

## **Police Misconduct**

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“Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services.”

*(President’s Task Force on 21st Century Policing, 2015, p. 1)*

Police officer misconduct is a critical issue facing police departments across the world. Police officers are entrusted with authority to enforce the law, including the power to use physical force, so they can protect society from crime and violence. Police abuse of their authority represents a fundamental threat both to human rights and the democratic rule of law. Cases of perceived misconduct can reduce community trust and confidence in the legitimacy of police (Weitzer, 2002), which in turn can impact legal compliance (Fagan & Tyler, 2005) and community co-operation (Murphy, Hinds, & Fleming, 2008). More specifically, police abuse of process can lead to miscarriages of justice (Ransley, 2002), as well as have lethal consequences for citizens (IPCC, 2011; Miller et al., 2017; Porter, 2013).

This article begins by discussing definitions of police misconduct, and terminology used in its study, to shed light on what police misconduct is. It then moves to an overview of what types of actions are considered to be misconduct and a presentation of some research on misconduct typologies. A discussion then follows of how forms of misconduct may vary in severity, which is a diverse construct. Finally, the article considers what happens to officers who are found to have engaged in misconduct, highlighting some of the contemporary issues of police disciplinary processes.

### **What Is Police Misconduct?**

Police misconduct has been a critical issue of concern for decades. Media coverage of high profile scandals often mark the start of cycles of inquiry and reform in Australia, Canada, the United Kingdom, and the United States, among other countries (Frank, 2009; Hough, May, Hales, & Belur, 2018; Manning, 2009; Porter & Prenzler, 2012a; Sherman, 1978). In the United States, early examples include the Knapp (1972) and Mollen (1994) Commissions into the New York Police Department and the Christopher Commission (1991) into the Los Angeles Police Department, while landmark Australian inquiries include the Fitzgerald (1989) inquiry into corruption in the Queensland Police Service as well as the Wood (1997) report on the New South Wales Police Force (1997). Each of these highlighted

widespread patterns of wrongdoing, including criminal actions, by police officers. More recently, the United States has experienced a number of high profile Department of Justice investigations into police departments, such as Ferguson and New Orleans, following concerns over publicized police actions (D'Souza, Weitzer, & Brunson, 2018), alongside the President's Task Force on 21<sup>st</sup> Century Policing (2015).

Despite this continued attention, scholars have highlighted a lack of agreement over definitions of what actually constitutes misconduct (Manning, 2009). Terms such as *misconduct*, *corruption* and *deviance* are frequently used with different meanings and sometimes interchangeably. Kappeler, Sluder, and Alpert (1998) noted that definitions often come from legal or administrative procedures and decisions. Frank (2009) points out that there is likely to be some consensus regarding serious, particularly criminal, acts; however, non-criminal acts of misconduct may be subject to less agreement.

For Punch (2000), police misconduct described the breaking of internal rules (which he differentiated from police criminal actions and corruption). However, even official definitions of misconduct can be broad and encompass normative values and expectations. For example, in Australia, the Crime and Corruption Act 2001 (which sets out the functions and powers of the Queensland Crime and Corruption Commission) includes in its definition of police misconduct, behavior “that (a) is disgraceful, improper or unbecoming a police officer; or (b) shows unfitness to be or continue as a police officer; or (c) does not meet the standard of conduct the community reasonably expects of a police officer” (p.330). Hough et al. (2018) note, in relation to England and Wales, “there is no clear consensus with the police service about the boundaries of misconduct—beyond the rather circular definition that misconduct is behaviour which is judged to be so in investigations of misconduct” (p.541).

Definitions are, of course, important for a variety of reasons. Definitions can impact the measurement of misconduct and, therefore, knowledge of misconduct prevalence and impacts (Porter, 2005). Definitions can also determine responses to misconduct. For example, agencies who have responsibility for investigating (or overseeing investigations of) misconduct will be bound by the definition of conduct established by their jurisdiction. A lack of consistent definitions can also hinder scholarship by limiting the comparability of findings, therefore limiting understanding. This article will take an inclusive definition of misconduct as “deviant, dishonest, improper, unethical or criminal behavior by a police officer” (Roebuck & Barker, 1974, p. 423). This enables discussion of a range of behavior and perspectives.

## What Types of Actions Are Considered Misconduct?

There have been a number of attempts to describe the range of proscribed behavior for police officers and their underlying dimensions. As Newburn (1999) discusses, “the boundary between corrupt and non-corrupt activities is difficult to define, primarily because this is at heart an ethical problem” (p. vi). This section begins by exploring official codes of ethics before turning to typologies put forward in the academic literature.

### *Codes of Conduct*

Law enforcement codes of conduct (or codes of ethics), particularly those agreed upon by national and international bodies, assist our understanding of the types of actions that may constitute acceptable and unacceptable conduct by police. International codes include the International Association of Chiefs of Police (IACP, 1957) *Law Enforcement Code of Ethics* and the United Nations (1979) *Code of Conduct for Law Enforcement Officials*. In the United Kingdom, the *Code of Ethics: A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales* applies to all police forces in those two countries (College of Policing, 2014). These codes outline expected standards of behavior through a mix of basic principles or values (e.g., integrity and impartiality) and standards for specific behavior (e.g. the use of force, and confidentiality). The Codes recognize that officers are placed in a privileged position of power with regard to not only discretionary decision making but also access to information. Officers are expected not to abuse that position; they must abide by the law and the formal rules of the police department, and they must respect and protect citizens’ human rights. The codes also assist with defining particular terms. For example, in relation to corruption, the United Nations (1979) states in its code:

While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one’s duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted. (p. 3)

Codes of conduct, therefore, assist both public and police officer understanding of what may constitute reasonable expectations regarding officer conduct (Cawthray, Prenzler, & Porter, 2013). However, breaches of the codes do not necessarily amount to misconduct. Further, codes of ethics do not present a systematic typology of proscribed behavior, nor do they attempt to unpack and understand different forms of behavior. Indeed, there are a number of underlying components to acts of misconduct. As Newburn (1999) concluded in

relation to corruption, “any definition of corruption should acknowledge the varying means, ends and motives of corrupt activities” (p. v).

### ***Typologies***

In an early effort to produce a typology of police corruption, Roebuck and Barker (1974) put forward eight forms of corrupt behavior from a review of the literature (and personal experience). They defined corruption as “proscribed behavior engaged in by a law enforcement officer who receives or expects to receive, by virtue of his official position, an actual or potential unauthorized material reward or gain” (p.424). The eight types were primarily based on the acts themselves, but they were also described according to five underlying dimensions: the number of actors; violation (department or legal); degree of peer support; organized or opportunistic nature; and reactions of police departments (pp.427-8).

Roebuck and Barker (1974) described five forms of behavior that Punch (2000) later agreed could be considered corruption: kickbacks (receipt of some benefit for referring business to particular companies); shakedowns (e.g., bribe for not making an arrest/issuing a ticket); protection of illegal activities (e.g., gambling or prostitution); the fix (e.g., quashing cases, disposing of a traffic ticket); and internal payoffs (e.g., fees for job assignments or holidays). In addition, Roebuck and Barker (1974) listed corruption of authority through the receipt of gratuities (which Punch (2000) later defined as police misconduct rather than corruption), opportunistic theft, and direct criminal activities such as burglary and robbery, (which Punch (2000) argued actually constitute police crime). Punch (1985) added a ninth category of flaking or padding to describe instances where police plant evidence or add to evidence (such as quantities of drugs found on a person or at a scene). However, Punch (2000, p. 304) observed that “this does not deal with the full range of deviant practices and particularly the more serious and insidious abuses of a police officer’s position—extreme violence, manipulating evidence, sexual harassment, racism, and direct involvement in drug dealing.”

Rather than adding further specific categories of behavior to the typology, Punch (2000) concentrated on differentiating different forms of corruption, misconduct and crime based on the motives underpinning corrupt behavior and the relationship with the parties involved. For example, while some organizations (such as Transparency International) define corruption as being for private or personal gain, Punch discussed the social and organizational motives underpinning corrupt behavior. He used the phrase *noble cause corruption* (or *process corruption* or the *Dirty Harry syndrome*; Punch, 1985) to describe a

range of behavior designed to secure a good outcome (for the public, the organization or the criminal justice system), such as conviction—but through corrupt means. However, he noted that the absence of direct gain from an external corruptor means that this is not necessarily aligned with the conventional definition of corruption. Punch further differentiated corruption that is strategic (typically involving mutually beneficial relationships with organized crime) and predatory (such as extortion) from straightforward corruption, which he saw as a largely passive response to incentives for “something...done or not done” (Punch, 2000, pp. 304-305). Despite the attempts to distill a broad range of police behavior into a simplified typology based on underlying dimensions, the types were not empirically established beyond case study examples.

There have been attempts to more systematically establish typologies based on larger sample case analysis in both a bottom-up and top-down approach. Porter and Warrender (2009) analyzed a sample of 50 cases of police deviance highlighted through court cases in the United Kingdom (e.g., convictions quashed due to improper police practices; criminal convictions of officers, etc.). They coded each case according to specific features highlighted in the literature in order to analyze patterns in how those features manifested. The bottom-up approach was designed to test whether features coalesce or combine in consistent ways that indicate (and can be used to define) particular types of cases. They found that cases could be classified into three types, based on dominant combinations of: motivation (noble cause or personal gain); relationships (internally networked, externally networked or a single lone officer); duration; officer rank; and cause (proactive, reactive to offers, or in response to a situation). The most frequent combination was lone constables proactively committing one-off acts for their own personal gain. A number of these acts constituted criminal offences (such as driving under the influence of alcohol and sexual harassment); this set of cases was given the descriptive label of *police crime*. The second most frequent combination saw networks of officers engaging together to commit acts for a noble cause in response to a specific situation. These acts were typically related to investigations and involved some form of evidence tampering or abuse of process; this type was labelled *noble cause misconduct*. The third type was characterized by officers above the rank of constable reactively engaging in acts involving an external person for personal gain over a period of time. This was labelled *corruption* and most closely resembled the classic definition (including cases of bribery). The authors concluded that their analysis empirically supported Punch’s (2000) distinction between corruption, misconduct and crime. They were also able to shed light on how these forms of behavior have manifested in the United Kingdom (in their sample) in terms of the

officers (ranks of those involved, the duration of involvement), and types of behavior involved. For example, it is noteworthy that the cases of evidence tampering, as noted above, sat within the *noble cause misconduct* type, since they featured internally networked officers acting for a noble cause, rather than actions in response to an external corruptor for personal gain. This therefore enables further understanding of the motivation behind the behavior in this sample.

In contrast, a top-down approach was employed by Dean and Gottschalk (2011) to explore the existence of a specific classification scheme using court case transcripts for a sample of 60 prosecuted Norwegian police officers. Analysis was based upon the classification scheme of Dean, Bell, and Lauchs (2010), which differentiated categories of police deviance on a sliding scale from misconduct to corruption to predatory policing. Each category was then further differentiated according to the depth or level of deviance regarding whether the underlying cause or influence was individualistic, social/cultural or organizational/systemic. This three by three model was adapted by Dean and Gottschalk (2011) to produce nine motivations for police deviance, which they then searched for within their sample of 60 cases. They were able to find examples of seven of the nine motivations, or types, of cases. There were no coded instances of systemic corruption (defined as individuals who actively obstruct the investigation or prosecution of unethical conduct) or systemic predatory policing (defined as individuals who actively network with criminals to exploit others for profit). Individual level cases were most common across each of the three categories of deviance, with individual level misconduct representing the most frequent of the nine types (largely comprising cases of dangerous driving).

### ***Chief Officer Misconduct***

Hough et al. (2018, p. 546) note that the majority of scholarly attention to police misconduct has focused on “public-facing and patrol environments” and is skewed toward rank and file officers. While misconduct may indeed be more prevalent at the lower ranks (due to inexperience, opportunity, or sheer numbers), higher ranking officers are not immune. For example, the Fitzgerald Inquiry into the Queensland Police (1989) in Australia resulted in the dismissal and imprisonment of the police commissioner. Hough et al. (2018) argue that the different operating environment of higher ranking officers compared to lower ranking officers may create additional, or at least different, risks and opportunities, resulting in different forms of misconduct. Thus, much of our understanding of police misconduct may be less relevant to chief officers.

In the United Kingdom, an increasing number of high profile cases in the last decade or so brought into question the integrity of police leaders (chief constables and assistant chief constables), including in 2012 the first firing of a chief constable in 35 years (Hough et al., 2018). This led the College of Policing, the professional body for the police service in England and Wales, to commission research in 2013 into cases of chief officer misconduct. In response, Hough et al. (2018) conducted interviews with 33 investigators and other key stakeholders, discussing a total of 40 investigated cases of chief officer misconduct. Based on this, and open source material of cases, they produced a typology that distinguished two primary misconduct categories: decision-making and interpersonal behavior. The first category related to chief officers' use of position of authority regarding decision-making. It included abuses of process and procedure, particularly in terms of recruitment and procurement, as well as misconduct related to material gain, including forms of gratuity and payment of expenses. Also included in this category were various forms of professional misjudgment, including use of social media/email (p.546). The second category, interpersonal misconduct, included bullying, discrimination, and inappropriate sexual behavior. While the underlying dimensions of abuse of decision-making power (or discretion) and interpersonal behavior may echo problems highlighted in the lower ranks, Hough et al. (2018) suggested that common across the chief officer cases was a sense of entitlement and exception from the organizational rules, which resulted in chief officers denying or excusing their wrongdoing.

### ***Off-duty Conduct***

It should be noted that there has been some disagreement in the literature as to where off-duty behavior belongs in the definitions of police misconduct. As noted earlier, police officers have been known to commit a variety of behavior that amounts to criminal offences. However, Kane and White (2009) maintain that criminal behavior should only be labelled as *police crime* if it involves an “abuse of the police authority to gain the opportunity to commit the crimes” (p.740), citing the perspectives of Sherman (1978) and Kappeler et al. (1998). However, Kane and White acknowledge that officers can abuse their authority while engaged in off-duty behavior. Thus, the term *police crime* may capture some but not all crime committed by police off duty.

In contrast, codes of police conduct are increasingly recognizing the importance of off-duty behavior in a broader sense—the impact on the reputation of the police organization and public confidence in police. As early as 1957, the IACP Code of Ethics specified that officers should keep their “private life unsullied.” The College of Policing Code of Ethics

(2014) stipulates that officers “will behave in a manner, whether on or off duty, which does not bring discredit on the police service or undermine public confidence in policing” (p. 13). Regardless of definitional issues over abuse of authority of position, there are a variety of off-duty actions that would constitute misconduct in practice, particularly if criminal.

Cawthray et al. (2013) discuss a variety of examples of problematic private conduct of police officers. They discuss officers’ use of social media, particularly content of posts that may contravene expectations of appropriate behavior. Indeed, there have been a variety of cases of officers “stood down” for behavior on social media platforms, for example in the UK’s Metropolitan Police Service (Halliday, 2013). Cawthray et al. (2013) note how off-duty behavior might give rise to conflicts of interest, including through associations with known criminals or moonlighting in other occupations such as private security. Thus, while off-duty behavior might not constitute misconduct per se, it could increase the risk or opportunity for an abuse of position. Indeed, many jurisdictions require officers to declare such activities so that these risks can be appropriately assessed and managed (Porter & Prenzler, 2012a). Failure to declare might, therefore, represent misconduct in that it breaches internal rules. Cawthray et al. (2013) suggested that official codes of conduct could be more comprehensive and prescriptive regarding examples of unacceptable off-duty behavior.

### ***The Blue Wall of Silence: Misconduct as the Failure to Report***

The existence of a blue wall or blue code of silence has been widely acknowledged throughout the policing literature; the code of silence reduces the likelihood that officers will report misconduct and thus contributes to and perpetuates the problem (Skolnick, 2002). All three of the codes of conduct mentioned earlier include some provision that officers are, at a minimum, not to ignore or condone corruption and misconduct; preferably, they should report and oppose ethical breaches. Further, in many jurisdictions, failure to report known, or suspicions of, misconduct now constitutes misconduct in and of itself, subject to disciplinary proceedings (e.g. see Porter & Prenzler, 2012). Similarly engaging in harassment of colleagues to either dissuade them from reporting, or to punish whistleblowers, is also now generally a disciplinary offence.

### **How Do Types of Misconduct Vary in Severity?**

There is clearly a wide range of police actions that constitute misconduct in an official sense, as breaches of organizational rules and criminal law, as well as actions generally agreed upon to be inappropriate. However, there are a variety of perceptions regarding the

severity, or seriousness, of different forms of misconduct. Judgements of seriousness may be based on the perceived intent of the actor as well as the short- and long-term consequences of, or harm caused by, the act. Thus, the concept may differ across contexts and individuals. This is important because perceptions of seriousness of the behavior can underpin both the likelihood that people will engage in that behavior themselves and the likely response (formal and informal) of others when they do.

### ***Police Officer Views of Seriousness***

When Roebuck and Barker (1974) outlined their typology, they also proposed a hierarchical order in terms of underlying seriousness: (1) corruption of authority, (2) kickbacks, (3) opportunistic theft, (4) shakedowns, (5) protection of illegal activities, (6) the fix, (7) direct criminal activities, and (8) internal payoffs. While those authors suggested an ordering “from rule breaking to lawless behavior” (p.435), their discussion of the order fundamentally represented the extent to which practices would be accepted by individuals and, ultimately, the organization. They therefore proposed that the presence (or acceptance) of behavior at the high end of the continuum (internal payoffs) would likely signify the presence of all other behaviors in the typology. In terms of individual ethics, this has been termed the slippery slope, where engaging in lower levels of misconduct is linked to progressing to more serious forms of misconduct (Kleinig, 1996).

One method for measuring police misconduct that has been widely used in the academic literature is surveys of officers’ perceptions of hypothetical scenarios (Klockars, Ivković, Harver, & Haberfeld, 2000). In addition to circumventing methodological problems of uncovering actual misconduct (such as the code of silence), this methodology sheds light on the patterns and variations in officers’ acceptance of a variety of behaviors, through directly asking them to rate the seriousness of specific acts. This allows, to some extent, the testing of Roebuck and Barker’s (1974) proposed seriousness order, although not all of their eight types appeared in the surveys. Interestingly, the acceptance of gratuities of small value, such as free meals, has consistently been shown to be seen by police officers as among the least serious forms of misconduct, both in the United States (Klockars et al., 2000) and other countries across the world with few exceptions (Klockars, Ivković, & Haberfeld, 2004). This supports Roebuck and Barker’s (1974) placing of *corruption of authority* at the low end of the continuum. However, this research differs consistently from Roebuck and Barker’s placement of opportunistic theft. While Roebuck and Barker placed this third in the progression, survey research shows that police officers view theft as one of the most serious

forms of misconduct—above activities such as accepting a bribe to ignore a speeding offence (shakedown), a supervisor offering holiday time to an officer in exchange for a personal favor of servicing his car (internal payoff) and protection of illegal activities in the form of liquor license violations. This finding is largely consistent across countries and time periods (Klockars et al., 2004; Ivković & Haberfeld, 2015). Westmarland (2005) reported survey responses of UK police officers, concluding that actions of an acquisitive nature, whereby the officer in the scenario received money or goods, were perceived as more serious than actions of brutality toward suspects and bending rules to protect colleagues. This is reminiscent of the discussion of noble cause versus personal gain. Thus, as Westmarland suggests, the motive behind the act may be an important determinant of officers' perceptions of seriousness.

Normative perceptions clearly exist regarding the relative seriousness of specific infractions. However, there is evidence of variation in officers' views, particularly in terms of the level of seriousness ascribed to some forms of behavior. For example, a number of studies have shown that officers with supervisory status tend to view misconduct more seriously than officers who are not in a supervisory role (Porter, Prenzler, & Hine, 2015). Officer gender and ethical position has also been the topic of some interest, with mixed findings regarding gender differences in perception of seriousness (Porter & Prenzler, 2019). A number of studies have, however, shown that female officers tend to view excessive or unnecessary force more seriously than their male colleagues.

### ***Public Views***

It has been pointed out that the public should potentially have higher expectations regarding the ethics and conduct of police than other occupations, due to their powers as well as possible temptations on the job (Miller, 2010, pp. 242-243). This suggests that the public is likely to take a dim view of police misconduct and may potentially view infractions more seriously than officers do themselves. Steyn, Gopal, and Meyer (2013) explored survey data using the Klockars et al. (2000) scenarios to compare perceptions of seriousness between a sample of South African police officers and a sample of university students. They found broad agreement between the two samples regarding the rank ordering of the scenarios from least to most serious. However, when comparing ratings at the scenario level, they found mixed results depending on the scenario and its placement on the continuum. Particularly, there were fewer (or smaller) differences in perceptions of scenarios at the middle ranks of seriousness, while students tended to hold more extreme views at each end of the continuum.

Students tended to view the more serious forms of misconduct (such as theft) even more seriously than police officers, while viewing the less serious infractions (such as gratuities) as even less serious. Steyn et al. (2013) concluded that the latter may indicate positive effects of police training and policy. They also note that the students were actually more accepting than police of the improper use of force against a suspect.

In the United States, Seron, Pereira, and Kovath (2004) conducted a survey of a random sample of 1,100 people in New York City to explore public perceptions of police discourtesy/offensive language, use of force, and abuse of authority. They used a factorial vignette approach to show that citizens' judgements of serious misconduct are influenced by both legal and extralegal factors. Specifically, while respondents did not tolerate unnecessary force or offensive language, an officer's "abusive or threatening behavior" did not affect misconduct judgments (p. 702). Further, respondents were more tolerant (reduced their judgments of serious misconduct) when the suspect exhibited confrontational behavior, despite this being an extralegal factor. The researchers concluded that members of the public, while expecting professionalism from police officers, also recognize the need for "'street level' discretion...including the use of 'dirty means'" (p. 702). Once again, this seems to echo the motivational distinction between the noble cause of some misconduct and that for personal advantage.

### ***Official Views***

The Knapp Commission (1972) report on police corruption in the New York Police Department was the first to use the terms *meat eaters* and *grass eaters* to distinguish two differing patterns of behavior based on underlying intent or volition. Grass eaters were officers who primarily succumbed to temptation of offers (e.g. bribes) and whose behavior was viewed as a passive (and largely normative) response to a corrupt world. In contrast, meat eaters proactively and purposely sought out opportunities to exploit for considerable gain. While grass eating was widespread, it was considered to be amenable to change. In contrast, meat eaters were viewed as aggressive and corrupt individuals, who belonged in prisons rather than in the police department.

More recent evidence for official judgements of seriousness based upon intent can be found in the study of Norwegian cases of misconduct by Dean and Gottschalk (2011). They argued a sliding scale from misconduct to corruption to predatory policing and showed some support that this represents the views of the criminal justice system, in terms of penalties. Cases that they classified as *predatory policing* involved proactive behavior (such as

extortion) and were given harsher sentences (lengthier jail terms) than cases they classified as *corruption* (abuse of authority) or *misconduct* (breaking of departmental rules).

A more contemporary view on seriousness, however, focuses on the broader societal impacts of misconduct, where practices are widespread and have the potential to undermine or damage community support for police. In this regard, high profile investigations and reviews of policing in recent years, particularly in the United States, can be used to identify issues that are considered serious in the current climate (D'Souza et al., 2018). D'Souza et al. examined the reports of four US Department of Justice investigations of misconduct in problem police departments: New Orleans, Ferguson, Baltimore and Chicago. Their analysis highlighted similarities that led the authors to identify three main problems: improper use of authority to stop, search and arrest; verbal abuse and use of discriminatory language; and the use of excessive or unnecessary force. Race was a common issue across all three problem areas, including racial disparities in the exercise of discretion and use of force, as well as the use of racist language. Indeed, Punch (2009) noted a shift in police deviance since the 1990s, from corrupt behavior toward the abuse of authority and use of excessive force. As D'Souza et al. (2018) point out, such issues have now received a great deal of attention in the academic literature, more so than other acts of misconduct such as "perjury, evidence tampering, and improper interrogation techniques." Particularly, it is recognized that such practices can undermine public trust, confidence and support for the legitimacy of police, all of which are essential for democratic policing (President's Task Force on 21st Century Policing, 2015). Further, many scholars cite the inappropriate use of coercive force to be the central problem of police misconduct (Kerstetter, 1985). As Punch (2009) puts it, "beating leads to cheating" (p. 31) including lying and falsifying charges against the victim. This corruption-brutality relationship was also noted by the Mollen Commission (1994).

### **What Happens to an Officer Who Engages in Misconduct?**

There is a wide range of proactive and reactive measures organizations can take to deal with systemic problems in the ranks, many of which are covered elsewhere in this book. This section will be limited to responses at the individual officer level, once misconduct has been determined. A range of options are available—from criminal through disciplinary (including dismissal) to remedial responses. While responses to individual acts of misconduct typically reflect the severity or seriousness of the infraction, as noted above, these judgments of severity (and their grounds) can vary.

### ***Internal Versus External Decision Makers***

Historically, there has been tension over who should investigate and adjudicate cases of misconduct. Inquiries into and commissions investigating corruption have often criticized internal affairs departments of police agencies as, at worst, corrupt and, at best, lenient or ineffectual, compounding systemic problems (e.g. see the Knapp Commission, 1972). Even with the introduction of external civilian oversight/investigatory agencies, little has changed. In most cases, findings and recommendations are handed to police agencies with little authority to mandate a specific disciplinary response (for an exception, see the Police Ombudsman of Northern Ireland, (Porter & Prenzler, 2012b)). The failures of police agencies to adequately discipline officers have been criticized in the United States (Felker-Kantor, 2018) and in Australia (Robinson & McDonald, 2015). Police executives themselves are often frustrated over their lack of power to enact disciplinary decisions given the complex processes involving boards, tribunals, and unions—particularly when considering more serious penalties, including dismissal (Stephens, 2011).

Scenario based survey research of officers has shown that the majority of officers—across a variety of countries—do support at least some level of discipline for acts of misconduct (Ivković & Haberfeld, 2015). However, in South Africa, the study by Steyn et al. (2013) did note in relation to their police officer respondents “a general reluctance on the part of the police to impose the harshest sanctions” (p. 151). This seemed to be linked to seriousness perceptions. When comparing police officers’ and students’ recommended responses to the misconduct scenarios, students gave harsher penalties than police to scenarios at the serious end (but they also saw these as more serious than police) and more lenient penalties than police to scenarios at the lower end of seriousness (but they also saw these as less serious than police). However, Seron, Pereira, and Kovath (2006) showed that members of the public consider contextual and behavioral factors, independent of seriousness, when deciding on fair punishment for misconduct. The researchers concluded that “the public brings a temperate lens, or one that does not demonstrate a propensity toward harsh punishment” (p. 955).

### ***Disciplinary Responses: Deterrence Versus Behavior Change***

While acts that amount to criminal behavior can clearly be subject to criminal proceedings, behavior that involves the breaking of internal rules and codes may be subject to a range of organizational responses under an agency’s disciplinary or performance management system. Early views of disciplinary responses tended to stem from a *bad apple*

theory of misconduct, focusing on problem individuals who needed to be removed (dismissed) from service. The Knapp Commission's description of meat eaters particularly highlights this view. However, the Knapp report also recognized that grass eaters contributed significantly to the problem and placed some blame with the organization (also seen later in the Mollen Commission, 1994). Organizational theories of misconduct suggested that agencies needed to take responsibility for managing officers' behavior and deterring misconduct. Disciplinary responses have, therefore, centered around efforts to deter misconduct by increasing the risks (e.g. written or verbal warnings and reprimands, loss of vacation time, transfer/reassignment to less desirable duties or period of suspension) and lowering rewards through imposing financial penalties (e.g. fines, salary reduction, demotion in rank, loss of pension).

In contrast, there has been a growing impetus for systems that promote cultural change among officers. A vast amount of psychological literature underpins notions that compliance-based systems of behavioral control (based on the power of punishment and reward) are less effective than transformative systems that seek to encourage behavior through alignment of attitudes, values, and goals. In other words, people are more likely to do the right thing (particularly in the absence of surveillance) if they believe in the underpinning values than if they are simply looking to avoid punishment. The Knapp Commission (1972) noted that combatting the grass eaters would require "efforts to change the rank and file attitudes towards corruption" (p. 65). A survey of police officers in Queensland, Australia, conducted by the Crime and Misconduct Commission (CMC, 2013) supports this, at least hypothetically. The CMC reported that officers whose personal values aligned with the values of their organization were more likely to recognize the seriousness of a variety of examples of misconduct and were more likely to say they would report them. A number of remedial responses to misconduct have, therefore, emerged, including counselling, training and education to improve officer understanding and correct behavior.

### ***Disciplinary Reforms: Organizational Justice and Alternative Discipline Processes***

Underpinning deterrence theory (and social learning theory more generally) are the principles that punishment should be *prompt* (proximal to the behavior), *predictable* (likely and consistent) and *proportional* (severity should be based on the behavior). Not only does this assist learning through reinforcing expectations, but it can also demonstrate fairness and equity—the same level of punishment is quickly and consistently applied to the same act, regardless of the actor, and the punishment is not viewed as disproportionately harsh.

Literature on organizational justice highlights the importance of fair treatment for both identification with group values and compliance and cooperation (Blader & Tyler, 2009). Police officers' perceptions of fair treatment by their department have been linked to rule adherence (Bradford, Quinton, Myhill, & Porter, 2013), commitment to ethical policing (Bradford & Quinton, 2014) and less adherence to the code of silence (Wolfe & Piquero, 2011).

Unfortunately, many police disciplinary systems suffer from protracted investigations and overly adversarial processes (Stephens, 2011; Webbe, Williams, & Grayson, 2011), requiring a standard of proof of wrongdoing that is rarely achieved. This results in no finding—and therefore no action against officers—thus failing to deliver either specific or general deterrence. It also unfairly affects the subject officers who have waited months, sometimes years, to be cleared of misconduct. Stephens (2011) also cites examples from the United Kingdom and the United States of concerns that systems are overly punitive, either in general or for certain groups of officers (racial bias). In addition, the process of adjudicating decisions frequently lacks transparency. Seron et al. (2006, p. 927), note that both the process and outcomes “take place behind a blue veil”, with “no public record.” Indeed, a recent media report criticized the NYPD decision not to make disciplinary case outcomes public (Rayman, Annese, & Tracy, 2018).

Aligned with both the deterrence and values perspectives, a number of disciplinary reforms have been recommended and/or implemented in various jurisdictions. The use of a disciplinary matrix has been advocated to increase consistency, proportionality and transparency of decisions (Shane, 2012). Such a matrix typically outlines the range of punitive responses appropriate as the seriousness of the act increases, while also taking into consideration the subject officer's disciplinary history (Higginbotham, 2006). The matrix proposed by Shane (2012) also specifies aggravating circumstances (such as whether injury occurred) and mitigating circumstances (such as ignorance or following a superior officer's advice). A matrix therefore serves as both a guide to decision-makers to improve consistency and provides transparency to subject officers to encourage them to admit mistakes. Stephens (2011) cites a number of US police departments that have introduced this approach with positive outcomes, such as vastly improving the speed with which (particularly minor) complaints were resolved through reducing the need for a formal investigation and instead devolving responsibility to first line supervisors.

After the initial move to external anti-corruption and complaint-handling agencies (following the high profile inquiries of the 1970s to 1990s), local resolution by police

managers of less serious matters became a trend in recent decades. This improved the timeliness of responses. First line supervisors are in a better position to monitor officer performance and to provide remedial responses to correct behavior. In some cases, this process is underpinned by an early warning system or early intervention system (Walker, 2015) that highlights problem behavior to be corrected, thus avoiding multiple infractions or a progression in seriousness (avoiding the slippery slope). Mediation has also been introduced in some jurisdictions to assist the local resolution of issues arising from complaints (Prenzler & Porter, 2016). Mediation has the potential to increase procedural fairness for both the officer and complainant, through allowing both sides to be heard in an independent forum.

### **Conclusion**

In summary, police misconduct is understood to be an enduring issue around the world that needs constant vigilance, both from within and outside departments. Even where the majority of police officers fulfill their duties with honesty and integrity, isolated cases of misconduct can have huge ramifications for the reputation of a department. Various forms of behavior have been uncovered through formal inquiries and investigations—from criminal actions to actions that contravene department rules or community standards. One consistent observation is that defining misconduct can be difficult, primarily because misconduct is a belief rather than a behavior. Thus, while guidelines, rules, and legislation can set normative standards, individuals may still choose to except themselves based on their own opinions, context, and mitigating factors. It is therefore essential that systems designed to reduce misconduct are values-based. Recent developments to introduce remedial responses and increase the fairness of disciplinary systems are a valuable step in this direction.

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