

Moving Beyond the Noble Cause Paradigm: Providing a Unified Theory of Ethics for 21st Century American Policing

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Abstract

With the recent emphasis on fighting terrorism added to the traditional police mandate, the police in America face an unprecedented demand on their responsiveness, competence and clarity of purpose. Although the past thirty years have seen great strides in the improvement of police professionalism in terms of technology, community-orientation and the reduction of police corruption, a serious re-examination of purpose is long overdue.

Street officers and police executives alike are expected to reconcile the many, and often times diametrically opposed, demands placed upon them by their constituents. The state of the literature abounds with research of police culture, value-based hiring, police ethics and community policing yet it still proves insufficient to adequately provide the fundamental basis by which police can reasonably meet these demands. The “noble cause” of crime fighting emerges as the self-defined role of the police against a backdrop of a hodgepodge of rules and expectations that too often conflict with one another. What is lacking is an inarguable set of principles against which police can weigh alternatives in matters both small and large; principles that unify police ethics.

This set of principles is found in the Constitution of the United States and its Bill of Rights and is given clarification and relevance in the Federalist Papers. These are not moral rules or a litany of “dos” and “don’ts” contrived by well-intentioned police administrators but rather the unifying force by which ethical reasoning can flourish. They form the basis of our government and the powers that are entrusted to our public servants and, in particular, the police.

By accepting and applying these constitutional principles, police in America can gain a unity of ethical purpose and truly enhance their effectiveness and competence while avoiding the pitfalls of cynicism, scandal and the alienation of the public they serve.

Introduction

As the transition into the new millennium proceeds, policing in America is faced with challenges unprecedented in their scope and complexity. Perhaps the most immediate challenge in the post 9-11 era is the need to work collaboratively with other local, state and federal police agencies, as well as non-police agencies, to protect citizens against terrorist attacks. As part of this charge, police must plan and prepare for the response to chemical, biological, radiological, nuclear and explosive attacks. The need to share and utilize counter-terrorism information and resources is no longer the exclusive purview of federal agencies alone. Police agencies, whether accepting or not, are inextricably linked partners with fire,

public health, and other public agencies responsible for the development of a comprehensive and cooperative strategy to deal with terrorism.¹ These partnerships include the health, medical and emergency management communities, among others, and present a new set of responsibilities and expectations of the police.

Daunting as these new responsibilities may be, the traditional and more widely recognized roles of law enforcement, service provision and order maintenance continue to challenge police in their efforts to meet the many and diverse demands placed upon them. Equipped with the most recent technology and strategies for community-oriented policing, today's police are in the midst of a transition to a state of policing in which many of the past practices and priorities will become antiquated and rendered ineffective. This state of policing is given historical perspective and is described by Kelling and Moore (1988) as The Community Problem-Solving Era.² Cultural and ethnic diversity from demographic shifts, increasingly complex interrelationships with other federal, state and local agencies, and the growing public intolerance to incompetence, scandal and parochialism by police require serious reexamination of the core principals by which police conduct their business. Doing so is simply a matter of providing police with the necessary ethical principals to guide their decisions and help avoid the pitfalls of poor or uninformed decisions. On the other hand, failure

¹ Melissa Reuland and Heather J. Davies, "Preparing for and Responding to Bioterrorism" Protecting Your Community from Terrorism: The Strategies for Local Law Enforcement Series, Police Executive Research Forum vol. 3 (2004): 1.

² G. L. Kelling and M. H. Moore, *The Evolving Strategy of Policing* (Washington, D.C.: U.S. Department of Justice, 1988), 99.

to recognize and embrace the need for changing the fundamental precepts by which they operate, police risk losing legitimacy in the eyes of the public. With this legitimacy goes any hope of realizing the benefits of community-oriented policing. Given the extraordinarily dedicated and honorable men and women who comprise the vast majority of American police, such a loss would be a travesty.

The Extraordinary Powers of the Police

Among all state and local public officials, it is the authority of the police that is the primary focus of citizen concern, literature on public ethics and constitutional case law. This should come as no surprise as it is the police who wield the coercive power of government and intrude upon the liberty of individuals. Any person who has been stopped and detained for a minor traffic offense has experienced this. “The police...have responsibilities that require assertive, authoritarian rather than negotiating, democratic skills: they are expected to stop. Detain, sometimes seize, and if necessary injure or kill citizens when they are engaged in wrongful behavior.”³

In Federalist No. 51, James Madison observes, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controuls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to controul the governed: and in the

³ John P. Crank and Michael A. Caldero, *Police Ethics: The Corruption of the Noble Cause* (Cincinnati: Anderson Publishing Co., 2000), 15.

next place, oblige it to controul itself”⁴ Madison goes on to prescribe checks on government offices (and consequently public officials) to necessarily limit the authority of each in the interest of individual rights. This passage, written long before the conception of modern policing, provides a fundamental concept, or principal, by which all public officials are bound in their exercise of the power and authority given to them. In terms of the obligation for the police (government) to control itself, the police are accountable, arguably, to the public and are subject to the checks of the judiciary and, through laws, the legislature. More importantly for the subject of police ethics, all state and local sworn office-holders including the police are obliged to control themselves through their public oaths of office as required in Article VI, Section III, of the Constitution of the United States. The public oath of office, too often regarded as ceremonial, is the grounding mechanism by which the police are obligated to uphold the Constitution of the United States and the principals upon which it is based.

Unique among public officials, society confers to the police the authority, and indeed the obligatory duty, to protect and safeguard individual and collective rights and liberties. As such, the police have also been given, and publicly accept through their oath of office, the authority and obligatory duty to use the limits of those individual rights and liberties to enforce laws, gather evidence, and use force when necessary to seize persons and property in the pursuit of the protection and security of society. No other public office in America has such a profound personal impact on individuals. Edwin Delattre in his seminal work *Character*

⁴ Alexander Hamilton, James Madison and John Hay, *The Federalist Papers* (New York: Bantam Books, 1982), 262.

and Cops describes this delicate balance as, "...an experiment in whether policing can promote security and serve liberty for the sake of what (James) Madison identified as the ultimate purpose of government."⁵

Undeniably, society has entrusted the police with an enormous degree of authority and responsibility. As the most visible agents of the coercive power of government, the police are at the crux of constitutional guarantees as well as basic human rights. How the police go about exercising this authority and meeting this responsibility matters greatly to society. To do so in compliance with the Constitution of the United States, which they've sworn to uphold, requires competence and clarity of purpose with a clear understanding of the ethical implications of the decisions they make and the work they do. Furthermore, it requires a clear understanding of the various expectations placed upon them and how these expectations relate to this principal.

The Role of Police: What Does Society Expect?

So, what are the expectations of the police and who holds them? This question continues to intrigue practitioners and academicians alike and is not likely to be answered to the satisfaction of all those with an interest in it. Nevertheless, a common recurring theme held by society is that the police should, in some general sense, engage in preventing crime, investigating crime and apprehending offenders, maintaining order, and providing services.⁶ Little serious debate involves these commonly held general expectations. It is when

⁵ Edwin J. Delattre, *Character and Cops* (Washington, D.C.: AEI Press, 1996), 17.

⁶ Samuel Walker and Charles M. Katz, *The Police in America: An Introduction* (New York: McGraw-Hill, 2005), 5.

these general expectations are distilled down to the actual activities, priorities and decisions made by police that common agreement ends and disagreement flourishes.

Citizens expect different things from their police and, at times, those expectations can be in diametric opposition to each other. However, in a general sense citizens expect the police to protect them and to help them when needed. They expect the police to be fair and to perform their duties in such a way as to avoid excessive force, corruption, rudeness, authoritarianism and political influence.⁷

On the other hand, the police themselves often perceive their role quite differently from citizens and have expectations not shared with the public they serve. An example of this is the degree of emphasis that the police themselves place on the law enforcement role at the exclusion of their many other roles. Undoubtedly, society expects that law enforcement will be a police priority. They see this role as a means by which a reasonable degree of safety and security is achieved. It is an important and critical role and one that the American police do very well. But it is not the only role. In fact it is one in which police devote relatively little of their time and effort. Approximately ninety percent of a police officers time is spent in the social service function⁸ of providing services and maintaining order. The police more often find themselves directing traffic, assisting the mentally ill, interacting with community members, finding lost

⁷ Larry K. Gaines, John L. Worrall, Mittie D. Southerland and John E. Angell, *Police Administration* (New York: McGraw-Hill, 2003), 58.

⁸ Henry M. Wroblewski and Karen M. Hess, *Introduction to Law Enforcement and Criminal Justice* (Belmont, California: Thomson-Wadsworth, 2003), 105.

children, administering first aid, providing security at events, refereeing disputes, handling noise complaints as well as handling a seemingly endless litany of non-criminal matters. Contrary to this reality, “the police perpetuate the *crime-fighter* image themselves.”⁹ This self-defined image is deeply rooted in police values and culture and is continually reinforced by the basic and advanced training available to officers. The very use of the widely accepted reference of “law enforcement officer” for police is indicative of this misplaced understanding of the role of police in America. This should be of grave concern to practitioners and academicians alike as the decisions made by police, the priorities they set and their definition of success (or failure) is dependent largely, if not solely, upon how they perceive their role.

Meeting Expectations: How Are They Doing?

“Compared to their counterparts in many other nations, American police officers are much more civilianized and heavily restrained by law, constitutional limitations, community expectations and traditions in their exercise of authority and power.”¹⁰ As such, the American public has higher expectations of the police. “American readers, television watchers and moviegoers consume a steady diet of stories depicting police brutality, inefficiency, stupidity, corruption, dereliction of duty, favoritism and discrimination of unpopular groups.”¹¹ Such a portrayal distorts the public’s perception of the true state of policing in America.

⁹ Walker, 6.

¹⁰ Howard S. Cohen and Michael Feldberg, *Power and Restraint: The Moral Dimension of Police Work* (New York: Praeger, 1991), xii.

¹¹ Cohen and Feldberg, xi.

Nevertheless, a critical perusal of local newspapers and news broadcasts would suggest that the police are not doing very well. Although serious incidents of corruption catch the attention of the media and are subjects of much attention, as they should, these are not the focus of this paper. Well-publicized incidents of police corruption such as Rodney King, Malice Green, Amadou Diallo, and the Los Angeles Police Department's Rampart Division are extreme and rare examples of willful criminal conduct. These, along with other less-publicized or undisclosed incidents of serious criminal activity by the police are, in this author's opinion, hardly subjects of serious debate regarding their ethical reasoning or application of moral principals. These are felony crimes committed by criminals not likely to be swayed nor influenced by principled ethical discussion.

On the other hand, a much wider spectrum of honorable and dedicated police officers stand to benefit from a discussion of common moral dilemmas and the need for a universally shared set of moral principles. These are the ones at risk of falling prey to the lack of a commonly accepted "moral compass." A more accurate representation of poor decision making, confused priorities, ethical failure and police misconduct, if disclosed at all, is more likely to be found in local newscasts, buried in the local newspapers or through careful observation of the controversies surrounding the police.

Since 2000, the U.S. Department of Justice, Civil Rights Division, Special Litigation Section has entered into consent decrees with the following police departments:¹² These decrees arose, not from one abhorrent incident of police

¹² United States Department of Justice, Civil Rights Division, Special Litigation Section, "Settlements and Court Decisions".

corruption, but rather a long-term and pervasive pattern of unethical behavior and practices.

The Virgin Islands Police Department

The Beacon (New York) Police Department

The Alabaster (Alabama)

The Bakersfield (California) Police Department

The Cleveland (Ohio) Police Department

The Prince Georges County (Maryland) Police Department

The Villa Rica (Georgia) Police Department

The Portland (Maine) Police Department

The Schenectady (New York) Police Department

The Miami (Florida) Police Department

The Village of Mount Prospect (Illinois) Police Department

The Detroit (Michigan) Police Department

The Buffalo (New York) Police Department

The Cincinnati (Ohio) Police Department

The Los Angeles (California) Police Department

These consent decrees are a result of misconduct and civil rights violations that have persisted for years in the agencies and were part of a generally accepted, or at least tolerated, system of conducting police business. The misconduct giving rise to these decrees were, for a large part, committed by well-intentioned officers and permitted by supervisory and command staff ill-prepared to deal with the

ethical dilemmas they faced. The fact that these departments were investigated, determined culpable and subsequently entered into such agreements with the federal government strongly suggests organization-wide misconduct and not isolate incidents involving a small number of rogue cops. The tragedy of these decrees is that the ethical and moral failures precipitating them and the consequent harm done to the large groups of citizens could have been avoided.

The most avoidable and by far, the most prominent type of police misconduct does not involve serious criminal activity or systemic violations of civil rights. Rather they occur from the ineptitude or scandalous activities of one or a few officers. These types of activities represent the unprincipled behavior that tends to alienate large portions of the community or causes its members to question the legitimacy of the police. Many times the public is unaware of them until some thing or event causes their disclosure and some degree of scandal ensues. Incidents of drunkenness, racism, sexual misconduct or harassment and unreflective enforcement of laws are examples. These are the moral failures of police, many times the chief or a high ranking officer, and are the cause of many demotions, firings and “sudden” resignations. They undermine the public’s confidence in the police.

The frequency with which one observes the above examples indicates that there is a serious and persistent problem in American policing. For all the good that is done in terms of lives saved and cases solved and despite the countless acts of bravery and courage displayed by many officers, something is askew. The nature of the problem suggests the misplacement of values and moral reckoning

(ethics) used by police in making many of their decisions. Not only the decisions that affect many or are of grave consequence, but also those everyday routine decisions that comprise their decisions, when taken aggregately, determine the success or failure of the police as individuals, the police agencies, and the police as a vocation. They lack, or are unaware of, an existing set of unified principles, or, a Unified Theory of Police Ethics. Before identifying the causes of the problems described thus far, it would be helpful to explore, even in the most cursory sense, the values and morals held by police and the conflicts which exist between them.

Values, Morals and Noble Causes

Whenever people face recurring problems, cultural patterns evolve to provide a ready-made solution. This does not mean that it is the best or only solution, merely that the culture develops a set of standard patterns for dealing with common problems...The more frequently society relies upon its ready-made solutions, the more deeply entrenched the culture. (Brinkerhoff & White, 1991: 58)¹³

This quotation is as applicable to police culture as any other group of humans sharing a commonality of interest. The “standard patterns” of decisions made by police are valued for their utility in providing “ready-made solutions” to the problems at hand. What seems to work gets used. These patterns reflect the values of the police. The choice of specific patterns over others that may be

¹³ Stan Stojkovic, David Kalinich and John Klofas, *Criminal Justice Organizations: Administration and Management* (Belmont, California: Thomson-Wadsworth, 2003), 216.

available and their desirable end results (ready-made solutions) reflect the moral rules police use to make their decisions (choices). Although frequently used interchangeably, the distinction between values and morals is an important one and necessary to the understanding of the fundamental role that principles play in ethical decision making. “A value is a belief about the relative importance or desirability of a particular goal, status or quality.”¹⁴ Because the desired end, or value, can be good and morally right, or, it can be reprehensible and morally wrong, values are in essence amoral. History provides us with countless examples of individuals and indeed entire political systems, which have subscribed to values of both types. As values leave the “rightness” or “wrongness” of a particular decision unresolved they often prove to be insufficient guides to ethical decision-making. However, it is recognized that values play an important part of the decisions police make and that many commonly held values are indeed good and morally right by any reckoning. Nevertheless, in the final analysis, values fall short as moral guides and are too often obstacles to ethical decision-making. A popular notion today is the process of “values clarification.” Delattre, quoting Lawrence W. Sherman, describes this process. “Such methods are intended to enable people to discover what they already consider good and right, not to ask what we ought to consider good and right. They reduce the inquiry to questions of what individuals happen to like or want- a far different matter from what is worthy of our aspiration and respect.

¹⁴ Rickey D. Lashley, *Policework: The Need for Noble Character* (Westport, Connecticut: Praeger, 1995), 4.

Thus, by discovering that they enjoy seeing discrimination against a certain race or sex or religion, they “clarify” their values.”¹⁵

Morals, on the other hand, are the rules of right and wrong used in judging and deciding outcomes and the in choosing the means to achieve them. They are central to the decisions police make. Lashley describes the importance of morals to police:

Whether on the level of the individual police officer or the organization, values and moral judgments are intrinsic to the police process and cannot be separated from the decisions and policies of law enforcement and its professionals. Morality is, therefore, inescapably part of a police officer’s role. It imposes on the process of law enforcement and cannot be discounted or ignored.”¹⁶

Most decisions are routine and involve no particularly compelling moral question. They’re the “ready-made solutions” that have worked in the past, seem to meet with general approval and involve no conflict between prevailing moral rules. Ethical questions surrounding these decisions, if they exist at all, are elusive. Although no moral question may be raised, a decision, or a true and tested past practice, may very well violate a more fundamental principle yet go unchallenged. Virtually all significant changes in police decision-making paradigms have their genesis in wide acceptance yet later became necessary when the morality of them came into question. U.S. Supreme Court Decisions, Civil

¹⁵ Delattre, 150.

¹⁶ Lashley, 5.

Rights legislation, and the reorientation of police priorities consistent with community-oriented policing are noted examples. Some of the most perfunctory decisions made by officers, and indeed supervisory and command staff, may, at their core, have ethical implications involving fundamental principles. It is within this realm of decision-making that the police stand to make vast improvements in their relationship with a skeptical public. Consider the following:

It is traffic offense to park a car within a certain distance of a fire hydrant. When the offense occurs at a fire hydrant next to a high-rise dormitory on a college campus, the gravity of the offense is clear. The safety of the many students living in that building is compromised by the obstruction to fire trucks responding to a fire in that building should one occur. Issuing a citation and towing the vehicle is perfectly defensible, if not preferred course of action in such a circumstance. A tow truck is summoned and within few minutes, the police dispatcher advises the requesting officer that a tow truck is en route.

While the officer is awaiting the tow truck the owner of the car returns and wishes to remove the car and go on his way. It is an unofficial practice of the police in this particular agency to refuse the owner permission to remove a vehicle once a tow truck has been summoned and is in the process of responding. Under these circumstances, the owner is required to pay a partial fee to the tow operator to cover the expense of his response and, quite

frankly, to ensure prompt service from the operator in the future.

The operator is entitled to such a fee pursuant to the towing contract he has entered into with the police department. If the owner agrees to pay the fee, he may remove his car and be on his way. If he does not, the car is towed and the owner is required to proceed through the established channels of obtaining a release of the car.

This situation seems rather straightforward with no obvious moral conflicts. The law provides for the authority of the officer to tow the car, the operator is entitled to the partial fee, and the officer is under no legal obligation to permit the owner to remove the car without paying the partial fee. In this scenario, the owner reluctantly pays the fee and leaves with his vehicle. Later, the owner files a complaint with the department alleging that his freedom to leave was violated and that the officer had no right to hold his property “ransom” against his will. Although the officer’s decision precipitating the complaint is found to be proper, the issues involved are discussed in further depth between the officer and his supervisor. The officer asserts that he had the legal right and obligatory duty to remove the car because of the violation and the safety threat it posed. The requirement that the fee be paid is merely ensuring that the tow operator received that which he is entitled. Furthermore, the officer asserts that he could have legally refused the owner permission to remove the vehicle under any circumstances since he had, in essence, seized the vehicle, was in the process of the vehicle inventory, and was consequently responsible for the vehicle. The

discussion could have easily ended at this point. However, the supervisor, being careful not to unduly criticize the legal actions of the officer, pursued further discussion.

The supervisor asked why the officer decided to tow the car. The answer was obvious. It was in violation and presented a safety risk. But the owner wanted to move the vehicle, which would remove the risk. The removal would have alleviated the legitimate law enforcement purpose for towing the vehicle. The officer contended that the violator knowingly violated the law and got what he deserved for doing so. This point was short-lived as it was agreed that it is not the role of the police to punish violators but rather to enforce the law. Punishment is the responsibility of the courts. It was further agreed upon that the owner was not detained since he was free to leave at any time, albeit without his car. The supervisor then questioned whether or not it was an appropriate role for the officer to act as an agent of the tow operator in the collection of the partial fee. The officer argued that he and his fellow officers depend on prompt responses from tow operators and to compromise this was detrimental to the public. Finally, both reached consensus and decided that the unofficial practice was not in the interest of safety and that the collection of the fee could be pursued by the operator through whatever means he chooses but not through the coercive authority granted to the police.

This scenario illustrates the subtle manner in which moral decisions and the ethical reasoning used to reach them can apply to the simplest and seemingly benign decisions made by the police. The ultimate decision regarding the practice

described is irrelevant. A decision either way could be justified both legally and ethically. Legitimate arguments supporting each could stand on their own merits. The process by which the decision was reached and the moral implications considered and weighed, on the other hand, illustrates the importance that the role ethics can play in the most routine decisions. Furthermore, the issues raised during the discussion serves to caution against unreflective acceptance of existing practices. Even the small decisions merit some degree of principled consideration when police exercise their authority or otherwise decide matters impacting individual citizens.

Less frequently, decisions must be made among competing and conflicting moral rules. These are the hard decisions, which challenge the morality and ethical reasoning ability, and courage, of the officers making them. Consider the following moral rules that many police would accept as “right” and in keeping with their commonly held values yet can be in direct conflict with each other:

- It is wrong to lie. v. It is permissible, and at times necessary, to lie and deceive suspects.
- It is wrong to use, or permit the use, of excessive force on persons. v. It is wrong to report another officer for using excessive force
- All persons and groups are entitled to equitable police protection v. The use of the police to provide protection to groups espousing racial hatred is not proper

- Police should arrest offenders v. Some arrests are cheap and have no impact on public order
- Using trickery as an investigatory method is permissible v. It is inherently unfair to trick children and the mentally retarded
- Police should protect the public v. Police should protect the Constitutional Rights of dangerous criminals
- Police should be steadfast in curtailing illegal drug trafficking v. It is necessary to tolerate illegal drug trafficking by delaying the arrest of the trafficker in order to protect the identity of an informant while the informant gathers evidence against other traffickers

Each of the moral rules outlined above are legitimate and morally right when considered unilaterally. However, when juxtaposed to another morally right alternative, they conflict. Deciding between two morally right alternatives, or morally wrong alternatives when the negative consequences are stressed, when each is exclusive of the other demands the adherence to a more fundamental set of principles. Making such a decision merely by justifying the furtherance of some perceived, or contrived, noble cause avoids the fundament principle(s) involved. Avoiding the decision altogether avoids both. Delattre elaborates on the use of the Noble Cause to justify difficult moral decisions.

What does taint us as moral agents is an arrogant appraisal of ourselves that concludes, “I am entirely justified in my means because my end was noble,” or a cowardly response to demands, such as, “I’m damned if I do and damned if I don’t, so it makes no difference.” Giving everything we have when the issue is hardest does not taint us, but giving less suggests avoidable ignorance, weakness, or incompetence. Such a flattering self-appraisals and failure of nerve are the two forms of noble cause corruption.¹⁷

Relying upon the letter of the law and the authority it invests in the police is similarly insufficient to resolve such ethical dilemmas. The exercise of police discretion and the expectation that police authority be exercised judiciously and in the public interest demands deeper ethical reasoning. The resolution of conflicting moral rules, and indeed many decisions of a routine nature demand the consideration and application of inarguable and fundamental principles.

The Principles and Their Genesis

These four Principles, which have been expounded upon by Cohen and Howard (1991), have their genesis in Constitution of the United States, the Bill of Rights (Amendments I through X of The United States Constitution), and The Federalist Papers No. 10 and No. 51. By the very essence of their centrality to the inception and formation of our government, they are inarguable as Principles to guide police decision-makers through moral dilemmas as well as the

¹⁷ Delattre, 211.

routine problems facing them day-to-day. Together they provide a Unified Theory of Ethics for American Policing.

I. The Principle of Fair Access¹⁸

The first principle requires that all persons be afforded the protections and services of the police. Federalist #10 describes the damaging effect that factions, or, “citizens bound by some common impulse of passion, or of the interest, adverse to the rights of other citizens,” have on individuals and their rights. To decide that certain persons or groups do not merit the full attention, efforts, services and protection offered to others by the police violates this principle. “All citizens have the right to call on the police when their security is at risk, because (from a social contract perspective) all citizens have agreed to transfer to government their right to self-protection-the right to enforce their rights-in exchange for greater security.”¹⁹ Fearing the potential abuses and oppression of a populist (majority) rule of democracy, the framers of the Constitution realized the need for a Bill of Rights to protect individuals. As such, the first ten Amendments to the Constitution were enacted to protect against such abuses. In essence, they protect the minority from the majority.

Considering the Principle of Fair Access in the context of the Bill of Rights has two important and utilitarian applications for police decision-making. The first is that of the dual purpose police serve referred to earlier in this paper. Ethical resolution of the dual purpose of protecting rights and liberties

¹⁸ Cohen and Feldberg, 39.

¹⁹ Cohen and Feldberg, 44.

while, at the same time using the limits of those against individuals in order to protect society is given direction and guidance by this Principle.

More frequently, this Principle has application to less critical decisions regarding the distribution of services and the foci of police order maintenance and enforcement strategies. The enforcement of minor “nuisance” offenses against target groups, racial profiling, disproportionate investigative resources devoted to similar criminal cases, and decisions regarding the assignment of patrol officers to beats are examples of the more prevalent matters impacting Fair Access.

II. The Principle of Public Trust

This concept has its genesis in John Locke’s social contract theory, Article VI, Section III, of the Constitution of the United States, and in early experiments in democratic forms of government. The public, having surrendered certain powers to their government, trust in agents of that government to use that power in their interest and for the good of the public. Hillary Robinette, a retired FBI agent and noted expert in police ethics and misconduct, explains the concept of Public Trust.

“People in the social contract give up some rights-for example, the right to enforce their rights, thus police work becomes a public trust. The police officer takes an oath to act in the public trust and not to abuse the wide authority society gives. The police hold authority for and in the name of the public they

serve and the use of the badge, gun or baton for any reason other than defensive purposes is clearly forbidden by the standard. This standard calls for truth-telling in reporting and testimony and, often, it requires a high level of moral courage on the part of the police, especially when they must give evidence against other police.”²⁰

This Principle is the most fundamental and historically grounded of the four. By accepting this Principle, one acknowledges that it transcends the noble cause and value-based decision-making to a level defining the *raison d’etre* of the police. It requires that the actions police take, the power exercised, and the decisions made must be done in the best interest of the public. Withstanding public scrutiny is the ultimate test of this Principle. No other legitimate purpose, noble or otherwise, supersedes the Public Trust.

III. The Principle of Objectivity²¹

This Principle requires that the police set aside their own personal preferences, priorities and prejudices when performing their official duties. Asserting that men, and most certainly police, are not angels, James Madison in Federalist #51 recognizes that there is a propensity for public officials to use their power of office to their personal benefit at the expense of the public good. To further one’s personal agenda or preference or to pursue personal benefit under the color of office violates this Principle. Beyond the obvious issue of self-

²⁰ Hillary M. Robinette, “Police, Ethics, and Society” *The World and I*, no. 3 (1992)

²¹ Cohen and Feldberg, 60.

interest, Cohen and Feldberg²² identify over-involvement through “excessive aspiration to do good” and its antithesis, cynicism due to “indifference” as examples of violations of this Principle.

IV. The Principle of Safety and Security²³

The Principle of Safety and Security has its genesis, and is closely aligned with the Principle of Public Trust. As a separate and distinct Principle, better clarity and understanding is achieved regarding the appropriate use of police powers. “This is a standard that requires the police to develop and exercise good judgment, and particularly relates to the use of such practices as arrest, stopping and questioning or searching citizens and other coercive means in the enforcement of laws.”²⁴ Adherence to this Principle requires that there be a reasonable purpose for taking enforcement action and that it must, in some reasonable way, have an impact of the safety and security of citizens. Arresting because one can is insufficient reason to meet this Principle. “Cheap” arrests, citations written based on attitude, or failure to arrest when doing so promotes safety are violations of this Principle.

Conclusion

Policing in America is at a critical juncture which will determine its future as a powerful public institution. The demands and expectations of the police today are unprecedented in their scope and complexity. On a daily basis officers as well as command staff are required to make decisions of enormous

²² Cohen and Feldberg, 62-63.

²³ Cohen and Feldberg, 53.

²⁴ Cohen and Feldberg, 53.

social consequence. At some point in time, these decisions touch the personal lives of most Americans and have a profound impact on many of them. Inherent in these decisions are ethical processes requiring an acute sense of complex moral rules and the extraordinary courage to follow them. These are standards rarely, if ever, found in other public offices.

The police are faced with social, political and legal challenges for which they are ill-prepared to meet. Reliance upon noble causes and well-worn excuses for failure no longer suffice. The search for remedies to police ineptitude, misconduct and corruption and the seemingly endless quest to explain them needs closure. The solution to this problem is in the recognition, acceptance and application of the Principles espoused in this paper. They are simple in concept but admittedly difficult by the nature of the changes required to broadly apply them. They have existed longer than the police themselves and provide the bedrock upon which innovations can flourish. These Principles must become an integral part of police culture and they must serve as the ideal toward which police strive and by which they are judged if the police in America are to meet the challenges of the 21st Century.

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