Cyndi Banks

CRIMINAL JUSTICE ETHICS

Theory and Practice • Fifth Edition

Criminal Justice Ethics

Fifth Edition

For James

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Theory and Practice

Fifth Edition

Cyndi Banks
Capilano University

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PREFACE

This is the fifth edition of this text, which explores the articulation between criminal justice and ethics and presents ethical theories and applies them to elements of the criminal justice system. This edition maintains the critical perspective adopted in earlier editions, questioning and analyzing ethical issues as they apply within the criminal justice system and proposing modes of resolving such issues.

It is important to establish the diverse ethical dilemmas occurring in the criminal justice system. Chapters 1 through 11 reveal that professionals working in the system may have to confront a variety of ethical issues and ethical dilemmas. These chapters first provide the context of the diverse situations professionals face within the differing aspects of the system that create the need for an understanding of ethical decision-making. Accordingly, the format of this book is intentionally inverted to ground students in the practical issues prior to wrestling with ethical theory and the application of those theories to ethical issues occurring within the system. Those instructors who prefer to focus on philosophical theory prior to examining the ethical issues that arise in the system are encouraged to reverse the order of assigning chapters of the book to students to accomplish their pedagogical goals.

This new edition is the outcome of a thorough review of the fourth edition and includes much new material that assists in contextualizing and identifying ethical issues. It takes account of scholarship and studies published since the production of the fourth edition. This edition is thoroughly contemporary and continues to be an accessible and scholarly source of knowledge on ethics and criminal justice.

Following the positive responses received from reviewers and colleagues to the fourth edition, a number of changes have been made to the organization of the material. As well, references have been added throughout to link different chapters where similar material is discussed—for example, the issues of mass imprisonment and racial bias in policing. Data and tables have been updated and new case studies added.

The changes in this edition also include the following:

- Chapter 3 on police ethics contains updated discussions of police use of force, political action on police use of force, body cameras, "stop and frisk," excessive force, arrest-related deaths, and the ethics of the use of informants; this topic is also linked to discussions of police militarism, police use of Tasers, stress in policing, and police interactions with persons suffering from mental illness. This chapter recognizes and takes account of contemporary debates concerning the issue of police discretion, especially in relation to use of force.
- Chapter 5 on judges, lawyers, and ethics adds a discussion of the use of social media for judges. Many case studies in the book have been either updated or added to, while some remain as classic examples of issues sustained over time, particularly within legal ethics.
- Chapters 7 and 8 on ethics in corrections contain a revised discussion of the incarceration explosion, again reflecting current debates about the merits of a policy of incapacitation and the overall costs of that policy. In addition, the volume highlights arguments about prison overcrowding and examines the ethics of solitary confinement. The topic of private prisons is examined, and new material has been added to discussions about rape in prison, transgender prisoners in the United States and in other countries, and private probation and the poor. New topics include the right to privacy, the disenfranchisement of inmates, and the treatment of opioid abuse in correctional institutions.
- "The Ethics of Criminal Justice Policy Making" (Chapter 9) offers an expanded discussion of mass imprisonment polices and recent policy initiatives to reduce or end mass imprisonment. In addition to addressing the issue of elderly inmates and mass incarceration as "the new Jim Crow," the chapter looks at policy related to sexual predators, Internet sexual solicitation, and the recently explosive issue of the criminalization of immigration—"crimmigration." The section on capital punishment reviews recent debates, litigation, and practice concerning the lethal injection procedure in capital cases.

- Chapter 11, "Media Ethics and Criminal Justice," contains a new section focusing on comic books as popular culture and a form of mass media. It explores how characters in comic books (as later transformed into screen characters) convey representations of crime, justice, and punishment. In addition, issues of media responses to sexting and a discussion of media and police have been added, as well as alleged violence on college campuses and so-called binge-drinking, both framed by the media as threats to students and as moral panics, are critically examined.

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PART I

THE INTERACTION BETWEEN ETHICS AND THE CRIMINAL JUSTICE SYSTEM

1

THE IMPORTANCE OF ETHICS IN CRIMINAL JUSTICE

> To live ethically is to think about things beyond one's own interests. When I think ethically I become just one being, with needs and desires of my own, certainly, but living among others who also have needs and desires.
>
> —Peter Singer (1995: 174)

THE MEANING OF ETHICS

Ethics, also known as moral philosophy, is a branch of philosophy concerned with the study of questions of right and wrong and how we ought to live. Ethics involves making moral judgments about what is right or wrong, good or bad. Right and wrong are qualities or moral judgments we assign to actions and conduct. Within the study of ethics, there are three branches: **metaethics**, concerned with methods, language, logical structure, and the reasoning used in the interpretation of ethical terms, for example, what exactly the term *good* means; **normative ethics**, concerned with ways of behaving and standards of conduct; and **applied ethics**, concerned with solving practical moral problems as they arise, particularly in the professions, such as medicine and law.

Ethics provides us with a way to make moral choices when we are uncertain about what to do in a situation involving moral issues. In the process of everyday life, moral rules are desirable—not because they express absolute truth, but because they are generally reliable guides for normal circumstances (Singer 1995: 175). The focus of this book is on normative and applied ethics, particularly the exploration and analysis of ethical dilemmas and conflict situations that arise within the criminal justice system.

THE VALUE OF ETHICS

Do we need to study ethics? One view is that if we need to make a decision about a dilemma that confronts us, we can do so without any knowledge of ethics. From this perspective, ethics is too abstract and theoretical and is not related to the practical world. Another view is that we need a system of rules and principles to help guide us in making difficult decisions when moral issues arise. If we cannot draw on an ethical framework, we have to rely on emotion, instinct, and personal values, and these cannot supply an adequate answer to moral dilemmas. Among the reasons commonly given for studying ethics are the following:

- Ethical considerations are central to decisions involving discretion, force, and due process that require people to make enlightened moral judgments.
- Knowledge of ethics enables a person to question and analyze assumptions that are typically not questioned in areas of activity like business and politics. Questioning the criminal justice system should also be encouraged. This includes raising issues regarding such topics as the relationship between crime and justice, the role of law enforcement, the place of punishment, the limits of punishment, the authority of the state, the proper function of prisons, fairness in the workplace through creating a safe working environment, and equal opportunity.
- The study of ethics increases sensitivity to issues of right and wrong and the right way to conduct oneself, and aids in identifying acts that have a moral content.

- Only through studying ethics is it possible to define unethical behavior. A full understanding of ethical behavior demonstrates that it includes not only "bad" or "evil" acts but also inaction that allows "bad" or "evil" to occur.
- It is important to have the capacity to point to moral reasoning in justifying behavior, and the study of ethics develops that capacity.
- It is crucial that ethical decisions are made, and the study of ethics enables the development of tools that enhance ethical decision-making.
- Training in critical ethics helps to develop analytical skills and reasoning abilities needed to understand the practical as well as the theoretical aspects of the criminal justice system (Felkenes 1987).
- Understanding ethics enables an appreciation of the complexities of acts that involve ethical issues and dilemmas.
- Without knowledge of ethics, criminal justice professionals may be naive about moral issues occurring within the criminal justice system.
- The study of ethics helps criminal justice professionals quickly recognize the ethical consequences of various actions and the moral principles involved.
- Within the criminal justice system, ethics is germane to most management and policy decisions relating to punishment and is the rationale used in making these decisions, such as whether to rehabilitate, deter, or impose just deserts. Examples of such management and policy issues include whether it is ethical to force someone to attend a treatment program against his or her will and, given that the system of punishment is based on an assumption of rehabilitation, whether it is ethical to send an offender to jail and not offer treatment programs to help him or her change behavior to regain freedom (Felkenes 1987).
- The criminal justice system comprises professionals who exercise power and authority over others and who in some cases are authorized to use force and physical coercion against them. The law, or accepted standards of behavior, imposes ethical rules and responsibilities on these professionals. It follows that professionals in the criminal justice system must be aware of ethical standards in carrying out their functions. Ethics is crucial in decisions involving discretion, force, and due process because criminal justice professionals can be tempted to abuse their powers (Felkenes 1987).

In this book, the value of the study of ethics by criminal justice professionals will become apparent as the criminal justice system is analyzed to reveal how decision-makers sometimes fail to make the "right" choices or deliberately act unethically in carrying out their functions. It will become clear that studying and applying ethics is a prerequisite for any competent criminal justice professional. As an introduction to the kinds of ethical issues that can arise in criminal justice, two reports of criminal cases are presented in Case Studies 1.1 and 1.2.

In Case Study 1.1, it was not until three years after Archie was beaten to death that reports concluded that some officers had behaved brutally. Despite the extreme circumstances of this case, no police officers were prosecuted or sanctioned administratively, largely due to the police "code of silence," a part of the institutional culture of the police. However, it is significant that the officers transporting Archie did not enter the hospital but instead took him to the police station. Archie is supposed to have slipped and fallen at the police station, and by the time he did receive medical treatment, he had been severely beaten to such an extent that he died as a result of what was termed "a homicide by police intervention." Furthermore, Archie's family was compensated by the city in an out-of-court settlement. Ethical questions concerning police use of force, possible police perjury, and a police cover-up of illegal acts ultimately surfaced. These and other ethical issues in policing will be addressed in Chapter 3.

In the following report of a death row inmate released from prison after 19 years of incarceration, the state admitted there was a lack of evidence linking him to the crime for which he was convicted. His lawyers alleged prosecutorial misconduct, pointing out that the prosecution withheld critical eyewitness evidence from the defense that contradicted the main evidence used to convict him originally. This case illustrates the need for prosecutors to adhere to ethical standards of conduct, a subject that will be more fully explored in Chapter 5.

CASE STUDY 1.1

POLICE BRUTALITY IN NEW ORLEANS

In March 1990, Adolph Archie, an African American, was injured in an incident in which police claimed he shot and killed a white police officer during a downtown shootout. Archie later died under circumstances that are still far from clear. Transporting Archie to the hospital after the shooting took police 12 minutes, but the distance was only seven blocks. When he arrived, about 100 officers were present, having heard about the death of their fellow officer. While Archie was being taken to the hospital, police radios were used to utter death threats against him, and those accompanying him to the hospital believed there might be a lynching if he were taken there. According to their account, they decided not to take him to that hospital, and instead of taking him to a different hospital, they took him to the police station where the deceased officer had worked. Here, officers reported there was a scuffle involving Archie and he fell, causing bloodstains on the floor. However, the sergeant at the police station denied seeing either Archie or the officers and did not ask about the bloodstains but simply ordered that they be cleaned up.

When Archie finally got medical treatment, it was clear that he had been severely beaten, but no officers were held responsible. At the hospital, X-rays of Archie's injuries disappeared, and staff members were unable to record details of Archie's name and background. He was injected with iodine, to which he was alleged to be allergic, for a medical test, and some concluded that this was the cause of his death. However, other accounts by pathologists reported that he had been beaten to death. Ultimately, his death was reported as a "homicide by police intervention" by the coroner. Within hours of his death, Police Superintendent Warren Woodfork cleared all officers involved in the incident of any violations of conduct. Reportedly, the rookie officer who arrested Archie was denounced by fellow officers for not killing Archie on the spot.

Subsequently, in May 1993 a report by the advisory committee on human relations found that some officers had brutalized Archie and that the department had failed to hold them accountable. The committee noted the existence of a police code of silence that was supported at the highest levels within the department.

Source: Human Rights Watch 1998.

CASE STUDY 1.2

POLICE BRUTALITY DURING KATRINA

On September 4, 2005, a week after Hurricane Katrina struck New Orleans, police shot six civilians who were crossing the Danziger Bridge, killing two and seriously wounding the others. It emerged that a cover-up of what happened there was organized by a high-ranking police officer. While police initially claimed that some of the civilians had been shooting at them, no guns were found at the scene, and the victims denied this version of events. A state grand jury charged seven officers with murder, but the case could not proceed for technical reasons. Then, in August 2011, Lt. Michael Lohman admitted to organizing a cover-up of the incident because he recognized it was a "bad shoot." On August 5, 2011, a federal jury convicted five former or current officers on charges resulting from the cover-up, and they were sentenced in 2012 to prison terms ranging from 6 to 65 years (Bureau and Kunzelman 2012).

In concealing the truth of the incident, retired sergeant Arthur Kaufman and the four other officers planted a gun, fabricated witnesses' statements, and falsified reports after they had shot at unarmed, defenseless civilians who were simply trying to cross the bridge in search of food and help. One officer did not dispute having shot an unarmed man in the back.

The prosecution had contended that Kaufman took a gun from his home weeks after the shootings and turned it in as evidence, trying to pass it off as a gun belonging to Lance Madison, the brother of one of the deceased, Ronald Madison, a 40-year-old mentally disabled man. Police arrested Lance Madison on attempted murder charges, but a grand jury later cleared him.

Source: "A Bad Shoot" 2010.

NORMATIVE ETHICS

Normative ethics is fundamental to ethical decision-making in the criminal justice system. A central notion in normative ethics is that one's conduct must take into account moral issues; that is, one should act morally, using reason to decide the proper way of conducting oneself. Effectively, ethics, in prescribing certain standards of conduct, gives us a way of making choices in situations where we are unsure how to act.

What are these standards of conduct, and how do we decide what is right and wrong? Some argue that because standards of conduct and ways of doing things differ from society to society, there can never be one single standard for all people everywhere and that we must make ethical decisions based on each situation. This approach to setting standards of conduct is called **ethical relativism**. Others argue that one set of ethical standards applies across all societies and people have an obligation to do what is "known to be right"; that is, they argue in favor of **ethical absolutism**.

ETHICAL RELATIVISM

Ethical relativists argue that what is morally right or wrong may vary in a fundamental way from person to person or from culture to culture. In other words, as Robert Arrington (1983) argues, we cannot simply say that a moral judgment is true for all purposes, persons, and cultures—we can assert only that it is true for a particular person or social group. Relativism does not mean that we cannot criticize people of other cultures on moral grounds, but it does mean that when we say that a person in another culture did wrong or acted immorally, we must judge that person by the standards of that culture and not by our own (Cook 1999: 35).

CASE STUDY 1.3

DEATH ROW INMATE SET FREE

On February 28, 2005, an Ohio judge dismissed all charges against Derrick Jamison in relation to the death of a bartender in Cincinnati. Prosecutors had elected not to retry him in the case. He had been convicted and sentenced to death in 1985 based in part on the testimony of a codefendant, Charles Howell, whose own sentence had been reduced for testifying against Jamison.

The prosecution decision not to retry him followed a finding that the prosecutor had withheld statements that would have contradicted the testimony of Charles Howell, would have undermined the prosecution's theory about the victim's death, and would have suggested other possible suspects for the murder. Two federal courts ruled that the prosecution's actions had the effect of denying Jamison a fair trial. The victim, Gary Mitchell, was murdered on August 1, 1984, at the Central Bar in downtown Cincinnati. Customers found him almost dead, having received blunt-force trauma to the head. He died several days later. Several eyewitnesses gave different accounts of persons entering and leaving the bar, and a shoe print was found on top of the bar. Jamison was arrested two months later after robbing a restaurant. He was wearing the gym shoes that had produced the impression on top of the bar. A few months after Jamison's arrest, Charles Howell was also arrested as an accomplice in the murder, and he informed police that he and Jamison had robbed the bar and that Jamison had attacked the bartender.

Before trial, the prosecution indicated that it was unaware of any exculpatory evidence, but in fact such evidence had been excluded from the homicide book prepared by the Cincinnati Police Department. This is the book that is passed to the prosecutor for trial. Ultimately, Jamison argued that he did not receive 35 documents from the prosecution prior to trial and that the practice of the police department and the prosecutor's office had the effect of suppressing evidence material to his defense. Jamison's conviction rested principally on the testimony of Charles Howell, the shoe print found on the bar, and the testimony of a witness who positively identified Jamison as the perpetrator. She had identified him at the trial but in the police offense report had indicated that she could not make that identification. Obviously, the offense report could have been used to challenge her identification of Jamison at the trial.

Source: Death Penalty Information Center 2007.

In other words, there are objective moral standards as long as judgments about right and wrong are made relatively.

Robert Holmes (1998: 163–164) discusses three forms of ethical relativism: ethical relativism, cultural relativism, and extreme or individual relativism. *Ethical relativists* agree that there is moral right and wrong but contend that what is right for one person or culture may be wrong for another.

Cultural relativism is a form of relativism that claims that moral beliefs and practices vary from culture to culture. It is important to understand, however, that cultural relativists do not argue that certain acts or practices are right or wrong in a particular culture. They simply note the differences.

Extreme or *individual relativism* takes the position that moral beliefs and practices vary from person to person. In contrast to ethical absolutists (see the later section "Ethical Absolutism"), ethical relativists draw attention to factors such as moral diversity among different cultures, the varying state of morals in a particular society at different historical periods, and the fact that at any given time there is a high degree of moral disagreement within a particular culture. One example is the moral disagreement in the United States concerning abortion (Bunting 1996: 73).

CULTURAL RELATIVISM

The proponents of *cultural relativism* argue that every society has a different moral code explaining what acts are permitted or not permitted. They argue that we cannot judge one moral code as being superior to another because there is no objective standard to apply to make such a judgment. In other words, the moral code that we in the United States subscribe to is not special. Consequently, it is simply one moral code among many. If the moral code of a particular society determines that a certain act is right, then the act is right within that society. Accordingly, it is not for us to judge other people's conduct in other societies. We should be tolerant and avoid being judgmental.

At first, the notion of cultural relativism seems to reflect the way many of us see the world; for example, we believe in tolerance and understanding, and we recognize diversity in society. However, there are a number of objections to cultural relativism that show it cannot be viewed as a viable approach to ethical issues, including the following:

- There is the problem of identifying what constitutes a culture or society. For example, it is easy to imagine an isolated tribe in a far-off country as a separate culture with its own ethical standards and rules, but what of American culture? Although we may think of American culture as homogeneous, it is very diverse because many languages are spoken within it, and the various ethnic groups that make up American society may well maintain their own ethical standards of conduct, which differ from those of the dominant culture.
- If this difficulty in identifying a culture or society exists, then it is easy to see that we may end up in a position where our own individual values, family background, education, or religion can determine ethical standards. In other words, cultural relativism can become transformed into a matter of individual ethics (individual relativism), where each person can claim that his or her moral standards are those that should apply to society and others.
- Cultural relativists are not able to explain which ethical standards should apply when cultures overlap. Cultures are no longer totally isolated from each other, and it becomes increasingly difficult to avoid interacting with other cultures. This raises the problem of deciding whose ethical standards are to apply.
- In all societies, standards of conduct change over time, and the cultural relativist is faced with the problem of acknowledging these changes while arguing that morality is relative to a culture. However, which values in which historical period should apply? On the face of it, the values applying in all periods have equal validity. For the cultural relativist, therefore, there is no overall standard to apply.
- A major problem with cultural relativism is that it operates as moral isolationism. This means that arguing that everything is relative tends to suggest this must be the end of the issue and all debate must stop. It also suggests, in the view of Carol Gilligan (in Hinman 1998: 55), an attitude of "couldn't care less," because when we say that all things are relative, we are really saying we don't care about them. Therefore, cultural relativism fails to provide us with answers to issues and in fact tends to close off debate altogether.

Cultural relativism is closely associated with anthropology, and some even refer to it as an anthropological theory. Some philosophers argue that cultural relativism is in fact a methodology that requires that they adopt a nonjudgmental framework toward the culture they study, and therefore, as a methodological practice only, cultural relativism does not involve moral relativism (Cook 1999: Chap. 7; Ladd 1973: 2). However, other philosophers contend that cultural relativism contains elements of both methodology and a value system (Womack 1995: 48).

ETHICAL ABSOLUTISM

This view argues that there exists an eternal and unchanging moral law, the same for all people, at all times and places (Holmes 1998: 165). The absolutist believes that certain moral principles apply to all people everywhere and that people can recognize or discover these principles and be guided by them in deciding the nature of their own conduct and in judging the conduct of others. Also, the ethical absolutist, being already aware of these principles, believes himself or herself qualified to pass judgment on anyone (Cook 1999: 7). Absolutism is considered valid regardless of thought and feeling. This position is the opposite of relativism in that there can be no consideration of other perspectives because, it is argued, there is only one "true" perspective.

An example of an absolutist position arises in arguments about capital punishment. As Jonathan Glover (1999: 245) points out, two absolutist views prevail on this question. One is emphatic that the murderer must be given the punishment he or she "deserves," which is death, and the other can see no justification for "judicial murder" under any circumstances. An absolutist would not change his or her view with respect to capital punishment, no matter what arguments were put forward by either side. Among the questions that arise from adopting an absolutist position are, "If there are universally accepted values, what are they?" and "If universally accepted values exist, do they remain constant or do they change over time?"

If there is disagreement about moral issues between societies, then how should we act? On one hand, the ethical relativist will say we should not judge and that there is no single truth that applies across societies and cultures. On the other hand, the moral absolutist will argue that one single truth must be applied across all societies and cultures regardless of beliefs and values. In favor of ethical relativism, it can be said that it is correct in warning us against assuming that our ethical standards represent some absolute standard, because many, although not all, of our ethical standards apply only to our own society. Also, ethical relativism teaches us the value of an open mind, of tolerance, and of understanding. One way of resolving this disagreement about relative and absolute ethical standards is the notion of *ethical pluralism.*

ETHICAL PLURALISM

Ethical pluralism argues that in most situations, there are many truths rather than one single truth. Lawrence Hinman (1998: 67–68) contends that ethical pluralism allows us to adopt four principles to resolve conflicts between differing ethical standards. These principles are the following.

The Principle of Understanding

This requires that we fully understand and appreciate the meaning of ethical standards found in another culture from the perspective of that culture. For example, before making any judgment about an issue such as female circumcision, we should possess a full understanding of the history and cultural context of this practice as it applies in the many societies in which it is performed. We should recognize that a Western response to an issue of this nature is shaped and constructed by our own cultural values.

The Principle of Tolerance

This means accepting the existence of differences as opposed to denying any diversity in ethical standards. This principle therefore rules out an approach based on ethical absolutism.

The Principle of Standing Up Against Evil

Hinman argues that understanding and tolerance ought not to lead us to a position where "anything goes," as the ethical relativists argue, but rather, we should be prepared to stand up against what he calls "egregious moral wrongdoing," especially when such conduct affects the powerless and the marginalized of the world. An example of this kind of moral wrongdoing would be the crime of genocide, which is internationally recognized as a crime against humanity.

The Principle of Fallibility

This principle argues in favor of our own fallibility. We should always be prepared to learn from other cultures and to have our own moral shortcomings exposed. Most countries have prohibited capital punishment for children (see Chapter 9). However, until 2005[1] in the United States, the Supreme Court declared that states had the right to execute those as young as 16 years of age. The principle of fallibility would argue that the United States and its Court at that time did not choose the correct ethical position on the issue of capital punishment for juveniles and that it should be prepared to listen to the reasoning and experience of the rest of the world, which has outlawed capital punishment for juveniles.

Other philosophers seem to agree with an approach that emphasizes ethical pluralism, which Robert Kane (1996: 14–16) calls "openness." He stresses that a pluralistic point of view only suggests the possibility that other views are correct; it does not demonstrate that they are in fact correct. Pluralism challenges absolute values but does not rule out their possibility. We can be open and tolerant to other points of view while still believing that some are better than others, even while we believe that only one is correct. Openness does not imply indifference; it only indicates recognition that we do not possess the truth and are willing to learn from others and to search for truths beyond our own limited point of view. Kane advocates an approach that assumes an attitude of openness to other points of view to allow others to prove themselves right or wrong.

John Cook (1999: 169) suggests an approach that sets aside an argument based on tolerance and instead advocates taking cases one by one and examining them in light of the details of each particular case. He therefore suggests that the question of whether we ought to interfere with the practices of another culture is not a philosophical question but a practical, moral one. The examination of a particular case means understanding the nature of the problem, what considerations would be relevant to a solution, and what a "right solution" would be. This seems to parallel Hinman's point that there must be a full understanding of the cultural context of a particular case before any attempt is made to resolve conflicts among differing ethical standards.

RELIGION AND ETHICAL STANDARDS

As discussed earlier, when societies apply normative ethics, they are prescribing ethical standards for conduct. What is the origin of these standards? Many people believe that ethical standards and religion are connected, and that ethical standards are derived from religious principles and tenets. For example, many hospitals in the United States have ethics committees that typically include representatives of the clergy as members, and when ethical issues are discussed in the media, religious representatives are often invited to comment on them. People assume, therefore, that religious representatives who interpret religion are also able to define ethical standards of conduct. The divine command theory expresses this view and argues that what is morally right is what God directs, and conversely, what is morally wrong is what God prohibits.

In a famous discussion, the Greek philosopher Socrates took up the question of whether divine command theory was concerned with the power of the gods to command or the "rightness" of the gods' commands. He asked the question, "Is conduct right because the gods command it or do the gods command it because it is right?" The arguments about this question are considered in the following sections.

Conduct Is Right Because God Commands It

According to this perspective, the only issue is the simple matter of God requiring a particular kind of conduct. If God commands it, that is sufficient and the conduct is right regardless of what reason tells us. However, this raises the question of how we discover what constitutes God's will. If we argue that it is contained in religious texts, should we look to only one text—for example, the Bible; if not, how do we discover God's will from the multitude of religious texts that exist in the many religions on earth? It is also difficult to determine the exact nature of God's will. If we assume it is to be found from reading the Bible, what if we cannot find any statements there about a particular ethical issue, and what do we do if there are conflicting statements about God's will regarding a particular ethical issue? Also, if we argue that conduct is right because God commands it, this means we are giving God the power to issue whatever commands He wishes. This in turn means that God can give a different command from the one He has already given, so His commands can be considered arbitrary. However, the notion that God's commands are arbitrary is inconsistent with the belief that God is all-powerful and all-knowing. It is obvious that this argument raises a number of complex and difficult issues.

God Commands Right Conduct Because It Is Right

This is the second option offered by Socrates, and it means that God's commands are not arbitrary but emanate from the application of His wisdom in knowing what is best for us. However, there is a problem, because in accepting the rightness of God's commands, we must also accept that there is some standard of right and wrong outside God's will that must exist prior to and independent of God's command. In the final analysis, therefore, we must either accept that God's commands are arbitrary or recognize that His commands have reference to a standard of rightness and wrongness independent of His will. Those who take the position that ethical standards are set by God are therefore obliged to accept arguments that tend to conflict with their fundamental religious belief in God's goodness and omnipotence. The divine command theory raises so many complex and difficult issues that it leads to the conclusion that setting ethical standards by reference only to religion is highly problematic.

ETHICS AND NATURAL LAW

In looking at the origin of ethics, some ask whether natural law is the origin. The idea of natural law is that underneath the diversity of human cultures and beliefs about what is right and wrong, we can identify some factors that are common to our human nature. The notion of natural law was a favorite of ancient thinkers like Plato and Aristotle, who sought to identify universal traits of human nature with the aim of finding common goals or ends that would bring human fulfillment or happiness (Kane 1996: 46). This pattern of looking for natural laws continued into the medieval and later periods of Western culture, especially through the thinking of the 13th-century philosopher Thomas Aquinas (Haakonssen 2010: 76).

Natural laws are said to be laws that govern human behavior and define the right way to live. They are said to be "natural" because they are thought of as incorporating human nature and the goals that humans naturally seek. In effect, natural law represents a search for moral absolutes that define what is "normal" and "natural." For example, despite more progressive and inclusive modern attitudes toward homosexuality, some still argue that practicing homosexuality is "unnatural" because it is contrary to human nature. In modern ethics and law, natural law "refers to the more general idea that there is a 'higher' norm or law that is not the work of human action" (Haakonssen 2010: 76). In this sense, therefore, natural law is differentiated from positive law, such as the enactment of legislation.

Lloyd Steffen (2012), in an argument grounded in elements of natural law, proposes to bridge the gap between ethical theory and lived experience. Arguing that it often seems that ethical theories are far removed from people's actual experiences, Steffen suggests an ethical framework that will assist those faced with ethical issues and dilemmas to resolve them by applying what philosophers term "practical reason"—a form of reasoning that we apply when faced with decisions about how to live and act. Steffen points to the difficulties of Kantian and consequentialist theories (see Chapters 12 and 13), especially in relation to Kant's conception of ethical absolutism where, for example, a person may be faced with a clash of duties such as protecting an innocent life or telling an untruth; the choice, according to ethical absolutism, must always be never to lie, whatever may be the consequences. As Steffen points out, this does not square well with general notions about lying that overlook so-called white lies where no harm is caused by the act of lying.

Steffen argues that consequentialist ethical theory too has its problems because it concerns itself solely with calculating the maximum utility of an act (see Chapter 13 for a critique of consequentialism) and therefore does not condemn any lying that yields the greatest good for the greatest number (Steffen 2012: 8). In other words, while the Kantian will adhere to principles, the consequentialist operates in the belief that nothing is intrinsically wrong or immoral. Steffen asks whether we should simply accept the shortcomings in these theories and apply them regardless or take a different approach that he terms a *hybrid*—"one that takes account of duty and principles yet steers clear of absolutism and that attends to consequences but avoids relativism."

Steffen's hybrid approach to ethical decision-making is based in natural law which, as noted previously, essentially claims that human beings as rational persons are naturally endowed with the capacity for reason and are therefore capable of identifying goodness. According to Steffen, the hybrid ethic is expressed most cogently in the structures and frameworks associated with "just war" thinking (see Chapter 10), itself a tradition found in natural law thinking. Essentially, the just war tradition argues that war, in certain circumstances, can promote the common good and serve the interests of justice. A war can therefore be said to be "just" if it satisfies certain criteria. Behind this just war framework, Steffen discerns an ethic that can guide action—namely, that "ordinarily force ought not to be used to settle conflicts" (2012: 44). This ethic, he suggests, as a moral presumption or "common agreement" is applicable to war or to any use of force. It is, however, liable to be displaced by exceptions represented by the criteria that traditionally permit a just war, examples of which are acting in self-defense and protecting innocent civilians (p. 46). It is easy to see how this ethical approach can be applied to police use of force—that commonly, force ought not to be employed to settle conflicts and then only when necessary, applying exceptions using the graduated scale of responses such as those set out in Chapter 3.

Steffen (2012: 86) acknowledges that this hybrid ethic is not found in ethics textbooks and could be regarded as a more complex form of rule consequentialism (sometimes called rule utilitarianism; see Chapter 13). Other objections to Steffen's perspective center on its abandonment of ethical absolutism—for example, in the case of abortion where some take an absolutist approach and would argue no criteria could trump the moral argument against it, as well as to his reading of natural law. The same objections could be taken to his position on lying and cheating where he sees room for "just lying" and "just cheating" (pp. 101, 107). In spite of these challenges, Steffen's perspective for "doing ethics" resonates because it blends theory and practice and provides a clearly expressed and practical method of resolving ethical issues.

ETHICS AND LAW

Is law a source of ethical standards, and what is the relationship between law and ethics? It is important to understand that ethics and law are distinct categories. By law, we generally mean legislation, statutes, and regulations made by states and by the federal government on a host of subjects for the public good and public welfare. Laws do not, and are not intended to, incorporate ethical principles or values, but sometimes ethical standards will be reflected in laws. For example, both morality and the law prohibit the act of murdering another human being. Similarly, legislation regulating the legal profession or other professions may give legal effect to certain professional codes of conduct. It is possible to argue, therefore, that codes of conduct regulating legal practice have the force of law. However, on a whole range of subjects from business practice to driving a vehicle, laws do not set ethical standards.

It is important to appreciate, therefore, that ethical standards are not necessarily written down in the form of laws or other rules, but represent the collective experience of a society as it regulates the behavior of those who make up that society. The fact that an ethical standard is not repeated or copied in a law does not affect the validity of that ethical standard. However, where ethical standards are incorporated into law—such as a law governing the right to choose an abortion—although people must obey the law, they are not necessarily required to hold the same ethical beliefs expounded by that law.

Sometimes laws can conflict with ethical standards. For example, laws promoting apartheid in South Africa and slavery in the United States were both clearly in violation of ethical standards relating to the dignity of the person but were nevertheless lawful and were expected to be obeyed when in force. From time to time, a mass movement develops against a particular law or set of laws, reflecting a section of public opinion that claims that the law is wrong and should be repealed. Where there is a deliberate disregard of the law by those protesting its wrongness, the result can be acts of civil disobedience. For example, in India during the British colonial period, Gandhi advocated and practiced civil disobedience to British laws because he and his followers wanted an end to the colonization of their country. Similarly, in the United States, civil rights workers and activists deliberately flouted laws that were racially discriminatory and were prepared to be arrested and jailed in pursuit of equal treatment for all citizens.

ETHICAL DILEMMAS

Ethical questions and issues arise for all people, not just for professionals in the criminal justice system or professors who teach ethics or members of the clergy. We may all have to make decisions involving ethical issues in our daily and professional lives because, as we have noted, ethical issues are concerned with questions of right and wrong and how we ought to act. For example, we might apply for a job, and to be considered for the position, we may have to decide whether to hide the fact that we were fired from a previous job for misconduct. In other words, we have to decide whether to lie to promote our own career interests or whether to reveal the truth. Another instance may arise as we walk down the street and see a person who is apparently homeless, panhandling from passersby. The ethical dilemma here is whether we should act to help the poor and needy or just pass by and give nothing.

We will have to make ethical decisions in our day-to-day lives, so it is helpful to recognize when an issue involves ethical considerations and then have the ability to apply a knowledge of ethics, including ethical terminology and concepts, in making our decision about what to do. A number of ethical approaches can be taken in making a decision about an ethical issue, and you will see in the following chapters that no ethical approach is the "correct" one; rather, different approaches are equally valid in ethical terms. The approach we adopt to an ethical issue will frame and give meaning to any decision we make and can be used to justify and validate our actions. Of course, it is always possible to abandon the responsibility for making an ethical decision. We might decide that we will simply follow the dictates of others rather than applying our own minds to a particular ethical issue. For example, during World War II, many war crimes were committed by members of the Nazi Party, who claimed they were simply following orders in committing those crimes. In effect, they abandoned their responsibility to make an ethical decision not to kill or murder and opted instead to obey unethical and inhumane directions.

Similar situations may arise in the criminal justice system. For example, a prosecutor may have to decide whether to seek the maximum penalty against an accused under three-strikes legislation. If he or she does decide to seek the maximum, the result may be that the accused will be incarcerated for the rest of his or her life. A prosecutor may decide to act ethically and fully weigh this issue in light of the facts of the case and the nature of the crime committed. Alternatively, he or she may choose not to follow that process and may simply take the position that the law reflects public opinion and that he or she should always exercise discretion so as to impose the full penalty provided by the law.

When we decide to accept responsibility and make a decision involving ethical considerations, we are faced with a personal ethical dilemma. A personal ethical dilemma can be contrasted with an ethical issue. The latter is usually an issue of public policy involving ethical questions. Examples of such issues include the morality of capital punishment, whether to incarcerate more people or use alternative sanctions for convicted offenders, and other important social issues. A further distinction between ethical dilemmas and ethical issues is that an ethical dilemma is the responsibility of an individual and requires a decision to be made. Ethical issues, on the other hand, being broad issues of social policy, do not require individual decision-making beyond the decision of whether one is in favor of or opposed to a particular social issue. However, the fact that ethical issues do not require most individuals to decide the issue does not mean that an individual is helpless to influence the public debate on a social issue.

Ethical dilemmas are important in the criminal justice system because criminal justice professionals are often faced with having to make decisions that involve ethical issues. Much of the material in this book concerned with ethical practices in the criminal justice system will focus on ethical dilemmas faced by criminal justice professionals, and it will analyze options in light of ethical theories and any relevant rules and regulations.

How do we recognize when a dilemma is an ethical dilemma as opposed to merely a dilemma? An ethical dilemma arises only when a decision must be made that involves a conflict at the personal, interpersonal, institutional, or societal level or raises issues of rights or moral character.

What process is followed in resolving an ethical dilemma? Richard Hare (1987) argues that we initially use an **intuitive** level of moral thinking when we consider ethical dilemmas. This provides us with relatively simple principles derived from our upbringing and past experience of decision-making. **Critical thinking** is another process of thinking about moral decisions; in contrast to intuitive thinking, critical thinking applies principles established by philosophy and moral concepts, and it is therefore non-intuitive. In making moral judgments when faced with moral dilemmas, we may initially apply an intuitive form of thinking, relying on our intuition to identify possible courses of action to make the decision. However, we are likely to find that our intuitions do not adequately equip us to make moral decisions and that critical thinking is required. Consider the following scenario:

> A newly recruited correctional officer, Tom, overhears three other correctional officers, Fred, Bob, and Charlie, discussing arrangements to assault an inmate, Raymond, who has previously attacked another correctional officer, a close friend of the three officers.

Tom is faced with a dilemma: whether or not to prevent the attack on Raymond. His dilemma is an ethical dilemma because if he does act, this will involve a conflict between him and Fred, Bob, and Charlie. It is also an ethical dilemma because it raises issues of rights and morality—that is, the right of Raymond to safety and security even in prison, and the morality of allowing a person to be assaulted other than in an act of self-defense. To resolve his ethical dilemma, Tom will need to pursue a process of analysis resulting in a decision. The following process is intended to provide Tom with a method for reaching his decision:

1. He will identify the fact that he is faced with an ethical dilemma and state the dilemma clearly.
2. In his mind, he will collect the facts and circumstances of what he overheard so that he is quite clear about what he heard, the identities of those involved, and all other relevant information.
3. He will collect all the facts and knowledge relevant to the decision, including his own values about the issue and the values of his workplace. He will consider his own position at the prison as a newly trained officer and the consequences of reporting the incident and of not reporting it.
4. This is an ethical dilemma, so he will call to mind his knowledge of ethical principles and theories with the aim of applying those ethical approaches to his possible courses of action.
5. Tom will now identify his available options for action. First, he could intervene in the situation by informing his supervisor of the conversation he overheard. This action will be based on his responsibility to ensure the safety and security of all inmates and to enforce the policies and rules of the institution. Second, he could choose to ignore the conversation because of his loyalty to his fellow officers and his need in the future to receive their assistance and support when carrying out his duties. Third, he could choose to intervene by talking to the officers involved in an attempt to prevent the misconduct with the aim of minimizing the harm for all involved parties. Tom must support each alternative action with reasoning derived from ethical principles to give credibility to his choice of action.

6. Tom will make his decision based on his analysis of the dilemma after applying the ethical approaches to each course of action. He will choose the option that for him is the most ethically appropriate. In other words, after considering the choices according to this process, he will decide, "This would be the right thing for me to do." He therefore resolves his ethical dilemma by making an ethical decision and acting on that decision.

Tom's process for making an ethical decision seems straightforward. However, making an ethical decision may involve factors such as personal values, personal priorities, or how a particular decision might affect friends or even strangers. Therefore, the most ethical choice is not always clear. To act ethically is not simply a matter of deciding what is right and wrong in advance and stubbornly sticking to that position. Since there are many gray areas where there are no specific rules, laws, or guidelines laid out in advance, it is not always easy to know which decision is the most ethical choice. In addition, if we are to act in an ethical way, we have to justify what we do, and the justification must be sufficient to, in principle, convince any reasonable human being. As James Rachels puts it,

> [a] moral judgment . . . must be supported by good reasons. If someone tells you that a certain action would be wrong, for example, you may ask why it would be wrong, and if there is no satisfactory answer, you may reject that advice as unfounded. In this way, moral judgments are different from mere expressions of personal preference . . . moral judgments require backing by reasons, and in the absence of such reasons, they are merely arbitrary. (1991: 438)

Hare (1987: 218) argues that moral judgments must be able to be applied universally. According to this principle, similar actions ought to be judged similarly, unless there are morally relevant differences between them. For example, if I judge it wrong for you to cheat in examinations, I must be prepared to say that it is wrong for me as well, unless I can explain how my situation is different from yours in a morally relevant way (Holmes 1998: 151). Thus, the principle does not say whether you should cheat, but it does require that whatever you do, you must be consistent. Singer (1995: 175) expands this notion somewhat by arguing that when thinking ethically, I ought to consider the interests of my enemies as well as my friends and of strangers as well as my family. If, after I have fully taken into account the concerns and preferences of all these people, I still believe that a particular action is better than any alternative, then I can honestly say that I ought to do it.

What weight do we give to our **personal values** when making ethical decisions? By *values*, we mean what individuals care about and what they think is important. This can include such things as people's desires, such as social approval; what they enjoy, such as sports or music; their goals or purposes; their ideas of happiness or success; and their highest ideals. Each person develops a set of values that forms his or her value system. We often assume that our values are similar to others'; however, we may define values differently than others do. For example, we may have different definitions of what constitutes a "family," but we may all share "family" as a value. Even if we do have similar definitions of values, we often prioritize them differently. Thus, one person might give the value of "freedom" a higher priority than the value of "preservation of life." Another may prioritize the value of "loyalty" higher than "personal freedom." The fact that we may order our values differently explains why our thinking about ethical decisions differs from that of others and why we arrive at different conclusions.

ETHICAL ISSUES IN CRIMINAL JUSTICE

To illustrate the relevance of the study of ethics to the criminal justice system, a number of specific ethical problems and issues that might arise for professionals in the criminal justice system are sorted into the sections that follow. These problems and issues might be concerned, for example, with how to exercise authority, with how to deal with conflicts between the personal and the professional, or with ethical issues confined within one particular part of the system, such as juvenile justice.

Ethical Problems in the Use of Authority

- The use of authority to promote personal values
- The use of authority to avoid accountability for wrongdoing
- Police gratuities, free meals, discounts on purchases, and so on

Ethical Problems in the Relationship Between Personal and Professional Interests

- Using professional status to promote personal interests (religious, philosophical, financial, etc.)
- Using institutional time and materials for personal gain unrelated to legitimate work activity

- Engaging in or promoting professional activities that are contrary to personal values
- Engaging in public or private personal activity that is contrary to professional values (use of drugs, driving under the influence of alcohol, etc.)

Ethical Problems in Personal and Professional Commitments to Clients

- Behaving unethically in personal relationships with clients
- Using relationships with clients or the public for personal gain (acquiring goods more cheaply, having work done for personal benefit, accepting gifts, etc.)

Ethical Issues in Criminal Justice and Public Policy

- The war on drugs
- Government policies having implications for criminal justice professionals in issues such as youth confinement, fingerprinting of juveniles, and compulsory treatment such as mandatory participation in substance abuse programs or anger management
- Capital punishment
- The move away from rehabilitative juvenile justice policies and toward more punitive policies
- Policies involving harsher penalties, resulting in "prisoner warehousing"
- Government-imposed mandatory sentencing (three-strikes legislation, mandatory minimum sentences)
- Truth in sentencing policies
- Increased surveillance of citizens in society
- The policies implemented in the war on terrorism
- Internet sexual exploitation
- Criminalization of immigration—"crimmigration"

Ethical Issues Resulting From Policing Policies

- Policing policy in domestic violence cases
- Racial profiling
- Use of force
- Use of police discretion
- Rules or practices relating to the retention or disposal of court records—for example, in the juvenile justice system, where some states have considered making juvenile records and court hearings open to the public and the media
- Body cameras
- "Stop and frisk"

Ethical Problems in Dealing With Human Rights Issues in the Criminal Justice System

- The administration of cruel and unusual punishment
- Human rights violations against prisoners (women, men, transgender individuals, juveniles)
- Capital punishment
- Armed drones and targeted killings
- Torture

Ethical Problems in Information Sharing

- The ethics of withholding information—for example, from a client, the court, or the police
- Problems of confidentiality and privileged communication—for example, counselor–client relationships and participation in research

Ethical Issues in the Media Reporting of Crime

- Crime and public opinion
- Crime as entertainment
- The politicization of crime
- Representation of particular groups of offenders and of women or girl offenders

In this chapter, the role of ethics in shaping decisions has been explored. Ethics has been shown to be a central component in decisions involving ethical dilemmas, and the process of analyzing an ethical dilemma has been illustrated. Ethics is concerned with standards of conduct and with "how I ought to act," and standards of conduct may vary among different societies. Approaches to setting standards range from cultural relativism to moral absolutism; a perspective that emphasizes moral pluralism seems to offer the best hope for resolving problems of relativities. Investigating sources of ethical standards reveals that religion, natural law, and other forms of law have an influence in shaping ethical standards. An understanding of ethics is essential to competent decision-making by criminal justice professionals and to the proper working of the criminal justice system. In this chapter, case studies in the form of media reports of unethical conduct by police and prosecutors have been presented. In the next chapter, ethical issues in law enforcement are explored in depth.

In 2003, France legislated to ban the wearing of headscarves in public schools ("Chirac: Ban Headscarves" 2003). It was claimed that this action was necessary to protect the separation of church and state required by French law. There are an estimated 6 million Muslims living in France, many from former French colonies in North Africa, but very few wear headscarves. The French move seems to have spurred other European states to follow that lead, as a number are now advocating a ban on the burqa and niqab—the *burqa* covers a woman's body from head to toe and totally conceals her face, and the *niqab* is a headscarf that covers a woman's hair. In some German states and in Belgium, the niqab cannot be worn in schools.

In 2006, the right-of-center government of Holland committed itself to a prohibition on the wearing of the burqa and the niqab in public if it returned to office (Bell 2006; Clements 2006). Also in 2006, the British foreign minister was reported as having said that the niqab was a barrier to communication, and then British prime minister Tony Blair, commented that it was "a 'mark of separation' that makes people from other backgrounds feel uncomfortable" (Grice 2006). In May 2010, Belgium banned covering the face, and in June 2010, Spain approved a motion to ban the wearing of the burqa in public by a narrow majority, despite the fact that only about 2,000 women out of a Moslem population of 5 million in Spain wore the burqa (BBC 2010).

Advocates of the prohibition claim that wearing the veil challenges, or can be seen as a threat to, "progressive" Muslim women who refuse to wear it. However, women who choose to wear the veil say that the veil symbolizes modesty, humility, and devotion to their faith.

1. How is *ethics* defined?
2. Why is it important for criminal justice professionals to study ethics? Explain how applying ethical approaches helps criminal justice professionals make appropriate and "correct" decisions.
3. What are the possible sources of ethical rules? Discuss the problems inherent in each source.
4. Discuss the advantages offered by ethical pluralism over ethical absolutism and ethical relativism.
5. Outline the steps involved in analyzing an ethical dilemma.

1. In March 2005, in a 5–4 decision in *Roper v. Simmons*, the U.S. Supreme Court abolished juvenile executions, arguing that it is unconstitutional to sentence anyone to death for a crime he or she committed while younger than 18. The Court argued that teenagers are too immature to be held accountable for their crimes to the same extent as adults given the "national consensus" against executing juveniles and the medical and social science evidence demonstrating their immaturity.

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POLICE ETHICS

The Nature of Policing and Police Corruption

ETHICS AND POLICING

The study of ethics in policing has expanded considerably over the past few years as cases of police brutality and corruption have surfaced in the media and in the courtroom. Commentators agree that three issues have shaped the role of ethics in policing: *styles of policing, the police as an institution,* and *police culture.*

Generally, we think of the police as controllers of crime; however, the original English conception of the role of the police force emphasized the need for police to obtain the goodwill of citizens in performing their policing duties. The very first set of instructions to constables, published in England in 1829, reminded the new police officer,

> There is no qualification more indispensable to a Police Officer than a perfect command of temper, never suffering himself to be moved in the slightest degree, by any language or threats that may be used; if he does his duty in a quiet and determined manner, such conduct will probably induce well-disposed by-standers to assist him should he require it. (quoted in Skolnick and Fyfe 1993: 70)

When policing came to the United States, there was little concern among police officers about adhering to legal norms, despite their formal policing role as enforcers of the law (Haller 1996: 7). In fact, police received little training in law, and most of those arrested were tried before justices who also had little legal training. Police were part of the larger political system, seen as a resource at the command of local political organizations. In the early period, it was common for police and other public officials to earn rewards by operating rackets (p. 8). Patrolmen worked on the streets with little supervision, and the main expertise a detective offered was his knowledge of the underworld. Violence was an accepted norm, because many policemen believed they were entitled to punish wrongdoers themselves, and on their patrols, they were expected to be able to physically dominate the streets without resorting to arrest. Police operated in neighborhoods as authority figures, sometimes whipping delinquent boys as a more effective sanction than arrest and incarceration. Police commonly used violence to persuade suspected persons to confess, and newspapers reported interrogations of this nature without unfavorable comment (p. 22). In addition, the police culture of the time supported the use of violence in upholding the dignity of the police officer. Over time and by the end of the 1930s, police organizations had become large bureaucratic structures organized along military lines (Walker 1996: 27).

During the 1930s era of reform, police began to narrow their functions to focus on crime control and the apprehension of criminals; consequently, police became enforcers of the law with the goal of controlling crime. Other activities that police formerly engaged in, such as solving problems in the community, became identified as "social work" and were ridiculed (Kelling and Moore 1996: 79).

Notwithstanding the police attitude that constructs policing as crime fighting, many observers of police work regard the primary function of the police to be peacekeeping. In this view of policing, police occupy their time for the most part by attending to a range of problems that have little to do with law enforcement. In fact, they may spend as little as 10% to 15% of their time engaged in enforcing the law (Manning 1996: 225).

THE NATURE OF POLICING

Commentators on policing have struggled to adequately express and theorize the nature of policing in society, including its ethical base. Researchers have developed models of policing to assist in understanding the police function in society; these models are the crime fighter, the emergency operator, the social enforcer, and the social peacekeeper (Kleinig 1996: 24–29).

The **crime fighter** sees criminals as the enemy, and police and the community as the "good guys." In other words, police see their role in punitive terms—for example, treating suspects as though they were already guilty. Perceiving the policing role as crime fighting runs the risk of ends justifying means and dramatizes policing so as to condone invasions of privacy and abuse of power. This is especially the case when citizens have surrendered their right to use force to the police.

The influence of media representations of police, either through police dramas on television or in reality programming depicting police carrying out their duties, should not be underestimated. In constructing images of police as "fighters against evil" in drama and as "protectors of society against permissiveness" in police reality programs, the media reinforce the notion of the police officer as crime fighter. In terms of audience response to this entertainment, three notions emerge: that offenders are professional criminals who are clever and motivated by greed, that the interests of justice are not well served by liberal judges or lawyers who are preoccupied with defendants' legal rights, and that hardworking, dedicated cops are out there, on the streets, doing their best in the face of these constraints (Beckett and Sasson 2000: 118).

The **emergency operator** model sees the policing role as akin to that of other emergency personnel, such as ambulance operators and firefighters. Police offer emergency assistance, clearing the way for professionals such as social workers, who provide more substantive problem-solving services. This model emphasizes the policing mission as dealing with people rather than crime fighting; however, competence in crime control is still required in this model.

Viewing the police as **social enforcers** emphasizes coercion as the central feature of police work (Bittner 1967). This model sees the role of police as addressing many day-to-day problems whose solutions may require the use of force. The social enforcer model has been criticized for focusing excessively on coercion as a police function and for failing to recognize that other members of society may also use coercion, such as parents and schoolteachers.

In formulating the **social peacekeeper** model, Pollock-Byrne (1998) and John Kleinig (1996) argue for the need to adopt a broader definition of policing, with Pollock-Byrne advocating for policing as public service rather than crime fighting and Kleinig promoting policing as social peacekeeping. For Kleinig, this characterization offers the most satisfactory definition of the actual tasks that police perform, and he locates it historically in the Anglo-Saxon notion of the King's Peace, breaches of which were considered crimes. According to Kleinig, the peacekeeper model incorporates the crime fighter and social service models and reflects the range of acts that might occupy the police in a community (p. 28).

Jerome Skolnick (1966) noted the inherent tension between the police roles of enforcing the law and at the same time protecting citizens, and he considered that tension irreconcilable. He argued that police could reconcile this conflict by giving priority to their duty to uphold the law. William K. Muir (1977) and Herman Goldstein (1977) saw a need for officers to be trained properly to exercise their considerable discretionary powers, while Muir noted that because officers are free to choose their style of policing, this enables them to act ethically or otherwise according to their desires. Edwin Delattre (1989) and Lawrence Sherman (1985) were concerned about issues of corruption in policing arising during the 1980s. Delattre argued that the best way to ensure ethical policing was to recruit officers with integrity. Sherman, however, saw the temptations open to police as an issue constituting a "slippery slope," where minor acts of corruption would lead to major acts, unless internal police controls and accountability sanctioned those minor acts.

Manning (2007: 63) identifies four "primary segments" found within policing: **patrol officers** who make up the bulk of a law enforcement unit and who often remain in this occupation throughout their police career; **middle managers** who rise through the ranks through seniority and examinations, supervise and handle paperwork, view themselves as "moderating and supervising the mistakes of others," and generally remain at this level; **higher administrators** who are selected by local consultative political processes (including the mayor, city council, or a specific hiring committee), who rarely have contact with patrol officers, and whose duties involve political as well as policing considerations; and **detectives and investigators** who enjoy higher status than patrol officers and are "information processors who investigate, define, clear and otherwise manage the tension between the 'case.'" To this analysis could be added the pervasive police paramilitary units known as SWAT teams described later in this chapter.

POLICE AS AN INSTITUTION

The institution of policing has been perceived either as a profession or as a bureaucracy. Kleinig (1996: 30–46) sees the police as possessing some of the aspects of a profession, such as discretionary authority and providing a public service, but not others, such as the possession of higher education and special expertise. The importance of the distinction between a profession and a bureaucracy for the study of police ethics is that professions emphasize ethical standards and a service ideal. Organizationally, police resemble any other large, bureaucratically organized occupation. Police commonly define themselves using the rhetoric of professionalism, sometimes to deflect criticism, arguing that outsiders are incapable of understanding police work and therefore should have no say in its performance (Walker 1996: 29).

POLICE CULTURE

Individuals within institutions carry out roles defined by the rules, regulations, and procedures of the institution, and these roles and their relationship to each other make up the structure of the institution. However, there is another dimension to the workings of an institution that commonly includes the attitudes, values, and norms of that institution, collectively described as the **institutional or organizational culture**. This culture largely determines the way in which institutional activity is performed, adding another layer to the official rules, regulations, and practices of the institution. Manning (1989: 360) explains police culture as the "accepted practices, rules and principles of conduct that are situationally applied, and generalized rationales and beliefs." The institutional culture should be differentiated from the **occupational culture**, which refers to the particular roles and experiences of the different occupational groups within the institution—for example, as between police middle management and patrolmen (Bacon 2014: 106). A number of commentators have attempted to analyze aspects of the police institutional culture. Peter Manning (1997: 4) argues that it is the occupational culture interacting with regulations, policies, law, and politics that constitutes the driving force of policing. For Manning, immorality, violence, and lies are routine in policing; teamwork is essential; and secrecy is endemic. Sherman (1982) identifies a set of values that new police officers acquire through their training process, through conversations with veteran officers, and in interactions with the public. These include the notion that enforcement of the law is not limited to the question of whether an offense has been committed but also includes the nature of the suspect. Accordingly, aspects of the individual—such as demeanor, the degree of cooperation with police, race, age, and social class—are all significant considerations in law enforcement decision-making. In a somewhat similar way, the institutional culture views any show of disrespect for police authority as a matter of great concern, and the perpetrator of such behavior is likely to be punished by arrest or use of force.

In terms of the use of force (see Chapter 3), police culture requires that police should never hesitate to use physical or deadly force against those who *deserve* it. Given that the role of police is to fight crime, police culture views due process as a practice that merely protects criminals and therefore as something that should be ignored when possible. From this perspective, rules concerning the protection of suspects and accused persons should be circumvented when possible because the function of such rules, so far as the police are concerned, is simply to handicap them in carrying out their true functions. Similarly, lying and deception are considered integral parts of the police function. *Loyalty* is a paramount duty, and the protection of one's colleagues, even when they perform acts of misconduct, is considered an overriding principle of police work. Finally, because the police engage in "danger work" in the protection of the public, it is considered appropriate for police to accept gifts from the public, such as free meals, coffee, and Christmas gifts. Sherman (1982) contends that police culture argues in favor of taking a reward that has no impact on what a police officer would do, such as eating a meal, but he argues that the culture rejects acceptance of money that would affect the policing task itself, such as accepting money for not giving traffic tickets.

Sherman contends that these values have weakened over time due to diversity within the police, the power of the police unions to defend individual officers, and the rise of investigative journalism, which has uncovered corruption in high places. Additionally, he points to the fact that police chiefs have taken significant steps to counter aspects of institutional culture.

In his explanation of police culture, John Crank (1998: iii) argues that existing literature oversimplifies the police, describing them in simplistic terms and minimizing the complexities of their employment. Crank presents various themes that he argues characterize police culture, ranging from "coercive territorial control" (the notion that the police view much of their work by reference to the use of force in controlling their assigned territory) to the vision of the police as "the new warriors" to guns as the ultimate expression of police authority. Crank extends his discussion to include the importance of suspicion in police work, the theme of "turbulence and edge control" (meaning triumph over unpredictable events), and cultural themes of solidarity. Other writers have identified suspicion as a characteristic of police work and the police personality, but Crank argues that it is a feature of police culture, a characteristic of the police worldview that provides a basis for all interaction between police and citizens. Importantly, in his discussion of the construction of police morality, Crank suggests that the police perceive themselves as "representatives of a higher morality embodied in a blend of American traditionalism, patriotism and religion" (p. 151).

Muir (1977) makes the case that police loyalty results in complicity. Once a police officer breaks or violates a rule or standard, he or she is bound to remain silent about other officers' violations, even if they are more serious.

Stuart Scheingold (1984) asserts that there are three dominant characteristics of police culture:

1. *Cynicism.* Police view all citizens with suspicion, and all citizens are seen as a "problem," especially if they can be categorized into a "type." Those who can be categorized are to be dealt with as though they have already committed a crime because they probably have. The very nature of police work leads police to the conclusion that all people are weak, corrupt, or dangerous.

2. *Force.* This is to be used in all situations where a threat is perceived. Threats can include perceived threats against the officer's authority rather than physical threats so that anyone with "an attitude" is thought to deserve a lesson in humility. Force, then, is both expressive and instrumental. It is a symbol of the officer's authority and dominance and is seen as the most effective method of control because it keeps all people in line.

3. *The police are victims.* The idea that the police are themselves victims of public misunderstanding and scorn, recipients of low wages, and victims of vindictive administrators sets police officers apart from other people and legitimizes and rationalizes a different set of rules for them. Police perception is that the public does not mind when the civil rights of "criminal types" are violated; they are only upset when police misconduct targets "good people." A study of community policing in Seattle, observing interactions between police and the community, reveals how police see themselves as "members of a politically vulnerable group that deserves protection from ill-informed public meddling; they possess an authority to control situations to which the public should defer; they command a unique base of knowledge, and thus deserve an elevated professional status" (Herbert 2006: 86). Commentators, therefore, generally portray police culture as negative, defensive, and isolationist. In contrast to this portrayal, police often promulgate statements of values or of their policing mission that are positive in nature, as in the "Foster City Police Department Basic Values" Closer Look box.

Changing Police Culture

While some scholars of policing have suggested that police culture has changed with the advent of community policing, a greater focus on service to the public, enhancement of communication and interpersonal skills, and the impact of cultural, ethnic, and gender diversification of police organizations, Bethan Loftus (2010: 1) suggests that, in the United Kingdom at least, the "underlying world view" of police officers has not altered because the basic pressures associated with policing have remained constant. In an ethnographic study of police culture in the north of England, Loftus found that police officers still perceived themselves as crime fighters (despite the fact that arresting criminals took up very little of their time) and as constituting the line that separated order from chaos. Loftus observed that physical responses to incidents were highly valued and that police celebrated a confrontational approach to policing despite policies and programs that reconfigured the policing mission as servicing "customers" (p. 7). The tensions between the realities of police work—mundane, monotonous, and unexciting—and the expectations—an action-packed day of crime fighting—meant that police "developed a profoundly cynical and pessimistic view of their social world" (p. 8). Loftus concludes that absent significant social change, police culture is unlikely to be impacted by radical change.

John Crank (1998: 119) argues that in relation to the United States over the past 25 years, police values have basically remained unchanged. One reason for this is that police recruits are selected from a pool of applicants who share police values, and persons attracted to law enforcement as a career are the same persons who have always been drawn to policing. Michael Caldero and Crank (2011: 66) suggest that officers are hired with a set of values already in place that are enhanced and fine-tuned through the academy and on-the-job training. They identify the formative influences as the academy, the police field-training officer, the police culture, the danger and isolation of policing, and other elements. Importantly, as they point out, officers are often recruited from police families, from small towns, and from the military. They are already imbued with the values that policing privileges, especially the focus on creating order in human interactions. In this sense, then, newly recruited officers are already committed to the noble cause—they are believers because the noble cause is an inherent part of their moral upbringing (see the definition of *noble cause* under the heading "Noble Cause Corruption").

Researchers have tended to describe police culture in monolithic terms and generalize its characteristics, often by reference to the culture of the patrol officer level of policing (Punch 2007: 107). One approach to understanding police culture is to think of a set of core characteristics, as noted previously, that can be said to represent the dominant culture. While officers may carry their shared experiences—the dominant culture—into different occupational specialties within a police force, studies suggest that specialists[1] also develop a culture for their specific occupation, as, for example, in undercover policing (Bacon 2014: 113). In addition, policing today is staffed by white and minority officers, by women, and by gay officers who collectively bring a heterogeneity to policing that did not exist when many ethnographic studies of policing were being conducted in the 1960s and 1970s (Sklansky 2007: 35). The study of police ethics is especially important in light of the functions and duties of the police, as well as the wide powers of discretion that they enjoy. Police decisions can affect life, liberty, and property, and as guardians of the interests of the public, police must maintain high standards of integrity (Pollock-Byrne 1998: 3–4). In addition, police have assumed the right to use intrusive, covert, and deceptive methods of law enforcement and have a crucial role in protecting minority groups. They have also suffered a series of blows to their reputation for integrity through acts of corruption, incompetence, and racism (Neyroud and Beckley 2001: 38). All of these factors point to the centrality of fostering ethical standards in policing. Police discretion concerning how to act in a given situation can often lead to ethical misconduct.

A CLOSER LOOK

FOSTER CITY POLICE DEPARTMENT BASIC VALUES

Integrity is basic to the accomplishment of the law enforcement mission. Both personal and organizational integrity are essential to the maintenance of the F.C.P.D. This means that we:

Ensure that accurate reporting occurs at all levels;

Promote and recognize ethical behavior and actions;

Value the reputation of our profession and agency, yet promote honesty over loyalty to the Department;

Openly discuss both ethical and operational issues that require change; and

Collectively act to prevent abuses of the law and violations of civil rights.

Due to the dynamic nature of our profession, the F.C.P.D. values innovation from all levels of the Agency. This means we:

Reward and recognize those who contribute to the development of more effective ways of providing policing service;

Strive to minimize conflict which negatively impacts our work product, yet we support the constructive airing and resolution of differences in the name of delivering quality police services;

Listen to and promote suggestions emanating from all levels of the Department; and

Wish to promote an atmosphere that encourages prudent risk taking, and that recognizes that growth and learning may be spawned by honest mistakes.

The law enforcement profession is recognized as somewhat close and fraternal in nature. The F.C.P.D. reflects this tradition, yet supports community involvement and ongoing critical selfappraisal by all its members. This means we:

Encourage employees to socialize with employees and community members alike to promote the reputation of the Agency;

Promote programs that improve the relationship between our members and the community at large;

(*Continued*)

(Continued)

Report and confront employees who violate laws and the basic values of the organization; and

Promote and discuss positive aspects of the Agency and its product throughout the county.

The provision of law enforcement services is a substantial expense to the taxpayer. The F.C.P.D. is obliged to provide the highest quality of police service for the resources expended. This means we:

Regularly assess the cost vs. benefits of the various programs of the Agency;

Require a standard of professional performance for all members of the Department;

Administer the Department funds in a prudent, cost-effective manner;

Publicly acknowledge and praise employees that excel at their jobs; and

Support and encourage employees in their pursuit of higher education.

Law enforcement, in the course of performing its primary mission, is required to deal with both dangerous and difficult situations. The F.C.P.D. accepts this responsibility and supports its members in the accomplishment of these tasks. This means we:

Review and react to an individual's performance during such an event based upon the totality of the circumstances surrounding their decision and actions;

Encourage all employees, as the situation permits, to think before they act;

Take all available steps and precautions to protect both the City's and employees' interests in incidents that provide either danger or civil exposure;

Keep our supervisor informed of any incident or pending action that jeopardizes either the reputation of the Agency or individual employee;

Attempt, conditions permitting, to reason with individuals in the enforcement setting prior to resorting to the use of force; and

Recognize that it is our duty to prevent, report, and investigate crimes, together with the apprehension and the pursuit of vigorous prosecution of lawbreakers. We also recognize that it is the domain of the court to punish individuals convicted of crimes.

From the Foster City Police Department, Foster City, California. Cited in More 1998: 48–49.

POLICE DISCRETION

By law, police are given the power to deprive citizens of their freedom by arresting them and the right to use force in the performance of their policing function, including lethal force in certain situations. The police are therefore given great authority under the law, and that authority is to be employed ideally in enforcing the law and protecting the public. Police authority and power is exercised within the discretionary sphere given them; any exercise of power or authority is an exercise of discretion. As well as authority conferred by law, police have another kind of authority derived from their role as police officers and represented by their physical, uniformed presence on the street. The public, therefore, tend to treat police officers with circumspection in most cases, aware in a general sense that police have specific powers, such as to arrest, but they are unclear as to the total extent of police authority. Police culture insists on the public giving the police respect and cooperation; flouting or resisting police authority can result in arrest or other consequences that may sometimes amount to misconduct—for example, threatening a future arrest or even assaulting a person to punish him or her for an attitude considered disrespectful.

Limiting Police Discretion

In performing their policing duties, police officers are able to exercise a high degree of discretion. This means they have broad freedom to make decisions about how to act in a given situation. For example, a police officer may decide to investigate an occurrence, or he or she may decide that it is not worthy of his or her time and effort. Officers can also decide whether or not to make an arrest and may make decisions about the amount of force required during a confrontation. Caldero and Crank (2011: 79) argue that police discretion is not value-free and is shaped by a set of values, including the noble cause morality that is already in place when they begin patrol work. It is therefore possible to predict the probable police action in situations calling for the exercise of discretion.

Some commentators argue that police discretion should be limited so that, for example, the rules and regulations of the police department and ethical standards circumscribe that discretion. Jeffrey Reiman (1996) argues even more radically that "police discretion has no rightful place in a free society" (p. 80). Manning (1997) points out that policing guidelines themselves create uncertain circumstances and that the impact of guidelines is unclear because cases in which the guidelines were not adhered to are never reported to supervisors. From the police patrol officer's point of view, James Q. Wilson (1968) notes that patrol officers may legitimately complain that having no agreed-on standards for the exercise of discretion makes their task harder, especially if the existence of many procedural rules enables others to easily penalize them for acting in an allegedly improper manner. Manning summarizes the issue of guidelines by noting that the solutions offered for limiting the wide powers of police discretion include judicial rule making, legislative regulation, and developing internal codes and regulations (p. 295). Jerome Skolnick and James Fyfe (1993: 120) point out, however, that elaborate police rule books, although purporting to be definitive, actually provide limited guidance of any worth to police because hard-and-fast rules do not adequately assist police in dealing with the fluid and fast-changing situations they may be faced with.

Some police officers deliberately use their wide powers of discretion and their authority to perform acts of misconduct, as discussed in this section. Davis (in Cohen 1996: 97) argues that discretion ought to be confined so that it is used only when truly required. In other words, where a rule, law, or policy can be applied to a situation, it should be applied. If this is not done, he argues, justice may be seen to be arbitrary or subject to inequalities. James Fyfe (1996: 183) contends that police ought to enjoy some degree of discretion, but like discretion in any profession, it can be justified only to achieve a broadly agreed-on purpose; in the case of the police, this purpose is often hard to define. Like Manning (1997), he attributes this lack of clarity about police goals to those same police chiefs who complain that discretion in police organizations is broad at the base and much narrower at the top. However, most citizens, including most police officers, support police having *wide discretion* on the basis that their hands should not be tied in their role as guardians of the public.

In a more recent discussion of how to regulate police discretionary power so that it is exercised in an ethical manner, Bradford and Jackson (2015) suggest three strategies that might regulate police discretion in relation to stop and frisk and associated police actions. One strategy is to place legal limits on police officer discretion so that there will be an internally generated list of circumstances where stop and frisk is permitted. This approach has drawbacks, however, in light of the wide-ranging duties of the police and the almost endless contingencies involved in the task of policing. A second strategy focuses on increasing police visibility through technology solutions such as body-worn cameras, citizen journalists who video police incidents, and the like (see Chapter 3 for a fuller discussion of these issues). The problem with this approach is the reality that police control what is recorded on camera and have the capacity to frame events in ways that favor police interpretations of events. A third strategy, the most favored, is to institute procedural justice procedures that are characterized by transparency, fair and equitable treatment, and respect for individuals in interactions between police and the public. Additionally, it would be important to ensure that similar procedures are applied within law enforcement agencies to ensure that such organizations treat police fairly and with justice. This would reinforce police confidence in their own authority and, in turn, promote police legitimacy through procedural justice (see Chapter 3 for a fuller discussion of police legitimacy and procedural justice).

Discretion and Accountability

Many argue that if police are permitted wide discretion, a high level of accountability should match it so that processes and machinery exist to investigate complaints of misconduct or abuse of discretion (see the section later in this chapter on "Combating Corruption"). Manning (1997: 146) notes that discretion creates uncertainty, and from the perspective of the police supervisor, it creates randomness in patrol practice that makes it difficult for administrators to enforce accountability.

Kleinig (1996: 4–5) outlines a distinction between decisions about scope and decisions about interpretation in exercising discretion. In the former, police must decide whether a given situation requires them to act, and in the latter, questions of definition arise, such as "Has an offense been committed?" and "Is this a situation in which I should act at all?" Police also must consider questions of priorities and make what Kleinig calls "tactical decisions" that bear on police attitudes, such as whether to react strongly to circumstances or to follow a more mediatory role.

ETHICS AND CODES OF ETHICS

Kleinig (1996: 234) traces the history of a police code of ethics, noting that it was not until 1928 that such a code was formulated for police in the United States. Professions commonly have codes of ethics regulating standards for the protection of clients and the public, and the desire for professional status is a major rationale for the development of police codes of ethics (p. 234). Within the United States, individual police departments have codes or canons of ethics, and the International Association of Chiefs of Police (IACP), which is dominated by the United States, finalized its Law Enforcement Code of Ethics in 1991 (see the "Law Enforcement Code of Ethics" Closer Look box).

What Is the Relationship Between Ethics and Codes of Ethics?

Kleinig (1996: 239) suggests that statements of values and ethical standards are likely to be briefer and more general than codes, with the latter detailing what kinds of acts may or may not be performed. Most codes of ethics are directed toward an undefined client or public base, and it may be in the public interest to establish certain standards expected of a particular profession. In this external sense, codes may be seen to have a rhetorical function and can provide some assurance that police do follow standards or are being urged to follow them by the code. Kleinig says that it is increasingly common for codes to be used as internal documents so that even when they are phrased in generalities, they at least identify issues and provide criteria for decision-making.

Police academies apparently use codes of ethics as a teaching device; however, codes cannot be considered definitive and do not usually include enforcement procedures (Kleinig 1996: 248). Kleinig cautions that although police officers pledge themselves to their codes of ethics, this does not mean they are required to sacrifice their reflexivity as individuals, and police may well find that their codes do not respond adequately to the situational demands placed on them. In one study, more than 75% of police officers surveyed responded that they depended mostly on their own personal ethics rather than the ethics of law enforcement to guide them in their professional activities (Felknes 1984: 217).

Police Compliance With Ethical Codes

The standards of conduct incorporated in codes of ethics are directed at each individual police officer, and therefore each officer must decide his or her own level of compliance. While some studies suggest that ethical standards held by officers during initial training diminish once they are "on the job" (Crank and Caldero 2000; Rokeach, Miller, and Snyder 1977; Zhao, Ni, and Lovrich 1998), Dennis Catlin and James R. Maupin (2004: 299) argue that socialization within law enforcement has no effect on an officer's ethical orientation. Ultimately, compliance may become a question of character, and officers may be admonished to "do the right thing even when no one is watching." Part II of this book explores various ethical theories, including virtue theory, which emphasizes the importance of character, and deontology, which argues that one must do the right thing even though others are not there to see simply because there is a duty to do the right thing. Clearly, this theory has considerable relevance for codes of ethics regulating standards of behavior in policing.

Ethics Instruction

Most would agree that ethics training and knowledge is essential for law enforcement in light of the complexities of policing and the legal liability issues that arise when police behave improperly and violate the public trust. Ethics training gained considerable traction in the 1990s when the IACP recommended providing ethics instruction for all ranks throughout an officer's career, incorporating decision-making models in instruction, discussing values and developing critical-thinking exercises, and using adult-learning models (Wyatt-Nichol and Franks 2009: 40). Preservice training in ethics in police academies is usually mandated, but the time spent on the topic is typically only between two and four hours (p. 41). In a survey of 100 selected police departments, Heather Wyatt-Nichol and George Franks found that among departments that required ethics training in the academy as a preservice requirement, most indicated that the instruction lasted half a day or less, and only a few departments required one full day of ethics training (p. 39). Nevertheless, some departments gave ethics greater prominence, with two departments reporting that one week of ethics training was required.

Only 14 departments required ethics training in service, while six reported that ethics was not mandated but was offered as an optional subject to fulfill in-service training requirements. Only 7% of departments required officers who had been disciplined for misconduct to complete ethics training. While most police chiefs took a positive view of ethics training, one chief gave his opinion:

> By and large, people bring the moral and ethical values into the workplace and law enforcement is no different. Providing the training merely allows the agency to keep the subject of ethical behavior on the surface. The training will not, in my opinion, markedly change the behavior of attendees, either positively or negatively. (Wyatt-Nichol and Franks 2009: 47)

A CLOSER LOOK

LAW ENFORCEMENT CODE OF ETHICS,* INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

All law enforcement officers must be fully aware of the ethical responsibilities of their position and must strive constantly to live up to the highest possible standards of professional policing.

The International Association of Chiefs of Police believes it is important that police officers have clear advice and counsel available to assist them in performing their duties consistent with these standards, and has adopted the following ethical mandates as guidelines to meet these ends.

A police officer acts as an official representative of government who is required and trusted to work within the law. The officer's powers and duties are conferred by statute. The fundamental duties of a police officer include serving the community; safeguarding lives and property; protecting the innocent; keeping the peace; and ensuring the rights of all to liberty, equality and justice.

A police officer shall perform all duties impartially, without favor or affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity.

Officers will never allow personal feelings, animosities or friendships to influence official conduct. Laws will be enforced appropriately and courteously and, in carrying out their responsibilities, officers will strive to obtain maximum cooperation from the public. They will conduct themselves in appearance and deportment in such a manner as to inspire confidence and respect for the position of public trust they hold.

A police officer will use responsibly the discretion vested in the position and exercise it within the law. The principle of reasonableness will guide the officer's determinations and the officer will consider all surrounding circumstances in determining whether any legal action shall be taken.

Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. 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.

A police officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances. Force should be used only with the greatest restraint and only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from applying the unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person.

Whatever a police officer sees, hears or learns of, which is of a confidential nature, will be kept secret unless the performance of duty or legal provision requires otherwise. Members of the public have a right to security and privacy, and information obtained about them must not be improperly divulged.

A police officer will not engage in acts of corruption or bribery, nor will an officer condone such acts by other police officers. The public demands that the integrity of police officers be above reproach. Police officers must, therefore, avoid any conduct that might compromise integrity and thus undercut the public confidence in a law enforcement agency. Officers will refuse to accept any gifts, presents, subscriptions, favors, gratuities or promises that could be interpreted as seeking to cause the officer to refrain from performing official responsibilities honestly and within the law. Police officers must not receive private or special advantage from their official status. Respect from the public cannot be bought; it can only be earned and cultivated.

Police officers will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. An officer or agency may be one among many organizations that may provide law enforcement services to a jurisdiction. It is imperative that a police officer assist colleagues fully and completely with respect and consideration at all times.

Police officers will be responsible for their own standard of professional performance and will take every reasonable opportunity to enhance and improve their level of knowledge and competence.

(*Continued*)

(Continued)

Through study and experience, a police officer can acquire the high level of knowledge and competence that is essential for the efficient and effective performance of duty. The acquisition of knowledge is a never-ending process of personal and professional development that should be pursued constantly.

Police officers will behave in a manner that does not bring discredit to their agencies or themselves.

A police officer's character and conduct while off duty must always be exemplary, thus maintaining a position of respect in the community in which he or she lives and serves. The officer's personal behavior must be beyond reproach.

*Adopted by the Executive Committee of the International Association of Chiefs of Police on October 17, 1989, during its 96th annual conference in Louisville, Kentucky, to replace the 1957 code of ethics adopted at the 64th annual IACP conference.

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POLICING AND STRESS

The notion that law enforcement is a stressful occupation is unsurprising given the nature of policing. For example, research studies have long focused on aspects of the policing mission and identified post-traumatic stress disorder (PTSD) as a condition likely to be experienced by police after shooting incidents. In such incidents, common reactions have been flashbacks, sleeping problems, time distortion, emotional reactions (including crying, anger, and elation), and fear of the legal repercussions of the shooting (Stratton, Parker, and Snibbe 1984: 127). Therefore, it has long been established that policing is a high-stress and high-strain occupation (Gershon, Barocas, Canton, Li, and Vlahov 2009: 276).

During the mid- to late twentieth century, the study of stress began to focus on policing. While some police agencies conducted research into stress and established employee assistance programs, it was not until 2000 that the first confidential hotline for police and their families was established in New Jersey, following a series of police suicides, using retired officers with skills in crisis intervention techniques (Waters and Ussery 2007: 171).

As an at-risk group, police are exposed to more acute stressors than people in most occupations, as evidenced by officers beginning their careers in excellent physical health and retiring early or dying from stress-related causes. Suppressing emotions is often a precursor to forms of stress, and the task of policing generally inhibits free emotion, as does the police culture itself. The then-chief of the Cincinnati Police Department in the early 1970s spoke of police culture as leading "officers to believe that they are a special population that has superhuman abilities and no weaknesses." Nevertheless, police culture values the figure of the "tough cop" able to withstand any amount of pressure (quoted in Waters and Ussery 2007: 172). In fact, the contrary is true, because officers become vulnerable to stress by having to be constantly vigilant. Exacerbating the stress problem is that departments tend to ignore it in favor of issues of training and equipment.

The Nature of Police Occupational Stress

Manning (2007: 73) describes organizational tensions within policing as arising from officer perceptions that their organization is "capricious, unpredictable and punitive rather than democratic and fair" and because officers "feel at risk from the internal machinations of politics, supervision, policies and uncertain events or incidents."

Workplace problems are important stressors, and studies have identified the following factors:

- Unsatisfactory interactions with fellow officers
- Concerns about status and opportunities for advancement in the department
- Bias and harassment
- Over- and underestimates of physical capabilities (Morash, Haarr, and Dae-Hoon 2006: 27)

Some stress is the outcome of a lack of support from networks both at work and at home. Shift work is also an issue in stress management because constant shift changes lead to serious health problems brought on by interrupted sleep patterns, digestive issues, and the general impact on physical and psychological well-being (Waters and Ussery 2007: 175). Excessive overtime, heavy workloads, and frequent interaction with the public all contribute to stress (Gershon et al. 2009: 276).

Organizational-based stress can seriously undermine law enforcement effectiveness through health issues, poor morale, and high staffing turnover rates (Gershon et al. 2009: 277). Studies have found that organizational stressors and not critical policing incidents are most closely associated with police stress (p. 284). Generally, police who experience high levels of stress report physical ailments and commonly have poor health, are often absent from work, experience burnout, experience job dissatisfaction, may not be truly committed to the policing mission, and may retire early (Morash et al. 2006: 26).

Stress and Crime Fighting

In terms of the policing mission, working in high-density/high-crime areas, working in metropolitan areas, and being employed in large departments differentiate the large municipal police departments from those that serve small cities and suburban and rural areas where different behaviors and attitudes are found. In large departments, stressors may be associated with high levels of discipline and regulation and a more proactive, even militaristic approach to policing. In small departments, there may be less crime and more scope for community-type policing that diminishes the isolation of police from the local community (Morash et al. 2006: 29). However, in a survey of about 1,000 officers from 11 police departments, including one serving a population of more than 1.5 million and one serving half a million, Morash and colleagues (p. 36) found that high crime rates and poverty did not have strong predictive value in explaining police stress. As well, it was found that the violent crime rate was not associated with high levels of stress. This result could be explained by the fact that even in a high-crime jurisdiction, many police do not directly deal with violence most of the time, or possibly a high crime rate is not a principal stressor.

Policing can mean that each call for police assistance has the potential for violence and injury or death. Domestic violence cases are especially dangerous, as the protagonists may turn on the police. Police face three types of stress: **explosive events** (for example, crimes in progress); **daily tensions** that corrode confidence and resilience; and **implosive events** that challenge an officer's values and bring about internal conflicts (Waters and Ussery 2007: 175). Additionally, police continually swap "war stories" that illustrate the potential for danger and constantly view media images of danger in policing (Griffin and Bernard 2003: 12).

According to the National Law Enforcement Officers Memorial Fund (n.d.b), 129 officers died on duty in 2017, a decrease from the 159 deaths in 2016 and 185 in 2011. In 2017, traffic accidents (auto crash, motorcycle crash, and struck by vehicle = 46) and firearms (46) accounted for 92 fatalities and were the leading causes of death. Job-related illness was the next-highest cause of death, responsible for 21 deaths (National Law Enforcement Officers Memorial Fund n.d.a). Policing also means adapting to change, which can itself be a stressor—for example, when a policy of community policing is introduced that might require significant role changes (Chan 2007: 134). Depression and heart disease are prevalent in police populations, and stress has been associated with problem drinking and hyperaggression, both on and off the job (Gershon et al. 2009: 276). The death of, or injury to, a fellow officer—an event that occurs only irregularly in other occupations—is known to be especially stressful.

Coping With Stress

It has been suggested that police culture itself develops in a way that helps police cope with the pressures and tensions of police work; for example, officers may rely on the mutual assistance and solidarity that are core elements of police culture (Chan 2007: 130, 144). There are numerous types of treatment and prevention programs for police, ranging from psychological counseling and Alcoholics Anonymous to training about stress at police academies. An officer may decide to cope with stress through alcohol, even though alcohol abuse is associated with domestic violence and poor job performance. Nevertheless, as a coping mechanism, alcohol is generally condoned by police culture (Waters and Ussery 2007: 176). Studies have shown that police are reluctant to contact mental health professionals because police culture disapproves of such action, and officers tend to have little confidence in professionals who are not closely associated with policing. As well, an officer may fear loss of his or her job because consultations with mental health practitioners may be held against them in disciplinary proceedings or even in litigation if they abuse their authority by using excessive force (p. 177). Generally, individual coping strategies include the following:

- Access to a dependable support system
- Improved communication skills to better articulate individual concerns (an appropriate mechanism that allows feelings to be vented)

- A regular exercise program and a good diet
- Recreational activities that allow an individual to "turn off" from work
- Participation in self-help groups
- Regular vacations

Departments can help officers to minimize or avoid stress through organizational practices and mechanisms that teach officers about stress and how to cope with it; by having open channels of communication to supervisors who are in turn supportive and understand how to recognize and respond to stressed officers; and by having debriefing sessions at the end of shifts (Waters and Ussery 2007: 184). Officers without a supportive family or friends may be especially vulnerable to stress (Gershon et al. 2009: 276).

Angry Aggression

Griffin and Bernard (2003: 3) have proposed that the use of extralegal (as opposed to excessive) force by police can be explained by "angry aggression theory." Extralegal force refers to the deliberate, knowing, and wrongful use of force by police, such that police are aware they are abusing their power. In other words, police have the intent to act extralegally (p. 5). The authors of this theory, which is composed of elements of sociology, psychology, and biology, argue that it better explains police extralegal force than do theories that focus on individual psychological characteristics such as "authoritarianism" or on police culture.

The theory originated to explain violent responses to minor conflicts and insults by disadvantaged minorities in the inner cities. It posits that persons who experience chronic physiological arousal—the body's "fight-or-flight" response—tend to see threats and respond to them more aggressively than do others who do not have that experience. These responses become embedded in norms and values. The literature also supports the notion that police experience chronic arousal and therefore tend to see threats and respond with aggression to an extent that others do not. The theory makes the case that police transfer aggression to visible targets in their immediate environment—namely, members of the public with whom they interact. The stressful nature of policing (including citizen disrespect and challenges to police authority), its social isolation (police tend to socialize with other police), and the inability of police to actually relieve the stress they experience (police are generally unable to relieve the stress of danger, citizen hostility, and organizational pressures) are all said to link angry aggression theory directly to use of extralegal force (Griffin and Bernard 2003: 12).

Clearly, research demonstrates that police experience numerous stressors on the job, and mechanisms for alleviating stress are crucial if stress is not to result in domestic violence in the home, alcohol abuse, angry aggression, or even suicide. Police use of force is an intrinsically complex issue impacted by training, experience on the job, police culture, occupational stressors, perceptions of illegitimacy by the public, and media representations of how and why it was used and to what degree (see Chapter 3 on police use of force).

POLICE "MILITARIZATION"

Since the late 1990s, scholars have been advancing the proposition that there has been a "militarization" of policing in the United States. This proposition is focused on one aspect of policing and drew little attention outside academia until the events in Ferguson, Missouri, a town of about 21,000 people, in August 2014, when a white police officer shot and killed an 18-year-old Black male. The public response initially focused on questions of race and bias and resulted in protests in the streets, some of which turned to looting and violence. Local law enforcement handled the situation by sending in police equipped with military-type weapons and body armor and accompanied by armored vehicles. This was widely viewed as police overreaction to the protests and focused public attention on the style and tactics of the policing of the protests. Questions were raised, generally about the nature of policing in the United States and how it had become militarized and the consequences of this for the public (Kiker 2015: 282).

This section examines the historical and contemporary context associated with the separation of police and the military, the theories and the narrative of militarization, and the nature of that militarization and how it has been said to have changed policing and the possible consequences.

Historical and Contemporary Context—Police and Military

Since 1776, the United States has sought to isolate the military from involvement in civilian affairs, citing the quartering of British troops in colonial Boston in the late 18th century as a show of power over a dissident population. However, the Reconstruction Act that followed the end of the Civil War divided the Confederate states into military districts and placed them under military control. Consequently, at that time, the military became the principal law enforcement agents. A rule prohibiting military involvement in domestic law enforcement was adopted in the Posse

Comitatus Act (PCA) of 1878. The decisions of the courts have confirmed this isolation approach and have noted "a traditional and strong resistance of Americans to any military intrusion into civilian affairs" (*Laird v. Tatum* 1972).

In World War I, the PCA was suspended, enabling the military to be used in aiding the policing of domestic unrest, and the National Guard was deployed overseas (Hall and Coyne 2013: 491). In 1981, the PCA was substantially weakened when it was amended to allow the military to participate in the war on drugs (Kiker 2015: 294). Specifically, the Military Cooperation With Law Enforcement Act created exceptions to the PCA and allowed the Department of Defense (DOD) to share information, as well as the military to provide advice and assistance to local police agencies and to offer them military equipment for deployment in the war. As well as providing aerial surveillance to interdict drug shipments, National Guard troops (provided by federal funds) were used by many states in prohibiting drug activities (Hall and Coyne 2013: 494–495).

As noted earlier, events in the town of Ferguson, Missouri, raised the profile of militarized policing, and soon after, the U.S. Senate reacted to public concerns by debating and holding hearings about federal programs that allowed police departments to obtain military assets at no cost. The general approach of the Senate was that this kind of equipment and its deployment as part of police tactics brought about mistrust between police and the communities they were supposed to protect and serve.

The Militarization Thesis

The foremost proponents of the militarization thesis are Kraska and Kappeler, especially Peter Kraska, who alone or with other scholars has researched and drawn attention to the expansion in the creation of SWAT teams in U.S. law enforcement agencies (Kraska 2007c: 1). Kraska's argument is that there has been a "little noticed but nonetheless momentous historical change—the traditional distinctions between military/police, war/law enforcement, and internal/external security are rapidly blurring. . . . Two interrelated trends . . . embody this blur: the militarization of U.S. police and crime control, and the police-ization of the U.S. military." In support of this convergence argument, Kraska points to the following:

- The weakening of the law preventing military involvement in law enforcement
- The creation of cooperation between police and the military, including technology transfers, information sharing, an operational relationship on drugs control and terrorism, and cross-training on SWAT tactics and antiterrorism
- The growth and routine use of SWAT units modeled on military units
- A "growing tendency" for police to rely on the war/ military model in designing crime, drug, and terrorism control and operations
- Constructing crime as "insurgency" and crime control as "low-intensity conflict," requiring the performance of counterinsurgency measures by police and the military (2007c: 2)

Kraska sees the notions of *militarization* and *militarism* as organizing concepts to better understand the changes that have occurred in policing since the 1960s, when the SWAT concept was first introduced. He offers this explanation of militarism:

> [It is] an ideology focused on the best means to solve problems. It is a set of beliefs, values, and assumptions that stress the use of force and threat of violence as the most appropriate and efficacious means to solve problems. It emphasizes the exercise of military power, hardware, organization, operations and technology as the primary problem-solving tools. (2007c: 3)

Militarization is therefore the implementation of the ideology of militarism; it means "adopting and applying the central elements of the military model," and it is represented in policing by police drawing on and patterning themselves around "the tenets of militarism and the military model" (Kraska 2007c: 3).

Kraska recognizes that the police have always been militarized to some extent and suggests there is a continuum of militarization. He proposes a set of indicators from which the degree of militarization can be measured. The indicators relate to type of weapons, military style such as combat dress, the use of elite squads and command and control entities, and operational factors, including using SWAT teams to execute "no-knock" drug warrants. Wherever SWAT units may be located on this continuum—Kraska does not offer an opinion on this—it remains unclear whether it is being argued that police have taken on the "primary war-fighting task of the standard military organization: to overwhelm and subdue" (Campbell and Campbell 2010: 338) or whether their role remains more limited than this. It is argued that even with a degree of militarization, there is no convergence of police and military roles in terms of "cognitive demands," because while even a police patrolman may exercise significant discretion in carrying out missions, a rifleman is required to simply obey orders (p. 339).

Number and Deployment of SWAT Units

Based on survey research, Kraska argues that as of the late 1990s, about 89% of police departments serving populations of 50,000 or more had an established paramilitary unit, representing a doubling of such forces that existed in the mid-1980s. In towns of fewer than 50,000, the growth in such units was even more marked, with about 80% having a paramilitary unit compared to only 20% in the mid-1980s. Also significant is the rate at which these units have been deployed. Kraska says there was a 1,400% increase in deployments between 1980 and 2000 and that there are now an estimated 45,000 deployments of SWAT teams annually among the departments he surveyed, compared to an average of about 3,000 in the early 1980s. This trend began with the declaration of the war on drugs. The increase is not attributable to a growth in dangerous incidents for which SWAT units were originally conceived, such as hostage, terrorism, or "sniper" situations (Kraska 2007c: 6). In fact, regardless of the size of the town, more than 80% of deployments were for drug raids with "no-knock"[2] entries into property searching for drugs (p. 7). Additionally, a high number of deployments were to undertake "routine patrol work in crime 'hot spots,'" indicating a normalization or routinization of SWAT units.

According to Kraska (2007a: 166), this represents a dramatic change in police tactics; in his view, 20 years ago such tactics were almost unheard of and would have been considered an "extreme and unacceptable police tactic." This may be because there is now a perceived threat equivalent to the war on drugs at that time, but Kraska does not discuss this. Kraska concludes that this represents "strong evidence that the U.S. police, and the 'war on crime' in general, have moved significantly down the militarization continuum" (Kraska 2007b: 793). An alternative view is that the frequent development of SWAT units is a reaction to the new demands placed on policing by the war on drugs—for example, in responding to well-armed and highly dangerous drug operations. This view therefore suggests that increased use of SWAT units is simply a response to needs and does not represent any real change in policing styles (Campbell and Campbell 2010: 329).

A 2014 study by the American Civil Liberties Union (ACLU) looked at 818 SWAT incidents involving more than 20 police agencies in 11 states covering the period from July 2010 to October 2013. In seven cases, civilian deaths occurred in the course of SWAT team deployments. The study found that 62% of SWAT callouts were for drug searches, and 79% involved raids on private houses. Only about 7% of callouts fell into the categories of action for which such units were conceived, namely, "hostage, barricade and active shooter scenarios" (p. 2). The report describes SWAT raids as "undoubtedly violent events" involving 20 or more officers carrying assault rifles and grenades who break down the doors of premises and scream at those inside to get down on the floor. In the view of the ACLU, SWAT deployments often "unnecessarily entailed the use of violent tactics and equipment including Armored Personnel Carriers (APCs); and the training provided to such units encourages the development of a 'warrior' mentality" (p. 3).

The ACLU concluded in its assessment of deployments that the use of SWAT teams to serve search warrants was inappropriate because officer safety did not appear to be under genuine threat. Of the incidents where officers believed weapons would be present (usually a handgun, not an assault rifle), such were found in only 35% of cases. ACLU argues that SWAT units should not be deployed based solely on probable cause of the presence of drugs and that warrant service is appropriate only if it can be demonstrated that regular police cannot execute a warrant without facing "an imminent threat of serious bodily harm" (2014: 4). The ACLU notes that "reasonable standards for deploying SWAT teams appear to be virtually nonexistent" (p. 4). In terms of targets for SWAT raids, the ACLU found that "the use of paramilitary weapons and tactics primarily impacted people of color" (p. 5). Specifically, in drug searches, the targets were primarily people of color, but in hostage and barricade situations, whites were the targets. Overall, the ACLU study found that 42% of persons subjected to SWAT raids to execute warrants were Black and 12% Latino; therefore, for all warrant deployments, at least 54% of the suspects were minorities (p. 5).

Causes of Militarization

Kraska (2007b) and other commentators point to two government strategies as key in the growth of militarization—the war on drugs and the war on terror. These metaphorical wars are argued to have shaped policing through the use of militaristic rhetoric. It is not clear how this occurred, and there seem to be no empirical studies that actually map how and why police departments came to form SWAT units. There are, however, some demonstrable linkages between law enforcement and these wars in the form of military involvement in the war on drugs and the transfer of equipment to police agencies to support the two wars. It is also argued that a driver of the move to militarism was the perception among police that SWAT teams and the like are elite forces and associated with "real police work," similar to the high status that special forces enjoy within military culture (Campbell and Campbell 2010: 335).

The war on drugs is discussed in Chapter 9, but in summary, the "war" was declared by President Nixon in the 1970s and was conducted by the Drug Enforcement Administration (DEA) and local police agencies with military assistance and great publicity. By the end of the 1980s, mass arrests for drug offenses were taking place, fears about crack cocaine and drug abuse generally were being fostered, and popular support for the war had increased such that by 1989, almost 40% of the public considered illegal drugs to be the "primary problem" facing the United States, and by 1993, 64% viewed drugs as a "critical" influence on crime. There was wide support for taking the war overseas to the drug-producing countries and for using the military to fight drug trafficking.

Some scholars have argued that while the effects of militarization in policing are clear and explicit in the growth and nature of SWAT type units, the causes remain contested; they also argue that the war on terror was not a cause of but rather an excuse for militarization and that policing has become militarized worldwide because of the amplification of threats to national security (Hill and Beger 2009: 29).

Applying a political economy perspective to militarization, Hall and Coyne (2013: 488) suggest that what they term "indirect militarization" occurs over time when police departments as bureaucracies engage in "mission creep" with the aim of expanding the range of their activities and increasing their spending. This tendency is argued as "inherent" and exemplified by the increase in the military budget from $306 billion in 1988 to $698 billion in 2010. Similarly, police spending climbed, growing 445% between 1982 and 2007. Therefore, Hall and Coyne argue that police agencies expand their operations to secure additional staff and funds. Having secured more funds, tactical training, and weapons, they face an incentive to use them to justify the increase and seek yet more funding (p. 488).

Hall and Coyne (2013) also point out that actual or perceived crises as well as moral panics that are fear based and associated with forms of crime or terrorism give government the opportunity to expand its activities by formulating new programs. The war on drugs and the war on terror are instances of such crises, and both created the opportunity for expansion of policing services (p. 488). Improvements in military technology also play a role as they are transferred to police agencies in the form of drones, satellite monitoring, and facial recognition systems. This, Hall and Coyne argue, facilitates the militarization of the police (p. 490). Kraska (2007b) does not mention that many police agencies have regularly recruited military veterans as patrol officers since the end of the Civil War. Whether or not the presence of military veterans in line positions or in SWAT units affects police culture or tactical perspectives has not yet been studied (Crank, Kadleck, and Koski 2010: 408).

The Consequences of Militarization

Kiker (2015) has argued that the move toward militarizing police began in the 1960s in Los Angeles when then–police chief Darryl Gates, faced with riots and looting in the Watts district of the city, decided that traditional police tactics were inadequate to deal with the situation and created a tactical unit—the first Special Weapons and Tactics (SWAT) team. With assistance from a nearby U.S. Marine Corps unit, Gates deployed the SWAT unit for the first time against the headquarters of the Black Panthers. By 2007, about 80% of U.S. towns with a population of between 25,000 and 50,000 persons had an operational SWAT team (p. 288). In Maryland, a report was released, revealing that Maryland deployed a SWAT team an average of 4.5 times every day in 2014 and that more than 93% of those deployments were for the purpose of executing a search warrant, and about 60% were for nonviolent crimes (p. 288).

The deployment of SWAT teams has become a pervasive policing tactic. The following examples show how SWAT tactics have been employed inappropriately or recklessly, resulting in very adverse outcomes. Kiker (2015) argues that the existence of SWAT teams increasingly shapes aspects of policing that previously were conducted without militarized police units.

- In 2014, the U.S. Eleventh Circuit ruled in *Berry v. Leslie* that using SWAT tactics to conduct a regulatory raid on Orlando, Florida, barbershops was a violation of the Fourth Amendment.
- In St. Louis County, Missouri, the location of the town of Ferguson, police have determined that they will use SWAT teams to serve all felony warrants.
- In 2012, a police chief in Arkansas announced that he would bring in a policy that SWAT officers would patrol the streets of the small town he policed and stop all pedestrians, requiring identification and an explanation of why they were walking the streets (pp. 289–290).
- In Detroit, a seven-year-old girl was shot in the head and killed by a SWAT team member who entered her home in search of a suspect who lived in another unit of the duplex owned by the girl's family. The team had been warned before the raid that there were children in the home (p. 290).
- In Cornelia, Georgia, a SWAT team that executed a no-knock warrant on a suspected drug dealer threw a flashbang grenade prior to entering his house. It landed in the crib of a small child, who was severely burned (p. 291).

- Today, police militarization has reached university police departments and schools. At least two university law enforcement units have obtained grenade launchers from federal sources, and the Ohio State University police unit has a mine-resistant ambush protected (MRAP) vehicle (specifically designed to withstand explosives attacks) to provide "presence" on football game days (ACLU 2014: 22).

Even while violent crime continues to decrease, the expansion of the tactical use of SWAT teams continues. Hill and Beger claim that militarization subverts democratic policing and encourages the perspective that inner cities are war zones with the urban underclass constituting the enemy (2009: 32). Thus, individual rights are in danger of being disregarded when the traditional police role of "protect and serve" is reconfigured to "overwhelm and defeat" (Campbell and Campbell 2010: 329). Campbell and Campbell do not explain the degree to which this claimed erosion of rights is occurring, but it is clear that even with an expanded jurisdiction, SWAT units are not dominating policing, nor are they likely to do so. Any claims that this is occurring would need to be supported by empirical research. As to the public reaction to SWAT units, Jefferis (2012: 71) argues that the public accepts their law enforcement officers behaving as and resembling soldiers because the rhetoric of fear associated with violent crime and terrorism warns that the "enemy" is always close by.

Some police agencies have, however, opted out of the drive to militarize. Police commanders have questioned the effectiveness of SWAT activities, such as patrolling in full tactical gear, noting that communities find these shows of force intimidating and offensive (Campbell and Campbell 2010: 335). Nevertheless, most departments have retained their equipment, and some scholars believe that as long as the wars on drugs and terror persist, the militarization of policing will continue, promoted by the "drug-terror complex" (Hall and Coyne 2013: 500). It is not clear if this means policing operations will increasingly be handed over to SWAT units or whether the changes in policing said to have already taken place will be enhanced or even accelerated.

Critiques of the Militarization Thesis

Kraska (2007c) argues that SWAT teams engender fear and outrage within communities, but he has been criticized for the lack of evidence to support this assertion (Waddington 1999: 129). Waddington maintains that SWAT teams could not have expanded beyond the original Los Angeles model without political support and that the general public has at best remained apathetic about their expansion and the tactics they employ. He therefore disputes the notion that such units inspire public fear, drawing on international studies that show no correlation between public approval of the police and the weapons they carry and have found police in armed jurisdictions to be no less popular than unarmed police.

The ACLU (2014: 23) points out that the Cary, North Carolina, SWAT team offers a training session called "Warrior Mindset/Chemical Munitions," but Waddington rejects the argument that SWAT teams constitute a "warrior culture" and are "warrior cops" who have adopted a military-style culture, enjoy action and combat, delight in possessing and using powerful weapons to fight crime, and maintain a strong esprit de corps. He contends that SWAT teams may well have their own culture, but it remains a police and not a warrior culture because SWAT team values are shared by most police (1999: 130). While Kraska argues that SWAT units see themselves as elite police involved in real crime fighting and in dangerous activities, it can be said that police culture (see earlier section on "Police Culture") similarly perceives the policing mission as crime fighting. Therefore, there may be little difference in role assumption between SWAT teams and patrolmen. Kraska (2007c) does not discuss the articulation between police culture and militarization.

Finally, Waddington points out that while the military is trained to use lethal force indiscriminately in order to defeat an enemy, police may target specific individuals only for good reasons, and while they have discretion to use force and violence, it is limited and circumscribed by rules and institutional practice (1999: 133). Therefore, he argues that it cannot be said that police have adopted a military culture or posture—their training and their missions are completely different. While it is true that SWAT units are heavily armed and protected by body armor, they must be discriminating in using their weapons compared to the military, who generally favor volume of fire as opposed to accuracy (p. 135). For example, if SWAT teams use flash-bang grenades when entering a building, this contrasts with the military, whose practice is to throw a shrapnel grenade into a room and spray it with automatic fire. Nevertheless, while contending that Kraska overstates his case, Waddington agrees that "if the distinction between police and military disappears, then it threatens the very basis of democratic polity" (p. 137).

Den Heyer (2014: 347) reviews the militarization thesis, but like Waddington, he maintains that police are not being militarized and that the establishment of SWAT-type units is "a natural progression in the evolution and professionalization of one aspect of policing agencies."

A CLOSER LOOK

MILITARY EQUIPMENT TRANSFERS TO LAW ENFORCEMENT: THE FEDERAL 1033 PROGRAM AND HOMELAND SECURITY GRANTS

The federal 1033 program, begun in 1997 and administered by the Department of Defense (DOD), permitted the transfer of surplus military equipment to police departments at no cost. The initial purpose was to use the equipment in counterdrug activities, but this was later broadened to also assist in the global war against terrorism by securing the "homeland" against possible terrorist attacks (ACLU 2014: 16). Between 1995 and 1997 alone, the DOD gifted 1.2 million items of military hardware to police agencies, including Ml6 rifles, grenade launchers, and armored personnel carriers (Hill and Beger 2009: 30). The DOD-supported transfer program claimed that the considerable financial investment in various weapons was justified because these items possessed a "dual-use status" (Campbell and Campbell 2010: 335). The 1033 program required that agencies taking delivery of equipment put it to use within one year of receipt, thereby incentivizing agencies to deploy military equipment in law enforcement (ACLU 2014: 16). Of the equipment transferred under the program, 36% was brand new, and it was therefore possible for the DOD to purchase equipment and simply transfer it on to law enforcement agencies free of charge (ACLU 2014: 24).

The Associated Press (AP) reported on November 24, 2013, that the equipment transfers included 18-ton, armor-protected, military fighting vehicles called MRAPs with bulletproof glass and gun turrets that were used in Iraq to counter roadside bombs (in Peak 2015: 201). At least 600 MRAPs have been given away. As one county sheriff in Albany, New York, stated, "It's armored. It's heavy. It's intimidating. And it's free." An AP investigation revealed that of the $4.2 billion worth of equipment distributed since l990, a disproportionate share had been delivered to rural police and sheriffs with small police forces and little crime. The equipment transfers are justified on the basis that they are necessary in conducting the wars on drugs and terror and to generally enhance homeland security (p. 200). The equipment has been described by critics of these transfers as "representing symbolic statements of war" (p. 206).

Following the events of 9/11 and the formation of the vast Department of Homeland Security (DHS) with a 2013 budget of over $60 billion, in 2003 the DHS began to provide grants to law enforcement that could be used to acquire military equipment under the Homeland Security Grant Program, which states its objectives as including preventing future terrorist attacks. Significantly, the grant program does not authorize grants to be spent to "supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local and Federal law enforcement services" (Peak 2015: 203).

There is now a network of private suppliers actively marketing weapons and tactical equipment to police agencies ensuring the persistence and growth of paramilitary units. As well, pressure and special interest groups comprising the "terror industry" made up of government agencies, technocrats, consultants, and private companies offer security and antiterrorist training and services and promote SWAT-type units as a means to counter the fear of terrorism (Hall and Coyne 2013: 489). In the war on drugs, police and prison officer unions lobbied for more funds, and police became increasingly dependent on federal funding for antidrug measures. The police wanted more stringent antidrug laws, and the companies running private prisons saw the opportunity to expand their earnings by the increased incarceration of drug offenders (p. 496).

In an article in the *New York Times* of June 8, 2014, Matt Apuzzo describes the town of Neenah, Wisconsin, with a population of about 25,000, where police have taken delivery of a 30-ton armored truck. The town has not had a homicide in more than five years, but the police chief justified the truck on the basis that the "possibility of violence, however remote, required taking precautions." He is quoted as saying, "We're not going to go out there as Officer Friendly with no body armor and just a handgun and say 'Good enough.'" The police chief described a proactive police approach during a shooting or standoff; instead of setting up a perimeter and waiting out the suspect or negotiating, "police are trained to move in and save lives."

In another justification for armored vehicles, the Richland County Sheriff's Department in South Carolina has a website featuring its SWAT team flanking an armored vehicle resembling a tank with a mounted .50-caliber gun. The department spokesman said that the vehicle "allows the department to stay in step with the criminals who are arming themselves more heavily every day." Police take the truck to schools and community events, where it is a "conversation starter." In the suburbs of Indianapolis, officers justified a mine-resistant vehicle to "protect against a possible attack by veterans returning from war" (Apuzzo 2014).

At the same time that the president of the police federation was reported justifying the equipment to save the lives of hostages and ensure officer safety, the police chief of the town of Bloomingdale, Georgia, with a population of fewer than 2,800 persons, secured armored vehicles and grenade launchers through the 1033 program, even

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though he has not had to use deadly force against anyone in 20 years (Peak 2015: 202).

In 2014, President Obama ordered a review of the acquisition programs that dispatched military-grade equipment to police forces, and in January 2015, he issued an executive order creating a working group that, among other tasks, was to examine the equipment issue (Kiker 2015: 295). On May 18, 2015, President Obama announced he would ban the transfer of some types of military-style equipment to police departments and restrict the availability of other equipment (Davis and Shear 2015).

On April 30, 2015, Montana passed legislation to ban the state from receiving categories of military equipment from the federal government under the 1033 program. The prohibition covers weaponized drones, combat aircraft, grenade launchers, silencers, and militarized armored vehicles ("Montana Legislature Passes Bill" 2015).

Den Heyer argues that contentions about the war on drugs, the war on terror, and the enticing culture of SWAT units "display a lack of understanding of policing, police institutions and of police officers" (p. 347). By this, he means that in his view, SWAT units both in the United States and in other countries were established in response to a specific incident or series of incidents or because police required a SWAT capability to respond to armed offenders. Thus, he denies the militarization thesis in favor of the proposition that police were merely responding to an actual or perceived need for specialist units. While agreeing there has been an increase in SWAT callouts, den Heyer points out that there are no data on the reasons for this increase or on the type of incident for which a unit was deployed. Conceding there has been a change in policing because SWAT units are now executing search warrants, especially in drug cases, den Heyer disagrees that this signifies the militarization of "mainstream policing." Instead, he argues it represents the "rational utilization of resources and the appropriate use of expensive and highly trained personnel" (p. 354). Relying on events in New Zealand when two officers were killed in making routine, drug-related inquiries, den Heyer suggests that the increased use of paramilitary units there relates to officer safety and notes that such units are subject to detailed regulation.

In the United States, officer safety appears to be the primary justification for the expansion in the deployment of SWAT units, but no studies have yet analyzed the police rationale. Minimizing risk does, however, seem to be a central issue in the deployment of SWAT units. For example, Radley Balko describes how searching online police discussion boards often locates some version of the statement "Whatever I need to do to get home safe" (2013). Finally, den Heyer denies any convergence between police and the military and asserts that apart from some "cross-fertilization" in the adoption of policies and procedures, there is a "clear vision" of the role separation (2014: 355).

Several levels of analysis can be applied to the issue of police militarization. One level situates the research and analysis of militarization within a wider discourse of increased state violence, fear of crime, and fear of terrorism. As Henry Giroux (2015) summarizes it,

> [m]ilitarism is one of the breeding grounds of violence in the United States and is visible in the ubiquitous gun culture, the modeling of schools after prisons, the exploding incarceration state, the paramilitarization of local police forces, the burgeoning military budget, and the ongoing attacks on protesters, dissidents, black and brown youth, and women. (para. 19)

Another level of analysis might regard SWAT teams as embodying one of the core elements of police culture—namely, that the police are risk makers. As Manning puts it, "the police seek risks in high speed chases, arrests, raids and other interventions and act on behalf of society in taking on risks" (2007: 52).

Phillips points out (2016: 185) that the influence of police militarization has now extended beyond paramilitary SWAT units and into street-level policing. Today, street-level officers are the so-called first responders to "active shooter incidents," and there is evidence that shotguns previously available to these officers are being replaced by the "patrol rifle"—the military-style assault weapon. This raises the question about whether the boundaries between paramilitary and nonparamilitary forces within law enforcement are diminishing. If so, what questions does this development pose in light of explanations that street-level officers require these weapons so they are not "outgunned" by criminals or terrorists and can respond appropriately, for example, to school shootings? Issues of public safety and protection, actual limits to the use of military-style weapons on the streets, and the perceived and actual dangers faced by police are all relevant factors in considering how militarization continues to progress within law enforcement.