2007

The New York Police Officer: Democratic and Moral Accountability in Conflict

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ACCOUNTABILITY CASES
ROBERT SCHWARTZ AND DANIEL W. WILLIAMS (EDITORS)

The New York Police Officer: Democratic and Moral Accountability in Conflict
By Sarah Ryan and Daniel W. Williams
The New York Police Officer: Democratic and Moral Accountability in Conflict

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Washington, DC 20004

Cover: Colina Design
Preface

The American Society for Public Administration (ASPA) and its Center for Accountability and Performance (CAP) are pleased to announce the availability of Accountability Cases. This innovative series uses real-world cases to illuminate concepts in accountability. Accountability Cases meets a long-felt need for high quality tools to be used in learning about accountability. Cases raise issues and dilemmas by linking theoretical perspectives with tangible experiences. This case, and other cases in accountability, are available for electronic download at ASPA’s website (www.aspanet.org).

The editors invite proposals for cases from academics and practitioners who are able to provide detailed accounts of events that illuminate accountability concepts. Please send 1-2 page proposals to Robert Schwartz (email: Robert.Schwartz@utoronto.ca) or to Dan Williams (email: Daniel.Williams@baruch.cuny.edu). Cases will be peer reviewed and published by ASPA.

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This case is divided into the following parts:

1. Background democratic concepts.
2. Background ethical concepts.
3. History of homelessness.
4. Historical context.
5. The broader case.
6. The narrower case, presented as a role playing exercise.
7. Debriefing information (“What really happened?”).
8. Discussion questions.
9. A discussion of the broader case with questions.

We recommend that the student/user read the first five parts before the session in which the case is used.

Once the session begins, each student should see only his or her role. Additionally, the debriefing information and discussion questions should remain cloaked until the conclusion of the role-playing exercise. This cloaking will lead to more authentic role-playing. We have purposefully written the roles broadly enough to allow for student investment and creativity. Additionally, we have attempted to adhere as closely as possible to the facts of the case (as reported by the media). If the instructor or leader wishes to add more details to the roles, we would caution that the details neither prescribe student attitudes or behaviors nor deviate from the facts of the case (as this will complicate the debriefing segment and discussion). If the class size necessitates the addition of roles, we suggest adding additional “partner” roles. The role-play has been field tested at Baruch College with evidence of positive student response and effective learning.

At least 30 minutes should be allotted to this activity; thorough examination can extend to an entire class session. The discussion questions in section nine follow the order of the background and case materials, but can be re-ordered as the instructor/leader sees fit. Some questions might be appropriate as examination essay questions.
Introduction and Discussion

The following case draws upon two views of accountability. One is democratic accountability, the other is accountability to one's own moral conscience. As the story unfolds, other facts may get in the way, but these central views should not be forgotten.

The focus of this case is on the individual. However, the material also covers institutional decisions and policies that deserve considering. The institutional story is the background, not the foreground, of this case. Yet, when the institutional features are considered, they may give new insight to the individuals' decisions.

Democratic Accountability

Democratic accountability implies a unique situation in which sovereignty rests with the population at large while government is administered by professionals or experts. From the early 1800s to the 1880s, the United States did not face this divide, because the use of patronage tied the mechanisms of government to the electoral process. Under patronage, elected officials would recommend the selection of government workers and sometimes make the selection decision in total. From a democratic accountability point of view, the workers were part of the package that came with the elected official. If they performed poorly, the remedy was to remove their patron, which generally also led to their discharge. From the view of democratic accountability, the bureaucrat's only role is to carry out the will of the sovereign democratic decision makers. Generally, this means the decision of legislators, who should direct the actions of the public staff “to the most minute degree that is technically feasible” (Finer 1941, 336). Within this view, to be accountable is to report back, demonstrating that one has done what one was told to do. If there is evidence of failure, the bureaucrat is punished (Finer 1941; Behn 2001). With the advent of Civil Service reforms such as the Pendleton Act in 1883, this linkage was lessened (Frantzich and Percy 1994). Lower officers of government became employees, professionals, and experts unconnected to the electoral process and, thus, not part of the democratic character of government.

From the 1800s to the 1940s, it was argued that this division is good, because the types of decisions made by government employees are merely technical, and better made by experts than politicians (Goodnow 1900; Wilson 1887). However, since the 1940s, the distinction between technical and political decisions has been
challenged (Appleby 1949; Friedrich 1940). Today, it is commonly believed that the day-to-day decisions made by front line “street level” bureaucrats are as much policy decisions as are the framing decisions made by legislators or elected executives (Lipsky 1980). In New York City, the New York Police Department (NYPD) is the most readily observable frontline bureaucracy, with more than 37,000 uniformed officers and a $5 billion slice of the city budget (New York City Independent Budget Office, 2005; NYPD, 2006). NYPD personnel continually influence safety policy – sometimes even more so than elected officials do. For example, Rudolph Giuliani, mayor of New York from 1993 to 2001, directed the police to enforce anti-nuisance laws such as ticketing turnstile jumpers in subways. Such enforcement had been lax for decades. Early on, the police cooperated with these new requirements. Later, however, Giuliani directed the police to ticket jaywalkers (Lombardi 2000), ignoring the fact that New Yorkers consider jaywalking to be something close to a civil right. The police – the street level police – simply would not ticket jaywalking except under the watchful eyes of their supervisors. Street level decisions became the real policy, which was to ignore jaywalking just as always (Donohue 2001).

Modern democratic accountability involves a tension between accountability for compliance with instructions from higher authority and accountability for performance. In an ideal democratic model, there is a division between the principal (the public or its representative) and the agent (bureaucrat), with accountability in the form of the agent reporting to the principal. The principal specifies actions through laws and rules and the agent fulfills the specifications through obedient compliance. When the agent fails to obey the rules, the principal punishes the agent. This somewhat stark description of democratic accountability follows Finer’s work; however, the general argument of the primacy of publicly selected decision makers can be found among top ranked scholarship of the recent past (Moe 1988).

Current scholars often focus on the difference between accountability to the sovereign and accountability for the public purpose (Behn 2001; Dubnick 2005; Jos and Tompkins 2005; Moe 1988). One common argument is that bureaucratic hierarchy is a significant reason for organizational failure in the form of red tape and conservative decision making (Howard 1994; Kaufman 1977; Osborne and Gaebler 1993). Drawing upon the work of Goodnow, some authors contend that public administrators are experts in achieving public ends and should not be constrained by the inexpert advice of legislators. Another consideration, which draws upon the Finer-Moe formulation of administrative rule, is focused on positive
instructions for what government should do. Still another accountability concern is about catching people doing what they should not be doing (Anechiarico and Jacobs 1996; Behn 2001). This branch of democratic accountability involves accountability for violation. Under this formulation, “accountable” suggests retribution for clearly inappropriate action. A large part of accountability law is about retribution and penalty. Anechiarico and Jacobs argue that such law frequently misses the mark and adds to the ineffectiveness of government.

Complicating these conceptions of democratic accountability is the relationship between the elected official and the electorate. Two competing views of this relationship are those of the delegate and the trustee. As a delegate, the institutional decision makers are obliged to reflect the wishes of the public at large. The public may bear some moral responsibility for poor decisions due to their poor choice of a representative. As a trustee, the institutional decision makers are able to make separate morally responsible decisions regardless of the will of the public at large. If we view the institutional decision makers as trustees, they may personally bear a greater share of responsibility for morally reprehensible institutional decisions.

**Moral Accountability**

There are at least four types of moral accountability to consider. These include: Utilitarianism, Kantian Deontology, Aristotelianism, and Social Contractarianism.

From a **Utilitarian** point of view, the issue to consider is whether an action leads to more or less total social good (Mill and Crisp 1998). The exact meaning of “social good” is disputed among utilitarians, but it is roughly the total of all the happiness experienced in the society, regardless of who in particular experiences it, minus all the unhappiness experienced in the society. Under slightly different types of utilitarianism, this matter can be “in general” or in regard to a particular case.

For a police officer, failing to enforce the law might lead to more social good under some circumstances. It is generally accepted that police officers warn rather than cite for some traffic offenses, for example. Citizens do not have a clear understanding of the rationale for these warnings, but are usually quite relieved to be warned. Limited empirical evidence does not support the view that these warnings are as effective as full enforcement (Reinfurt, Campbell, and Stewart 1990). However, the combined social good of the drivers’ relief multiplied across all drivers receiving warnings as well as the partial effectiveness of warnings could result in a net social
benefit from such warnings. Because such a utilitarian calculus cannot be performed explicitly, one must use his or her judgment to evaluate the relative level of societal happiness in this instance.

From the point of view of Kantian Deontology (Kant and Abbott 1898; Kant, Heath and Schneewind 1997; Kant, Wood, and Schneewind 2002), it is important to consider the moral conscience of the government agent, that is, the lesser government official, or bureaucrat. Such officials are people who must be honored with the same human dignity as the sovereign public. Indeed, democratic sovereignty and human dignity both depend upon the respect of individuals. From a Kantian standpoint, it is wrong to deny the dignity of anyone, including the government employee. Thus, the formulation of democratic accountability as stated above is immoral because it denies the officer’s right to follow his or her own moral judgments. Democratic accountability must be reformulated to take into account the dignity and humanity of the public employee. That employee must be “an end-in-herself,” which means she must be able act from her own motivation. If, in her own conscience she is repulsed by the express will of the public, she must be free to reject it. Any formulation of democratic accountability that restricts this freedom is immoral.

Chester Bernard has made a closely associated argument from moral psychology (although he never would have called it that) that people simply will not act against their moral core. If democratic accountability conflicts with core moral principles, agents will simply refuse to comply with democratic accountability. The expectation of such accountability is dependent on the hiring of morally limited employees or it is self-defeating (Bernard 1938), because either the agents will ignore their own impulses and blindly enforce laws, or they will not comport with the public’s expectations of them.

A police officer, who interacts with numerous constituents, must also consider the moral autonomy of others, such as his or her supervisor, other police officers, property owners, individual members of the community, and the public at large.

The Aristotelian may ask whether following the tyrannical will of the masses is part of the good life (Aristotle and Ostwald 1962). For Aristotle, the good life is not one that is filled with pleasure throughout, always easy or fun. The good life is one in which, on the day one dies, one can look back and say, “My life was worth living.” Americans, who tend to deny death, may think this an easy criterion. However, if we acknowledge death, it is actually a difficult criterion. A life worth living may
lead to hard times where one is at odds with one’s society in order to do what is right. A life worth living may require struggle, sacrifice, and risk. A life worth living may require vision and goals that threaten one’s momentary happiness. Aristotle also advised moderation, which may mean balance between family and work. It may mean balance between personal ideals and social norms.

A police officer may face concerns over the good life and, perhaps, concerns over the bureaucratic nature of his or her work. Exchanging the monotony of routine for economic security may be personally challenging. When is the work unworthy of personal commitment? How does the police officer balance his or her public role with private life? What compromises must be made?

A Social Contract is an agreement between a society and its members (Barker 1960; Hobbes 1950; Locke and Laslett 1988; Locke and Peardon 1952; Rousseau, Masters and Masters 1978), whereby citizens agree to relinquish certain privileges for benefits such as protection from bodily harm. For example, citizens might pledge taxes, support of the government, and military participation in exchange for public order and protection from foreign invasion. Generally, this “social contract theory” is thought to be unrealistic in that citizens have little opportunity to actually make such pledges, withdraw from the contract, or experience life outside of society. It is, however, often used in hypothetical reasoning, that is, thinking about how things might be. John Rawls connected it to Kantian thought by appealing to the reader’s intuition, asking how he would judge universalizable decisions without the opportunity for bias (Rawls 1971, see particularly page 11 and note 4; Rawls and Kelly 2001). To some degree, constitutional democracy is an imperfect attempt to actualize a social contract.

Stephen Holmes and Cass R. Sunstein applied the idea of the social contract to rights, arguing that all of the “rights” enjoyed by U.S. citizens come at a price (1999). Even so-called “negative rights,” or simple prohibitions against government intrusions into daily life (i.e. the right to free speech, religion, or peaceful assembly), come at a price and necessitate government action. Holmes and Sunstein contend, “Rights are costly because remedies are costly. Enforcement is expensive...and legal rights are hollow to the extent they remain unenforced” (1999, 43). Thus, the social contract always necessitates a strong government role in human affairs, even when the government is protecting individuals’ rights to be free from the tyrannies of the government.
In the context of the social contract, one role of a police officer is as a representative of "the people," fulfilling society's commitment to its members. The police officer may consider a member of the public selfish or repugnant when s/he demands that the officer enforce laws that seem trivial or unfair. However, as an agent of society, the officer has "contracted" to defer his own preferences to those promises society has made. Thus, he may have to evict a seemingly downtrodden person for the advantage of someone wealthy. Alternatively, he may have to delay an eviction, hurting a deserving property-owning friend, while awaiting the full process of the law on behalf of tenant who is seemingly irresponsible.

**Special Considerations**

By now, the reader might ask, why should bureaucrats such as police officers worry about moral considerations at all? Why isn't this just a matter of democratic accountability? Why shouldn't they just do what they're told to do by their supervisors or the public? The best way to answer this is to review Article 8 of the Charter of the Nuremberg Trials (the war crimes and holocaust trials after World War II). In Article 8, it states: "The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires" (Linder 2000). In the Nuremberg Trials, the defendant was the government agent. The point of this quotation is that the government agent is not free to defer his or her judgment to the sovereign state, but remains personally responsible for those actions and can be held accountable for them in a court of justice.

Article 8 rests moral and legal accountability on the shoulders of individuals, not on society at large. However, the individual must still decide how to resolve his or her accountability. Does he resolve it as a Utilitarian? Does she resolve it as a Kantian? Is he a Social Contractarian? Perhaps Aristotle guides the decisions? Maybe our decision maker has her own moral decision-making calculus.

**The history of homelessness**

Despite ancient admonitions to "love one's neighbor" and the relative tolerance that homeless people encountered centuries ago, "since the enclosure of common lands in 16th-century England" (Amster 2003, electronic), "vagrancy began to be seen as a threat to the order of things" (Miller 1991, 9, as quoted in Amster 2003). The first raft of "Poor Laws" was passed in England in response to rampant...
unemployment and sky-rocketing prices in the late 1500s and early 1600s (Boyer et al. 2000). Parliament issued the laws to pacify upper and middle class citizens who worried that the jobless folk wandering the countryside would undermine law and order (Boyer et al. 2000). As America was settled, English common law supplemented the “Protestant Work Ethic [that was] intimately connected to the national mythos of equal opportunity and free-market meritocracy” (Amster 2003, electronic. See also Weber 1958). As in England, homelessness was seen as an issue of individual malfeasance rather than structural inequality. In the mid-nineteenth century, American efforts to assist the poor exacerbated the problem by requiring poor people to leave their homes and move into work houses in order to receive funds (Friedman 2002; Boyer et al. 2000). The workhouse “solution” to poverty not only deprived people of their homes, but also subjected them to inhumane living conditions. For example, “[i]n 1833 a legislative committee found that the inmates of the Boston House of Industry were packed seven to a room and included unwed mothers, the sick, and the insane as well as the poor” (Boyer et al. 2000, 291). In the late 1800s in New York City, unlucky poor immigrants and homeless people of all stripes were “forced into the barracks located in the cellars of police stations... with planks for bedding, no ventilation of any kind, and the inhibiting presence, passing for protection, of the police” (Sante 1991, 33). Although the homeless were from time to time befriended by the likes of such altruists as James Eads, the “hobo millionaire,” who established shelters, medical facilities, and hobo colleges (Sante 1991), for the most part they were seen as a defective or diseased lot that threatened both public safety and the sterility of public spaces (Amster 2003). The plight of the homeless has been especially precarious in New York City due to its sheer size and the uniqueness of its historical, cultural, political, and economic climate.

Case Study General Context and Background

New York City is an anomaly. Comprised of five boroughs, each of which is more populous than many American states, New York City seems more like its own country than a typical metropolis. The culture of the city pulses with the energy of its millions of inhabitants, assembled from every corner of the globe into infamous neighborhoods such as Hell’s Kitchen and Brownsville, Brooklyn. At the heart of it all is Manhattan, the borough better known as “The Big Apple.” In addition to the 1.5 million people who call this borough home (Wikipedia 2005), nearly 40 million tourists visit the city each year (NYC & Company 2005), and nearly 1 million commuters make their way to Manhattan by train, bus, ferry, and car each weekday.
All of these people converge onto a strip of land that is roughly 13 miles long and 2 miles wide. Thus, on any given day, there are a great number of people attempting to co-exist peacefully on the tiny island of Manhattan.

Throughout the history of Manhattan, keeping the peace has been a daunting task. Herbert Asbury’s 1927 account of the city’s violence, The Gangs of New York, described a past in which “no well-dressed man, and certainly no woman, could venture safely off Broadway, even in the daylight” (Bordewich 2002, 48). This gruesome account of early Manhattan life prompted Martin Scorsese’s 2002 movie of the same name. Though few dispute the accuracy of both Asbury and Scorsese’s accounts of early Manhattan life, the city has evolved greatly since the mid-nineteenth century. Today at Five Points, one of the major epicenters of early gang warfare depicted in Scorsese’s epic, “small children clamber over jungle gyms in a public park” (Bordewich 2002, 49). It is safe to say, that Manhattan has been tamed into a livable city. Nevertheless, the ghosts of the past seem to be ever-present, and New Yorkers, especially Manhattanites, are wary of violence.

Throughout the early part of the twentieth century, Manhattan emerged as a more family-friendly place. It became not only permissible, but customary, to walk on the streets in daylight (a novel concept to the earliest New Yorkers), enjoy public parks and spaces, and build a life in the bustling metropolis. The city seemed to be on a gradual upswing until the late 1960s and 1970s, when it began to spiral out of control. Currents of discontent and an astonishing level of government mismanagement contributed to a climate of unrest. Numerous events served as harbingers of the violence to come, including the Stonewall Riots, which began on Friday, June 28, 1969 in “a mafia-run gay bar in Greenwich Village” (NPR 2004, online). That a city that was prized for its tolerance would become the site of riots over police discrimination was just one sign that the times were changing. Luc Sante, author of Low life: Lures and snares of old New York, remarked on his experience of New York in the 1970s:

“The New York I lived in...was rapidly regressing. It was a ruin in the making, and my friends and I were camped out amid its potsherds and tumuli...Already in the mid-1970s, when I was a student at Columbia, my windows gave out onto the plaza of the School of International Affairs, where on winter nights troops of feral dogs would arrive to bed down on the heating grates. Since then the city had lapsed even further. On Canal Street stood a five-story building...
empty of human tenants that had been taken over from top to bottom by pigeons. If you walked east on Houston Street from the Bowery on a summer night, the jungle growth of vacant blocks gave a foretaste of the impending wilderness, when lianas would engird the skyscrapers and mushrooms would cover Times Square...At that time much of Manhattan felt depopulated even in daylight. Aside from the high-intensity blocks of Midtown and the financial district, the place seemed to be inhabited principally by slouchers and loungers, loose-joints vendors and teenage hustlers, panhandlers and sitespecific drunks, persons whose fleabags put them out on the street at eight and only permitted reentry at six” (2003, online).

The Broader Case

Sante’s New York “gained a reputation for being a crime-ridden relic of history” (Wikipedia 2005, online), and in the mid 1970s was forced to reorganize its finances by the state of New York. As the city attempted to iron out its budgetary woes, crime continued to escalate, fueled by rampant police corruption and an ever-increasing drug trade (Bratton 1996). When crack hit the streets in the early 1980s, it looked as if the city might go under completely (Bratton 1996). Murder rates were on the rise, culminating “in 1990, [a year in which] there were 2,246 homicides in New York City... an historic all-time high for New York City — 2,246 murders in one city, in one year” (Bratton 1996, online). Residents had begun to leave the city, and those who stayed felt unsafe, as demonstrated by the decrease in subway ridership. According to William J. Bratton, who assumed the position of New York City Chief of the Transit Police in 1990, “the impact of societal breakdown was most evident in the city’s subway system” (1996, online).

The city’s subways were filthy and dangerous. More than 5,000 homeless people, many recently released from mental institutions as part of a widespread deinstitutionalization movement, called the subways their home in 1990 (Bratton 1996). More than 178 of the homeless people were killed that year as they “fell onto the trains, or were hit by trains, or were murdered in the system” (Bratton 1996, online), and numerous criminal acts committed by homeless people made the public wary of them. Bratton created a plan that drew fire from homeless rights activists. In addition to instituting patrols and dummy patrols of the subways, Bratton suggested evicting many homeless people from the subway in the bitterly cold winter of 1991 (Faison 1991). Opponents charged that the homeless people had nowhere else to go. According to Doug Lasdon, executive director of the Legal Action Center for
the Homeless, “The problem is that most of these people don’t want to go to the shelters” (Faison 1991). Lasdon maintained that the subways should remain an option for the housing of the homeless, but Bratton ultimately won out, mobilizing units of officers who patrolled and evicted arguably dangerous homeless people (Faison 1991, 1). During Bratton’s 21-month tenure, serious crime in the subway system dropped more than 15%1 (Steinberg 1992). In the years that followed, subway crime continued to diminish and ridership subsequently increased. Nevertheless, there was an ever-present fear of subway violence looming under the surface.

Whenever it seemed that public transportation was safe, another random, horrific crime would grace the front page of the local newspapers. Despite the thousands of police officers that had been added to the force in the early 1990s under the auspices of the “Safe Streets” program, and the precipitous drop in violent crime rates throughout the city throughout the early and mid-1990s, there were still enough random, violent incidents to occasion fear amongst city residents (Bratton 1996). Take the case of Karen Biolsi, for example. The 38-year-old Long Island resident was punched in the face by a homeless man who had multiple prior arrests just minutes after she exited her train in Pennsylvania Station (Kennedy 1995). The assault took place three days after a federal judge had ruled that Amtrak could not eject people from its trains simply because they were homeless (Kennedy 1995). Or consider the case of Edward Johnson, a 42-year-old father on his way home to cook dinner for his 15-year-old daughter. He was stabbed to death by Zenaida Bennett, a 28-year-old woman who had been arrested just one week prior on weapons charges (Cooper 1997). Or two eerily similar attacks in 1999 in which homeless people pushed subway riders onto the tracks – the first victim was killed, the second’s legs were severed (Bernstein 1999a; The New York Times 1999a). Amidst all of the news coverage of homeless people attacking innocent bystanders, a simple fact was overlooked – homeless people were more often the targets of violence than the perpetrators.

In June of 1996, a homeless man clubbed another homeless man to death before assaulting a tourist (Stout 1996). In September of 1998, a homeless man was stabbed in Central Park and later died from his wounds (The New York Times 1998a). Initially, police charged another homeless man with the murder, but released him when his

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1 “In 1991, 15,572 felonies were reported in the subways, a decline of 2,752 from 1990, when 18,324 felonies were reported” (Steinberg, 1992, B1).
alibi checked out (The New York Times 1998b). On July 22, 1998, a homeless woman, the child of Holocaust survivors, who had grown up in Brooklyn and exhibited serious mental illness most of her life, was bludgeoned to death in Central Park (Bernstein 1999b). She had been overheard screaming for help, but no one called the police (Bernstein 1999b). Despite the fact that homeless people were the victims in all of these stories, much of the New York City public had grown increasingly frightened of the homeless population since the early 1990s.

Prompted by these fears, Mayor Rudolph Giuliani instituted sweeping reforms. After driving the homeless out of the subways and into the shelters, mayor Giuliani issued a policy requiring the homeless to earn their shelter stay via work (Whyte 1999; The New York Times 1999b). This was followed by a decree declaring that homeless people were not permitted to sleep on the sidewalks, prompted by a midtown attack in which a business man was hit by a homeless man with a brick (Whyte 1999). New York City’s The Daily News fueled the fire with a front-page editorial entitled “Get the violent crazies off our streets” (Whyte 1998). Homeless people were no longer allowed in the subways, on the sidewalks, or even in shelters if they refused to work. This prompted the still-circulating rumor that mayor Giuliani had all of the homeless people rounded up and bussed to Florida. In an increasingly-political debate, Hillary Clinton (during her Senate campaign) opposed mayor Giuliani’s policies, claiming that he was “criminalizing the homeless” (The New York Times 1999c). In the midst of all of the political posturing, homeless rights advocates were trying to invoke sympathy for New York’s homeless residents, many of whom were war veterans or mentally ill with no where to go.

In the early 1990s, the plight of the homeless was being compounded by the scourge of HIV/AIDS. Housing Works, a non-profit HIV/AIDS activist organization in New York estimated that in 1990 there were “fewer than 350 units of supportive housing for the estimated 30,000 homeless New Yorkers with AIDS and HIV” and that “AIDS was fast becoming a leading cause of homelessness in New York City, with thousands living on the streets or in dangerous, squalid, and disease-ridden shelters, with no access to healthcare or social services” (Housing Works: History 2002, online).

The face of homelessness was more than just HIV/AIDS victims, however. Homeless people came from all walks of life and included domestic violence victims (National Public Radio 2001), and thousands of children (Kaufman 2003). Advocates for the homeless population in New York stressed the importance of educating the public about homelessness and instituting governmental reforms aimed at assisting New
York City's homeless population, rather than punishing them. Activists such as Brother Vishwas Bartolomeu Dias, who had worked at a homeless shelter on the Bowery for more than a decade, directly confronted the prevailing ideology of dangerous homeless people, stating, “Only the gullible swallow the myth that homeless pose a threat to public safety” (2004, A-22). But New York City’s effort to control the homeless population had just begun.

When Michael Bloomberg took office as mayor in the winter of 2002, he furthered former mayor Giuliani’s crackdown on the homeless by instituting new police procedures that increased the number of homeless people arrested. During one month in the fall of 2002, “the police arrested 580 homeless people, compared with 288 over the same period the previous year, on charges from sleeping in public to assault” (Gonzales 2004, B-l). This “spike in arrests of homeless people in the fall of 2002 led advocates and civil libertarians to sue the Bloomberg administration, contending that the police were singling out the homeless” (Gonzales 2004, B-1). And then the events of the night of November 22, 2002 occurred, and this simmering feud between homeless activists and the New York City government began to boil over publicly.

Narrower Cases (leading to role play)²

In the wee hours of the night, 39-year-old New York City police officer Jesus Demarco and his partner were summoned to the Zeckendorf parking garage just east of Union Square (14th street) to talk to a man sleeping under a “no trespassing sign” (Baker 2002; Gonzales 2004; Wilson 2004; Worth 2004). Upon arriving, Demarco found the man already handcuffed by his superior, sergeant Michael Havel (Wilson 2004). Havel indicated that the man had refused to go to a homeless shelter and told Demarco “he’s yours,” indicating that Demarco should arrest him (Wilson 2004, B-3). Demarco, who had been a member of the New York Police Department (NYPD) since 1994 (Worth 2003) had transferred to the Homeless Outreach Unit several years before to assist people in this situation, and often befriended the homeless people on his beat, quietly offering them food and clothing (Gonzales 2004). He talked to the man, and told his supervisor that he refused to arrest him (Gonzales 2004).

² Some names and biographical information have been modified.
Role Play Ground Rules!

Before you move on, let's set some ground rules. You will reach a page called STOP! The next four pages after STOP are roles and the fifth page describes a scenario. You and three others should work together. You should read your role. You should then read the scenario. DO NOT read the other roles. For the discussion phase of this case, you will take the role of (1) Demarco, (2) Demarco's partner (3) Sgt. Havel, (4) the homeless man. In the discussion phase, you will represent your role in a discussion with three other people. You should choose your role now. Then you should read only your role and turn to the page labeled “START!”
STOP!
ROLE
Officer Jesus Demarco

You are a nearly 10-year veteran of the New York Police Department (NYPD). You are a religious man, a father of four, and a police officer who has been highly recognized for his diligent service to the department. You object to arresting homeless people, although you have arrested homeless people in the past. Your lieutenant recently promised you he would put you on a new detail that would not require you to arrest homeless people, but so far he has not come through. Today, you need to get home on time so that your wife can go to work, you do not have a babysitter. If you do make an arrest, you will inevitably work late.

You do not want to arrest this homeless man, despite the fact that he was found sleeping on private property and resisted your supervisor's efforts to assist him in finding a shelter. You believe he has come around and is willing to go to a shelter.
ROLE
Officer Demarco's partner

You are officer Demarco's partner. You and he have an excellent working relationship. You are newer to the force (having only served three years), and though you appreciate his desire to assist homeless people, you are also concerned with protecting New Yorkers, not to mention your job. Your loyalties must ultimately lie with your commanding officer, though this situation presents a gray area. Since the command was not directed to you, you are not required to act. Should you speak up for your partner's rights? Should you attempt to talk your partner into following orders?
ROLE
Sergeant Havel

You are officer Demarco's supervisor. You are generally highly regarded by the officers whom you supervise. You have been given direct orders by your commanding officers to clean up the streets and make them safe for tourists and residents. Union Square is a particularly busy area and is also in close proximity to several New York University dormitories. One of the high profile subway murders by a homeless person was not far from the site of this incident. You offered the homeless man assistance but he was not willing to take it. Now you have been disobeyed by one of your officers.
ROLE
Ralph James, Homeless Man

You are a 44-year-old Trinidadian native living homeless in New York City. You have slept in this garage before, and probably will again. You were offered a chance to go to a homeless shelter by Sergeant Havel. You refused. You are perfectly happy sleeping in the parking garage. Your experience with shelters has not been good. Shelters are often dirty, crowded, and violent.
START!
Scenario to discuss and enact

Sergeant Havel has just told Officer Demarco that Mr. James "is yours." This is police jargon, for "I've cuffed him, now you arrest him." Officer Demarco, must decide what to do next, and then everyone else must follow on with appropriate decisions.

This discussion will work best as role playing. Don't say what you will do, take the voice of your role and "do" it.
STOP!

Do not read beyond here until after you have had your discussion!
What really happened?

Officer Demarco believed that the man would now go to a homeless shelter, but Sergeant Havel viewed Demarco's actions as a direct violation of orders. "He's yours," meant "he's your collar, deal with it," jargon that most police officers would interpret to mean that an arrest was in order (Wilson 2004, 3). Demarco had just ignored the command of his supervising officer. This was grounds for termination.

Almost immediately, officer Demarco's story was front page news all over the state of New York. New York City's friend to the homeless was summarily suspended from the department without pay pending a hearing (Baker 2002; The New York Times 2004). An NYPD spokesman summed up the charges by explaining that officers cannot "pick and choose" which orders to follow (New York Post 2003, 19). Officer Demarco returned to work one month later, a few days before Christmas (The New York Times 2002). As the department slowly assembled evidence for officer Demarco's trial, the issue was tried publicly in the court of public opinion. Issues of internal NYPD affairs such as arrest quotas and treatment of minority officers became fodder for cocktail conversations and would ultimately be a central tenet in the defense's opening statement at officer Demarco's trial (Brick 2004). Housing Works collected $3,000 for officer Demarco's defense, local clergy spoke out on his behalf, and Lieutenant Eric Adams of the "100 Blacks in Law Enforcement Who Care" group publicly supported officer Demarco (The New York Times 2002). The fervor over officer Demarco's trial continued, though it took more than two years for the trial to be convened.

For many, the case seemed open and shut - a veteran officer with a conscience was being bullied by a police force known for its harsh policies toward the homeless. As the days unfolded, however, the issue became much thornier, as Demarco's character was put on trial. Officer Demarco, who maintained that his religious principles guided his actions, stated repeatedly during his testimony "my God is in control" to explain his decisions (The New York Times 2004; Wilson 2004). However, officer Demarco's superiors painted self interest as the motivation for his refusal to arrest the homeless man that night. At trial officer Demarco admitted that he had arrested homeless people on numerous occasions in the past (The New York Times 2002; The New York Times 2004), and that he would arrest them again in the future (Gonzalez 2004; Wilson 2004). Additionally, under cross examination, officer Demarco admitted that "he was offended that night that a lieutenant who had
promised to put him on a new detail seemed to have broken his promise" (Wilson 2004, 3). Finally, officer Demarco admitted that he had needed to get home early because his wife had to leave for work and they had no babysitter for their four children (Wilson 2004). Officer Demarco testified that whenever he made an arrest, he invariably had to wait for the prosecutor to take a statement for up to 4-6 hours after the arrest, which inevitably kept him at work late (Wilson 2004). So, was officer Demarco a martyr for the homeless, or simply a cop who couldn't be bothered to make an arrest in the wee hours of the morning?

Ultimately, officer Demarco was placed on probation for one year. His supporters felt that he had been railroaded and that his sacrifices demonstrated glaring faults in the New York Police Department. On the other side of the debate, people argued that NYPD officers had a duty to protect the public and obey orders. The Post-Standard (Syracuse, NY) summed up the controversy: "There are two ways of looking at this case: He was insubordinate in defying an order from a supervisor. He is being prosecuted for showing compassion. Take your pick" (2004, A-6). And what of the homeless man that officer Demarco had risked his badge for that night? The man, 44-year-old Trinidadian native Ralph James, was found sleeping in the same garage a week after officer Demarco's fateful decision not to arrest him (New York Post 2002). "Asked what he would say to the cop who put his job on the line for him, the Trinidad native replied curtly: 'zero'" (New York Post 2002, 9).
Discussion Questions

Democratic Accountability

1. Is it possible for the public to monitor what bureaucrats, such as police officers, are doing each day?

2. What are the pros and cons of allowing the public to directly monitor the activities of bureaucrats?

3. Of the two models of civil servants described above (i.e. the patronage system v. the civil service system), which seems more efficient? Effective? Fair? Democratic?

4. If the day-to-day operations of the government have to be carried out by people who are not elected, what system would you design to ensure that the will of the people is actually carried out by the government?

Moral Accountability

1. Does society have contractual obligations to its weakest members to improve their lives rather than force them to conform?

2. Are people who choose not to participate in society actively, such as homeless people, still members of society, or are they renegades from whom society must simply be protected?

3. Must public employees simply obey directives fixed by their democratically elected higher authorities (see Herman Finer above)?

4. When should public employees refer to their own moral principles instead of the law?

5. Is the principle underlying Article 8 of the Nuremburg trial as important today as it was in 1945?

6. Should public employees do what they are told even when they have qualms against so doing, as long as the action is legal? If not, what should they do?

7. Does it matter who benefits when public employees perform their functions?
Case Study

1. Is there a conflict between Officer Demarco's accountability to his moral conscience and his democratic accountability?

2. What promises has Officer Demarco made (explicitly or implicitly) by becoming a member of the police force? Has he promised to protect the garage? Has he promised to carry out whatever laws are passed even if he does not agree with them?

3. Should Sergeant Havel consider Officer Demarco's moral stance in deciding how to proceed?

4. Immanuel Kant says that the typical criminal is denied his dignity when he is not arrested and punished, which is the only way to recognize that he is a rational being who is an end-in-himself. Does Mr. James' apparent disregard for his own dignity matter from a Kantian perspective?

5. Is Mr. James an equal member of society with the owner(s) of the garage? If so, how do we balance their competing needs, desires, and rights?

6. Is Sergeant Havel "using" Officer Demarco's partner by making him a witness to the events?

7. What should the New York Police Department have done about this situation?

Broad Accountability Issue

The broader case introduces another matter of accountability: this is the "accountability" of political decision makers and senior administrators for public policies that adversely affect the well being of relatively helpless members of society. While not all homeless people are helpless, a large proportion of the homeless are mentally ill and a large proportion comprises substance abusers, some are both. If public policy disregards the well being of these members of society and leaves them exposed to the risk of untreated mental disease, ostracism, violence, and death, one might ask whether there is an accountability issue regarding the behavior of the decision makers who have constructed this reality.
Questions of Broad Accountability

1. Who is responsible for the well-being of homeless people, especially when they refuse "help"?

2. Do public decision makers have a responsibility to look beyond the expressed popular will and fight for unpopular causes and segments of the population?

3. How should administrators, especially those at lower ranks respond to decisions that may not comport with their moral judgments?
References (Introduction/Commentary):


References (Case)


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