confessions are happening only in movies, this is much more often phenomena. At least some percentage of these are people who are choosing to go to jail because of some moral reason, some personal ethic. Chapter 15 is not getting much easier, it deals with morality and drug abuse. While Chapter 16 will show that earlier discussed corruption is present in reach and poor parts of the world equally, only the forms are sometime different. Because inner principles are obviously not enough, or so it seems at the present, many countries are resorting to the real observer: body cameras worn by police officers. Following, article 19, is focusing mainly on police accountability, it is describing how entrenched democratic policing is in the countries of the region, and also highlights strategies to better solidify democratic policing in Commonwealth Pacific - Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. We will finish with 3 Chapters about importance of understanding between police and communities and the most obvious examples of unethical behavior of police officers: police brutality and racially biased behavior. I hope that among the readers there will be future police officers who will always have moral laws on their mind as much as the written rules.

Marko obtained his Master's degree from University of Belgrade - Faculty of Law in 2014. He specialized in Criminal Law, Family Law and Environmental Law. He spent his Master year studying about international child abduction. He is currently employed in Ministry of Defense's Legal Department

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