

## **Improving American Police Ethics Training: Focusing on Social Contract Theory and Constitutional Principles**

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### **Abstract**

Americans have good reason to fear the awesome power granted to police officers and to demand that these government officials adhere to the strictest of ethical standards in carrying out their duties. No other government official has such direct power and immediate access to regularly deprive the average citizen of their liberties. Other scholars (Cohen and Feldberg, 1991; Fitzpatrick, 2006) have articulated a clear set of ethical standards that should be used to guide the police in America, yet they are not being taught to most American police cadets. These standards are based on social contract theory and principles found in the Declaration of Independence, the U.S. Constitution, its Bill of Rights and the Federalist Papers. Are these principles too complicated for the average police recruit to internalize? One would think an officer that takes an oath to uphold the U.S. Constitution would at least understand the basic principles found within it.

This paper is partly an extension of an earlier work by FitzPatrick (2006). It will explain why a change in current police ethics training focusing on outcome-based codes of ethics and oaths of honor is necessary. The paper reviews Cohen and Feldberg's (1991) five moral standards for police and argues that they should form the basis of police ethics training in the U.S. It explores the reasons that these standards are rarely taught to cadets in police academies across the nation. Suggestions for maneuvering around these barriers and incorporating the five moral standards for police into all levels of police training will be presented.

### **Introduction**

*Ethics in government* seems like an oxymoron to many American citizens. They are becoming increasingly cynical in their view of politicians, appointed officials and other public servants at all levels of government. Scandals and abuses of power are reported in the local and national news on a weekly basis, further eroding trust in government. At no level does this lack of trust have more serious implications than on the front-lines of American government – the local police.

Each nation strikes a different balance between order and liberty. The purpose of police in every society is social control. The police are called upon to maintain the balance between freedom and security that the government has established. The United States of America has historically placed more weight on the side of freedom and has been described as an experiment in ordered liberty. Delattre points out that the police play a central role in the success of this experiment, and therefore, “America’s government is also an experiment in law enforcement and peacekeeping” (Delattre 2006, 18).

Police represent the arm of American government that is authorized to use non-negotiable coercive force on its citizens (Bittner 1985, 23). The police in the United States are entrusted with enormous power. No other government official legally holds and regularly uses the power to detain citizens, search their personal belongings, use physical force against them or otherwise

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deprive them of their normal liberties. As a result, people of all demographic backgrounds fear the police, but rarely does the average citizen express fear of the President of the United States or of their representative in Congress. With this awesome power comes the responsibility to use it for the public good in accordance with the democratic principles our republic was founded on. How can American citizens ensure that police officers take this responsibility seriously?

Before delving into the main topic of this paper regarding ethics training for police officers, it must be noted that ethics training alone will not increase the level of trust in the police or end abuses of police power and authority across the nation. Improving ethics training for American police officers is one crucial component of a series of changes that need to be implemented within the profession. A popular debate within police ethics literature centers around the question of whether corruption and misconduct are the result of rotten apples or a rotten barrel. The author's experience has revealed that departments with widespread problems usually suffer from both. Improved ethics training may begin to repair the rotten barrel over time, but rotten apples can be avoided if police agencies devote a great deal of effort on the front end by carefully selecting individuals of good character. A selection process that incorporates thorough background checks, polygraph examinations, psychological tests, personal interviews and assessment scenarios should be used to find the best available candidates for the position of police officer.

As Delattre notes, it may be difficult to find people in their early twenties that have had their character tested through experience and who have developed habits of excellence as a result (Delattre 2006, 86). At the very least, police departments must hire people who *want* to do the right thing and have shown that they have attempted to do so up to that point in their lives. Successful candidates should be those who view the opportunity to become a public servant as a privilege rather than those who are attracted to the power that comes with the position. They must understand and accept the fact that they will be held to the higher standards that apply to all public servants. No amount of ethics training will change the behavior of a person who is attracted to the occupation for the wrong reasons, who is not particularly concerned with what is morally right and who does not seem very concerned about his/her character. Taking short cuts during a selection process to meet staffing needs will cost an agency more dearly than operating with a shortage in personnel.

### **Current State of Ethics Training**

Once an agency has hired new officers of good moral character who want to do the right thing, these individuals must be taught what is right and what is wrong. Leaving them to rely on their own personal moral values, common sense or religious principles will fail them in the complex and often contradictory world of policing. Current ethics training seems to recognize this, but relies too heavily on an outcome-based system of vague oaths and codes, coupled with specific lists of things that are prohibited by laws and departmental policies. For example, the International Association of Chiefs of Police has developed a code of ethics (IACP-1) and an oath of honor (IACP-2) that have been widely adopted as part of the ethics training in basic police training academies across the United States. Both documents are helpful descriptions of desired outcomes, but they do little to assist an officer or a police administrator in making tough decisions when faced with an ethical dilemma in every day circumstances. Most officers who want to do the right thing realize that they should not engage in serious criminal conduct. But what about the more subtle questions that erode the level of trust that citizens have in the police?

Officers and police administrators grapple daily with questions that have ethical implications. What if different factions in the community make opposing demands on police? What if the mayor says she wants more traffic tickets written to increase funds coming into the city? What if the mayor requests that city residents only receive warnings? When should an officer arrest an offender rather than give a warning? Why can't officers accept half price meals? What is the public trust? When is it permissible to lie to a suspect? What should an officer do if he/she pulls over an off-duty officer? Is it wrong for an officer to run personal errands within his/her jurisdiction while working? Can officers go home for lunch? What if a rookie's training officer or supervisor asks him/her to do something that he/she thinks is wrong? What is expected of an officer that observes a co-worker doing something wrong? What should an officer do if he/she sees an officer from another department do something wrong? Does an officer have to wear a seatbelt in the cruiser if he/she never gives seatbelt tickets to citizens? Are officers permitted to let a person's circumstances influence whether or not the person gets charged with a crime, or must every citizen be treated exactly the same? Is it permissible for officers to give "courtesy cards" to their friends? If an officer is off duty and gets pulled over, is it wrong for him/her to show his/her badge to the officer? Can police officers overlook some crimes that are committed in their presence? How should an officer decide which offense to

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charge a person with when several offenses fit the crime? Can officers take a quick nap on midnight shift if their dispatchers know where they are and can wake them up if there is a call for service? What should a supervisor do if he/she knows a subordinate has used excessive force or has otherwise violated someone's rights, but the citizen has not complained about it? Can police executives make an effort to keep certain reported crimes a secret so as not to panic the public? What weapons are police administrators obligated to provide the officers to ensure they have everything they need to use the appropriate levels of force? These are just a few of the more common dilemmas that officers and police administrators face.

Officers could choose the wrong course of action in many of these scenarios and yet not violate any law or department policy. No list of prohibited acts or set of policies will be exhaustive. There is no way to write a policy for each dilemma an officer will face. Kleinig calls these situations "the murky middle." He observes, "Yet morally responsible decision-making is more than a matter of 'following the rules', or even of resort to established procedures. The rules may not be sufficiently nuanced or entirely compatible. Judgment is required." (Kleinig 2002, 287). What should guide an officer's judgment?

Officers have to be given a set of clear and inarguable principles that are process oriented and can help them weigh their options when faced with an ethical dilemma. A good amount of literature exists that addresses the need for an increased amount of ethics training in policing, but very few scholars and practitioners have stated clearly which ethical principles should be taught and integrated into the profession. Department policies, codes of ethics, codes of conduct and oaths of honor are useful, but they should be based on universal standards and should be used to make those standards more precise.

To be able to reason through ethical dilemmas, an officer has to first understand the basic democratic principles that our government was founded on and the role of police in our society. All police officers take an oath to uphold the Constitution, yet a great number of them have never read it. When the author occasionally has an opportunity to ask officers where they think their power and authority are derived from, most answer that they get it from a specific law, or from the state government, or from their chief. Few officers state that their power comes from the very citizens they serve.

In most states, the curriculum for the basic police academy that new recruits attend does include the topics of police ethics and of the role of police in American society. However, the

amount of classroom hours spent on each topic is minimal. For example, in police academies in Ohio three hours is devoted to ethics and three hours to the role of police. Social contract theory is mentioned, but little or no time is devoted specifically to the study of the Declaration of Independence, the Constitution, its Bill of Rights or the Federalist Papers.

Once the new recruit has graduated from the police academy, further ethics training is rare. Some police departments incorporate ethics into their field training program where new officers are trained by a more senior colleague for a few months. Some agencies send their management and supervisors to training programs that address ethics. Unfortunately, officers could go a decade between these phases of their career without any additional ethics training.

### **Social Contract Theory, Constitutional Principles and Policing**

The Declaration of Independence and the U.S. Constitution are based on John Locke's concept of the social contract (Locke 1690/1986). Officers need to be familiar with social contract theory because it gives legitimacy to the American system of government and the role of police in society. The authority of police is derived from the people through the social contract. Briefly, social contract theory holds that the purpose of government is to better protect the rights that people already naturally possess: those of life, liberty and property. Citizens enter a bargain in which they agree to give up their power to enforce their own rights to the government and trust that the government will use this power to benefit the public. If a government proves to be ineffective at securing the basic rights of life, liberty and property, then the people owe no allegiance to it. As an agent of the government, the police are also bound by this social contract. Their power is held as a public trust. This informs police on the general attitude they should have about their occupation and towards the public.

Using principles from the Constitution, its Bill of Rights and the Federalist Papers as the basis for police ethics training is far superior to the common practice of using state ethics laws and the IACP code of ethics and oath of honor. Ethical standards based on Constitutional principles are inarguable because police officers take an oath to uphold them. If cops disagree with these principles they should find another occupation. As Kooker explained fifty years ago, police are given "the duty of upholding and defending the principles of the American way of life" (Kooker 1947, 172). Unless and until our Constitution and resulting system of government

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undergoes significant changes, the following principles will be important benchmarks of ethical policing by which officers and citizens alike can gauge police behavior:

- due process
- justice
- checks and balances
- equal protection of the laws
- separation of power
- freedom of speech religion, press, petition and assembly
- right to bear arms
- protection against unreasonable searches and seizures
- protection against self-incrimination
- right to a lawyer
- right to a speedy trial

Can officers still get the job done with all of these constraints? It's not surprising that in a society that puts heavy emphasis on liberty, the legitimacy of the police rests more on how well the public thinks police treat people than on the impact the public thinks the police have on crime rates (Mastrofski et al. 2001, online). Officers should be taught that these are positive rights rather than just constraints. These are the very principles they are working to uphold, not rules that they must constantly be looking for exceptions to or ways to get around. Too many police training courses focus on exceptions to these basic principles rather than first emphasizing their central role in our system of government.

Scholars and practitioners have been calling for American police to use Constitutional principles as a guide for decades. Cogshall argued that a lack of knowledge of basic constitutional law was one factor that could lead to the corruption of the police service (Cogshall 1949, 242). Thompson insists that the main business of government ethics should be education in democracy. He says ethics education for public servants must relate ethical standards to the broader ethical purposes of government. Ethics training should focus less on how to stay out of trouble and more on ways to make democracy work better (Thompson 1992, 254). Most recently, FitzPatrick has addressed the need for a unified theory of ethics for American police that is rooted in the democratic principles our nation was founded on. He borrows from Cohen

& Feldberg (1991) and adopts four of their five moral standards as the basis for this unified theory (FitzPatrick 2006, online). Because all police officers across the nation take an oath to uphold the same Constitution, a unified theory of ethics based on the democratic principles our government was founded on will apply equally well to police officers in every jurisdiction in America. What universal ethical standards for American policing can be drawn from these principles?

### **Cohen and Feldberg's Five Moral Standards for Police**

Howard S. Cohen and Michael Feldberg (1991) created an excellent ethical guide for policing in a book titled *Power and Restraint: The Moral Dimension of Police Work*. This is the only applied ethics source the author has found that clearly articulates standards derived from social contract theory and Constitutional principles and can be used to make value judgments about police work. Cohen and Feldberg's five moral standards for police can be viewed as both ideals to strive for and minimum requirements. They are standards of responsibility that apply generally to all government officials, and police in particular. Those who accept the power and authority that comes with the position of police officer must also accept these standards of responsibility (Cohen & Feldberg 1991, xv). The following is a brief summary of Cohen and Feldberg's five standards of ethical policing taken from chapter 3 (pp. 39-66) of their book:

#### *1. Fair Access*

Policing is a shared social resource. As such, police must provide fair access to their services based on relative need. Social contract theory and the principle of justice informs police in this area by reminding officers that *all* citizens have agreed to transfer to government their own power to enforce their basic rights. Therefore, all citizens have a right to the services of the police. This standard cautions officers against the two extremes of favoritism and neglect.

#### *2. Public Trust*

Through the social contract, the public has given police the authority to act on their behalf and the power to take actions that are no longer permitted to private citizens. The public has also given up their right to resist the lawful commands of a police officer. They trust that the police will use this power with restraint, doing the

minimum amount of harm necessary to accomplish their tasks, while respecting the protections the Constitution affords every citizen. The public also trusts that the police will use this awesome power for the public good, and not for personal gain.

3. *Safety and Security*

Police must undertake enforcement activities within the framework of maintaining safety and security and should avoid unreflective enforcement of the law. The purpose of living under the social contract is increased security, not the desire to live under rules for their own sake. Safety and security is the end to which government is the means. Laws should be enforced when officers reasonably believe that doing so will have some impact on the safety and security of citizens. Overzealous enforcement has the potential to make society less safe and secure.

4. *Teamwork*

Police are an extension of one branch (executive) of government and represent only one part of the criminal justice system. The behavior of police officers must meet the tests of teamwork – coordination, communication and cooperation. Police officers need to understand their role within the government, the criminal justice system, and their own agency and should be careful not to overstep the mandate given to them. It is not their role to make laws, interpret laws, decide guilt or innocence or to exact punishment, but they must cooperate with the other facets of government that are responsible for these functions. The three functions of government delineated in Locke's social contract theory and the Constitutional principles and protections of due process, the right to a speedy trial, separation of powers, and checks and balances form the basis for this standard.

5. *Objectivity*

Police work is a social role that requires officers to demonstrate objectivity while serving as society's referees. They must maintain a non-partisan attitude in carrying out their duties. This ethical standard cautions the officer against using personal feelings as the basis for official police action and against the two extremes of becoming over-involved or cynical. Police act as agents for all people, and not for one faction over another. This standard is based on social contract theory and the



principles of justice and equal protection of the law.

Taken together, these five ethical standards provide a decision-making framework for the every day dilemmas that police face. They can be used to guide the broad discretion that officers are given. Cohen and Feldberg are careful to point out that more than one morally sound outcome may exist for each dilemma, and in other situations, there may be no available option that will satisfy each of the five standards (p. 43). The authors also acknowledge that efforts at fulfilling one standard completely will often result in diminishing the officer's capacity to fulfill another standard (p. 65). At times tradeoffs must be made because the standards are interrelated. The situation will dictate which standard is most important in resolving the dilemma.

### **Integrating the Five Moral Standards into Police Ethics Training**

In his discussion of applied ethics for democratic policing, Pagon (2003) observed the following:

“It has become obvious that only properly educated and trained police officers are able to respond adequately to moral and ethical dilemmas of their profession. Only a police officer who is able to solve these dilemmas appropriately can perform his duties professionally and to the benefit of the community. In doing so, he cannot rely solely on his intuition and experience. Not only he has to be well acquainted with the principles of police ethics and trained in moral reasoning and ethical decision-making, he also needs clear standards of ethical conduct in his profession.”

Pagon (2003) goes on to list the three directions that police ethics needs to develop in:

“(a) applying the principles of applied ethics to the police profession; (b) establishing standards of ethical conduct in policing; and (c) defining the means and content of education and training in police ethics.”

Sixteen years ago Cohen and Feldberg (1991) satisfied the first two points for American police by using the principles of applied ethics to establish five standards of ethical conduct, and their book provides police trainers with several ideas for defining the content of police training.

So why have directors of police training in each state neglected to incorporate these standards into the police ethics training curriculum? Some may simply not be aware of this source. Perhaps the first step for practitioners in improving police ethics training is to lobby the International Association of Chiefs of Police, requesting that they endorse Cohen and Feldberg's

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five moral standards for American police. Directors of state training commissions, advanced training programs and police chiefs look to the IACP for guidance on best practices. This is evidenced in the widespread use of the IACP code of ethics and oath of honor. The five moral standards should be integrated into the IACP ethics tool kit (IACP-3) that is available online to assist police agencies with ethics training and the development of related policies. The ethics tool kit is too heavily focused on the IACP oath of honor.

Practitioners who are aware of Cohen and Feldberg's (1991) book should lobby the association of chiefs of police and the commission on peace officer standards and training in their state to encourage them to endorse and adopt the five moral standards for police as the basis of the block of ethics training in the basic academy curriculum. The typical training regarding causes of corruption, instruction on laws and department policies, codes of ethics and oaths of honor should not be eliminated. These too are helpful and can be used to make the five moral standards more precise.

Many academies use real life scenarios that officers have faced on the job to generate discussion and assist cadets in working through their options in an ethical dilemma. Using case studies as training tools is an essential component of police ethics training. Cohen and Feldberg's five moral standards should be the primary source that cadets use to determine the best outcome. The second half of the book contains several cases. Cohen and Feldberg work through each one, explaining how the five moral standards can be applied to them. This book should be required reading for all police cadets, along with the Declaration of Independence, the U.S. Constitution and its Bill of Rights. A significant expansion in the number of hours devoted to ethics will be required to adequately cover these topics. The International Association of Directors of Law Enforcement Standards and Training (IADLEST) should take the lead in encouraging the adoption of these standards nationwide. (This association can be found online at <http://www.iadlest.org/>)

Providing police cadets the training they will need to reason through ethical dilemmas is a good start, but the five moral standards need to be reinforced and applied to new situations once the rookie hits the street. Field training programs should incorporate these ethical standards into every training topic covered. In addition to this, individual agencies need to have periodic ethics in-service training for all officers. All other in-service training should refer to the five

moral standards as a guide. Certainly a short discussion of ethics is relevant to defensive tactics training, firearms training, legal updates, etc.

First line supervisor training, management training and leadership training within the profession also have a duty to include instruction on the five moral standards for police. At each step of an officer's career he/she will be faced with new ethical dilemmas. As officers progress through the ranks, their level of responsibility increases. Police executives need to keep in mind that the five moral standards apply equally well to the decisions they make. One cannot hold subordinates accountable for street level decisions that violate these standards and yet fail to hold his/her own management decisions to the same standards. Fortunately, some prominent police leadership training programs have already made Cohen and Feldberg's (1991) book required reading. Police executives should be taught how to reinforce these standards by using them as the basis for rewards, disciplinary action, promotions, strategic planning, etc. within their agency. Hanging the five moral standards in a frame on the wall and then talking about it once a year in refresher training will be about as effective at protecting against a rotten barrel as hanging up the law enforcement code of ethics has been. The standards have to be integrated into every aspect of the officer's career. The community that an agency serves must also know that these standards guide the provision of police services.

The Fraternal Order of Police (FOP), the largest police professional organization in the country, could play a significant role in reinforcing these ethical standards by addressing the widespread misuse of FOP license plate emblems and "courtesy cards." An officer that places an FOP emblem on his/her license plate or gives FOP courtesy cards to his/her friends and family to decrease the chances that they will be pulled over, cited or arrested is clearly violating the standard relating to the public trust. (Several other large police professional associations in America provide similar items to member officers.) Why would professional organizations want to encourage this practice?

### **The Role of Institutions of Higher Education in Police Ethics Training**

Do average high school graduates understand the principles that our constitutional republic was founded on? Are they familiar with social contract theory and do they know the ultimate purpose of government? Do they understand these things well enough to become agents of the government? If the answer to any of these questions is "no," then the basic police training

academies across America have a responsibility to make sure cadets are educated in these matters.

While an increasing number of police agencies in the nation are requiring some amount of college education as a condition of employment, the minimum education requirement for police officers in most states remains a high school diploma or general equivalency degree (GED). (See Jagiello [1971] for a critique of this minimum requirement.) This means the majority of police cadets will have no exposure to these concepts beyond what they were taught in high school. Certainly there is no guarantee that a college graduate will know and understand these principles, but the chances of being exposed to the concepts surely increase as the level of education increases. In addition, college education serves other purposes that uniquely prepare an individual for a career in policing.

Buerger (2004), a police practitioner turned academician, explains:

“Education and training are fundamentally different tasks, though in an ideal world, they should complement each other.....A college education is designed to build within each student the ability to critically assess new situations, undertake new learning as needed, and even to question the ‘facts’ and underlying assumptions of existing canons of knowledge when necessary.....By comparison, training systematically builds particular skills to achieve certain ends.....in a well-developed system, the collegiate process would feed well prepared individuals into a police training process that capitalizes on their education, thus creating a complimentary approach to improving police services.”

Until this ideal state is achieved, police training academies need to work toward incorporating more training hours into the curriculum to adequately address democratic principles of government and the role and authority of police in a democratic society. Academy commanders should solicit professors of criminal justice, political science and public administration from local universities to assist in teaching these components to cadets. Likewise, colleges and universities need to add an applied ethics course to the criminal justice curriculum that teaches students to apply their critical thinking skills to situations they will experience on the job.

As Kooker (1947) noted regarding police education and training:

“The full liberality of education must be preserved, and the police profession should in no way seek to dominate the field of police training.....The full facilities of our universities and colleges should be used both in preparatory and in-service police training.”

With the recent increase in the number of police basic training academies that operate out of accredited universities, perhaps policing will see more cooperation between academicians and practitioners.

### **Conclusion**

Cohen and Feldberg (1991) have done a great service for policing in America by using applied ethics to provide a clear set of standards by which police work can be judged. Their five standards of ethical policing are inarguable because they are rooted in the democratic principles and political theory our government was founded on. They are far superior to codes of ethics, codes of conduct and oaths of honor as a guide for police discretion. They do not, however, provide easy answers to the ethical dilemmas that cops face daily on the job. Instead they encourage police officers to use moral reasoning based on Constitutional principles to weigh their options and choose the best solution. These standards represent a “unified theory of ethics” (FitzPatrick 2006, online) in that they are applicable to policing in every jurisdiction in the United States. The local tradition of policing in this nation dictates that state ethics laws and local department policies should be used to make these standards more precise and to tailor them to the needs of communities. Every police officer in the nation should be able to say that they have read the Declaration of Independence, the U.S. Constitution, its Bill of Rights and Cohen and Feldberg’s (1991) *Power and Restraint*. It is the duty of police practitioners and the leaders of the major police professional organizations to improve police ethics training to that end.

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