Appreciating the Impacts and Limits of Law

Barbara Armacost's route to legal academia was unconventional. She began her professional life as a registered nurse working in thoracic-cardiovascular surgery. After five years of nursing, Armacost went back to school—but not in law. Instead, she earned a Masters Degree of Theological Studies in New Testament and Ethics at Regent College at the University of British Columbia, Canada. Two years later, and after spending eight months working at a mission hospital in Haiti, Armacost took up her law studies as a member of the Law School's class of 1989.

As a law student, Armacost did all of the things—and then some—that prospective law professors tend to do. She served as a Notes Editor of the *Virginia Law Review*, and she earned from the faculty top prizes for scholarship, professional extracurricular activities, and character. After graduation, Armacost served as law clerk to Judge J. Harvie Wilkinson III on the United States Court of Appeals for the Fourth Circuit. She then did a short stint at the U.S. Department of Justice, working for the Office of Legal Counsel. It was while Armacost was a member of the prestigious OLC staff that the Law School recruited her to return to

Charlottesville as a member of the law faculty.

Armacost's life as a nurse and theologian shaped her approach to law teaching and scholarship. As she put it, "the combination of medical practice and theological education instilled in me habits of mind in which the moral and real-world implications of legal arguments are always close to the surface." Her background in theological ethics set the stage for a view of law in which ethical and moral considerations are appropriate—indeed essential—to a full understanding of legal theory, doctrine, and practice. As for her work in nursing, Armacost explains, "In the practice of medicine, most of the people you are serving are sick and hurting. It is impossible to forget that your work affects the lives and well-being of real people."

By contrast, she points out, both the conditions of legal practice and the styles of legal scholarship can make lawyers lose sight of the practical and moral salience of their work. For example, Armacost observes, "law teachers and scholars—most of whom tend to focus on appellate opinions and abstract legal questions—may underestimate, misunderstand, or obscure the real-world effects of legal doctrine. Likewise, by putting pressure on lawyers to make any and all plausible arguments, the adversary system can foster the misimpression that lawyers are not responsible for the world that is constructed by the claims they choose to make." In her teaching and writing, Armacost has resisted these pressures by focusing on the impact of legal decisions and the design of institutions. She brings to that focus not simply her experience as a healer and a student of theology, but also her clear-eyed, rigorous, and deeply pragmatic perspective. Hence, she emphasizes, her objective is not to suggest that courts alone can or should alleviate all suffering or make all claimants whole. Rather, her aim is to identify, understand, and explain the proper limits of the rule of law, but without ignoring or minimizing the costs and burdens those limits impose in individual cases and on individual human beings.

As a law teacher, Armacost works hard to instill these same habits of mind in her students. Armacost teaches courses in Torts, Civil Rights, Legislation, Criminal Procedure, and the First Amendment religion clauses. Her pedagogical substance, strategies, and style have proved to be a spectacular success.

Students uniformly praise Armacost for her comprehensive knowledge of the doctrine; her meticulous explication of competing arguments in difficult cases; her patient, yet rigorous, attention to their developing skills as lawyers and advocates; and her steady accessibility as an instructor, both inside and outside the classroom. Her students come away from her classes with a thorough understanding of the law and of lawyering, and with their moral compasses still intact or, better still, more finely calibrated than ever before. One of Armacost's Torts students gave her this telling praise: "The best part of the class was Armacost presenting a controversial case and saying 'what do you think should happen?' This got everyone thinking about their intuitions first, before analyzing the law, and led to some interesting discussions that ultimately clarified my thinking about what the law actually was trying to achieve."

Likewise, Armacost's scholarship presents thoughtful and original rationales for some of the U.S. Supreme Court's most controversial lines of decisions. In keeping with her interests in the real-world effects of law, Armacost's work is animated by a broad interest in constitutional remedies and a specific interest in how those remedies affect governmental institutions and individuals. Armacost's thoughtful attention to the actual impact of remedial schemes brings rich rewards for the readers of her work, who inevitably come away with a better understanding and appreciation of some remedial designs that, upon first glance, might seem harsh, unjust, or simply inexplicable.

In her first major article, "Affirmative Duties, Systemic Harms, and the Due Process Clause," 94 *Mich. L. Rev.* 982 (1996), Armacost took on a series of decisions that are not merely controversial, but almost universally maligned in the legal academy. In these decisions, the federal courts have insisted that there is no liability for governmental failure to act under the Due Process Clause. The facts of the most infamous decision outlining this proposition—*DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189 (1989)—illustrate perfectly why, at first glance, these cases are so normatively unattractive. In *DeShaney*, a 6-year-old boy was killed by his father after social workers negligently failed to remove the child from the father's custody. If ever there were a case for liability for failure to protect, *DeShaney* was it. Yet,

the Court rebuffed the boy's mother's claims against the child-care workers and upheld the principle that the government has no general duty to protect us from harm.

In her account of *DeShaney*, Armacost goes right to the heart of the matter. On the one hand, *DeShaney* has been relentlessly—and, she believes, fairly—criticized for the weakness of its constitutional arguments. On the other hand, notwithstanding these criticisms, the federal courts have stubbornly adhered to the view that the government has no general duty to protect individual citizens from harm. To explain this paradox, Armacost offers a crucial insight derived from the intersection between public and private law.

As Armacost remarks, *DeShaney*'s no-duty-to-protect rule is not just a constitutional principle, but also is one that is firmly embedded in the common law of tort. In her compelling account, the rule in both contexts has its origins in the allocative effects that would be produced by liability for failure to protect. If courts were to impose on government a duty to protect, their judgments inevitably would require that additional public resources be expended to fulfill that duty. Of course, in the real world, public resources are limited, sometimes sharply, so that a decision to spend more on court-imposed protections would mean spending less on some other governmental service involving parties not before the court. In this precise sense, Armacost argues, judicial imposition of a duty to protect would raise political process questions beyond those present in other contexts where courts enforce constitutional rights. In other words, *DeShaney* and its progeny implicate complex—so-called "polycentric"—decisions about the proper allocation of public resources. To say the least, courts lack the competence and expertise to make these decisions. Hence, they wisely refuse to intervene, even though the consequences can be as tragic as they were for Joshua DeShaney and his family.

Armacost's repositioning of *DeShaney* is characteristic of her comprehensive and original approach to scholarship. She is one of a handful of public law scholars who evaluate constitutional questions with an eye towards the incentive and allocative effects produced by a system of private enforcement of public rights. In "Qualified Immunity: Ignorance Excused," 51 *Vand. L. Rev.* 583 (1998), Armacost turned once again to her private law background in order to isolate a problem that other public law commentators have not noticed clearly, and, again, she located a creative solution at the point where private and public law intersect. In this article, Armacost wrestled with knotty questions concerning the qualified immunity conferred upon most governmental officials who are sued under Section 1983.

Armacost begins her exposition by inviting readers to ponder an anomaly in the law of immunity: In most areas of private law, ignorance of the law affords no excuse whatsoever from liability. Private tortfeasors will not be heard to explain that they thought they were behaving reasonably at the time they committed their unlawful acts. By contrast, governmental officials are immune from liability if they reasonably could have believed that their actions were lawful. Why this difference in treatment?

Armacost solves the puzzle by analyzing notice requirements in the substantive criminal law and comparing them to the functions served by qualified immunity doctrine. Everyone knows that "ignorance of the law is no excuse" for criminal violations, but the criminal justice system sometimes honors this foundational proposition by its breach. When the nature of the crime itself—say, homicide or arson or robbery or rape—provides actors with notice that they are doing something wrong, accused persons are not allowed to defend themselves by arguing that they were unaware of the statutory prohibition on such activity. But for crimes that are regulatory in character, courts generally are inclined to insist that liability may fairly be imposed only where the defendant actually knew or was afforded notice of the content of the prohibition. That is, in the criminal law, notice of the law sometimes serves as a proxy for individual fault and culpability, which are the key justifications for the pain and stigma imparted by criminal convictions and punishments.

In her account of the law of qualified immunity, Armacost finds precisely the same connection between notice of wrongfulness and imposition of liability. When a governmental official engages in conduct so wrongful as to contain indicia of its own illegal character, qualified immunity tends to drop out of the case altogether, and the official will be held liable. But when the only factor that makes the governmental actor's conduct wrong-

ful is knowledge of illegality, the qualified immunity defense is available, thereby guaranteeing fairness by assuring that the defendant was on notice as to the wrongfulness of her conduct. In this way, the principles of qualified immunity ensure that Section 1983 judgments carry moral stigma.

In the final part of the article, Armacost puts pressure on her analogy between private law and public law in order to generate sensitive and insightful parallels between criminal law and constitutional law, between the familiar phenomenon known as "overcriminalization" and the potential risk of what she calls "overconstitutionalization." Many criminal law theorists have argued that imposition of criminal blame without fault "waters down" the criminal law by depriving it of the moral force it would otherwise have. Armacost argues that there is a similar risk in constitutional law: If Section 1983 violations were to be found when the defendant acted without fault, the social meaning of the violation would tend to provide little, if any, moral pressure for officials to comply with constitutional commands. This insight argues not only for insisting on a robust scope for qualified immunity, but also for eschewing enterprise liability and the trivialization of Section 1983 by transforming any and every tort committed by government into a constitutional violation.

In her next major scholarly foray, "Race and Reputation: The Real Legacy of *Paul v. Davis*," 85 *Va. L. Rev.* 569 (1999), Armacost built upon her critical exposition of the connection between the scope of constitutional rights and the remedies for their violation. At the time she began writing, Armacost's target—the Supreme Court's line of cases commencing with *Paul v. Davis*, 424 U.S. 693 (1976)—had been the subject of a vast and relentlessly critical body of legal scholarship. In *Paul* itself, the Court held that a governmental official's "mere" injury to a citizen's reputation does not constitute a deprivation of liberty or property within the meaning of the Due Process Clause. In cases following *Paul*, the Court decreed that, even where protected interests in property or liberty are involved, if state compensatory remedies are available and adequate, the plaintiff has received all the process she is due. It also decided that merely negligent conduct does not even implicate the Due Process Clause.

As Armacost observes, commentators uniformly and properly have faulted these decisions for their stingy analysis and their fast-and-loose use of constitutional precedents. She then joins the debate from a different angle of vision and provides startling new insights into the precise stakes in these cases. Rather than taking up questions posed by other scholars— which focus primarily on whether a narrow or broad interpretation of the Due Process Clause is appropriate or normatively appealing— Armacost cuts to the chase and ponders the difference to individual citizens that the *Paul* line of cases actually makes. As she bluntly puts it in her paper, "What . . . is actually lost in the way of substantive protection against particular, governmental misbehaviors by limiting the scope of Section 1983 liability for due process claims?"

Contrary to what most scholars imagine, Armacost asserts that there is less at stake in the *Paul* Court's narrowing construction of due process in Section 1983 cases. As she recognizes, of course, the claim involved in *Paul* itself, i.e., a claim for reputational harm, is lost entirely. And thus she agrees with other commentators that the Court's decision in *Paul* is indefensible not only because it flies in the face of clear precedent, but also because it obfuscates the enormous power of the government to cause reputational harms. However, what other scholars have not noticed is this: Apart from the sort of claim alleged in *Paul* itself, only a small number of due process claims are foreclosed completely by *Paul* and its progeny. Instead, as Armacost documents, the vast majority of such claims are redirected from the Due Process Clause to other constitutional "homes," such as the Fourth and Eighth Amendments.

This substitution of one constitutional "home" for another is significant for reasons that no scholar before Armacost has clearly documented. The effect of the Court's decision to exchange a due process claim for one arising under, say, the Fourth or Eighth Amendments, has imposed surprising and devastating costs. The substitution usually requires courts to replace the "subjective" inquiries of due process—which focus on whether conduct "shocks the conscience" or arises from "deliberate indifference"—with "objective" standards, such as "probable cause" or "reasonableness under the totality of the circumstances." The impact is to deny relief for claims of bad

faith, and, in particular, to reject important claims against governmental actors for racist conduct. The only remaining option for raising claims of invidious intent is the Equal Protection Clause, a prospect that most scholars agree holds out little promise of success in such cases. Armacost concludes, "given the history of racially inspired excesses in law enforcement and the racial divisions that still plague 20TH-century America, the foreclosure of intent-based arguments [for certain kinds of claims] may be the real loss attributable to the Court's due process jurisprudence."

Since the terrifying events of September 11, 2001, the domains that preoccupy Armacost have become more dangerous and more frightening, both in terms of the harms that private actors seem willing to inflict on each other and in terms of the protective measures that governmental actors are inclined to endorse. In response, Armacost's writing has become more ambitious and more pointed. In particular, she has begun to shift her focus to the interconnection between remedies and the design of governmental institutions, including police departments and other law enforcement agencies.

For example, in the new article excerpted here, "Organizational Culture and Police Misconduct," 72 *Geo. Wash. L. Rev.* 453 (2004), she demonstrates why the prevailing remedies for police misconduct are ineffective for eliminating police brutality: Reform efforts have focused too much on notorious incidents and misbehaving individuals, and too little on an overly aggressive police culture that facilitates and rewards violent conduct. Real reform, Armacost argues, requires police organizations to accept collective responsibility for these destructive institutional features. Armacost offers a number of suggestions, drawn from the literature on organizational culture, for promising remedial schemes that would target rogue departments as much as rogue officers.

In future work, Armacost aims to reframe the definition of privacy for purposes of the Fourth Amendment safeguards, with an eye towards protecting ordinary citizens from extraordinary technology in an era of extraordinary criminals, i.e., terrorists. She also is hard at work on an essay extending to the armed forces some of her insights on the powerful and inevitable connections between organizational culture and individual misconduct.

As Armacost's scholarship moves into the area of institutional design, one can be certain that it will remain motivated by a desire to understand the impact of that design on individuals. In this sense, Armacost is simply extending the thread that weaves together her professional experiences: a desire to assist others to do what is right and good, whether as individuals acting alone or through institutions.

Organizational Culture and Police Misconduct

72 *George Washington Law Review* 453 (2004)

WHAT ACCOUNTS FOR THE LACK OF SUCCESS in achieving lasting police reform? The answer I want to explore is that reform efforts have focused too much on notorious incidents and misbehaving individuals, and too little on an overly aggressive police culture that facilitates and rewards violent conduct. Real reform requires police organizations to accept collective responsibility, not only for heroism, but for police brutality and corruption as well.

Consider the way in which police departments describe and defend controversial actions by individual cops: either as well-intentioned but unfortunate responses to dangerous and ambiguous situations, or as the aberrant behavior of rogue cops. The first kind of explanation seeks to place the incident in question outside of the category of police wrongdoing. Occasional beatings or shootings of suspects whom police reasonably believed were armed and dangerous are regrettable, but not culpable. The second explanation accepts brutal police actions as unquestionably wrong, but attributes them to a small minority of police officers gone bad. Thus, these incidents tell us little or nothing about the experience or motivation of the well-behaved and well-intentioned majority.

These explanations are powerful and important because they frame the way police departments--and ultimately the legal system--respond to police brutality. This article argues that these stories police departments tell themselves (and us) about the causes of police violence are flawed because they ignore the power of the police organization in shaping conduct. Thus, it is not surprising that judicial, administrative, and departmental responses to police violence have been notoriously unsuccessful. The explanations described above view police misconduct as resulting from factual and moral judgments made by officers functioning merely as individuals, rather than as part of a distinctive and influential organizational culture. The regrettable-accident explanation deems an officer not morally or legally culpable for a reasonable, though erroneous, decision. Thus, police departments view incidents in this category as requiring no corrective intervention, except, perhaps, an official expression of regret for harm caused. What this explanation fails to consider, however, is how the officer came to be in that particular situation in the first place and whether there is anything to be learned by examining the organizational norms and policies that framed his judgment. The officer-gone-bad explanation is flawed in a similar way. It assumes that the misbehaving cop is off on a "frolic and detour" for which he alone is accountable. This explanation allows the department to distance itself from incidents of misconduct by labeling the perpetrators "rogue cops," deviants who are wholly unlike their fellow officers. Moreover, it allows police leadership to declare to the rest of the rank and file, "this incident is not about you." All of this allows the police organization to absolve itself of any responsibility for the officer's wrongdoing.

Traditional reform strategies have had limited success in curbing police brutality, in part, because of the limits of the strategies themselves. Ex ante measures, such as psychological screening to weed out "bad apples," have not proved very useful because available personality tests are not good at predicting which potential employees will engage in violent conduct. Ex poste measures, such as civil and criminal penalties to punish repeat offenders and deter similar conduct in the future, are limited by procedural, doctrinal, and practical constraints that render them poor tools for controlling police brutality.

These strategies are also inadequate because the individual-specific model of police behavior on which they implicitly rely is woefully incomplete. The psychological testing strategy assumes that the causes of police misconduct are traceable to a set of personality traits that make some officers more prone to violence

than others. The punishment-deterrence strategies treat police officers as independent moral agents whose behavior can be changed simply by exposing them to the threat of civil or criminal penalties. While both of these theories contain significant elements of truth, they are missing an important component: the role of the police organization in shaping attitudes and influencing decision making. Individually-oriented remedies will not cure the problem if systemic features of the police organization permit, sanction, or even encourage the officer's violent behavior.

It is essential that the police organization be taken seriously, both in fixing blame and in formulating solutions to police misconduct. There are at least three reasons why this is so.

First, it is factually inaccurate to focus on individual deeds, and ignore the organization, in analyzing the causes of police conduct. Law enforcement organizations have cultures—commonly held norms, social practices, expectations, and assumptions—that encourage or discourage certain values, goals, and behaviors. Police agencies are culpable if they tolerate cultures that promote conduct that is morally or legally objectionable.

Second, it is unfair to lay the moral responsibility for police misconduct solely at the feet of individual officers. The organizational literature provides a theoretical framework for what police scholars have long known: law enforcement officers cannot be viewed as individual decision makers who function in isolation. They are embedded in an organization that makes them more likely to frame their judgments in terms of role-based obligations and expectations than according to a simple cost-benefit analysis of their potential actions. This explains why legal sanctions that assume an individual rational actor model are less than successful in curbing police misbehavior.

Finally, the impulse to isolate misbehaving officers as "rogue cops" is, essentially, a search for scapegoats. While punishing individual miscreants may satisfy society's thirst for someone to blame, it also causes us to miss important systemic and organizational causes that lie behind individual acts of brutality. This is not to say that individual officers bear no causal or moral responsibility for their own harm-causing deeds. Indeed, the fact that individuals function within an organizational framework poses special risks of unintended and inadvertent harms, and imposes corresponding obligations to guard against such harms. Focusing only on isolated actors, however, may divert attention away from needed institutional reform.

Perhaps the most obvious indication that police brutality has an organizational component is precisely the evidence that police spokesmen use to exonerate police departments when cops misbehave: the oft-noted phenomenon that police officers who brutalize citizens have often done so multiple times before. In many troubled police departments, it is a relatively small minority of police officers who account for a disproportionate number of citizen complaints and reported incidents of excessive force. Although one possible explanation is that these repeat-brutalizers have personality traits that predispose them to violence, this explanation fails to explain why their departments permitted these problem officers to repeat their violent conduct. Moreover, the identification of violent tendencies does not distinguish whether the negative personality traits were present when the police department hired the officer or resulted from the officer's training and experience on the force or, most likely, some combination of the two. One of the most obvious places to look for a richer explanation of police brutality is in the culture of the policing organization, which includes the formal and informal norms and expectations that create the environment in which the brutal acts were allowed to continue.

Investigative reports on troubled departments and the scholarly literature on policing are in agreement that police misconduct is caused in large part by systemic features of law enforcement organizations. According to these literatures, police culture is characterized by: formal and informal norms that favor a confrontational, hard-nosed style of policing; an evaluation and promotion system that functionally rewards illegal uses of force through nonenforcement of stated management policies; and a work environment that tolerates (even encourages) violent and discriminatory language and attitudes that may contribute to violent and discriminatory conduct. In sum, despite formal policies to the contrary, police culture conveys an informal message that confrontational aggressive policing will be rewarded, even if it results in repeated incidents of violence.

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One could raise several objections to the conclusion that police brutality has an organizational component. First, one could argue that a pattern of repeated incidents of police brutality by a small number of police officers does not necessarily suggest that the problem is systemic. Indeed, it could suggest the opposite: if the vast majority of police officers manage to avoid excessive uses of force, then perhaps the small minority who misbehave are "rogue cops" whose behavior the department does not condone and whose misconduct results from non-organizational factors such as personal deficiencies. A second possible objection is that the pattern of unsanctioned repeat offenders suggests sloppy or incompetent management, rather than the more serious allegation that the organizational culture actually condones and encourages police brutality.

There are a number of responses to the first objection. First, one need not choose between the systemic or organizational and the individual or psychological explanations for police brutality in departments that display a pattern of repeat offenders. Both are necessary to a satisfactory explanation of police brutality. There is reason to think, however, that the organizational factors may actually be the more important contributor to conduct. Studies by police scholars and sociologists indicate that individual personality traits provide (at best) only a very partial explanation for police misconduct. The most sensible conclusion is that whatever effect officers' personalities and beliefs have on their propensity toward violence, these factors are mediated by the characteristics of the relevant police organization. Thus, so-called rogue cops cannot be explained away by identifying their alleged violent propensities and ignoring organizational pathologies.

Second, a law enforcement organization that tolerates repeated, notorious instances of the worst kinds of brutality—even by a minority of police officers—effectively signals to its employees that a certain level of violence is acceptable despite formal policies to the contrary. The culture of an organization is made up of "shared meaning" or "shared understanding," which results in "a process of reality construction that allows [members and participants] to see and understand particular events, actions,

objects, utterances, or situations in distinctive ways." These shared understandings are created not only by values and norms that are formally expressed but also by the kinds of conduct that are encouraged, rewarded, or tolerated by the organization. Behaviors that are common and accepted become part of the fabric of informal norms and values that then shape future actions. In a police department that winks at overly aggressive policing, the organizational culture will begin to tolerate, even implicitly encourage, the kinds of excesses that go along with aggressive law enforcement methods.

In response to the second objection, that repeated instances of brutality are evidence of a management rather than an organizational problem, again there is no need to choose between the two. Managers of virtually every police department have adopted formal rules and policies describing the contexts in which officers may employ various levels of force. Formal adoption of these rules, without adoption of structures for monitoring and punishing violators, however, would be ineffective in curbing illegal uses of force. We could call the failure to monitor and discipline subordinates a management failure, rather than an organizational failure. But the more numerous, egregious and notorious the incidents of brutality that remain unaddressed, the more we would deem the managers themselves culpable for failing to take action. Moreover, widespread managerial failure in the face of continued, notorious misconduct begins to look like the organization itself is dysfunctional. Repeated instances of misconduct that go unpunished is evidence that "something is rotten in Denmark." Why? Because repeated failure by higher-ups to address patterns of misconduct is viewed as a signal—by subordinates and the outside world—that such conduct is permissible. It creates a cultural climate that appears—even if by default—to actually condone the deviant behavior.

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It is well-established in the literature that organizational structures and their distinctive cultures have a significant causative effect on the decisions and behaviors of institutional actors. Moreover, both policing literature and the vast majority

of police investigative reports conclude that police departments have unique organizational cultures that powerfully influence the behavior of individual cops. What has been largely missing is a more systematic analysis of how the realities of police culture—and its effect on the conduct and judgment of individual officers—may contribute to police brutality and its seeming imperviousness to legal solutions. I turn to that task below.

One of the primary organizational features that researchers have associated with wrongdoing by institutional actors is the problem of fragmented knowledge. "Bureaucratic organizations parcel out morally significant knowledge among various individuals along the same lines as organizational tasks. The division of labor is equally a division of knowledge." For example, supervisors may be unaware of the wrongful actions of subordinates who are implementing organizational policies. Conversely, subordinates may not know where their actions fit into the overall institutional program, or the limits of their individual discretion. Under these circumstances, the conduct of multiple actors can converge to create a harm as to which none of these actors had enough information to have known—or in some cases, to have even suspected—that the harm could or would occur. If "[i]ndividuals within the organization do not know, or perhaps do not want to know, what their actions add up to," it can lead to organizational wrongdoing for which no one in the organization will accept responsibility. Of course, in any particular circumstance the claim that the actors "did not know" may or may not be believable. The point is that lack of guilty knowledge—if it is believed—can serve to mitigate moral and legal responsibility.

To push the point a bit further, information fragmentation can actually be used by organizational leaders as a way of avoiding responsibility for organizational harm. One significant feature of bureaucratic management is that "details are pushed down and credit is pushed up." Managers specify the ends that they want to accomplish without identifying in any detail the means that their subordinates are to use to accomplish those ends. This allows managers to avoid becoming enmeshed in messy particulars, but it also serves to insulate them from any harm caused by low-level decisions. When subordinates make mistakes in furtherance of a broadly framed agenda, managers may be able to claim that they

neither sanctioned, nor knew, of those harm-causing actions. Conversely, the message that managers send by broadly defined goals—"results without [any] messy complications"—creates pressure on middle-men to protect their bosses, hide their own mistakes, and convey only good news.

The phenomenon of the bureaucratic "double message" has been widely recognized as a cultural feature of many police organizations. Like all organizational cultures, police culture is defined not so much by officially-proclaimed goals and rules, but by the sometimes very different messages that circulate at the operational level. Police socialization involves a whole range of complex and conflicting messages. For example, there is the "hard-nosed" organizational message that emphasizes crime-fighting and proactivity, the message that says, "Let's go get 'em." But, there are also all kinds of "non-hard-nosed mandates" such as "observe due process," avoid excessive force, and do not discriminate on the basis of race. In practice, these mandates often conflict. And while police management may purport to keep them in balance, the official organizational messages are selectively affirmed or undermined by informal messages about what kinds of conduct are actually tolerated or rewarded.

It is these informal expectations—that officers learn from fellow officers on the street and in the locker rooms—that determine the institutional culture that ultimately governs and shapes the discretionary decisions of street level cops.

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All of this contributes to a perceived necessity for police to "take matters into their own hands" and to "cut through the 'bullshit' of legal procedures in order to provide the [level of] safety that the public desperately wants." It also gives rise to several additional characteristics of police culture that make it difficult to address police brutality. The call to do a potentially dangerous job involving conflicting demands and uncooperative or ungrateful citizens results in a sense of us versus them that develops between cops and the outside world. The bond resulting from this siege mentality—the so called "brotherhood in blue" —creates a "fierce and unquestioning loyalty to

all cops, everywhere." Along with the bond of solidarity is the sense that no one outside the ranks will really understand the realities of policing. Moreover, a code of silence serves to reinforce police bonds of solidarity. All this together makes it difficult to investigate, with any accuracy, incidents that may involve mistakes or misbehavior.

This is not to say that anyone is ordering police officers to brutalize suspects, or to engage in other unlawful conduct. Cops are never told to be silent or to keep the agency's secrets. They never see an order upholding the code of silence that guides their working lives. The fact is, though, that there is no need to be explicit. The reactions, body language, whispered asides, and other rites of initiation convey what is expected. This lack of formal instruction, however, cannot absolve the organization of responsibility for the harmful acts.

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The above discussion leads to four important conclusions. First, while the oft-repeated "bad apple" explanation for police brutality has focused attention on identifying problem officers, the real story is that organizational factors interact with individual propensities to produce police brutality. Cops do not arrive at the police department door as fully formed brutalizers; they are created, in some part, by features of organizational culture that enable (or incite) them to act on their violent propensities. Thus, police departments must supplement strategies that seek to identify violence-prone officers with measures aimed at changing features of police culture that encourage officers to misbehave.

Second, it follows that no legal strategy that ignores the power of the police organization will have any lasting success in addressing police brutality. Moreover, strategies to change the behavior of individual cops must include some way of controlling the informal, as well as the formal, messages that frame the way they view their world. While the conclusion that changing the police requires a change in police culture is well-established in the policing literature, it has not found its way into the legal regime that seeks to regulate police brutality. Of course, one possibility is that police culture is not amenable to change by legal

mechanisms. Perhaps change will require administrative reform, for example, away from the "professional model" emphasizing aggressive crime control, and toward community policing or problem-oriented policing. Clearly, interventions seeking to change cop behavior must include the organization or they will ultimately fail.

A third and related conclusion is that thoroughgoing organizational change—the kind that is necessary to alter entrenched patterns of thinking and conduct—will require top-down pressure, including strong police leadership at the highest levels. The only way that individual cops will change is if the organizational culture changes, and the only way that the organization will change is if high-level officials are held accountable for the actions of their subordinates. As long as police administrators can chalk up misconduct to a few rotten apples and absolve themselves of any responsibility for the barrel out of which those rotten apples came, there will be no lasting reform. Police management "must accept responsibility for molding the organization's occupational culture. When misconduct occurs, blame must not fall exclusively on the rank and file but must be shared by managers for failing to prevent misconduct from occurring."

Finally, given the realities of police culture, in which informal norms of street level culture often contradict and undermine informal policies, reform must include strategies to obtain "buy in" from the ground up. This is where some form of professional peer review becomes essential. A key benefit of peer review is that it could mobilize street-level cops so that their energy, passion, commitment and expertise become part of the solution rather than part of the problem. Top down reform by courts and administrators will not be successful unless the rank and file also become part of the process of redefining police culture from the bottom up. ❧

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