

# The Special Moral Obligations of Law Enforcement<sup>1</sup>

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War and terrorism come most readily to mind when thinking about political violence. But many face political violence from agents of their own government, in the form of police brutality, racially biased enforcement of laws, and the enforcement of unjust laws.<sup>2</sup> All of this can inflict serious harm on individuals and communities. The ethics of war has a long history and a rich, highly developed literature. The ethics of law enforcement deserves similar attention.

In 2015 police officers in the United States killed 1,146 people, 229 of whom were unarmed. The proportion of black individuals killed is significantly higher than the proportion of white individuals.<sup>3</sup> This is but one example of the state's political violence against its citizens, and has been the source of public controversy. The Black Lives Matter movement has arisen in response; at roughly the same time, a Blue Lives Matter "movement" has arisen as well.

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<sup>1</sup> I would like to thank the audience at the University of Connecticut's Political Violence Workshop for helpful comments and criticism on an early version of this paper. Special thanks to the Editors of and two anonymous referees for *The Journal of Political Philosophy*.

<sup>2</sup> I understand political violence broadly. It includes all violence for political purposes. Violence (or the threat of violence) for the purpose of enforcing the decisions and laws of political bodies thus counts as political violence.

<sup>3</sup> Of course, I am not claiming that all of these killings were unjustified. <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database> Retrieved June 24, 2016.

The Black Lives Matter movement originated after the killing of Trayvon Martin by George Zimmerman in 2012, and was further propelled by the controversy over Ferguson Police Officer Darren Wilson’s killing of Mike Brown.<sup>4</sup> The phrase “black lives matter” is not meant merely to assert that the lives in question have moral value. It is also meant (among other things) to draw attention to the structural racism and violence brought upon black individuals, often by law enforcement.

The “blue lives matter” rejoinder is similarly not to be interpreted merely as a reminder that law enforcement officers have moral status. One Blue Lives Matter group has a social media presence and publishes articles dedicated to their cause. Their official webpage describes the nature of the group as follows:

“Due to the nature of the profession, law enforcement personnel are seen as easy targets and are consequently bullied by slander, illegitimate complaints, frivolous law suits, and physical threats. ... We desire to change these wrongs to law enforcement and once again shed positive light on America's heroes to help boost morale and gain society's much needed support.”<sup>5</sup>

The group has posted “memes” saying, “Police are the most mistreated people in America.”<sup>6</sup> In an article posted to their website, the Black Lives Matter group is described as an “anti-police hate group.”<sup>7</sup>

The Blue Lives Matter “movement” extends beyond this media organization. It is represented in the notion of the “war on cops” as developed by Heather Mac Donald. She argues

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<sup>4</sup> [Http://blacklivesmatter.com/about/](http://blacklivesmatter.com/about/). Retrieved 11/29/2016.

<sup>5</sup> [Http://bluelivesmatter.blue/organization/](http://bluelivesmatter.blue/organization/), retrieved 11/29/2016

<sup>6</sup> [Https://www.facebook.com/bluematters/photos/a327244947468286.1073741828.326614387531342/588467428012702/?type=3&theater](https://www.facebook.com/bluematters/photos/a327244947468286.1073741828.326614387531342/588467428012702/?type=3&theater) Retrieved 12/1/2016.

<sup>7</sup> [Http://bluelivesmatter.blue/spirit-airlines-ball-black-lives-matter/](http://bluelivesmatter.blue/spirit-airlines-ball-black-lives-matter/) Retrieved 12/1/2016.

that the increased scrutiny of police officers following the shooting of Mike Brown has made police officers less willing to engage in aggressive policing. Mac Donald and others call this the “Ferguson Effect” and lay blame for rising violent crime rates on it.<sup>8</sup> Chuck Rosenberg, director of the Drug Enforcement Administration, has taken up the term as well.

There is also the recent spate of laws that make attacking police officers a hate crime. These laws are often referred to as “Blue Lives Matters” laws in a deliberate attempt to respond to the Black Lives Matter protests. They have been passed at the state level (in Louisiana) and introduced at the federal level as well.<sup>9</sup>

Whether there is a genuine, unified Blue Lives Matter movement is ultimately not important for our purposes. What is important is to recognize the way the Blue Lives Matter sentiment, as a rejoinder to the Black Lives Matter movement, has become a fixture in contemporary American politics. It has a robust presence in social media, in legislative bodies, and within law enforcement agencies at local, state, and federal levels.

Additionally, some object to Black Lives Matter proponents by asking why there aren’t similar protests and outrage about “black on black” killings.<sup>10</sup> According to this complaint, we should not be so focused on the killings of black citizens by law enforcement, given that far more black citizens are killed by other black citizens.

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<sup>8</sup> Mac Donald, 2016.

<sup>9</sup> In the House, a Blue Lives Matter Act attempted to make attacks on police officers hate crimes. In the Senate, the Thin Blue Line Act attempted to bring harsher penalties against attacks on police officers.

<sup>10</sup> Bernard Goldberg’s “Young Black Men in the Crosshairs” is a typical example of this sort of response. <http://www.nationalreview.com/article/385604/young-black-men-crosshairs-bernard-goldberg>. Retrieved 6/28/16.

Being concerned with structural racism is perfectly compatible with being concerned with mistreatment of law enforcement officers. But Blue Lives Matter proponents seem to understand this to be a zero-sum game. The very name of the group indicates as much. When one claims that black lives matter, they are met with the response that—actually—blue lives (or all lives) matter. Furthermore, Blue Lives Matter proponents tend to downplay the legitimacy of the Black Lives Matter movement. They seem to deny that approaching law enforcement with skepticism and protesting its excesses are appropriate, and to insist that the focus on police killings of black persons is disproportionate.

A large part of the disagreement turns on the moral evaluation of the killing of a citizen by law enforcement. Is that on a par with one citizen killing another? If so, then perhaps the complaints discussed above are warranted. If, on the other hand, there is something morally special about the killing of a citizen by a law enforcement officer, then these complaints fall flat.

This disagreement invites us to consider the moral obligations law enforcement officers have to citizens, and to investigate the professional ethics of law enforcement. The issue, however, is not merely an issue of professional ethics. The effects of the formal political institutions we have rely in part on the social, informal norms which are separate from our institutions. Not all of our laws, for instance, are enforced. Sometimes it is simple and harmless (e.g. jaywalking). Other times the moral gravity is tremendous (e.g. when police departments show no urgency to test rape kits). We should be concerned with developing moral guidance for how our formal institutions ought to be applied. Which rules may be ignored, if any, and which may not?

An account of special moral obligation partly satisfies both needs. I take professional moral obligations to be a species of special moral obligations, so in Sections I and II I defend an account of special moral obligation that supplants a dominant theoretical approach to professional ethics. This explains why law enforcement have special moral obligations. In light of the competing social movements described above, one of the primary aims of the paper is to show that law enforcement officers have special moral obligations to refrain from killing people “on their beat” or in their jurisdiction. Their special moral obligations include, but (importantly) are not exhausted by, a more stringent obligation against killing. In Sections III and IV, I explore the implications of the view by describing some of the obligations law enforcement have in virtue of their professional roles. To conclude, I respond to objections and return to the Black Lives Matter and Blue Lives Matter dispute in Sections V and VI.

One final introductory remark is in order. Much of political philosophy is conducted at a high level of abstraction. Thinking about how individual police officers may behave in specific situations is about as particular a question in political philosophy can get. Very clearly, much hangs on the details of specific situations. The aim of this essay is not to give definitive moral guidance to particular members of law enforcement in specific situations. The best I can hope to accomplish is to develop a framework that can be usefully applied to specific situations.

## **1. What Are Special Moral Obligations?**

Special moral obligations are those had by an individual to a particular individual or to a class of individuals, and are had in virtue of unique features of the individual who has the

obligation.<sup>11</sup> The violation of a special moral obligation often constitutes greater wrongdoing and carries greater blame than general obligations. This is because these special obligations are additive; they are had in addition to the general obligations. Paradigmatic cases of special moral obligations include parental obligations. Suppose we have an obligation to feed children who need food. Parents have this obligation, as well as a special obligation to feed their own child. If a parent neglects to discharge this obligation, they have violated both the special and general obligation.

### *1.1. Political authority and professional integrity*

One way of thinking about the moral obligations of law enforcement is through the lens of an account of political authority. If states have political authority, then the agents of the state are imbued with some of that authority. I think it wise to avoid approaching this question from the perspective of any particular theory of political authority. Suffice it to say that, agents of the state may have an obligation to protect the interests of citizens, but they are not permitted to do so by any means; there are moral limits which are independent of whatever considerations ground political authority. Think in terms of the social contract, for example. Not only are there moral limits on what a party to a contract can do to enforce it, one can also have obligations which conflict with contractual obligations. Thus, if police officers have special moral obligations, it will be in virtue of an analysis of them that is independent of an account of political authority.

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<sup>11</sup> One will become part of the relevant class whenever the grounds of special obligation are met. I discuss this shortly.

I turn now to an analysis of the special moral obligations of agents of the state which is independent of arguments about political authority. A dominant approach in professional ethics grounds professional moral obligations in the ends or goals of a profession. In the medical ethics literature, probably the most developed literature on professional ethics, some defend an “internal morality of medicine.” There are a variety of such internal moralities with significant differences, but most claim that there are certain actions that physicians may not perform, not because they are immoral *simpliciter*, but because these actions conflict with the goals of medicine. Capital punishment, abortion, sterilization, cosmetic surgery, the amputation of healthy but unwanted limbs, or euthanasia may be permissible. But arguably physicians may not perform these actions because medicine aims at health, not pathology and death.<sup>12</sup> More generally, philosophers writing on professional ethics often appeal to “professional integrity.”<sup>13</sup> Actions are consistent with professional integrity when they are consistent with the ends or goals of that profession.

This approach, though widespread, faces serious problems. The first problem is one of ambiguity: it is often ambiguous what one’s professional goal is. The goals of medicine are contested.<sup>14</sup> Is the goal of medicine health, or are there other goals like the management of healthy pain and assistance with dying with dignity? The goal of the legal system is justice, but is

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<sup>12</sup>See Pellegrino 2001, Kass 1975, Miller and Brody 1995, 1998, 2000, 2001, Hershenov forthcoming.

<sup>13</sup>See Wolfendale 2009, Miller and Brody 1995, and Brody and Night 2007 for examples of appeals to professional integrity.

<sup>14</sup>Boorse 2016, Pellegrino 1999, Miller and Brody 2001. See Veatch 2001 and Beauchamp 2001 for objections of this sort.

this the goal of the lawyer, or is the goal of the lawyer the achievement of the best possible outcome for her client (regardless of what justice demands)?

Perhaps ambiguity arises everywhere, and this problem is not unique to the internal professional morality theorist. But, in the present context, the problem is daunting. Clearly some police forces take their goal to be the enforcement of the law, whatever that may be. But others seem to take their goal to be justice, or peace, or generally serving their community. Take, for instance, the code of ethics adopted by the International Association of Chiefs of Police. The code recommends the use of discretion; in particular:

It is important to remember that a timely word of advice rather than arrest which may be correct in appropriate circumstances-can be a more effective means of achieving a desired end[sic].<sup>15</sup>

Law enforcement officers themselves often seem to reject the view that the goal of the profession is simply enforcement of the law. What is called for, then, is a supplemental framework for thinking through morally charged decisions in the context of law enforcement.

The problem is not, however, merely one of contestability.<sup>16</sup> The most serious problem is that ends or goals are not sufficient, by themselves, to ground or give rise to moral obligations or permissions. We can look to occupations which satisfy the standard criteria for being a profession, and yet clearly lack moral obligations simply in virtue of their professional goals.<sup>17</sup>

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<sup>15</sup>[Http://ethics.iit.edu/ecodes/node/3353](http://ethics.iit.edu/ecodes/node/3353) Retrieved 2/12/2017.

<sup>16</sup>Thanks to an anonymous referee for pressing me to make this clear.

<sup>17</sup>I am unable to pursue this further here, but I develop this argument in detail in other work.

## *1.2 Professional obligation as special moral obligation*

We've seen a need for a moral framework for law enforcement. This brings me to a third account of the special obligations of law enforcement professionals. On this account, one has a special moral obligation if<sup>18</sup> one meets any of the following criteria:

1. One is particularly well suited to provide morally important aid
2. One is causally responsible for another's vulnerability<sup>19</sup>
3. One has voluntarily taken on an obligation<sup>20</sup>

Promissory and contractual obligations are a species of (3). Professional obligations are grounded in (1) and (3), though as we will see, in certain cases (2) as well. Law enforcement officers meet all three criteria.

A clarification about (1) is needed. It is notoriously difficult to account for the relationship between ability and obligation. We're often tempted to say that if one cannot do something, one doesn't have an obligation to do it. But we're also tempted to say this even when, strictly speaking, one does have the relevant ability. Suppose my hands are broken, but I've promised I would wash the dishes. It is possible that I do not have an obligation to wash the dishes, even though strictly speaking, I could. This suggests that at least one sort of ability

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<sup>18</sup>But not 'only if': I do not intend for these criteria to be necessary or for this list to be exhaustive.

<sup>19</sup>I borrow this terminology from Goodin 1985.

<sup>20</sup>In this paper I shall give no definite account of the stringency each of these criteria have in the abstract. I am inclined to think that it isn't the case the one of these criteria will always make an obligation more stringer than another criterion. Similarly, it's not the case that promissory obligations are always weightier than obligations with other sources. Some reparative obligations are stronger than others. This weighting and ranking problem plagues all forms of value pluralism, but I don't think the problem justifies rejecting pluralism. Thanks to an anonymous referee for pressing me on this.

relevant to obligation has to do with the cost to oneself of discharging an obligation. This is in addition to whether it is strictly speaking possible to perform an action which will discharge an obligation. Criterion (1) attempts to capture this without embroiling ourselves in the ‘ought implies can’ debate and related difficulties.

Because, on my view, each of these criteria are sufficient for increasing the stringency of an obligation, it can remain the case that one has a special moral obligation to act or omit even if only some of the criteria are met. Sometimes it will be costly for a law enforcement officer to do something that I claim she must do. In some circumstances, one can appeal to cost to override a *prima facie* obligation. Nevertheless, when one has a special moral obligation to do something, one might be required to take on a greater cost than someone without a special obligation. For instance, if someone is drowning, and there is a strong rip tide, a typical bystander may not have an obligation to wade into the water to rescue the swimmer because it would be costly for them to do so. On the other hand, if the bystander is causally responsible for this person’s vulnerability (e.g. she pushed them into the water), then she could not so easily appeal to cost to override the obligation to save the swimmer. This is important for the arguments that follow. It leaves open, however, that sometimes the cost of discharging a special obligation overrides the obligation.

These criteria should be understood as applying to individuals. This allows for a fine-grained analysis of the special obligations of different members of law enforcement. Criteria (1) and (3) are easily understood as applying to individuals. Criterion (2) is more complicated. Law enforcement is an instance of collective action; law enforcement organizations as a whole can contribute collectively to the vulnerability of certain groups. This gives us reason to attribute special obligations to officers on the grounds of causing vulnerability even when they have not

performed some action which by itself is sufficient to cause vulnerability in members of the community. Let us discuss the application of each criterion in turn, keeping in mind that (2) can be satisfied collectively.

## **2. How Law Enforcement Satisfy These Criteria**

If law enforcement officers are (1) particularly well situated to provide aid, are (2) causally responsible for another's vulnerability, or (3) have voluntarily committed themselves to provide such aid, then they have special moral obligations to do so. If all three criteria are met, then the special moral obligation is likely to be especially strong. Certain features of the law enforcement profession make it such that, except in unusual circumstances, all of these criteria are met. Some of the features are necessary results of enforcing the laws of a state, and some of them are contingent upon the way in which law enforcement is carried out.

The state claims a monopoly on coercion and violence. This is often taken to be a defining feature of states.<sup>21</sup> Law enforcement officers are part of the monopoly on coercion and violence, in that they are uniquely empowered to employ force on behalf of the state. Given their monopoly on violence, police officers (1) are particularly well suited to provide aid (again, in most cases). In this case, the aid is primarily the protection of property rights and the right to bodily integrity. If we understand a law enforcement officer to necessarily be an agent of the state, and we take it to be a defining feature of a state that it claims a monopoly on violence, then it is necessarily the case that law enforcement officers meet the first requirement for having special moral obligations. And if, as I've argued, this condition is sufficient for acquiring a

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<sup>21</sup>This is a Hobbesian and Weberian understanding of the state. Hobbes 1994; Weber 2004.

special moral obligation, then law enforcement officers necessarily have special moral obligations to citizens. In particular, police officers have a special moral obligation to see to it that citizens are safe and not at risk for physical harm or violation of property rights.

Law enforcement officers in most cases satisfy both the strict ability and cost dimensions of criterion (1). Members of law enforcement receive special training and tools to perform their duties. If an aggressor needs to be subdued for the protection of others, a law enforcement officer's training and tools make them more likely to succeed. The more experienced an officer is, the better they will satisfy this criterion, because they become more skilled at their jobs.

There is another way in which the cost of performing the required actions are decreased for law enforcement. It relies on their situation in the legal system compared to ordinary citizens acting in their own self-defense.

It is possible for individuals to take up the cause of justice or self-defense on their own, and there are private security firms. But doing so carries the risk of severe penalties, among which is coercion by law enforcement and legal penalties. Vigilante justice is punished by the state, so individuals are not permitted to "clean up" their neighborhoods themselves. With respect to self-defense, individuals risk being charged for violating laws in the course of their self-defense. In one well known case, Marissa Alexander fired a handgun in the direction of her husband who she claims was attacking her. No one was injured by the shot, and despite Florida's infamous "stand your ground" law which allows those who take themselves to be under threat to use violence in self-defense without first attempting to flee from the situation, Alexander was sentenced to twenty years in prison. She eventually took a plea bargain which resulted in sixty-

five days in jail and two years of house arrest.<sup>22</sup> This case garnered widespread attention because it stood in stark contrast to George Zimmerman's case. Zimmerman shot and killed Trayvon Martin and was not arrested when law enforcement cited the stand your ground law. Zimmerman was eventually acquitted of charges. The point of this comparison is to highlight the uncertainties of the legal system and the astronomical costs one is at risk of taking on in self-defense situations.

These considerations are relevant to criterion (2) as well. Insofar as law enforcement agencies maintain their monopoly on force or violence, they (2) maintain some causal responsibility for vulnerability of citizens, since they limit the degree to which others can provide it for themselves. Let us suppose for the sake of argument that the police department and the officers of Ferguson, M.O. were wronging the members of the community.<sup>23</sup> Despite the presence of an armed group acting wrongly towards the citizens, they could not take up arms to defend themselves or hire private security agencies to do it for them.<sup>24</sup> Doing so would marginalize them, diminish their cause, and provoke the aggression and violent response of state and federal law enforcement agencies. And although they could engage in political activism to bring about changes, this would be an extremely costly and time consuming process. So, it seems clear that the monopoly on the use of force claimed by the state contributes to vulnerability.

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<sup>22</sup>See <http://www.cnn.com/2014/11/24/us/stand-your-ground-plea-florida/index.html>. Retrieved June 25th, 2016.

<sup>23</sup>Ferguson, M.O., an important place for the development of the Black Lives Matter movement, become the center of attention after the killing by officer Darren Wilson of Michael Brown Jr. The police department was investigated by the Department of Justice and found to have in place a variety of harmful and racist policies.

<sup>24</sup>Even if there are circumstances in which it is permissible to use violence against the state, it would likely be imprudent. See Brennan 2016 for an account of when citizens may use force against a government agent.

By analogy, if lifeguards at a beach coercively enforced a policy whereby others are not allowed to help swimmers who are drowning, those lifeguards thereby take on a stronger obligation to fulfill their lifeguard duties. This is especially true if the lifeguards are actively engaging in behavior that makes it harder for swimmers to tread water on their own.

By making it seriously risky to protect one's rights on their own, law enforcement agencies take on special moral obligations to provide aid in the form of protecting those rights. Additionally, various policies, including drug prohibition, racist enforcement of laws, and the use of minority communities as tax revenue generators, place these communities in particularly precarious situations.<sup>25</sup> This, in turn, increases the likelihood of members of that community turning to illegal activity by making it more likely that drug use and crime become or at least seem rational to those individuals.<sup>26</sup> Thus, law enforcement agencies and their members play a substantial causal role in bringing about the vulnerability of minority communities.

The effects of drug prohibition or the so-called "War on Drugs" serve as evidence that law enforcement officers meet criteria (1) and (2). Consider (2), having a causal role in another's vulnerability, first. There is an abundance of evidence provided by scholars and policy experts working on the topic of drug prohibition that not only have many of these policies failed, but they've also caused extreme and widespread harm.<sup>27</sup> It is incredibly difficult to argue that the

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<sup>25</sup>See in particular Section III of the Department of Justice's report on the Ferguson, MO police department. [Http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/fergusonpolicedepartmentreport.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/fergusonpolicedepartmentreport.pdf). Retrieved June 25th, 2016.

<sup>26</sup>See Becker and Murphy 1988 and Becker 1968. There is much more work on rational choice theories of crime and addiction.

<sup>27</sup>There is a large literature on this topic. Boettke et al (2013) argue that drug prohibition has increased drug potency, the cartelization of the drug industry, and an increase in the

state of affairs would have been better had drug prohibition not become law; counterfactuals are always difficult in the context of complex systems. Nevertheless, it is unlikely that we would see such high rates of incarceration without drug prohibition. This is a massive harm.

Police officers, insofar as they actively enforce the anti-drug laws, contribute to this harm. And, this harm, like the mass incarceration of non-violent offenders, leads in turn to more harm: families are torn apart, educational and economic opportunities are eliminated and narrowed, and offenders are often temporarily disenfranchised. Thus, police officers are causally responsible, at least to some degree, for the vulnerability of members of the communities they police. Notice also that relatively widespread dissatisfaction with the policy has had little political effect. Currently only a handful of states have legalized or decriminalized marijuana, and some states (including New York) have ramped up enforcement with controversial stop-and-frisk policies.<sup>28</sup>

The enforcement of drug-prohibition is not the only way in which law enforcement are causally responsible for the vulnerability of community members. The effects of placing school resource officers in public schools provides further evidence of this. Some research suggests that schools that increase security (i.e. more school resource officers) exhibit higher rates of

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number of drug addicts. These claims are also defended by others, including Baum 1996. The 2009 UN world drug report shows that as drug prohibition policies became widespread around the world, heroin production doubled and cocaine production rose by twenty percent, and that prohibition has led to increased violence and drug overdoses, and the spread of infectious diseases like HIV. Gray 2012 argues that drug prohibition has harmed users by making the consumption of drugs more dangerous. He also argues that drug prohibition has harmed communities by leading to corruption, “clogging” the judicial system, generating the prison-industrial complex, and undermining constitutional rights against (for instance) warrantless search and seizure.

<sup>28</sup>This was eventually ruled unconstitutional and the policy was eliminated.

suspension.<sup>29</sup> Further, black students are much more likely to be suspended than white students for similar behavior. The more a student is suspended, the less likely they are to succeed in school, which in turn diminishes their opportunities for further education and narrows their economic opportunities. This in turn increases the likelihood that students end up in the criminal justice system. Researchers have called this the “school-to-jail pipeline.” Criminologists Rocque and Paternoster have called this “one of the strongest findings in the juvenile delinquency literature” and have reported robust evidence that racial bias is an important feature which puts students in the “pipeline.”<sup>30</sup> This is a complicated causal picture, but it gives us some reason to think that policing techniques play some role in increasing the vulnerability of certain communities and making it more likely that they turn to illegal activity.

Let us consider one more example of the causal role law enforcement has in the vulnerability of citizens. Some police departments use their communities to generate revenue for the city.<sup>31</sup> The Department of Justice’s report on the Ferguson Police Department describes this

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<sup>29</sup>Finn and Servoss 2014.

<sup>30</sup>Rocque and Paternoster, 2011

<sup>31</sup>I quote the Department of Justice’s Investigation of the Ferguson Police Department: “The City budgets for sizeable increases in municipal fines and fees each year, exhorts police and court staff to deliver those revenue increases, and closely monitors whether those increases are achieved. City officials routinely urge Chief Jackson to generate more revenue through enforcement. In March 2010, for instance, the City Finance Director wrote to Chief Jackson that “unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. . . . Given that we are looking at a substantial sales tax shortfall, it’s not an insignificant issue.” Similarly, in March 2013, the Finance Director wrote to the City Manager: “Court fees are anticipated to rise about 7.5%. I did ask the Chief if he thought the PD could deliver 10% increase. He indicated they could try.” The importance of focusing on revenue generation is communicated to FPD officers. Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership.”

in detail. The report also describes the way unreasonable court fees erected barriers to resolving violations, and the disproportionate targeting of minorities during the enforcement of these unjust policies. By targeting already poor citizens and administering excessive court fees, steep fines for traffic violations and missing payments and court appearances, the Ferguson Police Department created significant vulnerability in their community.

These policies do not affect all communities the same way. The disproportionate sentencing for drugs, like crack-cocaine, which are more popular in poorer communities, as well as the increased rates of arrest of black individuals for possession of drugs, breaks down family support structures. The heavy-handed policing tactics, and in particular the criminalization of misbehaving in school, diminish the educational and economic opportunities of individuals subjected to these tactics. Fines and court fees are more burdensome for poorer individuals, and in some cases, black communities are used merely to generate revenue.

Let us turn now to the final criterion for acquiring special moral obligations. One can take on special moral obligations via an explicit commitment without needing to make a promise, sign a contract, or take an oath. But any of the latter actions clearly do generate special moral obligations. Given that police officers have voluntarily taken explicit, informed, and non-compelled oaths to protect and serve, police officers certainly (3) have committed themselves to providing aid. Unlike the other criteria, this one applies to all members of law enforcement independently of how long they have been on the job.

### **3. Violations of Special Moral Obligations**

One of my aims is to show that it is seriously morally wrong for a law enforcement officer to kill or violate the rights of individuals in her jurisdiction. The obligation that is violated when this happens is an obligation to refrain from harming. What is the connection between this obligation and the obligation to provide aid (criteria 1 and 2) discussed above?

Members of law enforcement take on positive obligations, I claim, to reduce the vulnerability in populations which they are partly responsible for causing. They are also well suited to protect rights to life, liberty, and property. Finally, they've voluntarily taken on obligations to do so. This means that when they violate these rights, or they cause further vulnerability, they aren't simply violating these general obligations. They are also violating special obligations to ensure that these rights aren't violated.

Compare, again, the moral situation parents find themselves in. Clearly we are obligated not to abuse children. But, the account of special moral obligation I'm defending tells us that parents, given their special moral obligations, do something worse when they abuse their own children. Violating a special obligation that coincides with a general obligation is morally worse than violating a general obligation alone. So, although we all have obligations to refrain from infringing on rights, members of law enforcement violate their special moral obligations when they violate these rights.

When a police officer harms a citizen without a clear moral justification they violate a special obligation. Such a violation can occur at any time; there need not be any immediate assistance or aid required. In other words, it need not be the case that a citizen is in need of

assistance from law enforcement at the time that the police officer harms the citizen for a special moral obligation violation to occur.

#### **4. Which Special Moral Obligations?**

We are now in a position to understand the strength of the moral obligations had by law enforcement as well as the particular obligations had in virtue of a member of law enforcement's position in an institution. If my account is accurate, then much police work is inconsistent with the moral obligations of law enforcement officers.

The analysis on offer here allows us to differentiate between the special moral obligations of members of law enforcement in different institutional roles. What the police chief is morally required to do is different from what the officer patrolling the neighborhood must do. Recognizing these special moral obligations provides moral guidance for how law enforcement must improve their methods. Law enforcement is a complicated job with many roles. I do not aim to comprehensively account for the special obligations had by each role. Rather, I shall give an indication of how the framework can be applied by looking at a handful of roles and obligations.<sup>32</sup>

##### *4.1. The Special Obligations of High-Ranking Members of Law Enforcement*

Many members of law enforcement work in state and local police departments. But in the United States, some of course work in federal agencies. The leaders of federal law enforcement

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<sup>32</sup>A full theory of the ethics of law enforcement requires attention to state and federal prosecutors, as well as corrections officers. Saying anything of substance about these roles requires focusing on other details, so I leave that aside. (See §5 for one important detail.) I do, however, think that the framework developed in this paper can be usefully applied to prosecutors and corrections officers.

agencies (e.g. the Director of the FBI and the Administrator of the DEA) have special obligations in light of their roles. One concerns political lobbying. The easiest example of lobbying that law enforcement, institutionally speaking, has an obligation to perform, is to lobby for drastic changes to laws which are disproportionately harmful. Leaders of law enforcement agencies, in particular ones as visible and prominent as federal agencies like the DEA are in one of the best positions to see the effects of laws, and when it is clear that a particular law or set of laws is extraordinarily harmful, they should make that clear. This greatly increases the value of their testimony. When a police officer reports that the war on drugs is pernicious and ineffective, it carries more weight than when a college undergraduate complains or protests. These officials are thus uniquely situated to lobby politicians to change the law. There seems to be no reason, in principle, for the individuals who enforce laws to remain quiet about which laws are likely to be effective.<sup>33</sup>

The Administrator of the DEA has a more stringent obligation to partake in this sort of lobbying than does the chief of a small, local police department. This follows from the differences in their well-suitedness to effect change. The former garners national news attention, and speaks to members of Congress and the President's administration; not so for the latter. Similarly, the former is capable of effecting change on a much larger scale than the latter.

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<sup>33</sup>Though, as I've said, we must take into account the cost of such lobbying. It may be the police chiefs or high-ranking officials must motivate police fraternal organizations to engage in lobbying.

This is not to say that such lobbying would be successful. Rather, it is simply to point out the value of this particular type of testimony.<sup>34</sup> In some cases speaking out against certain laws might be costly for individual officers (i.e. by generating claims of insubordination). This can be avoided by having, for example, fraternal organizations speak out in the way they currently do against Black Lives Matter protests or when they endorse political candidates.

In addition to discharging their duty to inform legislatures and lobby for changes, law enforcement as an institution has an obligation to become more informed themselves. I have occasionally compared the special moral obligations of law enforcement to parental obligations; parental obligations are instructive in this regard as well. Because parents have special obligations to care for their children, this entails further obligations. They have an obligation to learn how to best care for their children. Health care is an example that offers an institutional comparison. The health care profession requires a significant amount of education to enter, has rich continuing education programs, and is involved in research aimed at making the profession more effective. Both of these are examples of how individuals in various roles recognize and take on epistemic obligations. In health care, the entire profession is organized (in part) around this obligation.

Law enforcement officers similarly have a stringent epistemic obligation. Leaders of law enforcement agencies thus have an obligation to see to it that agencies make institutional changes aimed at discharging this obligation. Perhaps some of the spending that goes towards

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<sup>34</sup>For support, consider the way that politicians tend to value the testimony of military generals on matters of fighting wars. Perhaps the analogy is strengthened by the drug prohibition being pitched as a “war.” I also don’t mean to suggest that political decision-makers should always defer to the suggestions of law enforcement officers or officials.

increasingly militarized weapons and the like ought to be dedicated to criminology research and continuing education for police officers. The point is not to defend specific institutional changes, but rather point to the stark differences between the epistemic positions and interests of health care and law enforcement professionals. Of course, some police departments have professional development programs. But in order to fulfill their special moral obligations, there will need to be deep institutional changes for law enforcement in general; all professionals in such high-stakes environments should be engaging in professional development or continuing education. It is up to high-ranking individuals in police departments to mandate continuing education programs and the like.

Police chiefs and other higher-ups have some discretion about which crimes to focus their deterrence efforts on, and how deterrence happens. The special obligation to refrain from harming or violating the rights of their citizens gives them moral reasons to avoid enforcing rights-violating rules. Discharging their epistemic obligations also allows them to reduce harmful sides effects of law enforcement (e.g. minimizing harm to protestors or individuals who are being arrested). Suppose (though this is controversial) that equipping officers with Tasers instead of guns reduces occurrences of police shootings. *If* this is right, police chiefs must change the way they equip their officers.

Finally, there are obligations had by those management positions in law enforcement agencies to effect cultural changes in departments or agencies. In particular, agencies must work to eliminate the “blue wall of silence” which is often used to cover up crimes and keep dangerous officers on the streets.<sup>35</sup>

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<sup>35</sup>See Kleinig 2001 for discussion.

There is a continuum between the leaders of large federal agencies and small local police departments, as there is between leaders of law enforcement agencies and lower ranking executives. The framework outlined above implies that there is a corresponding continuum of stringency of special obligation to engage in lobbying and institutional change with epistemic, cultural, and harm-reduction aims.

#### *4.2. The Special Obligations of Low-Ranking Members of Law Enforcement*

Nevertheless, even when these changes are not made, police officers have moral reason to act in accordance with the obligations I discuss below.<sup>36</sup>

Given the background special moral obligations, police brutality and the use of excessive force is seriously morally wrong. It is worse than one citizen performing a comparable act upon another citizen. Not only do these actions violate general obligations, but they violate the special obligations individuals have in virtue of being members of law enforcement.<sup>37</sup> This helps adjudicate the dispute between the Black Lives Matter and Blue Lives Matter proponents, which I take up further in Section VI.

Police officers patrolling communities have the ability to simply disregard the law and fail to enforce it (as they do with some other laws). As we've seen, law enforcement codes of ethics agree that sometimes the right thing to do is to not enforce the law; this account of special

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<sup>36</sup>As the Department of Justice's report on the Ferguson Police Department indicates, police chiefs already play a large role in guiding the priorities of officers on the streets. The Ferguson police chief indicated that he would try to deliver a 10% increase in revenue; clearly he could have attempted to make the changes I'll discuss in what follows.

<sup>37</sup>Because law enforcement agencies often cause greater vulnerability in minority communities than others, it is implied by criterion (2) that it will be worse for an officer to kill or brutalize minority citizens than others. This strikes me as correct and has obvious implications for evaluating the Black Lives Matter movement.

obligation provides resources for a principled decision about when not to enforce the law.<sup>38</sup>

Police officers thus have special obligations (though not always all things considered obligations) to disregard and not enforce laws which are obviously seriously harmful and unjust.

Here too drug prohibition serves as an example. If individuals have a *prima facie* right to own and consume recreational drugs, and if the enforcement of drug prohibition is seriously harmful to individual citizens and entire communities, then law enforcement has a very strong obligation to cease arresting individuals for possessing and selling drugs.<sup>39</sup> The claim here is not that eliminating drug prohibition will eliminate the vulnerability of minority communities. The claim is only that the way drug laws have been enforced have in fact increased the vulnerability of minorities, and that continued enforcement thus violates the special obligation generated by the causing of such vulnerability. And if there is a right to consume some recreational drugs, then the enforcement of drug prohibition violates the oath taken by most members of law enforcement to protect the rights of others.

There is some, perhaps significant, cost that an officer takes on when disregarding a law. My account is sensitive to this; if an officer can fail to enforce an unjust law without serious personal cost, without undermining the system of law and order, and so on, then this makes their

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<sup>38</sup>Estlund (2007) argues that in the context of correction officers the thing to do is resign rather than let an innocent individual go free. I take no stand on how the refusal to enforce a law takes place. It is compatible with what I've argued that the officer can either resign or "look the other way."

<sup>39</sup>I am not the first to make a claim like this. See Huemer 2012. I have not, of course, argued for the antecedent here. On the morality of drug laws in general, see Huemer 2004. See also the literature on the effects of drug prohibition cited above. Further, consider the way in which felony disenfranchisement harms the political interests of citizens (and their communities). I take no stand on whether all drug prohibition is a rights violation; though I am committed to the claim that the enforcement of some current drug prohibition laws does violate rights.

special obligation to do so strong. The costlier the refusal to enforce a law, the less stringent the special obligation is. Of course, personal cost does not exhaust the grounds of special obligation. In some cases, individuals have special obligations which require them to take on greater personal costs to discharge them.

If members of law enforcement have a special moral obligation to protect property rights (in addition to rights to life, bodily integrity, and liberty), then violating property rights is a very serious wrongdoing. Civil and criminal asset forfeiture is, in some cases, an instance of a property right violation. The Department of Justice reports that during the first nine months of 2012, the federal government claimed assets valuing over \$4.2 billion in total.<sup>40</sup> This does not include assets taken by state governments.<sup>41</sup> Law enforcement agencies took over \$4 billion worth of assets from citizens in 2012, whereas the FBI reports that during all of 2012, burglars stole a reported \$3.6 billion.<sup>42</sup> This comparison is intended to illustrate just how extensive asset forfeiture is. Of course, some of it is justified, though a portion of it is not. *Civil* asset forfeiture is a clear property right violation, for it occurs before any criminal activity has been proven. Criminal asset forfeiture is more complicated. In order for one to genuinely involuntarily forfeit a right, some wrongdoing must have occurred.<sup>43</sup> But if one is not doing something wrong,

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<sup>40</sup>Department of Justice, 2012. In 2013, it was over \$2 billion (Department of Justice, 2013).

<sup>41</sup>In 2015, assets seized by state governments are estimated to be around \$1 billion (Kelly and Kole 2015). The amount seized varies considerably from year to year, but the value of assets seized by state governments was likely significant in 2013.

<sup>42</sup>In 2013, the number was \$3.7 billion. All property crime in 2012 resulted in property losses of around \$15.5 billion, and \$16.6 billion in 2013. Federal Bureau of Investigation, 2012 and 2013. The comparison of these numbers in 2014 is particularly striking as a result of assets seized in the JP Morgan Chase/Bernard Madoff case and the Toyota case.

<sup>43</sup>See Thomson's *The Realm of Rights* for a discussion of forfeiture.

despite their action being a violation of an unjust law, then the action will likely not result in the forfeiting of a right.<sup>44</sup>

## 5. Reply to Objections

First, if I am correct, then law enforcement officers will need to have knowledge of relevant moral questions. They ought, for example, to be familiar with the arguments concerning the morality of drug prohibition. One might object that this is an unreasonable demand to make, given that police officers already have a full-time job. In reply, consider the moral education we require of health care professionals. Nursing and pre-med majors are required to take at least one medical ethics course. It is also common for health care professionals to seek ethics consultations on difficult cases. Further, many business majors are required to take courses on business ethics. We can quibble about the efficacy of such courses, but the important point is that requiring them does not seem to be an unreasonable burden. There's no reason to think that a similar burden for law enforcement officers is objectionable. Rather, it is merely a part of their epistemic obligations discussed above. Officers who fail to have knowledge of the relevant moral issues are acting negligently.

The second objection concerns another, perhaps competing, set of moral obligations. There are institutional duties which are likely a species of special moral obligation. They sometimes license individuals to do something that is all things considered harmful, or which might be unjust or a rights violation, simply in order to maintain the morally beneficial

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<sup>44</sup>This point admittedly relies on a controversial understanding of property rights wherein they are not simply the result of existing law. Should the reader reject this, note at least that the argument holds for civil asset forfeiture. Further, proponents of the "law-makes-property" view often deny that unjust laws make or unmake property. See Thomson 1992, 344.

institutions of which they are a part. Perhaps, for instance, soldiers are permitted to carry out unjust orders in war.<sup>45</sup>

Evaluating these claims in detail is a large task. Very different arguments have been advanced in their favor. I suggest we sidestep that project, and focus on two claims. First, those who are skeptical that institutional duties generally license otherwise immoral behavior will not find this objection compelling. Second, for those who are attracted to this view of institutional duties, it is worth drawing attention to the fact that an appeal to institutional duties does not provide resources to object to my conclusions about the epistemic obligations law enforcement have, the extra-stringent moral obligation to avoid causing bodily harm, or the resulting wrongness of excessive force. In other words, the appeal to institutional duties does not undermine the general picture of special moral obligation I've offered. At most it provides countervailing moral considerations.

Similarly, one might think that police officers are justified in simply following their orders and leaving the moral deliberation up to their commanding officers, legislatures, and other elected officials. This is the case only if the individuals or groups to whom the officers were deferring the moral decision making had a substantial track record of getting the issues right. Alas, they do not.<sup>46</sup>

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<sup>45</sup>For discussion, see Estlund 2007, Walzer 1977, McMahan 2009, and Brennan 2016. Walzer and Estlund think that soldiers are often permitted to carry out unjust orders, whereas McMahan and Brennan do not.

<sup>46</sup>McMahan (2009) confronts a similar issue (and reaches a similar conclusion) in the context of the moral permissions of soldiers to perform what might be immoral or unjust acts. As he notes, soldiers are permitted to defer to the judgements of their commanding officers in place of their own judgements if they have reason to think that their government or officers have a robust track record of getting things morally right. As in the case of war,

Finally, one might reply that members of law enforcement do not have the greatest causal role in the vulnerability of others. This is true. It does not pose a problem for the arguments defended in this paper. One need not have the greatest causal role in causing vulnerability, or be the most well-suited to provide aid, in order to take on a special moral obligation. Perhaps some individuals have more stringent obligations to minority communities than do members of law enforcement. This is consistent with the claim that members of law enforcement have special moral obligations.

## **6. Black Lives Matter versus Blue Lives Matter**

One motivation for this investigation was the dispute between the proponents of the Black Lives Matter movement and the competing Blue Lives Matter response. We've seen three good reasons for thinking that police officers have special and stringent moral obligations to citizens. The violation of such obligations constitutes a particularly severe form of wrongdoing, which in most cases justifies exceptional moral blame, outrage, and protest by citizens.

Does my analysis yield the conclusion that citizens also have a stronger obligation to refrain from killing police officers than citizens? In other words, does this analysis actually provide philosophical support for the Blue Lives Matter laws? I think not. Although members of law enforcement take on risks to serve society, the same is true of members of other professions.<sup>47</sup> We don't think that we have special obligations to commercial fisherman or long-

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there's good reason for skepticism on this front. With respect to drug prohibition, we have plenty of evidence that legislatures have gotten this wrong, morally speaking. Note also that Estlund (2007), in responding to McMahan, agrees that there are cases in which soldiers are not permitted to defer to their superiors.

<sup>47</sup>In fact, law enforcement is not the most dangerous profession. See the Bureau of Labor Statistics Census of Fatal Occupational Injuries. <https://www.bls.gov/iif/oshcfoi1.htm> Retrieved 2/16/2017.

haul truckers. Nor is anyone motivated to classify attacks on these professionals as hate crimes.<sup>48</sup> The account of special obligations I've defended does not imply that we have special obligations to these professionals; nor does it imply that we have special obligations to law enforcement. To be clear, the account will imply that in *some* circumstances citizens have special moral obligations to law enforcement (or truckers, for that matter). This seems right; but it is not the case that citizens in general have special obligations to law enforcement. Blue Lives Matter laws will find no support in the analysis I've offered.

The upshot is this: police officers have special moral obligations to citizens for three reasons: they are particularly well suited to provide aid; they are causally responsible for citizens' vulnerability; and they have voluntarily taken on a variety of obligations to citizens. The implications go well beyond the dispute between Black Lives Matter and Blue Lives Matter proponents. The use of excessive force by police, their enforcement of unjust laws and their unjust enforcement of just laws (e.g. racially biased enforcement of traffic laws, and practice of seizing assets, among others) constitute morally significant cases of political violence.

Law enforcement have special moral obligations to protect citizens' rights to life, bodily integrity, and property; when they violate these, they do something morally worse than when another citizen does the same. The Blue Lives Matter response to the Black Lives Matter movement fundamentally misunderstands this. The response is therefore facile and pernicious.

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<sup>48</sup>This serves as evidence that voluntarily taking on a risk to serve others is not one of the criteria for special moral obligation.

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