

Ethical issues in contemporary american police



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Abstract

The purpose of this research paper is to provide a modern overview of three major ethical issues pertaining to contemporary American policing and criminal justice. Corruption for personal gain is one of the most fundamental ethical violations in policing relates and relates to the misuse of authority for personal betterment. Truthfulness in court testimony, good faith, and constitutional compliance differ from traditional corruption because the underlying motive is to pursue what the police officer believes is a just outcome rather than personal gain. Racism and Racial Profiling refer to targeting individuals solely based upon their race.

Major ethical issues in contemporary American policing and criminal justice

Introduction

Law enforcement and policing are areas where ethical values are crucial, by virtue of the powers and authorities that are granted to law enforcement officers. Police have the power to make arrests and to use force, including deadly force, to overcome resistance to arrests. They also enjoy considerable latitude and discretion in the exercise of their policing authority, such as in terms of who they choose to investigate and how they execute their responsibilities. Naturally, policing powers can be misused, such as for personal gain, and that problem was rampant in many police agencies in the early history of American policing; in many countries, bribes and graft continue to be ordinary means of negotiating for leniency with police authorities. American policing has evolved tremendously in the last century with respect to ethical values and the standards of conduct expected of

police personnel. Nevertheless, ethical issues still arise, such as in connection with the veracity of police testimony at trial, constitutional compliance in the field, and with respect to racism in policing.

Corruption for Personal Gain

One of the most fundamental ethical violations in policing relates to the misuse of authority for personal aggrandizement. It was rampant in early American policing, largely because the entire process of appointment to the position of police officer in cities like New York and Chicago in the late 19th and early 20th century depended on illicit payoffs to political officials and their proxies (Conlon, 2004). In the 1970s, the now-infamous case of New York City Police Department (NYPD) officer Frank Serpico sparked the establishment of the Knapp Commission to identify and put a stop to rampant corruption within the nation's largest municipal police department. Those series of investigations revealed that the entire police department, from patrol officers all the way up through the highest ranks of police administration was corrupt. Instead of bribery, and extortion of criminal suspects being the rare exception to the rule, it was the police officer like Frank Serpico who refused to participate who was the exception. Moral integrity in that regard resulted in the honest police officer being ostracized by his fellow officers; in Serpico's case, it nearly proved deadly when other officers deliberately failed to provide adequate backup when he confronted an armed assailant (Conlon, 2004).

Generally, empirical studies of police corruption distinguish the misuse of police authority for the overt, aggressive pursuit of illicit gains from the passive participation in corrupt practices on the part of individuals within an

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existing organizational culture in which such practices are condoned or considered unremarkable (Cloud, 1994). Police officers who engage in the former are considered “meat-eaters”; those who participate only in the latter form of corruption are considered “grass-eaters” (Delattre, 2006). The most important significance of that distinction is that when a police agency maintains an organizational culture in which corruption of any kind is treated as criminal deviance and punished accordingly, only officers who are inclined to be “meat-eaters” still engage in corrupt practices. Generally, those officers who would have been “grass-eaters” within a corrupt police culture do not initiate corruption spontaneously and would have only been susceptible to corruption in an environment where it was expected by their fellow officers and where refusing to participate would have undermined their peer-to-peer relationships (Delattre, 2006). Meanwhile, more discriminating hiring practices, better training, and increased supervision have all but eliminated overt police corruption in American policing (Schmallegger, 2009). Today, when police corruption occurs, it is typically in connection with isolated instances involving individual officers or units rather than entire police agencies, and it results in newspaper headlines and calls for immediate administrative action, including appropriate actions against supervisors and police administrators who failed to prevent, identify, and take immediate action against any type of police corruption on their watches (Schmallegger, 2009).

Truthfulness in Court Testimony and Good Faith and Constitutional Compliance

Another important issue in contemporary policing ethics relates to the conduct of police officers as witnesses in court proceedings. Unlike “traditional” police corruption that prevailed a century or more ago and that was dealt with more recently by the Knapp Commission in New York, this type of unethical conduct is fundamentally different because the underlying motive is to pursue what the police officer believes is a just outcome rather than personal gain. Specifically, police officers often face a difficult ethical dilemma in connection with testifying at criminal trials: namely, they know that the defendant is guilty but that the outcome of the trial may hinge on what they say on the stand (Raymond, 1998). If they testify with absolute truthfulness on the witness stand when being questioned by seasoned defense attorneys, defendants may be exonerated by juries if defense counsel can successfully introduce any basis for doubting the accuracy of the factual accounts provided by police officer testimony. As a result, even otherwise ethical police officers may be tempted to alter their testimony at trial in the interest of securing a conviction that they believe represents justice more than exoneration as a result of their completely truthful testimony (Raymond, 1998).

This particular ethical problem is more complex than simply training police officers to testify truthfully on the witness stand. It includes the problem of training police officers not to misrepresent the facts in their initial incident reports in articulating their accounts of arrests and about how they characterize what they actually observed (Cloud, 1994). The unethical

approach used by many officers in some police departments includes simply misrepresenting the truth in their written characterizations to justify police conduct, particularly in connection with justifications for searches and the use of force (Foley, 2000). To a great degree, police agencies control how truthfully their officers represent the factual circumstances detailed in their field reports and arrest reports. In that regard, the phrase articulation can be used to mean careful attention to detail or, alternatively, it can mean that officers make sure to include any details required to support their actions at trial, irrespective of whether or not those descriptions actually represent the truth of what happened on the street (Raymond, 1998).

For a typical example, a patrol officer may know from practical experience that drug dealer frequently try to secret small amounts of drugs or weapons under the seats of their vehicles or in between the cushions. Generally, the 4th Amendment prohibitions of unwarranted search and seizure require either consent from the driver or probable cause to permit a police officer to search anywhere within a vehicle stopped for a traffic violation beyond what is plainly visible to the officer from his vantage point during the traffic stop (Zalman, 2008 137). Similarly, under *Terry v. Ohio* (1968) police officers may only conduct a cursory pat-down of the external clothing of subjects of their investigations and only for the purpose of ensuring their safety in connection with concealed weapons; they may not search through pockets for contraband of conduct other searches beyond the scope of the so-called “ Terry frisk” (Schmallegger, 2008 p256). However, as a practical matter, compliance with both rules depends substantially on the ethical commitment of the patrol officer, and of the commitment of his agency as reflected in his

training and in the leadership of his supervisors. To get around the 4th Amendment limitations of vehicle searches, all the police officer has to do is record in his report that the driver made a “furtive movement” or that the officer observed him reaching beneath his seat as he pulled over for the officer (Raymond, 1998). He could also simply record that a portion of the baggie containing drugs was visible in between the seat cushions or that the handgrip of a pistol was visible protruding from underneath the passenger seat from the officer’s normal vantage point. From the perspective of the police officer, misrepresenting the literal truth in such cases may be less important than taking drugs and illegal handguns off the street (Raymond, 1998).

Complying strictly with constitutional requirements is an ethical issue that reflects the commitment of the police agency, or, where doing so is routinely ignored, reflects the lack thereof. Consider the effect of police supervisors who caution their subordinates very specifically never to violate constitutionally legitimate police procedure for the sake of making an arrest as opposed to the effect of supervisors who preach only that whatever officers do in the field must be “articulated” properly in their reports to support prosecution. In practice, the first approach teaches officers that they may not impose their desire to interdict drugs and weapons and that they may not indulge even their strongest practical suspicions without constitutional authority to do so. Conversely, the second approach teaches officers not to wait until they get to court to lie; rather, the necessary lies to support their actions in the field must be properly articulated in their field reports so that they support their testimony at trial.

Sometimes, police procedure evolves specifically to circumvent constitutional protections against unwarranted searches and seizures in ways that are not susceptible to easy challenges. When officers engage in those behaviors independently or spontaneously, they represent ethical violations only on the part of those officers. However, when those practices become part of police training, they represent ethical violations at the departmental level. Such was precisely the situation in connection with police practices in Missouri that prompted the 2004 ruling by the United States Supreme Court in *Siebert v. Missouri* that now prohibits one such particular strategy: namely, two-tiered interrogations intended to circumvent the Miranda protections against self-incrimination (Hoover, 2005).

Generally, the standard police practice necessary to satisfy the landmark 1966 Supreme Court ruling in *Miranda v. Arizona* requires police to advise suspects of their 5th Amendment right to remain silent before any custodial questioning (Zalman, 2008). In Missouri, as in several other jurisdictions, police had adopted the practice of questioning criminal suspects extensively prior to arresting them, but in a context in which the suspects would not have reasonably believed that they could simply refuse to answer, such as when surrounded by uniformed police. Technically, the only penalty for questioning suspects “outside of Miranda” is the application of the exclusionary rule preventing the prosecution from using that evidence at trial (Zalman, 2008).

Missouri police had adopted the specific strategy of first questioning suspects outside of Miranda, then advising them of their 5th Amendment rights, and subsequently re-interviewing them (Hoover, 2005). Since

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suspects typically do not understand the legal implications of Miranda compliance, they would repeat statements in subsequent questioning under Miranda that they knew they had already answered previously. Since those subsequent interviews occurred in full compliance with Miranda, the prosecutors would introduce those statements at trial (Hoover, 2005). In *Siebert*, the U. S. Supreme Court expressly prohibited such practices, precisely because they amounted to nothing more than deliberate attempts to do what Miranda had prohibited for (then) almost forty years. Police may not extract information from criminal defendants during “custodial questioning,” which does not necessarily require formal arrest under circumstances where an individual would believe that he is free to terminate the interaction with police or to refuse to respond (Hoover, 2005).

By deliberately employing a two-tiered (i. e. pre-Miranda and post-Miranda) interrogation strategy, Missouri police had engaged in unethical conduct that eventually required judicial intervention at the highest level. Currently, similar practices in New York have resulted in widespread complaints in connection with routine practices employed by NYPD officers to make marijuana possession arrests (CCR, 2012; NYCLU, 2012). Typically, the officers initiate an investigatory detention to conduct an interview with subjects based on subjective suspicions that would not justify a search of the subject. They “ask” the subject to show them what is in his pocket and if he complies by producing a small quantity of marijuana, they arrest the individual for possession. The charges stemming from those arrests are eventually dismissed in criminal court on a case-by-case basis (CCR, 2012;

NYCLU, 2012), but the specific matter of unethical police conduct has not yet been addressed by a higher court.

Racism and Racial Profiling

Prior to the American Civil Rights Era, racial and ethnic minorities were routinely subjected to police procedures that were manifestly unconstitutional and unethical (Crutchfield, Fernandes & Martinez, 2010; Staples, 2011). During the 1950s and 1960s, the National Guard had to be deployed to protect black students enrolling in schools in states where local police would not and federal law enforcement authorities had to take over law enforcement and criminal investigation functions in Mississippi after local authorities with links to the Ku Klux Klan were complicit if not directly involved in the murder of four civil rights workers from New York (Schmallegger, 2009). In the modern post-Civil Rights era, racism is still a ripe area of ethical issues in American policing (Staples, 2011).

Typically, racism arises in policing in connection with the racial profiling of drivers subject to traffic stops. Specifically, racial profiling occurs when police officers target drivers based on their apparent race or ethnicity for ordinary traffic enforcement stops (Schmallegger, 2009; Zalman, 2008). This type of ethical violation, like many others, can represent either the prejudices and biases of individual officers or the condoning of such practices at an organizational level.

Conclusion

Outright police corruption, particularly on the scale of whole police departments, was eliminated nearly completely in the last few decades of

the 20th century after one especially high-profile egregious case within the largest police force in the country. However, more subtle ethical problems still emerge and require judicial intervention even in the modern era. Police sometimes manipulate their procedures in the field to take advantage of apparent loopholes in laws meant to protect citizens from excessive police intrusions. Likewise, racism also continues to present a background for unethical conduct among police officers inclined in that direction. In almost all types of contemporary ethical issues in American policing, the expectations and leadership messages coming from the employing agency is all that stands in between individual instances of unethical conduct and the spread of those unethical practices throughout the agency. References

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