Title:

Public Policy, Public Health, and Public Leadership challenges around law enforcement ethics and whistleblowing in the age of the #Black Lives Matter movement.

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Abstract

Police ethics and misconduct have been in the public spotlight at very significant levels in the U.S. creating tremendous public administration challenge for many city, state, and county governments. For those in law enforcement and corrections, public trust is an important part of being able to do the job effectively. When the public believes that those who enforce the law are intentionally biased, discriminatory, narcissistic, or unprincipled, the result is that cooperation between law enforcement and the public begins to erode. This issue becomes even more complex when police officers fail to report co-workers that engage in unethical behavior and police misconduct. This research explores complex managerial, social, and public policy nuances of law enforcement ethics, moral reasoning, and whistleblowing in the age of the “Black Lives Matter” movement in The United States.

Background
Police ethics and misconduct have been in the public spotlight at very significant levels in the U.S. creating tremendous public administration challenge for many city, state, and county governments. To ensure that the police are held accountable, body cameras have been placed on the officer to deliver an accurate record of officer engagements for complete situational awareness and tamper-proof digital evidence (Ripley, 2017). In a Baltimore case, a grand jury indicted a Baltimore police officer on charges of misconduct and fabricating evidence in connection with a body camera video produced by the public defender’s office that showed him planting drugs (Fenton, 2018). Under the department’s body camera policy, officers are supposed to start recording “at the initiation of a call for service or other activity or encounter that is investigative or enforcement-related in nature,” and during any other confrontational encounters (Fenton, 2018). They may stop recording under certain circumstances, such as when civilians request to not be recorded in encounters with officers and during exchanges with confidential informants (Fenton, 2018).

In California, immediately after the fatal shooting of an unarmed black man 20 times in his grandmother’s backyard, Sacramento Police officers told each other to mute recording microphones on their body cameras (Fenton, 2018). Police reported that they suspected that the man who was shot was holding a gun, but investigators only found a cell phone and no gun (Fenton, 2018). The shooting along with the muting of the body cameras raised concerns about the conduct of the officers and if muting the cameras was ethical misconduct (Fenton, 2018).

A former Caucasian police officer was found guilty of murder on August 28, 2018 because of his participation in a shooting where he fired into a car leaving a party and killed an unarmed African American teenager and honor roll student (Moravec, 2018). The encounter has become a catalyst for contentious concerns in the state of Texas and across the U.S. around the abuse of power, excessive force, racism, police misconduct, and unethical behavior on the part of civil servants that are sworn to protect and serve its community citizens (Moravec, 2018). This guilty verdict is the second officer in the Dallas Texas area to be found guilty of murder this year (Moravec, 2018). The most recent occurrences of police shootings of unarmed African-American men in the U.S. since 2013 has created the movement called “Black Lives Matter” or #blacklivesmatter, which has become a public outcry against police brutality and racial inhumaneness against Black people (Cobb, 2016). The goal of the movement is to create a world where law enforcement is held accountable for the misconduct, unethical behavior, and illegal harm inflicted on Black people in a manner that draws attention to the idea that Black lives should not be considered disposable and that they should be held to a high or equal level of importance as are the lives of others (Cobb, 2016).

Allegations of police misconduct against the New York City Police Department in the U.S. increased last year, which is the first increase in the last 10 years (Moore & Musumeci, 2018). The Civilian Complaint Review Board report outlines 4,487 complaints received in 2017 (Moore & Musumeci, 2018). This is 202 more than the year before with 58 % of allegations identified as an abuse of authority (Moore & Musumeci, 2018).

Recently, the former police chief Raimundo Atesiano, of Biscayne Park, Florida, and two officers were charged with fabricating charges on an African-American teenager to maintain a perfect case solving record (Rabin, Weaver, & Ovalle, 2018). According to reports, police chief Raimundo Atesian urged officers to dishonestly target African Americans without legitimate provocation and to name them as suspects for unsolved cases (Rabin, Weaver, & Ovalle, 2018). Several police officers were whistleblowers on these offenses. A probe of the police department uncovered that officers were instructed to file counterfeit charges on minorities to improve the police department’s crime stats (Rabin, Weaver, & Ovalle, 2018). The investigation also outlined that police leaders openly drank alcohol on duty, misappropriated funds, and that Capt. Lawrence Churchman routinely made public insults of a racist or sexist nature (Rabin, Weaver, & Ovalle, 2018).

Most police officers take the duties of their jobs seriously and honorably (Standfield, 2011). Police officers make decisions daily which not only influence the behavior of their department, but also the conduct and behavior of the people they are sworn to protect (Standfield, 2011). The stresses, pressures,
and duties of the job require a unique level of leadership skills for police officers around ethical judgment, ethical sensitivity, and the critical importance of moral and ethical values (Standfield, 2011). Whisenhand (2009) and Stanfield (2011) noted that when police officers fail to act ethically and beyond reproach, ethical drifting has the propensity to occur. According to Standfield (2011), ethical drifting is the incremental deviation from ethical behaviors and actions that are often ignored or unnoticed by those engaging in the behavior. Ethical drifting has the inclination to intensify gradually until even major offenses are rationalized as acceptable (Standfield, 2011).

According to the U.S. Department of Justice (2005), as many as 33% of the police force may be unaware of departmental ethical policies and procedures, and that as many as 55% had experienced an ethical conflict (U.S. Department of Justice, 2005). Millage (2005) claimed, “Seventy percent of employees from organizations with a weak ethical culture reported observing at least one type of ethical wrongdoing” (p. 13). As a result, not only is ethics important, but also is having a safe and fair apparatus for whistleblowing about ethical breaches.

The 2014 killing of 17-year-old Laquan McDonald who was shot 16 times by a Chicago police officer outlines the nature of police culture around ethics in law enforcement organizations (Simon & Aslsup, 2018). When McDonald was shot, there were five other cops on site when the shooting occurred. None of them shot at Laquan, but none of them disputed the official police report which was fabricated by the shooting officer and supported by police leadership (Simon & Aslsup, 2018). As reported in the initial official police report, Laquan was considered a threat to the officer’s safety by advancing towards the officer at the time of the shooting (Simon & Aslsup, 2018). A police car dash-cam video later revealed that the official report was a lie and that Laquan was shot in the back and killed while walking away (Simon & Aslsup, 2018). By all accounts, police cultures can have a blue wall of silence where police create a culture called the “blue brotherhood” in a way that intimidates whistleblowers (Goff, 2016).

Keli Goff (2016) says, “Historically good officers who have tried to hold their brethren accountable have not been met with a lot of positive reinforcement. One of the most notorious examples is the New York Police Department officer Frank Serpico, who revealed corruption involving his fellow officers. For breaking the blue wall of silence, he was left to die by colleagues after being shot in the face. Who knows how many officers out there are afraid of becoming the next Frank Serpico if they speak out? After all, most of us don’t have jobs where we have to worry about our co-worker leaving us to die if we upset them. But the reputational damage being done to good cops by bad ones is also putting good officers in danger. Now more than ever, good cops need to have the courage to call out the bad ones and the institutional and cultural support to do so.”

**Ethics and Emotional Acumen in Decision Making**

The impact of ethical drifting and emotional acumen with respect to whistleblowing is an important consideration for organizations that engage in operations involving public health and safety. An individual’s emotional, ethical, and moral perceptiveness in each situation correlates with his or her ability to respond appropriately and is expressed in terms of emotional and social intelligence (Goleman, 2005, 2007; Rathbone, 2012). Since the act of whistleblowing involves the ability to understand, analyze, decide, and respond, emotional acumen can be expected to play a major role in determining whether an individual will engage in it (Burke & Cooper, 2013).

Elias (2008) concluded that people usually believe whistleblowing to be essential in cases of misconduct but that they also feel fear, reluctance, and apprehension in the face of possible retaliation. Such findings point to the need for professionals to acquire ethical and emotional intelligence which are the key components of emotional acumen. Dellaportas et al. (2005) described the emotional nature of whistleblowing as complex because whistleblowers are viewed as heroes in public but as traitors within...
their organizations. Both the positive and negative aspects of whistleblowing deserve critical attention (Bhargava, Madala, & Burrell, 2018).

Whistleblowing flies in the face of the norm that employees should not question their superiors’ verdicts and acts, especially in public (Carroll & Buchholtz, 2000). It is, however, employees’ ethical duty to speak out that is at stake in cases in which they believe an organization or management to be engaging in some questionable practice. Whistleblowers who feel cut off from their fellow co-workers or superiors regarding unethical activities may seek help outside the organization (Carroll & Buchholtz, 2000). Whistleblowing involves deciding among contradictory family, legal, moral, personal, economic, and career demands and alternatives.

Novotney (2017) outlines that bystanders have great power and great vulnerability. Novotney (2017) describes how group behavior can influence individual behavior in ways that create a dynamic where some often develop a conviction that loyalty to a fellow officer means accepting or joining in whatever he or she is doing, even if the actions are unethical or abusive (Novotney, 2017). Often, law enforcement organizations have cultures where police officers are expected to have unwavering loyalty and support for their fellow officers. Officers that do not fall in line with these expectations are often detested by fellow officers and even superiors (Novotney, 2017).

Whistleblowing within a law enforcement department can be an extremely delicate and emotional subject (Millage, 2005). The willingness to be a whistleblower about an ethical concern to police supervision is often intrinsically dicey for an officer (Millage, 2005). The police subculture outlines that an officer must trust and respect those of higher rank and when this subculture is challenged with whistleblowing, the reporting officer is often ostracized and branded as a menace with a consequence of communal segregation and marginalization (Millage, 2005).

Developing and having the emotional acumen to come forward as a whistleblower over ethical misconduct has some unique dynamics. According to McMahon and Harvey (2007), having all-encompassing ethical judgment is based on the circumstances, situation, and how both are perceived. McMahon and Harvey (2007) enumerated several facets that impact ethical decision making and the perception of whether actions and behaviors are ethical. They include:

1. The scale of penalties or consequences from the action.
2. The nature and influences of social consequences.
3. The probability of effect.
4. The temporal immediacy.
5. Proximity and concentration of effect.

Because law enforcement organizations have the responsibility to protect and serve their community constituents, it is critical to teach ethical decision making at all levels and create avenues for employees to come forward when there are concerns around ethics and gross misconduct. Beemsterboer (2010) outlined a Six-Step Model, which includes:

1. Identify the Ethical Dilemma or Problem - This is the first and most critical step in the process. Once a problem has been recognized, the decision maker must clearly and succinctly state the ethical question, but only after considering all pertinent aspects of the problem. Step two is not necessary if a clear determination of right or wrong has been made.
2. Collect Information - The decision maker must gather information as a basis for an informed decision. This may include facts about the situation as they are developed, which may come from more than one source. Information regarding the values of the parties involved, including those of the patient and the healthcare provider, is needed. This step often takes time, since the information may not be readily available.
3. State the Options - After gathering all the necessary information; the third step involves brainstorming to identify as many alternatives (or options) as possible. There is also a tendency to think that a question has only one answer. This step forces the decision maker to view the situation from all angles to identify what involved parties or stakeholders might consider alternative answers to the problem.
4. Apply Ethical Principles to the Options - The next step is to view the situation with a focus on ethical principles (autonomy, beneficence, non-malfeasance, and justice) and ethical values and concepts (paternalism, confidentiality, and informed consent).

5. Come to a Decision Conclusion - When each alternative has been clearly outlined in terms of pros and cons, a reasonable framework has been developed to reference in making a decision.

6. Implement the Decision - The final step involves acting on the decision. Unfortunately, appropriate decisions are sometimes not implemented. Taking no action represents tacit approval of a situation.

It is critical to create organizational cultures where ethics is valued and there is emotional acumen to report misconduct violations when they occur. McDevitt, Giapponi, and Tromley, (2007) developed a model of ethical decision-making grounded on the amalgamation of process and content analysis that is driven by questioning which includes:

1. How severe are the perils if I insist on ethical misconduct?
2. How severe are the risks if I engage in unethical behaviors?

3. Is it realistic to deliberate if the unethical misconduct justified?

2017).

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8. The probability of effect.
9. The temporal immediacy.
10. Proximity and concentration of effect.

The scale of penalties or consequences was the perception of the magnitude of an offense and its entire impact. This was the perceived difference between stealing a dollar and a hundred dollars (McMahon & Harvey, 2007). Justifying a minor deceit was easier because of the correspondingly smaller consequences (McMahon & Harvey, 2007). Social consequences often defined how the behavior would affect the social standing of an individual (McMahon & Harvey, 2007). The probability of effect was defined as weighing the possibility that the act would cause harm and therefore, could be a cause of consequences (McMahon & Harvey, 2007). Temporal immediacy was the perception of how much time would elapse between the offense or behavior and any potential penalties (McMahon & Harvey, 2007). Proximity and concentration of effect referred to the affiliation or relationship that the offender felt towards the victim or victims by their misconduct (McMahon & Harvey, 2007). This dynamic becomes more complex when the unethical behavior is witnessed by another and when this individual must decide to tell someone about it or decide to be a whistleblower.

Methods

Based on the findings from the literature, a qualitative approach to assessing the role of emotional acumen and ethical decision-making was conducted utilizing members from the law enforcement community. According to Stringer (2013), focus groups represent an effective way to collect data and gain insight into an organizational phenomenon in that these participants have an intimate knowledge and
understanding of the organization’s internal culture, external regulatory conditions, infrastructure, resources, and history. Focus group participants were selected through purposive sampling, resulting in a selection of 12, 6 current and 6 former, African American law enforcement officers each with over 5 years of law enforcement experience and 4 who served as law enforcement supervisors.

To ensure reliability and trustworthiness of the qualitative research process, practices were adopted and applied based on the methodology created by Guba and Lincoln (1994). The methods and approaches performed during the focus group are outlined in:

1. Focus Group Size. Participants were placed in one of three focus groups that were conducted in independent sessions. This approach served to limit groupthink, dominance of conversation, and persuasive rhetoric among participants.
2. Unbiased Moderator. The moderator had no direct affiliation with the mortgage collections division nor had any buy-in with workforce-staffing models.
3. Peer Examination. Along with the moderator, two research assistants served as unbiased contributors of the focus group study. The research assistants had no daily association with the participants.
4. Member Checks. The moderator verified that all the participant’s responses were exact and truthful. The moderator confirmed that the information provided by the participants is not devalued or misinterpreted.

The moderator, two researchers, and a peer independently examined the results and coded the data based on trends, themes, and categories. Also, the research team completed a data triangulation to establish the findings.

**Findings**

The recommendations of the focus groups around police ethics and reform included:

1. Ethical Expectations. There was a consensus that leadership should set clear expectations of what is proper and improper behavior and should have on-going training around those cultural norms and expectations. To elaborate one participant said, “Law enforcement agencies should not look at training as a check the box exercise. The focus should be on the development of critical thinking skills that help develop better decision making around ethics and ethical problem-solving. This goes beyond handing out policy manuals and memos that outline what actions are expected or not. These tools also include being able to bring internal and external to the organization experts in to engage with training and insight. Workshops, easy to use reference materials, ongoing and readily available consultation from peers or mentors are just some of the many ways law enforcement agencies can make all employees more reflective and emotionally intelligent around ethical decision making.”

2. Enhanced Performance Evaluations. Connect ethical behavior to performance evaluation requirements and requirements for raises and promotions. The integration of ethical behavior to performance places accountability on both the officer and law enforcement leadership by requiring the detailing of any allegations of misconduct. These records provide insight to any patterns of behavior for each officer which would then necessitate appropriate actions to be taken by leadership before the point of no return.

3. Recognition and Awareness. Publicly reward ethical behavior and punish unethical ones. Create awards that publicly acknowledge and incentivize those that engage in ethical behavior. This will serve to reinforce the expected behavior. A participant stated, “Performance appraisals should have an evaluation measure that is honest looks at how all the officer’s behavior stacks up against the code of ethics in the department. People who act ethically should be visibly rewarded for their behavior. Just as importantly, unethical acts should be punished.”
4. Mitigate Reporting Risks. Create safe protected mechanisms for officers to report misconduct and unethical behavior in a manner that protects them from retaliation and reprisal. This also should include a reporting hotline, confidential employee counseling, and assistance around emotions that officers face when they evaluate the positives and negatives of whistleblowing on other officers.

5. Deliver educative criticism. A participant stated, “it is critical to address minor offenses with timely corrective feedback regarding off-target actions and behaviors. Reinforcement for behavior that is desired and corrective feedback for behavior that is not desired is critical to help create and sustain a culture of ethical behavior and consideration.”

6. Top-Down Modeling. Leaders and supervisors should model ethical behavior. A participant said, “If my boss is unethical, it creates the perception that unethical behaviors are okay.”

7. Cultural Immersion. Leaders should have conversations around ethics every day. A participant said, “It is critical to keep the conversation around ethical decision making and behavior alive every day. It should be front and center all the time.”

8. New Beginnings. Make ethics and ethical behavior a central aspect of the hiring criteria. A participant stated, “Include assessments that evaluate ethics as a key aspect of who they hire.” This information then becomes a part of the official employment record to and may be administered repeatedly over the course of their tenure in the department to identify any ethical drifts that may begin to take place.

9. A Test of Character. Make officers take polygraphs on an annual or every two-year basis. A participant said, “The intelligence organizations require polygraphs as a tool to keep employees honest and ethical. Police carry guns and can take someone’s life. Police also testify in courts in cases that can lock people away for the rest of their lives. The job carries a lot of responsibility, which makes it important that the employees act ethically and honestly. If employees knew that their behaviors and actions would come under the scrutiny of a polygraph test, they would be less likely to be dishonest or unethical.”

These 9 recommendations are critical to ensuring the possibility of ethical cultures and cultures where unethical behavior can be safely reported in law enforcement organizations. They create a framework for employees to critically think about their behaviors and reflect on the actions that are out of line with what would be deemed as ethical behavior.

The figure below represents a flowchart model proposed by D. Burrell and N. Bhargava (2018) which represents the six levels of ethical, moral and legal decision making when emotions are involved.

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
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<tbody>
<tr>
<td>Level 1</td>
<td>Observation and Awareness- At this stage there is a discovery, observation, and a witness of an ethical, moral, or legal issue of concern.</td>
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<tr>
<td>Level 2</td>
<td>Reflective emotional analysis- At this stage there is a level of significant disquiet that leads to a deep reflective and critical emotional examination about the issue of concern and how serious it is or has the potential to be. At this stage an individual must try his/her best to gather the facts and be as neutral as possible while describing or analyzing those facts. One should not be inclined towards distorting the facts or information for his/her personal benefits.</td>
</tr>
<tr>
<td>Level 3</td>
<td>An emotional sense of duty and obligation- At this stage there is either an emotional inability to remain a bystander about the issue and not do anything about it or there is personal emotional onus and responsibility to act.</td>
</tr>
<tr>
<td>Level 4</td>
<td>Emotional intuition- This stage is about intuitions or conscience. When our emotions are cultivated by compassion then they at times highlight what our cognizant and coherent mind has overlooked. Our emotions are one mode to check or to see whether one is rationalizing.</td>
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<tr>
<td>Level 5</td>
<td>Emotional courage- At this stage there is a deep exploration of the range of emotions that could include fear of retaliation and apprehension of the potential backlash but still, there are compelling overriding reasons to take action and do something. Here, a prediction about the future is made which are relevant to the situation(s) at hand. Though an individual can never predict about the future, certain things are more likely than others to occur.</td>
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<tr>
<td>Level 6</td>
<td>Emotional Questioning with Self- At this stage an individual should always ask one’s self before acting the following questions: a) Will I be able to live with myself if I made a particular choice? b) Will I feel better or worse about myself? c) Am I willing to let other people know about the situation or my decision to act? d) Will I feel guilty or ashamed of not taking any action sooner or will I feel proud of my decision to act? Do I want everyone around me to act the way I did?</td>
</tr>
<tr>
<td>Level 7</td>
<td>The emotional and communal intellect to act- At this stage there is an understanding of how to manage the emotional perceptions and emotional consequences that are required to act and navigate the social interactions, politics, and fallout.</td>
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Ethical and the emotional acumen to be a whistleblower ultimately trace back to the individual, the relationships, and the culture within the organization (Bhargava, Madala, & Burrell, 2018). Ethical drifting can be mitigated by leadership communicating a consistent vision of values, judgment, and behavior and applying the same principles to leadership, management, and subordinates (Stanfield, 2011). Leadership must emphasize an adequate and appropriate response through the use of a variety of purposeful interventions, processes, educational programs, and systems as tools to reduce ethical drifting (Stanfield, 2011). Developing a better understanding of professionalism and causes and impacts of unethical misconduct is important to the effectiveness and public perception of an organization (Standfield, 2011).

Understanding the direct causes as to why police officers start to drift from being honest with high morals and integrity to developing an ethical reputation of dishonesty, questionable integrity, and
corruption may not be fully understood, so police officers must attempt to proactively correct unacceptable behavior (Standfield, 2011). Understanding ethical theories provides a framework or roadmap for officers to follow as they make decisions and offers a plausible perspective for dealing with ethical questions that arise daily within the law enforcement profession.

Goodman (2007) postulated that stricter supervision and accountability through effective leadership and management was the key to affecting the attitudes and behaviors of employees. To reduce misconduct in the workplace, Goldman (2004) asserted it was not enough to have rules, regulations, and training. Vitally important, was the enforcement of those regulations and having a very clear course of action for all employees who break rules. Critical also, was the implementation of the right set of ethics that would work for the company. Millage (2005) offered, "Organizations need to evaluate what will work most effectively, including a closer look at the role workplace culture plays" (p. 13).

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