ETHICS IN LAW ENFORCEMENT

McCartney & Parent
BC Campus

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This text was compiled on 08/30/2026

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1: ETHICAL BEHAVIOUR

1.1: The Importance of Ethical Behaviour
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1.1: The Importance of Ethical Behaviour

For citizens, even for those of us with no aspirations in a career in law enforcement, morality and integrity are important characteristics to demonstrate. We instinctively know that it is good to be moral and act with integrity, but by coming to an understanding of the reasons for morality and integrity, we will be motivated to champion such behaviour. Among the reasons to be moral and integral, regardless of occupation are to:

- **Make society better.** When we help make society better, we are rewarded with also making better own lives and the lives of our families and friends. Without moral conduct, society would be a miserable place.
- **Treat everyone equally.** Equality is a cornerstone of most Western democracies, where all individuals are afforded the same rights. This is not possible without the majority of citizens behaving in a moral manner.
- **Secure meaningful employment.** Often employers will look at a person' past behaviour as a predictor of future behaviour. Someone who has a history of immoral behaviour will have difficulty securing employment in a meaningful job, as that person may not be trusted.
- **Succeed at business.** If you are employed in an occupation in which there you must rely on others, your moral conduct will determine the degree of goodwill that you receive from others. Businesses that have a checkered moral history are typically viewed with caution and are unlikely to attract new customers through word of mouth, and therefore are unlikely to prosper. This is especially the case where social media makes customer reviews readily accessible.
- **Lessen stress.** When we make immoral decisions, we tend to feel uncomfortable and concerned about our decision making. Making the right moral decision, or taking a principled perspective on an issue, reduces stress.

Ultimately, ethics is important not so that "we can understand" philosophically, but rather so we can "improve how we live" (Lafollette, 2007). By being moral, we enrich our lives and the lives of those around us. It's especially important to live a moral life when we are young, as it is helpful to exercise and practise these concepts before being confronted with more complex issues. Lafollette (2007) theorizes that ethics is like most everything else that we strive to be good at; it requires practice and effort. Practising and making an effort to make moral decisions throughout life will pay dividends when we are faced with serious moral dilemmas. Furthermore, having insight into "...historical, political, economic, sociological and psychological insights..." (Lafollette, 2007, p.7) allows us, as decision makers, to make more informed decisions, which will likely result in moral decisions. In sum, the practice of being moral, allows us to work on these skills, so when we are faced with real situations that impact others, we are ready

Lafollette (2007) also emphasizes the need to understand and develop our virtues. Knowing that we ought to behave in a certain way, yet missing an opportunity to exercise moral behaviour, is an indication of the need to "sharpen moral vision." For example we know that we ought to stay in good physical shape but often do not. This illustrates the need to be mindful of a virtue (in this case perseverance) that is important and must be developed. If, as people aspiring to become law enforcement officers, we develop the virtue of perseverance by staying in shape, we are more likely to hone that skill when we are working in law enforcement. We will be able to draw on that virtue when needed for even more serious situations, not only in law enforcement, but in other challenges that we may face in life.

Ethics is also important for those citizens who do not aspire to work in law enforcement. Successful business leaders often say that treating people morally is a very important aspect in obtaining success. A person's reputation is of key importance for a business leader, and if a person's reputation is damaged by poor ethical conduct, the business will also suffer. The same is true in all walks of life. Where ethics are taken seriously, and people strive to make ethical decisions and actions, personal and professional success follows.

Critics may argue that this attitude is self-serving and that some individuals act ethically only for their own self-interest to be successful or happy. Critics would add that this is not the right reason to be ethical, and therefore is not being truly ethical. A counter argument may be that the action itself can be regarded as ethical, regardless of the reason for taking the action. This perspective focuses more on the end result rather than the means to the end.

> How do you know as an individual if you pass the ethics test?

As an individual, you can ask yourself what society would be like if everyone conducted their moral selves like you do. Would society be better or worse? By asking yourself this question, your are really testing the universality of your behaviour. Immanuel Kant, a famous scholar of ethics, suggests we should only act in ways that we would want everyone else in the same situation to

act. We should also consider any way that we can improve our moral life to make society better.

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1.2: Ethics and the Pursuit of a Law Enforcement Career

Without a doubt, the most important attributes of an individual applying for a job in law enforcement are the applicant's integrity and moral behaviour. In order to be a law enforcement officer, individuals must demonstrate a life lived morally.

Of course, in some instances, an applicant may have on occasion been involved in isolated immoral activities. This is often understandable; however, law enforcement employers will not hire an applicant if they detect a demonstrated pattern of immoral behaviour. Recruiters and the agencies they work for may differ in the specific number of illegal or immoral acts they will allow an applicant to have committed before hiring that person, they all agree that it is very few. Some law enforcement agencies, in hiring climates where they have numerous applicants to consider, have the ability to be very selective and may choose only those applicants who have not demonstrated any moral lapses.

The moral history of an applicant is closely scrutinized by law enforcement agencies through background checks, polygraphs, detailed interviews, and integrity questionnaires. Each of these methods are used to root out applicants who may have exhibited poor moral choices in their past. Right or wrong, law enforcement agencies view past performance as a predictor of future moral performance.

Predicting an applicant's future moral conduct is largely based on the common acceptance of the slippery slope theory of ethics. According to this theory, applicants who exhibit minor moral infractions are viewed as likely to progress to more serious immoral behaviour. Punch (2009) describes the slippery slope as being small deviant acts that become increasingly easy and lead to participation in larger, more serious acts. Punch (2009) refers to the slippery slope as a "ladder" in which corruption is the end result, after a series of immoral steps.

Punch (2009) also describes the journey of some police officers as they travel from being moral civilians to immoral police officers. This often occurs because indoctrination into the police culture can negatively affect police recruits' ethical behaviour and have disastrous consequences (Souryal, 2011). Punch (2009), in describing this journey into the police subculture, states that the result is the slippery slope during which immoral decisions start as minor breaches of organizational or occupational rules and evolve into major corruption. Accordingly, Punch infers that even those applicants who have taken part in minor immoral activities would likely progress to serious immoral behaviours.

Punch (2009) refers to qualitative research, illustrating how the slippery slope theory may have played a role in the corruption case of Bob Leuci of the New York Police Department (NYPD). In this instance, Leuci joined the NYPD and was determined to remain straight, but slipped into corruption in a desire to fit into the police culture. Eventually, he became involved in serious corruption, resulting in his being fired, charged, and criminally convicted.

Contrary to proponents of this perspective, Prenzler (2009) argues that the notion of slippery slope has been incorporated into the police subculture not because the theory is valid but rather as a way to keep young officers from committing even minor ethical or moral infractions. Lafolette (2007) also rejects the theory, arguing that proponents of the slippery slope argument are imposing a general structure in which the cause of immoral activity can be traced back to even morally permissible activity. He breaks down the argument into a formula, asserting the following:

> *Action x is prima facie (or believed to be) morally permissible*
>
> *If we do action x, then through small analogous steps circumstance y will probably follow*
>
> *Circumstance y is immoral*
>
> *Therefore x is immoral*

Lafollette (2007) asserts that the above argument leads to unrealistic and unlikely conclusions because it assumes that all slopes move are downward toward immoral behaviour, and never considers that a slope could be upward, toward more moral behaviour. We should be prepared to consider that individuals who act immorally may regret their actions and decide to act more morally, or at the very least, cease their immoral practices. Essentially, Lafollette (2007) argues that we can learn from minor bad behaviours, regret the immoral behaviour through guilt or empathy, and strive to improve or reform. Thus, he argues, a person who commits fraud for the first time and later regrets the act will change his or her behaviour and not commit fraud in the future. What the person learns is that the feelings of guilt are not worth the gains made from fraud.

Caless (2008) enlarges Lafollette's critique with his observation that absolutists, viewing minor moral breaches in black or white terms, further promote the slippery slope theory. Caless (2008) questions the assumption that everyone is susceptible to corruption, and, as a result, minor immoral breaches must inevitably lead to major ones. He argues that if the slippery slope argument is to be accepted, then all officers who have ever received even a free cup of coffee will eventually perform major immoral actions.

The slippery slope theory also proposes that corrupt individuals who have entered law enforcement are more likely to engage in future criminal activity whether they have that first free cup of coffee or not. Coleman (2004) responds to this argument by suggesting that if only a few officers slide into immoral behaviour as a result of receiving a gratuity, then all officers should be denied such opportunities. Police corruption is so serious that it should be prevented at all levels, even if this means banning all gratuities.

> If you are pursuing a career in law enforcement, how do you know if you pass the ethics test?

Ask yourself what a law enforcement agency would think of your poorest moral decisions, and how these decisions would appear if you made them while your were employed by that agency. When did you make these moral mistakes? Were you young and therefore they could be considered childish mistakes? Problems arise when we make moral mistakes as adults, especially if we are young adults who have declared an interest in pursuing a law enforcement career.

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1.3: As Employees in Law Enforcement Agencies

Democratic countries walk a fine line between the anarchy and civil violence of collapsed states and the suppressive citizen controls exerted by highly authoritarian regimes. It is through the commitment of the police to the citizenry, their capacity to control crime, and their ability to act according to the rules they enforce—that they are also not above the law—that democracy survives (Caldero and Crank , 2004, p.17)

Inevitably this question arises: "why is it so important to be a moral law enforcement employee?" There are several reasons why people employed in law enforcement are required to be moral and to have sound moral values. Ironically, morals can at times be a hard sell to law enforcement officers, who, when dealing with exigent situations in which they are concerned not only for their safety but for the safety of all citizens, consider that the manner or means of how safety is achieved is not as important as the end result of achieving that safety. In other words, for officers who are dealing with their own personal personal safety as well as the safety of others, may consider the notion of philosophizing about the right thing to do as not being overly important.

However, law enforcement careers come with a number of duties and responsibilities for which moral behaviour is mandatory. The primary ones include discretion, power, and public service.

- **Discretion.** Discretion in law enforcement is necessary in order to efficiently manage call loads and to mediate minor incidents. Law enforcement personnel have enormous discretionary power throughout every rank, regardless of seniority, and are given great freedom to make operational decisions from the moment they start on the job. Discretion in law enforcement includes whom to arrest, whom to investigate, whom talk to, and whom to interview. More importantly, in these decisions officers have the power to deprive people of their freedom (Pollock, 2014). It is critical that law enforcement officials possess moral character so that the enormous decisions they must make are balanced and fair.
- **Power.** Because law enforcement officers exercise much discretion they also wield great power. They have the power to arrest, detain, search, seize, and question. The government grants officers these powers so they can enforce laws and maintain the peace. We live in a country in which due process protects civilians from the abuse of government agents and in which certain freedoms are expected. Thus, we expect law enforcement officers to use their discretion with due process in mind (Pollock, 2010).
- **Public service**. The state employs law enforcement officers to carry out the state's mandate: enforcing the law and keeping the peace. The trust the state places in law enforcement and other public officials to carry out this duty in a responsible fashion is called *public trust*. Public trust ensures that those tasked with these duties will not abuse their power. Public trust also ensures that all public officials will be held to a higher standard than those they serve. The ultimate test of public trust is that law enforcement officials "walk the talk" or "practise what they preach," and that they never engage in behaviour that, if performed by others, would be considered to break the law (Pollock, 2010).

It is important that employees of all government agencies possess and display a sense of justice in which all individuals are treated fairly. "Justice," as defined by Rawls (1999), means that all citizens are treated equally and fairly regardless of, among other things, their class, social position, intelligence, or strength. Rawls (1999) emphasizes that there is no greater need in government than for its social institutions to act with justice as the primary goal. For the police, this notion takes on even more importance, as the police are the most visible representatives of government at the street level, and the high level of discretion they exercise makes this notion of justice all the more critical (Lipsky, 1980). In order to achieve justice, police agencies must use their moral and ethical discretion at all times or they risk losing legitimacy, trust, and confidence.

Without ethical conduct, police lose legitimacy, and without legitimacy, the police are ill equipped to carry out their duties (Punch, 2009). One of the main characteristics sought by police recruiters in individuals applying to become police officers is that they possess positive ethics and moral values, which are reflective of society's expectations (Ellwanger, 2012).

In pursuing moral behaviour within policing, recruitment and training are utilized respectively in an attempt to ferret out immoral applicants who are dishonourable and do not exhibit integrity. This is done through extensive background checks during recruitment and later, and moral principles are reinforced through scenario training. Police officers are trained and educated as recruits so that they will be able to cope with the peculiarities of being a police officer in an ethical fashion (Allen, Mhlanga, and Khan, 2006; Braswell, McCarthy, and McCarthy, 2012; Renkema, 2007).

> How do law enforcement officers know if they pass the ethics test?

1. Officers should ask themselves if their agency were aware of their current moral and ethical life on and off the job, would the agency still hire them? If the answer is no, then officers should consider changes in their behaviour.
2. Officers, when confronted with a moral and ethical dilemma, should reflect on what their recruiting officer would consider to be the ideal action. Officers, in turn, should consider what action they would like to see an applicant to the agency make when faced with the same moral and ethical dilemma?

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2: ETHICAL SYSTEMS

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2.1: Major Ethical Systems

When learning how to resolve ethical dilemmas, it is important to be able to articulate a justifiable rationale for why we believe one decision seems right and another seems wrong. Having a basic understanding of the major ethical theories will help us toward an ethical resolution learning how to articulate and justify the decision.

At times, some of the ethical theories may seem overly philosophical for our purposes; we may even wonder why we should study theories that were sometimes developed centuries ago when we are primarily dealing with present-day issues. In other instances, some of the ethical theories may seem overbearing. The theories we look at here, however, are important to help us understand why the decisions we make, or someone else makes, are ethical or unethical.

For example, a decision may be made that appears on the surface to be unethical, but when we are aware of the philosophical system used in the decision making, we can then understand the root of the decision and, at the very least, see its intended morality. This allows us to view ethical issues from different perspectives and assists us in making informed decisions.

This book is concerned primarily with normative ethics and understanding only the common normative ethical theories. By dissecting the normative theories of ethics, we can have a clear understanding on the moral decisions we ought to make, or the reason some people make the decisions they do. Ethical theories will be examined only briefly as the focus of this book is contemporary ethical issues facing law enforcement. The descriptions of the following ethical theories are very basic and address only the points required for a basic understanding in a law enforcement context. Examples of how a theory may relate to and assist law enforcement are included.

Overview of Ethical Theories

There are three categories of ethical theories:

1. Normative ethics
2. Meta ethics
3. Applied ethics

Normative theories tell us not only what we ought to do, but also why we do things that in some instances may appear counterintuitive to what we think an ethical decision would be. Such theories are often called ethical systems because they provide a system that allows people to determine ethical actions that individuals should take (Pollock, 2007). Evans and Macmillan (2014, p.27) define normative ethics as “theories of ethics that are concerned with the norms, standards or criteria that define principles of ethical behaviour.” The most common examples of normative ethical theories are utilitarianism, Kantian duty-based ethics (deontology), and divine command theory, which are described later in this chapter. These systems are used by individuals to make decisions when confronted with ethical dilemmas.

Meta-ethics does not address how we ought to behave; rather, meta-ethics is related more to the study of ethical theory itself. Here the interest is in evaluating moral and ethical theories and systems. For example, moral relativism is a meta-ethical theory because it interprets discussions around ethics; a question asked within moral relativism is “is ethics culturally relative?” Evans and Macmillan (2014, p.27) define meta-ethics as “theories of ethics concerned with the moral concepts, theories, and the meaning of moral language. Pollock (2007, p.6) further defines meta-ethics as “a discipline that investigates the meaning of ethical systems and whether they are relative or are universal, and are self-constructed or are independent of human creation.”

For the purposes of this book, meta-ethics will relate to the way we look at and understand normative ethical theories. More concisely, meta-ethics concerns an interpretation and evaluation of the language used within normative ethical theories.

Applied ethics describes how we apply normative theories to specific issues, usually related to work or belonging to an organization; for example, policies and procedures of organizations or ethical codes of outlaw bikers versus ethical codes of police officers. Evans and Macmillan (2014, p.27) define applied ethics as “theories of ethics concerned with the application of normative ethics to particular ethical issues.” An example is knowing and practising the code of ethics for BC Corrections as an employee of BC Corrections or following the British Columbia Police Code of Ethics as a police officer.

With the overview of the three categories of ethical theories we will further analyze each ethical theory or system.

The normative ethical theories that are briefly covered in this chapter are:

- Utilitarianism
- Deontology
- Virtue ethics
- Ethics of care
- Egoism
- Religion or divine command theory
- Natural Law
- Social contract theory
- Rawls's theory of justice
- Moral relativism

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2.2: Utilitarian Ethics

Utilitarian ethics is a normative ethical system that is primarily concerned with the consequences of ethical decisions; therefore it can be described as a teleological theory or consequentialist theory, which are essentially the same thing, both having a notion that the consequence of the act is the most important determinant of the act being moral or not. Teleological reasoning takes into consideration that the ethical decision is dependent upon the consequences ("ends") of the actions. In teleological reasoning, a person will do the right thing if the *consequences* of his or her actions are good. Additionally, if an action by a person was an act that was "not good," but the consequences turned out to be "good," under some theories of teleological reasoning, the act may be deemed a good ethical act. This is also referred to as "consequentialist moral reasoning," where we locate morality in the consequences of our actions.

As a result of the consequentialist nature of utilitarianism, the means to get to the ethical decision ("end") are secondary; the end result is that which must be considered before determining the morality of the decision.

Jeremy Bentham (1748-1832) developed the principles of utility by defining it as a measure of maximizing pleasure while minimizing pain. Bentham wrote that everyone prefers pleasure over pain. It is with this belief that utilitarian moral principles are founded (Sandel, 2010). In developing the theory of utilitarianism, Bentham may have meant pleasure as in "happiness" and pain as in "sadness"; however, Bentham's rendering of utilitarianism sounded hedonistic, as if sensuality was the measure Bentham associated with pleasure (Hinman, 2013).

John Stuart Mill reconsidered the principles of utilitarianism and suggested that pleasure should not merely refer to sensual pleasure but also to mental pleasure, such as music, literature, and friendship. Mill sought to make intellectual pleasures preferable to sensual ones.

Hinman (2013) suggests there are four principle differences between pleasure and happiness:

1. Happiness is related to the mind, whereas pleasure is related to the body (for example sexual pleasure, eating, drinking)
2. Pleasure is of shorter duration than happiness. Happiness is long-term, focusing on the satisfaction of living well, or achieving life goals.
3. Happiness may encompass pleasure and pain.
4. There is an evaluative element in happiness versus pleasure.

There are two formulations of utilitarianism: act utilitarianism and rule utilitarianism. Act utilitarianism concerns the consequences of the first instance, where the utility of that act is all that is regarded.

The second formulation of utilitarianism, rule utilitarianism, concerns the consequences of the majority of people following a certain rule that is immoral, which would be negative. With rule utilitarianism, to determine the ethics of an act, the questions to ask are "What would happen if there was a universal rule that condones this action?" and "Would such a rule promote the consequences that would best serve a moral society?" Rule utilitarianism operates as a check and balance for utilitarian principles, assuring that decisions that may be utilitarian in principle are qualified with the notion of universality, asking "what would the result be if everyone followed a rule that allowed this act?"

The best way to illustrate consequentialist theory is through an implausible story proposed by Michael Sandel (2010).

> Imagine you are the driver of a trolley car train and are speeding along. As you are heading to the work yard, you realize the brakes don't work. Ahead you see five workers on the track. They are busy jack hammering and do not see you approach. You as the driver have the ability to determine where the train goes by switching the tracks to another track. However that track has one worker, who is also oblivious to your approach. By physically switching the tracks, you will save five, but your actions will kill the lone worker.
>
> The moral dilemma is such that we are required to determine what the consequences or the end result should be. The questions you need to ask are:
>
> What action would you take?
>
> Are the end results, or the consequences of your actions, important?

What action would a Rule Utilitarian take?

What action would an Act Utilitarian take?

Q. How can utilitarian theory assist law enforcement in moral dilemmas?

Law enforcement officers possess a great deal of discretion that must be exercised by all officers of every rank, regardless of their experience. When exercising this discretion, officers will be confronted on a daily basis with issues that are complex, and may not be covered in the agency's policy and most certainly would not have been covered in their formal education or police academy or other training. Law enforcement officers also are required to make exigent decisions, without the ability to consult with senior officers or policy and procedures. In some instances, when confronted with decisions, officers may want to rely on utilitarianism to make an ethical decision that is defensible when scrutinized in the future. For example, an officer tasked with policing a large pro-marijuana protest group may observe a person within the group selling marijuana. Legally, the officer has the duty to charge that person with trafficking in a controlled substance under the Controlled Drug and Substance Act, a serious indictable offence. However, from a utilitarian position, the officer may elect not to arrest and charge the suspect for two reasons:

1. The act of not arresting would make more pro-marijuana group happier compared to the number of people would be unhappy with that decision. We can reasonably say that society at large is becoming more relaxed about marijuana use, and the movement to legalize marijuana is strong and getting stronger. Perhaps the officer would recognize this, and make his or her decision accordingly. If the drug being trafficked was crack cocaine, then the officer would likely adjust the decision. (If the drug was a more lethal drug, that could cause death, the officer would be compelled by duty to arrest the suspect in order to prevent harm.)
2. If the arrest is made for trafficking , the consequence would likely be a serious violent confrontation with the large pro-marijuana group. The arrest by the police would not make the majority of these individuals happy. As a result, while arresting the trafficker may be the duty of the officer, the officer may come to the conclusion that the consequences of making an arrest are likely to be negative. Therefore by using discretion, the officer is utilizing utilitarian principles in his or her decision making.

From a rule utilitarianism perspective, the officer should consider what the consequences would be if there were a rule that everyone was allowed to smoke and sell marijuana. If the officer believes that society would be well served by this rule, then the officer should allow the sale to continue. Should the officer believe the rule would be detrimental to society, the officer should consider this as well, and at least consider making the arrest.

The Problems with Utilitarianism

Like all normative theories of ethics, utilitarianism cannot address all of the ethical dilemmas we face. Sometimes using utilitarian principles may be harmful to a group of people or to an individual. Some of the major problems with utilitarian consequentialist ethics include the following:

- **Measuring happiness is difficult**. Happiness is subjective and as a result is open to interpretation. Is happiness in winning a million dollars more significant than the happiness a person experiences when told by a doctor that he has a clean bill of health? Likewise, does the value of happiness increase with time, or with importance? If someone won a million dollars, would this be measured as "the most possible happy," as the million dollars will hopefully last for a long time? Conversely, a person received a clean bill of health after a routine checkup can be regarded as more important news; however this person is likely to forget this good news within days. So when we look at the happiness that is caused by these two events, we need to ask ourselves, "what makes us the most happy?"
- **Utilitarian ethics is concerned about the consequences of our actions, regardless of the action itself.** However, it can be difficult to know what the consequences of our actions will be because of the variables that we do not control. For example, a police officer may believe that writing tickets at an intersection will create a safe intersection environment for everyone. However, it is difficult to determine for sure that this will be the outcome. Unintended consequences may instead occur. Suppose, for example, that while the officer is writing a ticket at the intersection, a fatal accident occurs due to the officer disrupting the traffic. In this instance, the unintended consequences could not have been predicted, especially if the officer acted in a safe manner while writing the ticket. The unintended consequences may be viewed as immoral by utilitarian standards because of the end result. People who maintain this logic are referred to as Actual Consequentialists because actual consequences are what determine if the act was right or wrong. However, some consequentialists would rightly take into consideration the fact that the fatal accident could not have possibly been foreseen, and therefore the act itself was still moral in spite of the unforeseen negative consequences. This appears to be a more logical approach to consequentialism as it incorporates a mental element (*mens rea*) in determining if the act was moral.

- **Desired ethical consequences that actually result from our actions do not always happen immediately**. If the desired consequences of our actions do not occur immediately, how long must we wait for those good consequences to develop before we can say the action was ethical? Likewise, how long are we to wait to deem the consequences as positive or negative? For example, in a correctional institute, a warden who believes that weapons are being made in an inmate job program may cancel the program. The warden may decide to cancel the program due to the inability of staff to ensure that the making of weapons does not occur. The warden's decision is ultimately based on ethics and a desire to ensure the well-being of corrections staff and inmates. However, the inmates may view this decision as punitive as the prohibited weapons are being made by only some inmates. In analyzing the ethics of the decision by the warden, the question would have to be asked, "how much time would have to expire before we could determine this was an ethical action versus a punitive one?"
- **Happiness should not be the only consequence or goal that matters in some ethical dilemmas**. Some goals of the ethical decision, such as human rights, may matter more than the consequences of the action. For example, consider a detective who is investigating a series of sexual assaults has located evidence which is not admissible in court but clearly demonstrates that a suspect is guilty of the crimes. The detective realizes that the suspect is likely to recommit the crime, and therefore decides to plant false forensic evidence on the suspect to implicate him. While this action may result in positive consequences (and the greater happiness for the greater number of people), the actions are wrong and cannot be condoned. By removing the notions of justice, fairness, and basic human rights owed the suspect, the actions are immoral and unethical; they are actions that will eventually erode confidence in police. The consequences, from a utilitarian perspective, should not outweigh the notion of justice. In this way, utilitarianism can provide an excuse for those who commit wrongs for noble reasons. On the other hand, utilitarians may argue that the actions are actually not utilitarian because the long-term effects may have an opposite effect: less happiness for the greater number of people should lawful investigations not be trusted by society. This is an example of rule utilitarianism, where we can look at the benefits of having a rule that allows such actions (planning evidence) by law enforcement officers that would not promote the most happiness overall.
- **When utilitarian decisions benefit the majority at the expense of the minority, the minority's rights may not be taken into account.** Utilitarian principles often run contrary to individual's rights, and at times are the antithesis to concepts of modern justice theories. When we are tempted to make a decision that will positively impact the majority, we must also consider the negative impact on the minority. In the example above, the detective who plants false forensic evidence on a suspect may feel that the maximum happiness to the majority of people makes the action ethical. However, the investigator is not respecting the rights of the individual suspect. Much the same way, when crime reduction policies, such as sex offender registries, allegedly promote community safety, offenders' rights are ignored due to the loss of privacy. This is especially so, given that studies indicate such registries are often ineffective and do little to protect the community (Petrunik, 2002; Vess, 2008).

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2.3: Deontology

Probably the most complex of all the ethical systems we look at here is Kantian logic, which is a deontological theory. The word *deontology* comes from the Greek word *deon,* meaning "obligation" or "duty." It is an ethical system primarily concerned with one's duty. It is also known as ethical formalism or absolutism.

Deontology was formulated by Immanuel Kant (1724-1804). Kant believed that the end result is not of primary importance; rather, the real importance is in determining the moral intent of a decision or action itself. Kant would assess the morality of one's action and disregard the consequences. He further believed that we have duties that are imperative and that these duties must never be abandoned, regardless of the anticipated outcome. These duties, according to Kant, are absolute and must be applied to everyone equally.

The notion of duty is important to law enforcement officers who are bound by law to perform their duty. A duty is something we are required to execute, regardless of whether we want to or not. The duty may have a personal or professional negative consequence attached to it, but as it is a requirement or obligation, it is absolute and/or imperative.

Kant distinguished two types of duties: conditional or hypothetical imperatives and categorical imperatives.

A hypothetical imperative is a duty that is necessary to accomplish a specific goal. It is something that we do to achieve an end. Banks (2013) uses the example of the duty of a student to study hard in order to get good grades. In law enforcement, we may look at the hypothetical duty of a patrol officer to write as many search warrants as possible to be considered for a detective job.

A categorical imperative is an unconditional rule or duty. Regardless of the impact on you that the decision may cause, the duty remains the same and must be done. In this way, the act is unrelated to the end result; it is a duty regardless of the outcome. One example in law enforcement is a domestic assault policy that imposes a duty on a police officer to charge a spouse with an assault if evidence exists. This is a duty regardless of the outcome or the wishes of the officer. The duty in this case is policy written by the British Columbia Attorney General's office. The categorical imperative does not only have to be written policy; a police officer who stops a violator may have a duty to write the ticket if certain conditions of the violator stop warrant it, such as the danger of the activity and the driving history of the driver. There is much to say about the categorical imperative for law enforcement; however, for the purposes of this book, we will concentrate on only a portion.

Within the categorical imperative, Kant (2006) states that "...every rational being, exists as an end in himself, not merely as a means." Kant is saying that we should never use people to attain our desired end result; that we should treat everyone with respect regardless of the outcome. O'Neil (1986) uses an example in which a person deliberately makes a promise to another person without ever intending to honour that promise. In this sense, the person who is being deceived cannot consent because the rule, or maxim, of the first person is not known. In a law enforcement context, a police investigator who promises a witness that she will not have to testify against someone if she gives a statement would not be respecting that person and would be using her as a means to an end. An officer would know that this is not a promise that should be made as it is ultimately up to Crown counsel to determine who testifies and who does not. Kant would argue that the promise is using the witness as means to an end, and therefore not ethical. A law enforcement officer must decide whether to follow a consequentialist perspective, in which the consequences of his or her actions are more important, or a Kantian perspective in which the witness ought not to be used as a means to the effective ends.

Coercion is also a way in which Kant would suggest that respect is not shown. Given the powers that law enforcement officers yield, coercion is a tactic that, while perhaps producing an effective end to an investigation, would be wrong in Kant's view regardless of the outcome because the coercion did not allow the other party to consent to the act. Kant's conclusion is the following maxim: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end..." (Kant, 2006, p.50)

Q. How can deontological theory assist law enforcement in moral dilemmas?

Universality. Kant suggests that we should consider the implications of our actions as if they were universal. If we are considering not paying transit fares by jumping over the turnstiles, we should consider the implications if all transit users did not pay. In a law enforcement context, we should consider the ramifications of our actions. For example, a lead investigator may consider misleading the media in order to trick a suspect into making a mistake and exposing himself. When the investigator applies the universality rule (i.e., the spectre of all investigators lying to the media universally), it allows the investigator to consider the

negative ramifications of the action, even if the lie was made with the intentions of bringing out a moral consequence. This is comparable to rule utilitarianism, in which the universal application of actions should be considered.

The importance of duty. Law enforcement officers are required at times to fulfill their duty no matter what the personal costs. When confronted with a duty that they may not want to perform, the officers should consider that they agreed to perform duties when they swore their oath. These duties must be performed by someone, and when this duty falls to them, they must do their duty. For example, a patrol officer who does not want to criminally charge an acquaintance must consider her duty and the oath that she took when she joined the agency. The caveat to duty is that the duty must be done in good faith; that is, the duty should not be performed if the officer is aware that there is a lack of morality in the duty. It is often said among experienced police officers, "you are paid not for what you do, but for what you might have to do." This maxim refers to dangerous duty that you may not want to do, but are paid to do, and ought to do.

Law enforcement officers facing a dilemma in which rule utilitarianism and Kantian logic are at odds should further understand that the choice between the two schools of thought will yield different outcomes, and that the two schools of thought will help the officer understand the options and how to rationalize the decision made. It is not easy to know what option to choose, but officers should take into account the stakeholders involved, including witnesses, suspects, society, the agency and of course themselves.

Respect. Kant believed that a person should never be treated as a means to an end. The moral decision that a person makes must not in any way take advantage of a person. An example is lying to a person to gain "something" in return, even if the "something" is good or a conclusion that will assist and help people. An example in a law enforcement context would be an investigator using an informant to obtain information on another suspect, while offering the informant the chance to remove a charge, when the investigator knows that this will not happen.

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2.4: Virtue Ethics

Virtue ethics has its historical background in ancient Greece and was primarily developed by Aristotle. For the purposes of law enforcement, the major foundation in virtue ethics is the idea that if you are a good person, you will do good things, and to be good, you must do good (Pollock, 2007). In essence, we do not do good things because of an analysis of the end result or of an equation to decide how many people to help versus harm. Rather, we do the right thing, or good thing, because of our good character as demonstrated throughout our life. Therefore, the good act is an automatic response requiring little thought. However, when faced with complex ethical dilemmas, the person who has demonstrated a life of good character will show good character, using temperance and intellect. The real question for Aristotle was not, "what should I do?" but rather "what type of person ought I be?" When our answer is that we ought to be a virtuous person, we are likely to act in a virtuous manner, and therefore in an ethical manner.

Aristotle also spoke of flourishing in life, or living in a state of well-being. He used the word *eudaimonia* (from the Greek *eu,* "good," and *daimon,* "spirit;" commonly translated as "happiness" or "welfare," but more accurately as "human flourishing") to express the state of well-being and living a flourishing life. Within this context, Aristotle concentrated on virtues and vices. Virtues are strengths of a person's character that promote flourishing and well-being (Hinman, 2013). Conversely, vices are character flaws that impede flourishing and limit one's sense of well-being.

Hinman (2013) writes of different types of virtues that Aristotle proposed:

- Executive virtues are examples of "strength of will," such as courage and perseverance.
- Moral virtues are related to moral goodness. Examples are compassion, generosity, truthfulness, and good temper.
- Intellectual virtues are related to the ability to consider options. Examples are wittiness, wisdom, and understanding.

When we look at some of these virtues collectively, we can see that they project attributes that we want law enforcement personnel to possess. In a law enforcement context, society has expectations of officers who:

- **Are courageous**. Officers who are willing to put themselves in harm's way, in order to enforce the law, to protect people and property and to prevent crime.
- **Demonstrate perseverance**. Officers who are not easily deterred from doing the right thing or investigating crimes.
- **Exhibit compassion.** Officers who are able to empathize and sympathize with lawbreakers and victims and who understand that situations are complex and that everyone deserves respect.
- **Act with generosity.** Officers who offer themselves off duty by volunteering and who try to better the lives of others through community service.
- **Show truthfulness.** Officers who are trustworthy and who can be counted on to speak the truth, even when the truth is embarrassing, or results in a not-guilty decision in a case that is important to the officer.
- **Display good temper.** Officers who, when confronted with difficult situations, stay calm and who are able to withstand pressure to react physically or verbally.

The virtues listed above are attractive to law enforcement agencies, and people who demonstrate these virtues are those who law enforcement agencies and all other branches of public service want. Vichio suggests a list of core virtues that law enforcement personnel should possess (Fitch, 2014). They include:

- **Prudence.** Officers with the ability to decide the correct action to take when rules and policy are not present.
- **Trust.** Officers with the ability to be relied upon for truth. This must exist between officers and civilians, officers themselves, and officers and the courts.
- **Effacement of self-interests.** Officers who do not abuse their position of authority or gain favouritisms due to their position.
- **Courage.** Officers who place themselves in danger intellectually and physically. Officers who are not afraid of testifying in court and/or making arrests in tense and intimidating settings.
- **Intellectual honesty.** Officers who act while weighing what they learned in training and whose actions reflect their training and their academic abilities.
- **Justice.** Officers who treat everyone fairly, regardless of personal biases, and who act toward individuals as if looking through a veil of neutrality.
- **Responsibility.** Officers who understand what is right and that there are other courses of actions, but have the intent to do right. Officers who can be counted upon to keep oaths, and to be accountable.

The Center for American and International Law identifies what they term the Six Pillars of Character. They created these pillars with the assistance of 30 national leaders and ethicists. The six pillars that they identified as being the most important characteristics of an ethical police officer are:

1. **Trustworthiness.** Includes integrity, promise-keeping, and loyalty.
2. **Respect**. Treating everyone with respect, regardless of any biases or provocations.
3. **Responsibility**. Includes accountability, pursuit of excellence, and self-restraint.
4. **Justice and fairness**. Includes equity and demonstrating due process.
5. **Caring**. Showing concern for others. Showing consideration for decisions that affect others.
6. **Civic virtue and citizenship**. Being socially conscious. Demonstrating concern for one's community.

Q. How can virtue ethics assist law enforcement in moral dilemmas?

As mentioned previously, law enforcement agencies place a great emphasis on good behaviour of their officers. One way to ensure a strong likelihood of good behaviour is to hire those who have moral character that reflect the values of the agency. In clearly identifying these characteristics, agencies are likely to attract those who also identify with these characteristics.

1. Virtue ethics, at its core, is also simplistic, having two tenets that are important for law enforcement. There is no need to measure consequences or the morality of the action. Simply, the task is to be good and do good acts. If officers are good, they will act in a virtuous manner.
2. There is a need to practise virtue. By practising being virtuous, you will become virtuous in difficult situations automatically. Given this view, it is critical for law enforcement agencies to ensure that applicants wanting to join the agency have practised being virtuous to the point where it has become a habit. Applicants who have practised the virtues listed above will be officers who demonstrate those virtues by habit.

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2.5: Ethics of Care

Also known as feminist ethics, ethics of care is primarily concerned with caring for others. This has evolved from the need to care for those who cannot care for themselves, such as infants. It is a system that assists us in our relations with other people and thereby strengthens how we positively interact with people. The concept of ethics of care is consistent with many peace-keeping and peace-making roles within law enforcement (Braswell and Gold from Pollock, 2007). Officers routinely find themselves refereeing non-assault domestic and civil arguments while attempting to bring a peaceful resolution to the conflict. Ethics of care is, at times, an important perspective for law enforcement officers when they see a person in need and decide to perform an act of care or kindness. Officers who perform a caring act are, according to ethics of care, acting out of compassion rather from a sense of duty; it is within this context that ethics of care can be a reminder to law enforcement officers that often an ethical solution may be to make peace through consensus and understanding, rather than resolve issues formally through charges.

Ethics of care also supports the notion that issues should be resolved with compassion while building human relationships. In this way, a person should strive to build relationships with the community or individuals. With individuals, the building of rapport is critical to providing compassion to those in crisis and/or need.

Q. How can ethics of care theory assist law enforcement in moral dilemmas?

Building rapport with members of the community is an important aspect of community policing. This enables officers to identify issues and to deal with them with compassion. For example, an officer who builds rapport with students in a high school may become aware of a bullying situation. It is with compassion that the officer will be pushed to action to resolve this issue. Or an officer who is called to a grocery store to arrest a mentally ill street person who is stealing food may, instead of arresting the suspect, find an alternative route, such as connecting the suspect with a social service agency, or arranging for a social worker to help the person finda home.

Law enforcement officers should attempt, where possible, to address such issues with compassion and respect for all the parties involved.

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2.6: Egoism

Unlike other theories that prescribe how we ought to behave, egoism is a descriptive principle (Pollock, 2007) that does not tell us necessarily how we ought to behave, but rather why we behave the way we do. It infers that the person who acts in an egotistical manner does so because it is natural to act in this way, and therefore it is a moral action unto itself.

According to the tenets of egoism, the core reason that someone does any action is self-serving by bringing happiness or some other benefit to him- or herself. If someone performs an action that appears to be altruistic, the action was likely performed to give the actor gratification in some way. This may come in many forms; for example in the form of positive media attention, or just feeling good about oneself.

The following example may illustrate how a heroic act by law enforcement officers may be viewed differently through the lens of egoism. On June 10, 2014, Vancouver police detectives witnessed a shooting on the seawall in Yaletown. A gunfight ensued in which the suspect was able to escape via bicycle. Armed and reloaded, the suspect pedalled away and was followed by one of the detectives. The suspect fired at the pursuing detective, narrowly missing her. The detective pursued the suspect while being shot at until other police officers arrived who shot the suspect in an exchange of gunfire.

Most people would look at this case and believe that the detective was selflessly trying to apprehend a dangerous suspect before anyone else was shot. While this may be true, proponents of egoism would suggest that the detective acted in her own self-interest because capturing the suspect would satisfy her happiness, that she wanted media attention, or that she thought her actions would look good to her colleagues, thereby making her happy. This is a cynical view of her actions, but may help us understand why some people act in a way that puts them in danger.

Another way to demonstrate egoism is to place yourself in a situation in which you see someone who requires help. Suppose you decide that not assisting would cause you to feel guilty, thereby troubling you. As a response, you assist the person. From an outsider's perspective, you were acting selflessly and in the interest of the person who was requiring assistance. The end result of your actions, though, was twofold:

1. Your actions assisted the person in need.
2. Your actions made you feel good, allowing you to rid yourself of that troubling feeling resulting from guilt.

Q. How can egoism assist law enforcement in moral dilemmas?

Egoism does not suggest that police officers should act in their own self-interest; certainly this would not be appropriate for law enforcement personnel. Where egoism may help is to better understand why people do things that may appear selfish. This may help us develop empathy for the suspects that appear to be selfish and allow us to better understand that their actions are driven by egoism. Egoism may also assist us in understanding the motives of others, allowing us to look at these motives with more skeptically than we would otherwise.

Egoism can also provide explanations of misconduct among law enforcement officers. Officers who abuse the trust placed on them by society and abuse their authority could be said to be acting in an egoistic state (Souryal, 2011). In this sense, law enforcement officers are acting in their own self-interest and not in the interest of their agency, the individual citizen who was the target of and officer, and society in general. Ultimately, the end result of bad behaviour by law enforcement personnel, according to Souryal (2011, p.275), is "arguably feeding one's ego."

In a broader sense, ethical egoists may also view everything we do as an extension of a desire to live at peace in a society that respects all; every positive action we take is actually selfish activity, so that we can make a better society to live in. In this way, egoists can be positive in their actions making what are apparent good and ethical decisions. However proponents of the egoist theory would suggest that the decisions are at their root self-serving, and therefore egoist in nature.

Criticisms of Egoism

Egoism is an attempt at explaining how we naturally behave with our own interests as a central focus, and that we ought to behave in this way. However, it is an overly cynical perspective on how humans behave. There are plenty of examples of selfless acts that are committed every day and go without notice. While it is true that many donations are made and good deeds done with the expectation that positive publicity will be generated for the giver, this does not necessarily mean that the giver's sole purpose

is to gain publicity. It is possible that publicity is a by-product of giving. Furthermore, while it is in the interests of people to make decisions that will better society, there is no evidence that everyone makes these decisions based on self-interest (Rachels, 2006). If these decisions were universalized, then the world would be a markedly poorer place to live in.

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2.7: Religion or Divine Command Theory

Religion is often considered the most widely used system to make ethical decisions and to conduct moral reasoning (Pollock, 2007). Throughout the world, people rely on a variety of religions to help them determine the most ethical action to take. While divine command theory is widely used throughout the world, there are differences: the application of the theory may differ from religion to religion, and it may differ within each religion.

One of the basic tenets for divine command theory is to use God as the source for all principles. In this way, to rely upon divine command theory, a person must believe that there is a willful and rational god that has provided the direction toward an ethical outcome. It is from God's commands that actions are determined to be right or wrong and, because of this, divine command theory provides an objective assessment of what is ethical or moral. However, there is ambiguity in the way in which some scripture is interpreted.

According to Pollock (2007), there are four assumptions of divine command theory:

1. There is a god.
2. God commands and forbids certain acts.
3. An action is right if God commands it.
4. People ascertain what God commands or forbids.

Divine command theory also provides an explanation of why ethics and morality are so important. In religions, good acts are rewarded in the afterlife, while bad acts condemn the perpetrator to an everlasting punishment. What essentially makes religion such an incredibly powerful ethical system is that there is the spectre of a potentially eternal punishment in the afterlife (Pollock, 2007). This notion of eventual punishment reinforces in its followers the necessity to make ethical decisions based on the commands of their god.

Barry (1985, as cited in Pollock, 2007) describes that understanding God's will is done in three ways:

1. Through individual conscience
2. By religious authorities
3. Through holy scripture

Q. How can divine command theory assist law enforcement in moral dilemmas?

It is important for law enforcement officers who do not practise religion to be cognizant of the importance of religion with believers. As religions provide the most commonly used ethical systems in the world, law enforcement personnel, regardless of their own beliefs, must be aware that not only will some officers refer to scripture, so too will members of the public. It is at times difficult for non-believing officers to understand the power of religion and the importance of its meaning to believers. Non-believers must be cognizant of situations in which, to them, decisions based on divine command theory may seem odd or unethical, but are ethical to the believer. This does not mean that the law does not apply, but that care must be taken to act with empathy when dealing with these situations.

Generally, for officers who believe in God, a source of comfort may be present when facing death or other traumatic events that non-believers may not experience. Officers dealing with death may find comfort in the belief that those who die may be in a better place, that their soul is eternal, and that death may mean that the soul goes to heaven. Believing that death is not the end, but a new beginning, may help officers who practise religion deal with pain and suffering.

Officers are routinely involved in circumstances in which situations appear to be unfair and where innocent bystanders are victimized with tragic outcomes. Officers who believe in God are also able to look at these situations and find comfort in the belief that God has a plan for everyone, even those who have been unfairly victimized. These officers can draw strength from their belief that the apparently random victimization wasn't so random, and that God was acting in a way that, while hard to explain, is planned for some reason only known to God.

Specifically, divine command theory can offer officers a written or prescribed direction to morality. Officers who are faced with a situation in which their values clash with society may fall back on divine command theory for direction in grey areas. An officer who is surrounded with unethical activity by officers, other criminal justice workers, and people on the street may be able to withstand pressure to join in the immoral practice with the belief that God commands moral behaviour toward everyone and prohibits such

things as theft through corruption.

Officers could also use divine command theory to reaffirm in their own minds what is right, even when the Criminal Code or other legislation is unclear on a particular issue. By officers asking themselves what would God command or prohibit, they may be able to make a decision that they can justify.

Finally, officers who believe that God is always good would therefore believe that all of God's commands and prohibitions are good. By interpreting scripture, following the directions of religious authority, or making individual interpretations of God's command and prohibitions, officers are therefore able to do good, understanding that ultimately it is God's commands that they follow, and therefore their actions are good.

Criticisms of Divine Command Theory

While religion may be the most common ethical system employed, it has many issues that can be problematic if used as a moral guideline for law enforcement officers. For law enforcement officers in a pluralistic society, who are entrenched in religious doctrine and make ethical decisions based on that religious doctrine, their ethical decisions will not be acceptable with numerous segments of the society that they are sworn to treat equally. While decisions based on religious doctrine may be satisfactory for a law enforcement officer in his or her personal life, they can create difficulties in the workplace. An example is a law enforcement officer who refuses to enforce a court order to clear a group of Christians protesting abortion. The Christian officer may take offecse to such an order, in spite of the court's ruling and society's general acceptance of abortion.

Specifically, in a criminal justice context, Rawls (2005) viewed religion in public life as something that was out of place and that should, instead, be a private affair. Our religious and personal morals should be put aside when doing the business of the public. It is important, according to Rawls, that workers in government institutions not demonstrate their religious affiliations because we all receive benefits from living in a pluralistic society and that, as a result, we ought to withhold our religious and personal morals to ensure equality.

Other criticisms of divine command theory include:

- Religious scriptures are generally ancient and are hard to interpret against the complexities of today's society. As a result, religion as an ethical system does not provide specific ethical guidance to specific ethical dilemmas. Scriptures are ambiguous and are generally broad in nature.
- There are many religions in the world, with each possessing different prescriptions for morality. Religions have different gods from one another that are worshipped. Does the god a person chooses make a difference? Can you pray to the "wrong" god, or no god?
- Science has no evidence of the existence of God. Without a belief in the existence of God, divine command theory loses its authority among a large portion of the population who base their lives on science and empiricism.
- If we do believe in God, "who" determines what the commands are is not absolutely known or agreed upon. Within religious sects, arguments about who interprets commands is commonly a schism that separates factions.
- Those who believe in God can interpret the commands in their own way, thereby creating different interpretations to the solutions sought for ethical dilemmas; consequently, there can be confusion about what exactly is God's will.
- Contradictions in scripture are confusing. On one side there is mention of the sanctity for life, but there are interpretations that are cited by fundamentalists that provide allowances to cause death to other humans. The most commonly used example of this is in the Quran, in which one passage reads that infidels are to be caught and slayed, but another preaches that Allah loves transgressors. Interestingly, the first verse, it is argued by Muslims, is taken out of context, and refers to Muslims providing self-defence. Interpretations as to what constitutes self-defence further complicates when this verse should be enacted. Should an infidel, in the eyes of a fundamentalist, be slayed for what the fundamentalist deems as an insult, and therefore an attack?
- The notion that the might or power of God should be the basis of our ethical decisions indicates that the morality of the decision is based upon the fear of God's might and power. If this is so, then is the decision really an ethical decision, or is it coerced?
- If God is omnipotent, and is also the basis of morality:
  - How can we rationalize the suffering of innocent children in developing countries?
  - Is this God's plan to allow this to happen? If it is, how can we call this moral?

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2.8: Natural Law

Natural law was espoused by Saint Thomas Aquinas, who viewed the world as being created by God and understood that humans are rational beings capable of using their intellect to comprehend the world. By extension, God enabled humans to reason in a natural way to make ethical choices. Aquinas viewed the first principle of natural law as: "good is to be done and promoted, and evil is to be avoided" (White, 2006, p.29). Simply put, natural law asserts that what is good is natural, and what is natural is good. Unlike Thomas Hobbes' cynical view in the social contract theory (see next section), Aquinas viewed humans as being naturally inclined to do good rather than evil.

Because of the natural inclination toward doing good, Aquinas viewed morality as a universal set of rights and wrongs that are shared across cultures. He delineated two basic human inclinations:

1. To preserve one's own life
2. To preserve the human species

Followers of natural law would suggest that the decision is moral if it furthers human life or preserves one's own life. Should the decision go against human life or preserving your own life, the decision is immoral.

Q. How can natural law assist law enforcement in moral dilemmas?

Natural law can reaffirm in officers the importance of their job, that being to preserve their own life and the human species. Officers could be reminded that property is not as important as life and that their sole function should be public safety, rather than the protection of property, which is one of the common law duties of police officers.

Officers could also use natural law as a reminder of the importance to preserve their own lives when confronted with dangerous situations, and that is natural to want to protect oneself.

Criticisms of Natural Law

A problem inherent in natural law is defining what is natural. A proponent of natural law may deduce that homosexuality is unnatural because it does not preserve the human species. However, biologists have documented many different species that engage in homosexual behaviour. Many people consider homosexual behaviour as unnatural; however, it is seen among a variety of animal species, therefore the case for this being a natural activity is strong (Fereydooni, 2014).

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2.9: Social Contract Theory

Social contract theory is another descriptive theory about society and the relationship between rules and laws, and why society needs them. Thomas Hobbes (1588-1689) proposed that a society without rules and laws to govern our actions would be a dreadful place to live. Hobbes described a society without rules as living in a "state of nature." In such a state, people would act on their own accord, without any responsibility to their community. Life in a state of nature would be Darwinian, where the strongest survive and the weak perish. A society, in Hobbes' state of nature, would be without the comforts and necessities that we take for granted in modern western society. The society would have:

- No place for commerce
- Little or no culture
- No knowledge
- No leisure
- No security and continual fear
- No arts
- Little language

Social contract theory is a cynical, but possibly realistic, view of humanity without rules and people to enforce the rules. An example of a society in a state of nature can at times be observed when a society is plunged into chaos due a catastrophic event. This may occur in because of a war, such as happened in Rwanda, or by cause of a natural disaster, such as what happened in New Orleans in the aftermath of Hurricane Katrina. In both of these examples a segment of society devolved from a country in which the rule of law was practised to a community in a state of nature. Rules and laws were forgotten and brute force dictated who would survive. Unfortunately, without laws and rules, and people to enforce those laws and rules, society devolves into a state of nature.

In general, even without the calamities of natural disasters and war, Hobbes assumed people would strive for more wealth and power in what could be described as a "dog eat dog" society, where, he believed, people will do whatever is required to survive in a state of nature, where rules and laws are non-existent. This would mean that people will act in "wicked" ways to survive, including attacking others before they are attacked themselves. With rules in place, people feel protected against attack.

In a state-of-nature society, the strongest would control others that are weak. Society would have no rules or laws forbidding or discouraging unethical or immoral behaviour. People would be forced to be solely self-interested in order to survive and prone to fight over possession of scarce goods (scarce because of the lack of commerce).

For Hobbes, the solution is a social contract in which society comes to a collective understanding — a social contract — that it is in everyone's interest to enforce rules that ensure safety and security for everyone, even the weakest. Thus, the social contract can deliver society from a state of nature to a flourishing society in which even the weak can survive. The degree to which society protects the weak may vari; however, in our society, we agree to the contract and need the contract to ensure security for all.

The social contract is unwritten, and is inherited at birth. It dictates that we will not break laws or certain moral codes and, in exchange, we reap the benefits of our society, namely security, survival, education and other necessities needed to live.

According to Pollock (2007), there are five main reasons that laws are required in society:

1. The harm principle: to prevent the serious physical assault against others that would be victimized.
2. The offence principle: to prevent behaviour that would offend those who might otherwise be victimized.
3. Legal paternalism: to prevent harm against everyone in general with regulations.
4. Legal moralism: to preventing immoral activities such as prostitution and gambling.
5. Benefit to others: to prevent actions that are detrimental to a segment of the population.

Problems with the social contract theory include the following:

- It gives government too much power to make laws under the guise of protecting the public. Specifically, governments may use the cloak of the social contract to invoke the fear of a state of nature to warrant laws that are intrusive.
- From the time that we are born, we do not knowingly agree to a contract and therefore do not consent to the contract. An outflow of this thought is a movement entitled the "Sovereign Citizens" or "Freemen of the Land." The FBI identifies these

movements as individual citizens who reject government control and "the government operates outside of its jurisdiction. Because of this belief, they do not recognize federal, state, or local laws, policies, or regulations." (US Department of Justice, 2010). The FBI considers these movements as domestic terrorist threats (FBI, 2011).

- If we do accept the contract and wish to abide by it, we may not fully understand what our part of the contract is or ought to be.
- Contracts can be unfair for some. For example, the poor do not get the same benefits of the contract.

Q. How can social contract theory assist law enforcement in moral dilemmas?

While social contract theory does not tell people how they ought to behave, it does provide a basis to understand why society has implemented rules, regulations, and laws. If not for the social contract theory, our understanding of the need for these rules would be limited.

Specifically for law enforcement, social contract theory is important to justify the power that law enforcement can exert over the population as a whole (Evans and MacMillan, 2014). The power imbalance, held by law enforcement, is part of the contract that society has agreed upon in exchange for security. Where the contract can be problematic is when the power used by law enforcement exceeds what is expected by society under the contract.

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2.10: Rawls' Theory of Justice

John Rawls (1921-2002) was a contemporary philosopher who studied theories surrounding justice. His theories are not focused on helping individuals cope with ethical dilemmas; rather they address general concepts that consider how the criminal justice system ought to behave and function in a liberal democracy. It is for this reason that it important that all law enforcement personnel be aware of Rawls' theories of justice or at least have a general understanding of the major concepts that he puts forth.

Rawls' theory is oriented toward liberalism and forms the basis for what law enforcement, and the criminal justice system, should strive for in a pluralistic and liberal society. Borrowing from some concepts of social contract theory, Rawls envisions a society in which the principles of justice are founded in a social contract. However, Rawls identifies problems with the social contract that do not allow fairness and equality to exist among members of society and therefore proposes a social contract which is negotiated behind a "veil of ignorance." Here the negotiating participants have no idea what their race, gender, education, health, sexual orientation, and other characteristics are so that the social contract is fair. Ultimately, Rawls argues that the primary concern of justice is fairness, and within this paradigm Rawls identifies two principles:

1. "Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others" (Rawls, 2006, p.63). Rawls goes further by allowing each person to engage in activities, as long as he or she does not infringe on the rights of others.
2. "Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage (b) attached to positions and offices open to all..." (Rawls, 2006, p.63). Likewise, everyone should share in the wealth of society and everyone should receive benefits from the distribution of wealth. Rawls does not argue that everyone should be paid the same, but rather that everyone should have benefit from a fair income and have access to those jobs that pay more.

These principles should be adhered to, according to Rawls, to ensure that disadvantages are neutralized and everyone receives the same benefits of justice.

Rawls further addresses ethics in the individual, though this is not the central tenet of his theory, and is somewhat of a general statement of how moral people should behave (Banks, 2013).

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2.11: Moral Relativism

The principles of morality can be viewed as either relativist or absolutist (Souryal, 2011). Moral relativism refers to the differences in morality from culture to culture. A moral relativist's perspective would state that what is moral in one culture may not be moral in another culture, depending upon the culture. This is important for police officers to understand in a pluralistic society in which many cultures and religions make up the community where the police officer works. It is important for officers to appreciate that what may be immoral in a traditional Canadian sense may not be moral to members of a culture traditionally found outside of Canada. In realizing this, officers may be able to withhold judgment, or at the very least empathize with the members from that community for what in the officer's perspective may be an immoral act.

Morality in policing is, in most cases, relativistic since police officers are prone to accept moral standards that allow them to achieve goals within the police subculture, often at times contrary to the morals within mainstream society (Catlin and Maupin, 2002). It is moral relativism that enables police officers to accept lying to suspects in interviews in order to gain confessions, or to witnesses to gain compliance. In this instance, an officer may believe that lying is not morally permissible in certain circumstances, but is permissible in other situations. Another example in which a moral relativist perspective may assist an officer is in understanding circumstances surrounding physical punishment of children who misbehave. A culture may maintain that physical puinishment is morally permissible, even though in Canada the same punishment may be in violation of the Criminal Code. It is helpful for officers to understand this while investigating these offences, so that they can build rapport and empathize with suspects, and use moral relativity as a theme in interviews to alleviate the guilt the suspect may feel.

Contrary to relativism, moral absolutism refers to the belief that morality is the same throughout all cultures; that what is right in one culture is right in all cultures and what is wrong in one culture is wrong in every culture. Here, the immoral act is always wrong, no matter the culture, because there are universal rules governing morality. Police officers who are absolutists would reject lying, relying instead on a deontological perspective in which the consequences of the lie do not matter.

Moral relativism is a meta-ethical theory because it seeks to understand whether morality is the same in different cultures. Proponents of moral relativism do not observe universal rules governing moral conduct; rather, moral rules are contingent on at least one of:

- Personality (McDonald, 2010)
- Culture (McDonald, 2010)
- Situations (Catlin and Maupin, 2010).

The difficulty with applying relativism to the police culture is that it does not take into account the diversity of individuals that make up the police culture (Westmarland, 2008). One of the initiatives of community policing is that police agencies now recruit from a wide range of ethnic and cultural backgrounds (Barlow and Barlow, 2009; Kalunta-Crumpton, 2009). This diversity within law enforcement is reflected by the wide array of attitudes that police have toward various issues and the change that has occurred within policing (Newburn and Reiner, 2007). The ability of cultural norms to change is ever-present, and norms can and do change to reflect the values of other cultures (Groarke, 2011). Ultimately, cultural relativism reflects the notion that what is right is permissible in the culture the actor is within and that moral principles are not universal (McDonald, 2010). Within the policing context, the moral underpinnings of members of the police subculture are often in step with the morals of mainstream society, but at times they are not.

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3: ETHICAL DILEMMAS AND THE PROCESS OF EFFECTIVE RESOLUTION

3.1: Ethical Dilemmas
3.2: Values
3.3: Solving Ethical Dilemmas
3.4: References

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3.1: Ethical Dilemmas

When we are confronted with a problem or an issue for which we are required to make a difficult decision, we face a dilemma. The decision may be difficult because there are at least two competing values we are forced to choose between. For example, we may want to purchase an expensive product, but we may have to decide between an expensive, higher-quality product and a cheaper, inferior product. Our decision will involve balancing the values between saving money and purchasing a product that may perform better and last longer. The decision is often difficult, and sometimes we make the wrong decision with the best of intentions of making the right decision.

In order to solve ethical dilemmas, we must be aware of what values we consider important. Pollock (2010, p.13) defines values as unverifiable "elements of desirability, worth and importance." They are unverifiable because they are not capable of being scientifically proven and may vary from person to person. Evans and MacMillan (2014) define values as opinions and beliefs that we decide are beneficial or important. Before we address how we can solve ethical dilemmas, we need to understand what values are and why they are so important.

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3.2: Values

Values are what guide an agency and its employees. Law enforcement agencies will have differing values depending on their function. An agency that investigates wildlife infractions may possess different values from correctional services.

Let's take a look at various law enforcement agencies and the values they identify as being important on their websites.

Canadian Border Services Agency (CBSA)

- *Integrity*
  - We exercise our authority in an honest, open and fair manner.
  - We accept responsibility for our actions in order to build and maintain a reputation of trustworthiness and accountability.
- *Respect*
  - We serve the public interest through non-partisan support of our Minister.
  - We show the utmost appreciation for the dignity, diversity and worth of all people and uphold the *Canadian Charter of Rights and Freedoms*.
  - We develop and sustain mutual trust with our colleagues.
- *Professionalism*
  - We employ public resources wisely and properly.
  - We provide efficient, competent and excellent service.
  - We set high standards of achievement and accountability both individually and collectively.

BC Corrections[1]

- *Integrity*
  - Taking responsibility for our actions
  - Understanding how our actions can affect others
- *Courage*
  - Doing what's right and staying positive, not popular
  - Trying something new, risking failure
  - Leading by example
- *Teamwork*
  - Coming together in times of crisis
  - Mentoring
  - Working with people in other departments for a common purpose
- *Passion*
  - Sharing creative solutions with the leadership team
  - Demonstrating pride in what we do
  - Attempting to perform at a level we would expect of others
- *Service*
  - Maintaining respectful relationships
  - Working effectively with our justice partners
  - Doing our job really well
- *Curiosity*
  - Listening to new ideas
  - Challenging the way we do business and being willing to try new ideas
  - Seeking a better way to achieve our goals
- *Accountability*
  - Being responsible for any action we take, and believing in ourselves
  - Taking ownership for our actions
  - Providing effective leadership and direction to our teams

Vancouver Police Department

The Vancouver Police Department has four core values, which they refer to as IPAR:

- Integrity
- Professionalism
- Accountability
- Respect

Royal Canadian Mounted Police (RCMP) [2]

Recognizing the dedication of all employees, we will create and maintain an environment of individual safety, well-being and development. We are guided by:

- Integrity
- Honesty
- Professionalism
- Compassion
- Respect
- Accountability

When applying for a job with any law enforcement agency, it is important that the applicant understands the core values of that agency. The Vancouver Police website succinctly addresses the importance of knowing the agency's stated core values and demonstrating a life lived where these values have been incorporated in day-to-day living:

> These core values can't be taught in any school, and they are non-negotiable for our applicants. Without these, it would be impossible to have a successful career with the VPD.

Values are not solely limited to what the agency believes are core values, but also include one's personal and outside values. (Caldero and Crank, 2004). For example, applicants to the Vancouver Police Department should be aware of the agency's values and demonstrate how they have incorporated these values into their everyday personal and professional life.

We are inclined to have similar values that are shared among other members of the agency. Values are important for law enforcement officers and should be shared and agreed upon by all members. These imparted values are concentrated throughout the agency and become part of the agency's culture. Working with various constituents and members of other agencies also requires officers to consider their values. The Canadian Border Services Agency articulates the full integration of values from various sectors of society in its values statement, which reads:

> Values are a compass that guides us in everything we do; they represent what we believe and care about. Values cannot be considered in isolation from each other as they often overlap. We are expected to integrate public sector and CBSA values into our decisions, actions, policies, processes, systems, and how we deal with others. Similarly, we can expect to be treated in accordance with these values by our colleagues and management.

Let's review a situation of differing values in a law enforcement case. As illustrated in the table below, in the case of an active shooter at a theatre, individuals involved in the shooting will have differing values.

Role at the Theatre	Values
Single person	Hope, stamina, sobriety
Mother with child	Caring, concern, fortitude
Officer responding	Self-discipline, fortitude, courage
Follow-up detectives	Accountability, empathy, consideration

Each person will have his or her own interests and goals, which reflect the values that are important to them at the time. The mother with her child is primarily concerned with the safety of her child, and must show caring to her child and the fortitude to protect her child in the face of danger. Conversely, the follow-up detectives sent to investigate the shooting have goals that include conducting a thorough investigation. They may share some of the values that the mother possesses, but for the investigation, they will likely possess values of accountability to the mother and other victims, as well as have empathy for all the victims' families. When the situation changes, so too do the values that we possess.

The Ethics Resource Center (2009), located in Arlington, Virginia, identifies the following values as typical values that appear throughout codes of ethics. These are important for us to remember when faced with difficult ethical decisions where we are required to be aware of all the values of each of the vested stakeholders. Some ethical values include:[3]

Acceptance	Favorable reception or belief in something
Accomplishment	Doing or finishing something successfully
Accountability	Obligation or willingness to accept responsibility
Adaptability	The ability to modify behavior to fit changing situations
Adventurousness	Inclination to undertake new and daring enterprises
Allegiance	Loyalty or the obligation of loyalty
Altruism	Unselfish concern for the welfare of others
Ambition	An eager or strong desire to achieve something
Appreciation	Recognizing the quality, value or significance of people and things
Aspiration	A strong or persistent desire for high achievement
Assiduousness	Unceasing; persistent; diligent
Authenticity	The quality or condition of being trustworthy or genuine
Autonomy	The condition or quality of being independent
Benevolence	An inclination to perform kind, charitable acts
Camaraderie	Goodwill and lighthearted rapport between or among friends
Caring	Feeling and exhibiting concern and empathy for others
Changeability	The ability to modify or adapt to differing circumstances
Charity	Generosity toward others or toward humanity
Chastity	The condition of being of virtuous character
Cheerfulness	The quality of being cheerful and dispelling gloom
Citizenship	Exercising the duties, rights, and privileges of being a citizen
Clear thinking	Acting intelligently without mental confusion
Collaboration	To work cooperatively especially in a joint intellectual effort
Commitment	Being bound emotionally or intellectually to a course of action or to another person or persons
Community	Sharing, participation, and fellowship with others
Compassion	Deep awareness of the suffering of others coupled with the wish to relieve it
Competence	The state or quality of being adequately or well qualified
Competitive	To strive to do something better than someone else
Composure	Maintaining a tranquil or calm state of mind
Concern	Regard for or interest in someone or something
Conscientiousness	The trait of being painstaking and careful

Consideration	Process of employing continuous, careful thought and examination
Consistency	Reliability or uniformity of successive results or events
Constancy	Steadfastness in purpose
Cooperation	The willing association and interaction of a group of people to accomplish a goal
Courage	The state or quality of mind or spirit that enables one to face danger, fear, or vicissitudes with confidence and resolution
Courtesy	Civility; consideration for others
Credibility	The quality or power to elicit belief
Decency	Conformity to prevailing standards of propriety or modesty
Dedication	Selfless devotion of energy or time
Democracy	The principles of social equality and respect for the individual within a community
Dependability	The trait of being reliable
Determination	Firmness of will, strength, purpose of character
Diversity	A point of respect in which things differ; variety
Easygoing	Relaxed or informal in attitude or standards
Education	Obtaining or developing knowledge or skill through a learning process
Efficiency	The quality of producing an effect or result with a reasonable degree of effort to energy expended
Empathy	Identification with and understanding of another's situation, feelings, and motives.
Encouragement	The act of incitement to action or to practice
Equality	The right of different groups of people to receive the same treatment
Equity	The state, quality, or ideal of being just, impartial, and fair
Ethics	The way people behave based on how their beliefs about what is right and wrong influence behavior
Excellence	State of possessing good qualities in an eminent degree
Fairness	Consistent with rules, logic, or ethics
Faith	Confident belief in the truth, value, or trustworthiness of a person, idea, or thing
Faithfulness	Adhering firmly and devotedly to someone or something that elicits or demands one's fidelity
Fidelity	Faithfulness; loyalty or devotion
Flexibility	Responsive to change
Forgiveness	The willingness to stop blaming or being angry with someone
Fortitude	The strength or firmness of mind that enables a person to face danger, pain or despondency with stoic resolve
Friendship	A relationship between people based on mutual esteem and goodwill
Generosity	Liberality in giving or willingness to give
Gentleness	The quality of being mild and docile
Genuine	Not spurious or counterfeit
Giving	Voluntarily transferring knowledge or property without receiving value in return
Goodness	Morally right, or admirable because of kind, thoughtful, or honest behavior
Goodwill	A friendly attitude in which you wish that good things happen to people
Gratitude	A feeling of thankfulness and appreciation

Hardworking	Industrious and tireless
Helpfulness	The property of providing useful assistance or friendliness evidence by a kindly and helpful disposition
Honesty	Fairness and straightforwardness of conduct
Honor	Principled uprightness of character; personal integrity
Hope	The feeling that something desired can be had or will happen
Humility	Feeling that you have no special importance that makes you better than others
Industriousness	The characteristic of regularly working hard
Ingenuity	Inventive skill or imagination
Initiative	Ability to begin or to follow through energetically with a plan or task
Integrity	Strict adherence to moral values and principles
Joy	Intense or exultant happiness
Justice	Conformity to moral rightness in action or attitude
Kindness	The quality or state of being beneficent
Law-abiding	Abiding by the encoded rules of society
Liberty	The right and power to act, believe, or express oneself in a manner of one's own choosing.
Love	A feeling of intense desire and attraction toward a person or idea
Loyalty	A feeling or attitude of devotion, attachment and affection.
Mercy	Forgiveness shown toward someone whom you have the power to punish
Moderation	Having neither too little or too much of anything
Morals	Individual beliefs about what is right and wrong
Obedience	Compliance with that which is required; subjection to rightful restraint or control
Opportunity	Favorable or advantageous circumstance or combination of circumstances
Optimism	A bright, hopeful view and expectation of the best possible outcome
Patience	The ability to accept delay, suffering, or annoyance without complaint or anger
Peace	Freedom from war or violence
Perseverance	Steady persistence in adhering to a course of action, a belief, or a purpose
Promise-keeping	Keeping your word that that you will certainly do something
Prudence	Doing something right because it is the right thing to do
Punctuality	Adherence to the exact time of a commitment or event
Purity	Moral goodness
Reason	The ability to think and make good judgments
Recognition	An acceptance as true or valid
Reconciliation	Enabling two people or groups [to] adjust the way they think about divergent ideas or positions so they can accept both
Reliability	Consistent performance upon which you can depend or trust
Repentance	Remorse or contrition for past conduct
Resilience	The ability to rebound quickly from misfortune or change
Resourcefulness	The ability to act effectively or imaginatively, especially in difficult situations

Respect	Polite attitude shown toward someone or something that you consider important
Responsibility	That for which someone is responsible or answerable
Righteousness	The state of being morally upright; without guilt or sin
Sacrifice	To give up something for something else considered more important
Self-control	Control of personal emotions, desires, or actions by one's own will
Self-discipline	Making yourself do things when you should, even if you do not want to do them
Sensitivity	Awareness of the needs and emotions of others
Serenity	Calmness of mind and evenness of temper
Sharing	To allow others to participate in, use, enjoy, or experience jointly or in turns
Sincerity	Genuineness, honesty, and freedom from duplicity
Sobriety	Habitual freedom from inordinate passion or overheated imagination; calmness; coolness; seriousness
Stamina	The physical or mental strength to do something for a long time
Stewardship	The careful conducting, supervising, or managing of something
Supportive	Furnishing support or assistance
Thoughtfulness	The tendency to anticipate needs or wishes
Tolerance	Recognizing and respecting the beliefs or practices of others
Tranquility	A state of calm and peacefulness
Trustworthiness	The trait of deserving confidence
Understanding	Knowing how something works or a positive, truthful relationship between people
Values	Core beliefs that guide and motivate attitudes and actions
Virtue	Doing something right because it is the good thing to do
Wisdom	The ability to make good judgments based on what you have learned from your experience
Work	Perform as intended or desired

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3.3: Solving Ethical Dilemmas

With values as focal point, the National Association of Social Workers has created a framework that is used by social workers to address ethical dilemmas. The framework includes six steps:[1]

1. Determine whether there is an ethical issue or/and dilemma. Is there a conflict of values, or rights, or professional responsibilities?
2. Identify the key values and principles involved. What meanings and limitations are typically attached to these competing values?
3. Rank the values or ethical principles which – in your professional judgement – are most relevant to the issue or dilemma. What reasons can you provide for prioritizing one competing value/principle over another?
4. Develop an action plan that is consistent with the ethical priorities that have been determined as central to the dilemma. Have you conferred with clients and colleagues, as appropriate, about the potential risks and consequences of alternative courses of action? Can you support or justify your action plan with the values/principles on which the plan is based?
5. Implement your plan, utilizing the most appropriate practice skills and competencies. How will you make use of core social work skills such as sensitive communication, skillful negotiation, and cultural competence?
6. Reflect on the outcome of this ethical decision making process. How would you evaluate the consequences of this process for those involved: client(s), professional(s), and agency(ies)?

In comparison, Evans and MacMillan (2014) have developed a framework involving 10 steps to make ethical decision-making efficient and practical. This framework is specific to law enforcement officers and addresses the consideration of laws, regulations, policy, and procedures that other frameworks assume will be followed, but in law enforcement are very important to avoid charges and allow cases against suspects to proceed. The framework concludes with a follow-up to determine the effectiveness of the course of action taken by the officer.

As a simple alternative to these frameworks, students should consider the following framework:

1. *Establish the facts surrounding the ethical dilemma.*
   Facts are important in law enforcement. To investigate all cases, officers must rely on facts to guard against misinformation and cognitive biases. This is also true in ethical dilemmas that we face. If the facts are not known to us, we must investigate everything that surrounds the dilemma to ensure we are acting on the right information. Avoid acting on rumours and gossip by verifying information through factual information and evidence.
2. *Determine your legal obligations and duties.*
   We must be sure what our professional and legal obligations are. Professional and legal obligations will likely allow us to easily decide on a course of action to take in an ethical dilemma. However, while professional and legal obligations may not always require a course of action that coincides with these obligations, our awareness of any professional and legal obligations must be known to allow us to be fully cognizant of the consequences of our actions should we choose to ignore professional or legal obligations.
3. *Establish the interested participants involved.*
   It is important to know who will be impacted by the course of action that we decide upon. Often the primary participants are easy to identify and it is the secondary participants that are often not considered. These may include friends, families, or employees that are related somehow to the primary participants in the ethical dilemma. Knowing the impact of the decision made to secondary participants may be particularly important for a decision made with utilitarian underpinnings; where the rights of those who are not part of the majority may not be considered.
4. *Determine the ethical values of each participant.*
   Determining ethical values is important to allow us an understanding of what is truly at stake. A participant in an ethical dilemma may value loyalty as the most important value. However, another participant may value equality as the more important value. When considered, the value of loyalty may not compare with equality, depending upon the ethical dilemma.
5. *Consider normative ethical theories as an aide to determine a course of action.*
   When considering options, normative ethical theories may assist us in determining the consequences of actions, or the duties we may be obligated to follow that fall outside of the laws, rules, and procedures. We may also assess whether the decision we are considering is rational from another perspective we have not considered. We may also settle on an option, and rely on an ethical theory to assist us in articulating the reasoning behind the option we have chosen.
6. *Consider options that would be ethically sound.*
   There may be several options to consider, and each option ought to be considered critically by determining what harm it would cause and what values the person being harmed holds. The participant should consider the positives and negatives of

the decision and determine the risks and benefits associated with each option, as well as the benefits of each action, with these values in mind.

7. *Consideration of the possible negative and positive outcomes of each possible option.*
   Try to predict what may otherwise be unintended consequences of your decision. These consequences may not be readily apparent, but they require a critical analysis of the consequences of your decision. To help with this, try asking the following questions:
   - Would the action taken be well received if it was on the front page of a newspaper? While this should be a consideration, keep in mind that often the right decision may be the least popular in public opinion.
   - If the decision is job-related, would the agency or company you work for still hire you if it knew you would make this decision? If the answer is yes, then this should give weight to the decision you are about to make.
   - If the decision is not job-related, would the agency you would like to work for still hire you if it knew all the facts surrounding the dilemma and the decision you would make? If the answer is yes, then this should give weight to the decision you are about to make.

Implement options after considering steps 1-7.

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1. Taken in whole from the National Association of Social Workers. 3.03: Solving Ethical Dilemmas#return-footnote-823-1

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4: KEY ETHICAL ISSUES WITHIN LAW ENFORCEMENT

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4.2: Ethical Issues

There are numerous ethical issues that arise in law enforcement that are particular only to law enforcement. While widespread systemic corruption and lawbreaking by law enforcement officers in Canada is relatively rare, although it does occur from time to time. Such infractions include a clear violation of federal, provincial, or municipal statutes, and for the sake of brevity, they do not warrant discussion in this text. However, readers should look at such issues critically to gain an understanding of the variables that surround them. It is important to look beyond the obvious moral, ethical, and/or legal violations of the main actor and to critically assess the ethical issues that can, at times, surround the case peripherally. For example, Vancouver police officer Constable Hodson was arrested for selling drugs from his police car and threatening his former informant. This is a clear-cut violation of numerous statutes, including the Criminal Code and the Controlled Drugs and Substances Act. Nonetheless, the following questions may be asked relating to the case:

- What questions arise about the ethics of the Vancouver Police Department investigating Hodson?
- Did the Vancouver Police Department choose to ignore warning signs that Hodson was becoming increasingly involved in immoral behaviour?
- Should the Vancouver Police Department have conducted integrity testing of members making drug arrests?
- What can the Vancouver Police Department do to avoid such a serious breach in the future?
- Should the Vancouver Police Department have detected this moral flaw in Hodson before hiring him?

Key ethical issues that face law enforcement are not easy to identify at times, and when they are identified, they are open to interpretation. Often in law enforcement, a high-profile decision made by an officer in a millisecond is analyzed over months and sometimes years. Even with this ability to analyze the decision over years, a consensus is often not reached about whether the law enforcement officer's actions were ethical or not. It is for this reason that it is important to look at all ethical issues in law enforcement with a critical mind, so we can understand both sides of each issue. It is also why this text will focus on those issues that are not clearly ethical or unethical, but nonetheless are deserving of debate.

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4.3: The Ethics of Power and Authority

Law enforcement officers possess enormous amounts of power, which can be used against citizens to deprive them of their freedom, search them and their dwellings, seize their property, and use force against them. These powers are legally permitted under specific circumstances, and law enforcement officers are trained to know when these powers can be legally applied. As law enforcement officers rank among the most powerful occupations in society, what compounds their ability to use their power is that they are often in contact with relatively powerless and disenfranchised citizens who may be unable to resist an officer's illegitimate use of that power. These powers are legally prescribed, and law enforcement officers are well aware of them. It is important that law enforcement officers not misuse their power for the following reasons.

- **Because of the psychology of citizenship.**
  Citizens, for the most part, want to participate in the "social contract," to be a part of mainstream society and carry out their citizenship responsibilities. They want to belong to society and will do what they think is required by authorities to accomplish this. As a result, they will often try very hard to respond to what law enforcement requires and may be susceptible to unreasonable requests by law enforcement.
- **To maintain due process.**
  Every law enforcement officer should acknowledge the importance of due process. The abuse of power runs directly contrary to the notion of due process, and officers who misuse their power are creating an environment in which due process cannot flourish. Ideally, all officers in the criminal justice system should be focused on due process, and the police have a role in accomplishing due process by being fact finders and apprehenders (Manning, 2010). Along with this, law enforcement officers who are under pressure to charge a suspect must resist the power they are afforded when charges or other actions such as search and seizure are not warranted (Reiner, 2010). Police officers, in particular, face the challenge of weighing crime control against due process, in which they are faced with opportunities to misuse their power. Officers must make decisions on when and in what situations they should use their power. Officers must reflect on how the use of their power would look in a court of law under close scrutiny.
- **To safeguard discretionary power and therefore efficiency.**
  As mentioned previously, law enforcement officers exercise power through discretion. Radical criminologists propose that the police have too much discretion, with the end result being "too much street justice" for the poor, while ignoring crimes of the powerful, of which the police are a member (Box, 2008, p.274). Box argues that the way to eliminate this lack of due process is to place restrictions on discretion. Should law enforcement officers desire to maintain the discretion that they have, which is critical for efficiency, they must not abuse their power.

Power and authority are tools that law enforcement officers must use judiciously and ethically. Without an ethical life, this power will be misused, creating a power imbalance that is bad for the officer, the agency, and society.

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4.4: The Milgram Experiment

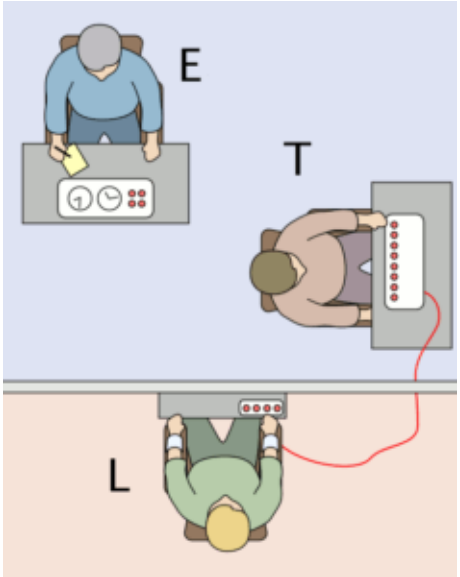
To demonstrate the ease with which power can be used to coerce people, Stanley Milgram conducted a scientific experiment that demonstrated how far people will go when confronted with someone who has power and is in a position of authority. In this instance, subjects often performed actions that were unethical when ordered to by a person in authority. Milgram's experiment demonstrated the power of authority and how someone in a position of authority can influence people to behave unethically and against their wishes.

Milgram's Studies on Obedience to Authority

The powerful ability of those in authority to control others was demonstrated in a remarkable set of studies performed by Stanley Milgram (1963). Milgram was interested in understanding the factors that lead people to obey the orders given by people in authority. He designed a study in which he could observe the extent to which a person who presented himself as an authority would be able to produce obedience, even to the extent of leading people to cause harm to others.

Like his professor Solomon Asch, Milgram's interest in social influence stemmed in part from his desire to understand how the presence of a powerful person—particularly the German dictator Adolf Hitler who ordered the killing of millions of people during World War II—could produce obedience. Under Hitler's direction, the German SS troops oversaw the execution of 6 million Jews as well as other "undesirables," including political and religious dissidents, homosexuals, mentally and physically disabled people, and prisoners of war. Milgram used newspaper ads to recruit men (and in one study, women) from a wide variety of backgrounds to participate in his research. When the research participant arrived at the lab, he or she was introduced to a man who the participant believed was another research participant but who was actually an experimental confederate. The experimenter explained that the goal of the research was to study the effects of punishment on learning. After the participant and the confederate both consented to participate in the study, the researcher explained that one of them would be randomly assigned to be the teacher and the other the learner. They were each given a slip of paper and asked to open it and to indicate what it said. In fact both papers read *teacher*, which allowed the confederate to pretend that he had been assigned to be the learner and thus to assure that the actual participant was always the teacher. While the research participant (now the teacher) looked on, the learner was taken into the adjoining shock room and strapped to an electrode that was to deliver the punishment. The experimenter explained that the teacher's job would be to sit in the control room and to read a list of word pairs to the learner. After the teacher read the list once, it would be the learner's job to remember which words went together. For instance, if the word pair was *blue-sofa*, the teacher would say the word *blue* on the testing trials and the learner would have to indicate which of four possible words (*house*, *sofa*, *cat*, or *carpet*) was the correct answer by pressing one of four buttons in front of him. After the experimenter gave the "teacher" a sample shock (which was said to be at 45 volts) to demonstrate that the shocks really were painful, the experiment began. The research participant first read the list of words to the learner and then began testing him on his learning.

The shock panel, as shown in [the figure],"The Shock Apparatus Used in Milgram's Obedience Study," was presented in front of the teacher, and the learner was not visible in the shock room. The experimenter sat behind the teacher and explained to him that each time the learner made a mistake the teacher was to press one of the shock switches to administer the shock. They were to begin with the smallest possible shock (15 volts) but with each mistake the shock was increased by one level (an additional 15 volts).



Once the learner (who was, of course, actually an experimental confederate) was alone in the shock room, he unstrapped himself from the shock machine and brought out a tape recorder that he used to play a prerecorded series of responses that the teacher could hear through the wall of the room. As you can see in [the figure], "The Confederate's Schedule of Protest in the Milgram Experiments," the teacher heard the learner say "ugh!" after the first few shocks. After the next few mistakes, when the shock level reached 150 volts, the learner was heard to exclaim "Get me out of here, please. My heart's starting to bother me. I refuse to go on. Let me out!" As the shock reached about 270 volts, the learner's protests became more vehement, and after 300 volts the learner proclaimed that he was not going to answer any more questions. From 330 volts and up the learner was silent. The experimenter responded to participants' questions at this point, if they asked any, with a scripted response indicating that they should continue reading the questions and applying increasing shock when the learner did not respond.

The Confederate's Schedule of Protest in the Milgram Experiments

75 volts	Ugh!
90 volts	Ugh!
105 volts	Ugh! (*louder*)
120 volts	Ugh! Hey, *this* really hurts.
135 volts	Ugh!!
150 volts	Ugh!! Experimenter! That's all. Get me out of here. I told you I had heart trouble. My heart's starting to bother me now. Get me out of here, please. My heart's starting to bother me. I refuse to go on. Let me out!
165 volts	Ugh! Let me out! (*shouting*)
180 volts	Ugh! I can't stand the pain. Let me out of here! (*shouting*)
195 volts	Ugh! Let me out of here! Let me out of here! My heart's bothering me. Let me out of here! You have no right to keep me here! Let me out! Let me out of here! Let me out! Let me out of here! My heart's bothering me. Let me out! Let me out!
210 volts	Ugh!! Experimenter! *Get* me out of here. I've had enough. I *won't* be in the experiment any more.
225 volts	Ugh!
240 volts	Ugh!

255 volts	Ugh! Get me *out* of here.
270 volts	(*agonized scream*) Let me out of here. Let me out of here. Let me out of here. Let me out. Do you hear? Let me out of here.
285 volts	(*agonized scream*)
300 volts	(*agonized scream*) I absolutely refuse to answer any more. Get me out of here. You can't hold me here. Get me out. Get me out of here.
315 volts	(*intensely agonized scream*) Let me out of here. Let me out of here. My heart's bothering me. Let me out, I tell you. (*hysterically*) Let me out of here. Let me out of here. You have no right to hold me here. Let me out! Let me out! Let me out! Let me out of here! Let me out! Let me out!

Before Milgram conducted his study, he described the procedure to three groups—college students, middle-class adults, and psychiatrists—asking each of them if they thought they would shock a participant who made sufficient errors at the highest end of the scale (450 volts). One hundred percent of all three groups thought they would not do so. He then asked them what percentage of "other people" would be likely to use the highest end of the shock scale, at which point the three groups demonstrated remarkable consistency by all producing (rather optimistic) estimates of around 1% to 2%.

The results of the actual experiments were themselves quite shocking. Although all of the participants gave the initial mild levels of shock, responses varied after that. Some refused to continue after about 150 volts, despite the insistence of the experimenter to continue to increase the shock level. Still others, however, continued to present the questions, and to administer the shocks, under the pressure of the experimenter, who demanded that they continue. In the end, 65% of the participants continued giving the shock to the learner all the way up to the 450 volts maximum, even though that shock was marked as "danger: severe shock," and there had been no response heard from the participant for several trials. In sum, almost two-thirds of the men who participated had, as far as they knew, shocked another person to death, all as part of a supposed experiment on learning.

Milgram's study is important in a law enforcement context for the following reasons:

1. Officers must be careful in exercising authority, especially to those that are most vulnerable.
2. Officers can also be greatly influenced by the negative/unethical actions of fellow officers and their own supervisors. It is important for senior officers to understand that Milgram's study strongly suggests that the actions of senior officers will coerce the same action in junior officers. While senior officers may think they are not being copied, or are manipulating the junior officer, Milgram's study suggests that they may be doing so.
3. Law enforcement officers are commonly involved in extraordinary situations, where heightened stress and perceived danger are high. In this environment, even those most strong-willed individuals may be vulnerable to coercion.
4. When a person is being arrested, his or her perception of losing freedom may provoke a reaction to the officer, despite the officer's position of power.

It is important for any person who possesses power to understand and be aware of the coercive nature of power; that power and authority are easily used to make people do things they otherwise would not do. It is within this paradigm, that abuse of power can occur, and officers must be aware of their power and the ease with which it can be abused.

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4.5: Person, Gender, and Cultural Differences in Conformity

Person Differences

Even in cases in which the pressure to conform is strong and a large percentage of individuals do conform (such as in Solomon Asch's line-judging research), not everyone does so. There are usually some people willing and able to go against the prevailing norm. In Asch's study, for instance, despite the strong situational pressures, 24% of the participants never conformed on any of the trials.

People prefer to have an "optimal" balance between being similar to, and different from, others (Brewer, 2003). When people are made to feel too similar to others, they tend to express their individuality, but when they are made to feel too different from others, they attempt to increase their acceptance by others. Supporting this idea, research has found that people who have lower self-esteem are more likely to conform in comparison with those who have higher self-esteem. This makes sense because self-esteem rises when we know we are being accepted by others, and people with lower self-esteem have a greater need to belong. And people who are dependent on and who have a strong need for approval from others are also more conforming (Bornstein, 1992).

Age also matters, with individuals who are either younger or older being more easily influenced than individuals who are in their 40s and 50s (Visser & Krosnick, 1998). People who highly identify with the group that is creating the conformity are also more likely to conform to group norms, in comparison to people who don't really care very much (Jetten, Spears, & Manstead, 1997; Terry & Hogg, 1996).

However, although there are some differences among people in terms of their tendency to conform (it has even been suggested that some people have a "need for uniqueness" that leads them to be particularly likely to resist conformity; Snyder & Fromkin, 1977), research has generally found that the impact of person variables on conformity is smaller than the influence of situational variables, such as the number and unanimity of the majority.

Gender Differences

Several reviews and meta-analyses of the existing research on conformity and leadership in men and women have now been conducted, and so it is possible to draw some strong conclusions in this regard. In terms of conformity, the overall conclusion from these studies is that that there are only small differences between men and women in the amount of conformity they exhibit, and these differences are influenced as much by the social situation in which the conformity occurs as by gender differences themselves.

On average, men and women have different levels of self-concern and other-concern. Men are, on average, more concerned about appearing to have high status and may be able to demonstrate this status by acting independently from the opinions of others. On the other hand, and again although there are substantial individual differences among them, women are, on average, more concerned with connecting to others and maintaining group harmony. Taken together, this means that, at least when they are being observed by others, men are likely to hold their ground, act independently, and refuse to conform, whereas women are more likely to conform to the opinions of others in order to prevent social disagreement. These differences are less apparent when the conformity occurs in private (Eagly, 1978, 1983).

The observed gender differences in conformity have social explanations—namely that women are socialized to be more caring about the desires of others—but there are also evolutionary explanations. Men may be more likely to resist conformity to demonstrate to women that they are good mates. Griskevicius, Goldstein, Mortensen, Cialdini, and Kenrick (2006) found that men, but not women, who had been primed with thoughts about romantic and sexual attraction were less likely to conform to the opinions of others on a subsequent task than were men who had not been primed to think about romantic attraction.

In addition to the public versus private nature of the situation, the topic being discussed also is important, with both men and women being less likely to conform on topics that they know a lot about, in comparison with topics on which they feel less knowledgeable (Eagly & Chravala, 1986). When the topic is sports, women tend to conform to men, whereas the opposite is true when the topic is fashion. Thus it appears that the small observed differences between men and women in conformity are due, at least in part, to informational influence.

Because men have higher status in most societies, they are more likely to be perceived as effective leaders (Eagly, Makhijani, & Klonsky, 1992; Rojahn & Willemsen, 1994; Shackelford, Wood, & Worchel, 1996). And men are more likely to be leaders in most cultures. For instance, women hold only about 20% of the key elected and appointed political positions in the world (World Economic Forum, 2013). There are also more men than women in leadership roles, particularly in high-level administrative positions, in many different types of businesses and other organizations. Women are not promoted to positions of leadership as fast as men are in real working groups, even when actual performance is taken into consideration (Geis, Boston, & Hoffman, 1985; Heilman, Block, & Martell, 1995).

Men are also more likely than women to emerge and act as leaders in small groups, even when other personality characteristics are accounted for (Bartol & Martin, 1986; Megargee, 1969; Porter, Geis, Cooper, & Newman, 1985). In one experiment, Nyquist and Spence (1986) had pairs of same- and mixed-sex students interact. In each pair there was one highly dominant and one low dominant individual, as assessed by previous personality measures. They found that in pairs in which there was one man and one woman, the dominant man became the leader 90% of the time, but the dominant woman became the leader only 35% of the time.

Keep in mind, however, that the fact that men are perceived as effective leaders, and are more likely to become leaders, does not necessarily mean that they are actually better, more effective leaders than women. Indeed, a meta-analysis studying the *effectiveness* of male and female leaders did not find that there were any gender differences overall (Eagly, Karau, & Makhijani, 1995) and even found that women excelled over men in some domains. Furthermore, the differences that were found tended to occur primarily when a group was first forming but dissipated over time as the group members got to know one another individually.

One difficulty for women as they attempt to lead is that traditional leadership behaviors, such as showing independence and exerting power over others, conflict with the expected social roles for women. The norms for what constitutes success in corporate life are usually defined in masculine terms, including assertiveness or aggressiveness, self-promotion, and perhaps even macho behavior. It is difficult for women to gain power because to do so they must conform to these masculine norms, and often this goes against their personal beliefs about appropriate behavior (Rudman & Glick, 1999). And when women do take on male models of expressing power, it may backfire on them because they end up being disliked because they are acting nonstereotypically for their gender. A recent experimental study with MBA students simulated the initial public offering (IPO) of a company whose chief executive was either male or female (personal qualifications and company financial statements were held constant across both conditions). The results indicated a clear gender bias as female chief executive officers were perceived as being less capable and having a poorer strategic position than their male counterparts. Furthermore, IPOs led by female executives were perceived as less attractive investments (Bigelow, Lundmark, McLean Parks, & Wuebker, 2012). Little wonder then that women hold fewer than 5% of Fortune 500 chief executive positions.

One way that women can react to this “double-bind” in which they must take on masculine characteristics to succeed, but if they do they are not liked, is to adopt more feminine leadership styles, in which they use more interpersonally oriented behaviors such as agreeing with others, acting in a friendly manner, and encouraging subordinates to participate in the decision-making process (Eagly & Johnson, 1990; Eagly et al., 1992; Wood, 1987). In short, women are more likely to take on a transformational leadership style than are men—doing so allows them to be effective leaders while not acting in an excessively masculine way (Eagly & Carli, 2007; Eagly, Johannesen-Schmidt, & van Egen, 2003).

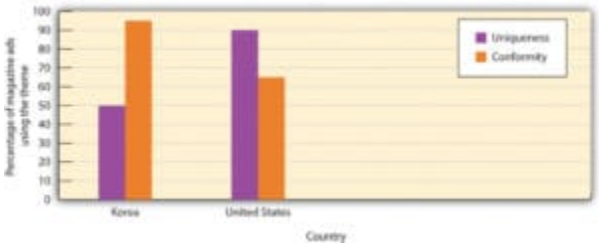
In sum, women may conform somewhat more than men, although these differences are small and limited to situations in which the responses are made publicly. In terms of leadership effectiveness, there is no evidence that men, overall, make better leaders than do women. However, men do better as leaders on tasks that are “masculine” in the sense that they require the ability to direct and control people. On the other hand, women do better on tasks that are more “feminine” in the sense that they involve creating harmonious relationships among the group members.

Cultural Differences

In addition to gender differences, there is also evidence that conformity is greater in some cultures than others. Your knowledge about the cultural differences between individualistic and collectivistic cultures might lead you to think that collectivists will be more conforming than individualists, and there is some support for this. Bond and Smith (1996) analyzed results of 133 studies that had used Asch’s line-judging task in 17 different countries. They then categorized each of the countries in terms of the degree to which it could be considered collectivist versus individualist in orientation. They found a significant relationship: conformity was greater in more collectivistic than in individualistic countries.

Kim and Markus (1999) analyzed advertisements from popular magazines in the United States and in Korea to see if they

differentially emphasized conformity and uniqueness. As you can see in [the figure], "Culture and Conformity," they found that while U.S. magazine ads tended to focus on uniqueness (e.g., "Choose your own view!"; "Individualize") Korean ads tended to focus more on themes of conformity (e.g., "Seven out of 10 people use this product"; "Our company is working toward building a harmonious society").



Culture and Conformity

Kim and Markus (1999) found that U.S. magazine ads tended to focus on uniqueness whereas Korean ads tended to focus more on conformity.

In summary, although the effects of individual differences on conformity tend to be smaller than those of the social context, they do matter. And gender and cultural differences can also be important. Conformity, like most other social psychological processes, represents an interaction between the situation and the person.

Psychological Reactance

Conformity is usually quite adaptive overall, both for the individuals who conform and for the group as a whole. Conforming to the opinions of others can help us enhance and protect ourselves by providing us with important and accurate information and can help us better relate to others. Following the directives of effective leaders can help a group attain goals that would not be possible without them. And if only half of the people in your neighborhood thought it was appropriate to stop on red and go on green but the other half thought the opposite—and behaved accordingly—there would be problems indeed.

But social influence does not always produce the intended result. If we feel that we have the choice to conform or not conform, we may well choose to do so in order to be accepted or to obtain valid knowledge. On the other hand, if we perceive that others are trying to force or manipulate our behavior, the influence pressure may backfire, resulting in the opposite of what the influencer intends.

Consider an experiment conducted by Pennebaker and Sanders (1976), who attempted to get people to stop writing graffiti on the walls of campus restrooms. In some restrooms they posted a sign that read "Do not write on these walls under any circumstances!" whereas in other restrooms they placed a sign that simply said "Please don't write on these walls." Two weeks later, the researchers returned to the restrooms to see if the signs had made a difference. They found that there was much less graffiti in the second restroom than in the first one. It seems as if people who were given strong pressures to not engage in the behavior were more likely to react against those directives than were people who were given a weaker message.

When individuals feel that their freedom is being threatened by influence attempts and yet they also have the ability to resist that persuasion, they may experience **psychological reactance**, *a strong motivational state that resists social influence* (Brehm, 1966; Miron & Brehm, 2006). Reactance is aroused when our ability to choose which behaviors to engage in is eliminated or threatened with elimination. The outcome of the experience of reactance is that people may not conform or obey at all and may even move their opinions or behaviors away from the desires of the influencer.

Reactance represents a desire to restore freedom that is being threatened. And an adult who feels that she is being pressured by a car sales representative might feel the same way and leave the showroom entirely, resulting in the opposite of the sales rep's intended outcome.

Of course, parents are sometimes aware of this potential, and even use "reverse psychology"—for example, telling a child that he or she cannot go outside when they really want the child to do so, hoping that reactance will occur. In the musical *The Fantasticks*, neighboring fathers set up to make the daughter of one of them and the son of the other fall in love with each other by building a fence between their properties. The fence is seen by the children as an infringement on their freedom to see each other, and as predicted by the idea of reactance, they ultimately fall in love.

In addition to helping us understand the affective determinants of conformity and of failure to conform, reactance has been observed to have its ironic effects in a number of real-world contexts. For instance, Wolf and Montgomery (1977) found that when judges give jury members instructions indicating that they absolutely must not pay any attention to particular information that had been presented in a courtroom trial (because it had been ruled as inadmissible), the jurors were *more* likely to use that information in their judgments. And Bushman and Stack (1996) found that warning labels on violent films (for instance, "This film contains extreme violence—viewer discretion advised") created more reactance (and thus led participants to be *more* interested in viewing the film) than did similar labels that simply provided information ("This film contains extreme violence"). In another relevant study, Kray, Reb, Galinsky, and Thompson (2004) found that when women were told that they were poor negotiators and would be unable to succeed on a negotiation task, this information led them to work even harder and to be more successful at the task.

Finally, within clinical therapy, it has been argued that people sometimes are less likely to try to reduce the harmful behaviors that they engage in, such as smoking or drug abuse, when the people they care about try too hard to press them to do so (Shoham, Trost, & Rohrbaugh, 2004). One patient was recorded as having reported that his wife kept telling him that he should quit drinking, saying, "If you loved me enough, you'd give up the booze." However, he also reported that when she gave up on him and said instead, "I don't care what you do anymore," he then enrolled in a treatment program (Shoham et al., 2004, p. 177).

Person, gender, and cultural differences in conformity are important in a law enforcement context for the reasons discussed below.

Citizens may not obey a lawful order by a police officer when the officer uses power lawfully. This may occur when the citizen perceives the officer is eliminating the citizen's right to engage in the behavior they wish to. This, according to Dr. Rajiv Jhangiani and Dr. Hammond Tarry, may lead people not to conform, or obey an order, and may indeed lead the citizen to oppose the officer who is trying to make a lawful order.

Furthermore, while person variables may predict conformity, situational variables are usually more important. This would suggest that the behavior and action of the officers may have a strong role to play in determining whether or not the citizen will conform.

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4.6: Ethical Issues during an Investigation

Caseload Management

Law enforcement officers who are in investigative roles are often confronted with ethical issues during the investigative process. Officers who have a heavy caseload are expected to determine which case to investigate at the expense of other cases. Officers often rely on the solvability of the case, and concentrate on that case, which means that cases that may be slightly more difficult to solve are never solved. This is a consequentialist perspective, in which the end result is seen as the most important aspect of the investigation.

Some officers may do an assessment of the victim, coupled with other investigative variables that allow the officer to decide which case is ultimately more serious and more important to work on. The difficulty with this approach is that the officer's values are taken into account and are weighed against the rights of all victims. Problems arise when victims who may not be considered high on the investigator's valued list (for example an officer who does not value sex-trade workers), do not receive the same level of service that other, favoured victims do. Officers must be cognizant of their personal biases and ensure that they consider other variables, such as solvability, continuation of the offence, serial offences of the suspect, seriousness of the injury, and perishable evidence.

Lies, Deception, and Tricks

Investigators walk a line between being tenacious in their investigations and being overzealous in refusing to give up a case that ought to be closed due to a lack of evidence. Officers must be aware not to allow their personal feelings to interrupt objective, critical and reflective consideration of the case. Investigators should routinely ask themselves how a case would look in court when all the facts are known by the defence counsel and the judge. Would their credibility suffer as a result? If the answer is yes, investigators need to address this and decide whether they should continue along their investigative path, or stop.

The Supreme Court of Canada does permit officers to use "tricks" to solve crimes. In *Regina v. Rothman,* the Supreme Court ruled that police can use tricks, so long as they do not shock the community. Such shocking or "dirty" tricks include things such as impersonating a priest or a lawyer to gain a covert confession.

Tricks that officers are able to use include posing as gangsters or drug dealers in undercover operations in order to obtain covert confessions. Other tricks that officers may use are lies in interviews to bond with subjects. Lying in law enforcement is allowed in certain circumstances, but is strictly forbidden in other circumstances. These include, but are not limited to:

- Creating evidence or planting evidence
- Lying in court (testifying)
- Lying in reports, notebooks, or other administrative or investigative reports
- Lying in any administrative or civil proceedings
- Lying to fellow officers or supervisors

The scope for lying is very narrow and it should be used sparingly for serious investigations by officers who know the boundaries and what would be accepted in court. However, the ethics around lying lead some officers to discount it as a tactic. Some of the reasons they cite for the unacceptability of lying include:

- Lies destroy confidence in the police. Both the suspect and the community at large will not believe even truthful information brought forward in the future by an officer who uses lying.
- Lies are immoral because they are an illegitimate means to an ends. It goes against Kant's categorical imperative that we should never lie, regardless of the consequences of not getting a confession in what may be an important case.
- The courts may disallow the evidence because the courts may determine that the evidence was obtained through tactics not warranted under *Regina v. Rothman*.
- The officer's religious beliefs and scripture prohibit or strongly discourage lying for interviews and criminal investigations.

Some officers have little issue with lying to suspects, taking a utilitarian and legalistic approach. They argue the following:

- It is for the greater good because lying justifies the end result (a classic utilitarian perspective that maximizes happiness).

- The positive consequence of lying to find evidence outweighs the consequence of not lying and thus not retrieving evidence.

Other officers take a different perspective, arguing:

- It is their duty to do what they can to solve a crime. However, lying does not follow Kantian logic because the act itself is wrong. The duty is to solve crime, not to lie. Furthermore, Kant would argue that the officer is using the person as a means to an end to get a confession.
- Solving a crime means you have to play at the criminal's moral level at times, and that as long as the evidence is admissible, anything goes. This perspective brings officers dangerously close to crossing the ethical line, venturing into noble-cause corruption. Officers must, in this case, be aware of the limits allowed by the court and not be tempted to surpass these limits.

Other investigative tricks include undercover operations ranging from simple stolen property investigations to elaborate and lengthy operations for murder and drug conspiracies. Essential in undercover operations is the need for an undercover officer to establish credibility with the suspect or target. In doing so, the officer may have to commit, or appear to commit, a crime. This may include stealing or damaging property, selling and handling drugs, or selling and handling restricted weapons. The actions of undercover officers have limits, such as officers not engaging in drug use, crimes of violence, or sex-related activities. Section 25.1 of the Criminal Code protects officers against prosecution as long as they are in the lawful execution of their duty and can account for the need to "break the law."

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4.7: Gratuities

For the purpose of discussion surrounding ethics in law enforcement, a **gratuity** is the gift of an item to another person based solely on their occupation. A gratuity is most often given to officers by workers in the service industry, such as waiters and bartenders. Additionally and problematically, gratuities are given for services expected and services already rendered; free coffees for law enforcement officers often come with strings attached, or at the very least, as an insurance policy to gain favours in the future should the need arise. A cynic would argue that offering free coffee is not an altruistic gesture, but rather an insurance policy for security in the future. A law enforcement officer who receives free coffee from a restaurateur will likely be expected to provide extra service to the restaurant should it be required. Conversely, a law enforcement officer who removes a drunk person from a restaurant can often expect a free coffee after the drunk has been removed. Four main reasons that gratuities are given to law enforcement officers are:

1. Because of the **theory of reciprocity**, where people feel they owe something to the giver. In a law enforcement context, this will be collected after the gift (the free coffee) is given.
2. To ensure future cooperation, where the gift-giver may want the services of the officer in the future. This can include gaining biased support of officers in spite of the facts surrounding an issue.
3. To use the presence of police officers, attracted by free coffee, as an advertisement to potential patrons that the environment is safe.
4. To use the presence of police officers, attracted by free coffee, as a way to dissuade potentially problematic patrons from patronizing the restaurant.

Gratuities are often seen as the first step on the slippery slope toward major corruption (Coleman, 2004), and it is for this reason that accepting gratuities is always frowned upon by law enforcement agencies. Coleman argues that while each step is, on the slippery slope, individually insignificant, it is the cumulative effect of the steps that draws and pushes officers to more serious forms of unethical behaviours. Once an officer starts on the slippery slope, pne step leads to another: the coffee leads to a coffee and a donut, which eventually leads to a free dinner. The cumulative effect of these gratuities, according to Coleman (2004), leads to a situation that is difficult for the officer to stop doing or turn around.

Coleman (2004) also identifies an absolutist perspective in which the free-coffee gratuity is viewed the same as receiving a thousand dollar bribe. They are both wrong regardless of the financial gain received by the officer. It can be argued that the intent of the officer should be considered. If the officer's intent in receiving the free coffee is to build community cohesion and better relations with the police, that should always be considered. However, if the intent is unethical, such as to save money by using the officer's power position, then this too should be considered.

In a controversial paper, Kania (1998) proposes that the police should be allowed to exercise discretion and decide the appropriateness of receiving minor gratuities such as free coffee. This, he argues, is similar to other professions and is a way to foster community relations; refusing minor gratuities such as coffee strikes at the core of building bridges with the community and can have an adverse effect on relationships. Kania (1998) offers little more than anecdotal evidence of this and recalls incidents in his own policing career in which he observed noble officers rejecting free coffee to the consternation of the provider, thus creating a rift between police and the community.

The most balanced view on gratuities belongs to Pollock (2007), who draws a sharp distinction between a gift and a gratuity. The gift refers to an exchange in which there are no strings attached, whereas a gratuity would likely be given for future favour, however subtle (Pollock, 2007). The difficulty is in determining what is and is not a gift versus a gratuity. Pollock utilizes ethical systems to make this determination.

A deontological perspective would suggest that if all businesses were to give all police gratuities, the ramifications would not be desirable (Pollock 2007). In essence, Rawls' (1999) principles of justice would be subverted by a system in which only those who pay are entitled to service. Pollock (2007) also suggests from a formalism perspective that the motive of the giver would be paramount and that the giver who has good intentions would make the gift morally permissible. Conversely, utilitarianism would suggest that the negatives outweigh the positives and, as a result, the gratuities would be unethical; however, act utilitarianism would judge each act on its own merits, allowing for gratuities to be accepted when the consequences are good for all concerned (Pollock, 2007). Rule utilitarianism, on the other hand, would determine that the long-term consequences of gratuities would be damaging to more people than they would aid, and therefore would not be morally permissible (Pollock, 2007).

Kania's (1998) perspective would fall under an ethics of care approach, in which gratuities would be ethical if there were a positive

social relationship already formed between the giver and the taker. The ethics of virtue would be concerned only with the virtues of the receiving officer (Pollock, 2007).

In conclusion, while other professions, such as doctors, are free to receive gratuities, law enforcement officers must be careful when receiving gratuities for the following reasons:

- Police are professionals and professionals don't take gratuities.
- People will expect different treatment.
- Gratuities could erode public confidence.
- There is the slippery slope potential; the receipt of gratuities can be a gateway for more corruption.
- Police get paid by the public to treat everyone equally.

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4.8: Use of Force Philosophy Theory and Law

Introduction

One of the most contentious issues facing peace officers, including police, corrections and sheriffs, is the use of force on citizens being arrested or citizens under an officer's custodial care. Officers who use force are subject to scrutiny in the following ways:

1. Court. In the courts (criminal and civil), officers who use force, where it is determined the force is unreasonable given the totality of the circumstances, are subject to criminal charges or lawsuits in civil court. The force used by the officers does not have to result in injury to the subject for charges or civil action to result. The key is if the use of force is determined to be unreasonable given the totality of the circumstances. Charges in criminal court can range from first degree murder to assault. In civil court, officers may be held accountable for their actions and be found liable for the damages they have caused.
2. Internal Investigations. Officers may be subject to investigations conducted by their own police department's investigators within the department's professional standards unit. The investigation will determine whether a criminal offence has been committed, but also whether the officer has breached the *Police Act* and/or departmental policy and procedures. When it has been determined that an officer has breached the *Police Act* or a departmental policy, the consequences may range from a verbal reprimand to suspension to termination of employment.
3. Media Coverage. With the prevalence of cameras in the community, officers' actions will often be captured on video. Even the most legitimate use of force can appear to be ugly, unnecessary, overly violent, and troubling. Video coverage of a use of force event is often biased and misrepresentative of the whole incident, or has been taken out of context. The November 6, 2014 incident, in which a Vancouver police officer broke a car window of a motorist to arrest the driver, was portrayed as excessive use of force against a driver for a driving violation. The police state that the window was broken after the driver failed to comply with the officer, and the officer broke the window to allow him to make a drug arrest in a potentially dangerous situation. The depiction by the media was somewhat balanced, including views from the police. However, the dissenting view in the article suggested that this type of action would eventually lead Canada to become a 'totalitarian' country. The officer's picture was presented in the media, regardless of the final findings of the investigation into the levels of force the officer used. While media is an excellent vehicle for accountability, officers must be mindful that their actions will be publicized and ensure that they appear in a positive light, exercising proper discretion, control, and minimal use of force.

Other Officers. Officers who use excessive force will often find themselves the subject of a complaint by another officer who witnessed the use of force action. Contrary to the perspective of many outsiders to law enforcement, officers will report and initiate a formal complaint against other officers who use excessive force. Instead of formally reporting the officer, other officers who witness excessive force may choose not to work with the officer or advise other officers not to work with the officer. While this is not a desirable outcome, officers using excessive force must be aware that other officers are scrutinizing their conduct, and that the repercussions can range from facing criminal charges to being ostracized.

History of Force in a Sovereign State

The use of force is an unfortunate but necessary component of state governance. Without the ability of the state to use force legitimately, the state would fall into anarchy or, as Hobbes suggests, a state of nature. Force should only be used by the state in a limited fashion and in limited circumstances. Max Weber observed that the state should be the only source that uses force legitimately, and that the use of force must be a tool available for the state to ensure it survives (Waters, 2015). Weber suggests that there is a need for violence to be used against citizens periodically by the state in order for a sovereign state to ensure order (Waters, 2015).

Nozick (1974) concurs, suggesting that the state must claim monopoly on the legitimate use of force and the ability to punish those who use force illegitimately. In the end, for a state to function, force is expected to be used against the citizens of that state from time to time. The inevitable tension arises when trying to determine the actions that constitute legitimate force as opposed to illegitimate force.

The police use force at times as part of the social contract in which force is required to ensure peace. As citizens, it is ironic that we expect the use of force to be used at times to ensure peace and keep us from a state of nature, however, we collectively agree that there are times in which force will be used against anyone who threatens the peace, or who has victimized someone else. The consequences of not allowing the government, and by extension the police, to create and execute laws, would be a

society that would be, as Locke describes "solitary, poor, nasty, brutish and short" (Hobbes, 1950, p. 104). However, the costs of the social contract can at times lead to abuse of authority, in which the contract is abused on behalf of the government and police. Governments, and, in particular, the police are in a position under the social contract theory to abuse this trust under the guise of protecting society, and must be overseen by accountability measures to ensure that the force used is appropriate and not excessive. Force, therefore, must be used against citizens only when appropriate and with the consent of society as a whole. In support of the notion of social contract theory, Sir Robert Peel's nine principles include the necessity to recognize that the use of force by the police is at times necessary. While Peel's idea was to have a non-military force keep public order, it was necessary to account for the need to use force when necessary. Peel recognized that force must be a last resort, and used only to the minimum required to achieve police objectives.

The issue with Peel's ideas is the subjective nature determining the action considered minimal force. Police officers in Canada differ from officers in the United States and the UK. Officers in the USA are confronted on a daily basis with a culture that considers the second amendment (Amendment 11: 'A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed') a sacred right. Interpretation of this amendment entitles Americans to possess firearms for lawful purpose. In the United States, gun possession is common, and police must be mindful that many persons they deal with may be in possession of a gun. In the UK, gun ownership is uncommon, and police do not expect to encounter a person in possession of a gun; as a result, the level of force they use on a day-to-day basis is expected to be lower than that used by their American counterparts.

Canadian police officers' use of force would fall somewhere between the UK and the US. Canadian police officers are required to be diligent when interacting with citizens, while remaining cognizant that there are fewer guns in Canada than the US, but more than in the UK.

In using force, officers are provided with a range of tools that are at times controversial. Each of these tools must be used sparingly, and only when deemed necessary against subjects who pose threats to themselves or others. Conducted energy weapons, more commonly referred to as Tasers, are an example of a weapon used by police officers that has garnered much controversy. The issue of 'creepage' is a concern. This is the notion that, when officers are given and trained in a compliance tool, they tend to use it too liberally, and only once there is official follow up in a judicial inquiry do they become more judicious in the use of the weapon. We also saw this happen when OC, or pepper spray, was introduced. The use of such tools increases in frequency. This trend is prevalent, until there is official oversight admonishing the liberal use of the tool. The use of Tasers, in cases in which the subject is not a threat to the officer or to another person, constitutes torture, as defined by UN Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment. As such, Tasers cannot be used to modify subject behavior; for example, a Taser should not be used when a subject is loudly expressive and angry. Only when the officer feels the subject is a threat and there are no other lesser means available should the Taser be deployed.

A police officer is inherently at risk of being the victim of violence, and the state has a responsibility to minimize the risk of violence. Likewise, police officers in democratic nations have rights as employees and as individuals, and as such they are entitled to do what they must to ensure their safety (Smith, 2009).

Hicks (2004) further attributes the abilities of police in modern democracies to use lethal force as per the ancient traditions of the 'Just War Doctrine' (jus ad bellum), which "was utilized to draw a moral boundary between those wars deemed appropriate and necessary and those uses of force deemed morally reprehensible." (Hicks,2004: 256). Nations considering waging a just war must abide by the following criteria, according to Hicks (2004: 258):

'(a) competent authority, indicating the need for a sovereign entity to wage war versus a single individual; (b) just cause, which incorporates the proportionality between the just cause and the means of pursuing it; (c) just intent, of which the ultimate aim is peace; (d) last resort, indicating an absence of the availability of other means of resolving the conflict; and (e) reasonable hope of success, a requirement that any morally just conflict must have a semblance of hope for achieving a peaceful resolution.'

These criteria closely align with the use of force continuum developed within the use of force models that officers in the USA must adhere to. Hicks (2004) feels that force is necessary only when it can be considered just, and thus provides the moral underpinnings that enable war. The requirements for a just war are therefore similar in nature to use of force models that are used by police officers. While Canada does not have a Use of Force Continuum, Canada has a National Use of Force Framework that contains the National Use of Force Model (graphic).

Use of Force Theory and Background

Police officers in Canada have a common law duty to protect life and property. To fulfill this duty, they must at times use force; to

not use force to protect life is a dereliction of duty that may result in the officer being charged under the *Police Act* or under the *Criminal Code*. While the use of force is not expressly sanctioned under common law, it includes an understanding that force may at times be required.

Police officers in Canada are also authorized to use force by federal statute, provincial statute, and departmental policy and procedure. The theory of use of force is guided by the National Use of Force Framework.

History

Graphic models describing use of force by officers first began to appear in the 1970s in the United States. These early models depicted a rather rigid, linear-progressive process, giving the impression that the officer must exhaust all efforts at one level prior to being allowed to consider alternative options. A frequent criticism of these early models was that they did not accurately reflect the dynamic nature of potentially violent situations, in which the entire range of subject behaviour and police force options must be constantly assessed throughout the course of the interaction.

In Canada, use of force models first began appearing in the 1980s. As part of a comprehensive use of force strategy, Ontario developed a provincial use of force model in 1994; some provinces and the Royal Canadian Mounted Police followed suit shortly thereafter.

In 1999, the Canadian Association of Chiefs of Police (CACP) endorsed an initiative involving a proposal to develop a national use of force model. In April of the same year, use of force experts and trainers from across Canada met at the Ontario Police College to create one model encompassing the best theory, research and practice for officers' use of force. The model would be dynamic, support officer training, and facilitate professional and public understanding of officer use of force.

Core Values of the Use of Force Framework

The use of force framework revolves around a series of core principles with which all strategies, tactics and protocols must align. For example, any new tactic developed by use of force experts for officer safety must align with these values. The following values form the framework of the use of force model:

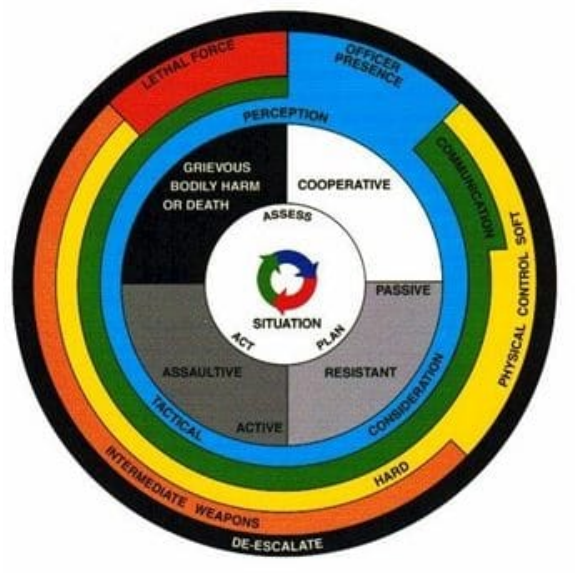
- The primary responsibility of a peace officer is to preserve and protect life.
- The primary objective of any use of force is to ensure public safety.
- Police officer safety is essential to public safety.
- The National Use of Force Model does not replace or augment the criminal, civil and case law; the law speaks for itself.
- The National Use of Force Model was constructed in consideration of (federal) statute law and current case law.
- The National Use of Force Model is not intended to dictate policy to any agency.

The Canadian Charter of Rights and Freedoms clearly establishes that everyone has certain basic rights. Everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Police officers are duty-bound to adhere to this Charter. However, to implement the mandate given to police officers within the limits set by law, it may become necessary for an officer, in some circumstances, to breach certain rights and individual liberties. Further, while engaged in the duties of policing, such as maintaining law and order, preventing crime, and protecting the public and/or officers themselves, police officers may be called upon to use force.

Canadian Society specifically acknowledges that in certain circumstances police officers are justified, on reasonable grounds, to use the appropriate level of necessary force in order to apply or execute the law. The officer is protected by law, as long as his or her actions are justifiable, and that the use of force remains in accordance with the law, human rights, professional ethics, and organizational and social values.

The National Use of Force Model

The National Use of Force Model (NUFM) was developed to assist in the training of police officers, and as a reference when making decisions and explaining officers' actions with respect to the use of force. The model does not justify an officer's actions; rather it identifies to officers the steps they must take to ensure that the actions they take are appropriate and measured. The use of force model is a tool that assists officers in knowing what level of force is appropriate.



Situation:

With every situation, an officer must do three things, before, during, and after the incident is concluded:

Assess: The officer must consider all elements of the situation. He/she needs to know the nature of the call, the suspect(s) involved, if he/she has backup available, what his/her physical abilities are, what the terrain at the location will be like, weather conditions, and so on.

Plan: The officer must formulate an action plan, bearing in mind that all situations are dynamic and constantly changing. Remember, every action has a reaction, so contingency plans must also be considered.

Act: Once on scene, the officer must put his/her plan into action.

It is important to remember that oftentimes officers must assess, plan, and act in a fraction of a second, as in the case of a spontaneous assault on the officer.

Subject Behaviour

The level of force that officers use is contingent upon the subject's behavior. Subject behavior is categorized in the following levels, ranging from complete cooperation to potentially lethal acts:

Cooperative: This type of subject is referred to as "yes people" because oftentimes seeing the police, or a simple gesture or request to leave will achieve voluntary compliance.

Passive Resistance: Subjects displaying this type of behavior do not do anything to hinder the police, but they also do not do anything to help the police. They may simply become dead weight and are typically seen at sit-in type protests.

Active Resistance: Subjects who actively resist will typically pull arms away from controlling officers, run away, hold onto fixed objects, and brace themselves in doorways or "turtle" by pulling their arms into their chest area, resisting officers' attempts to straighten the arms.

Assaultive: Assaultive subjects will strike or kick at officers. They may spit, swear, or yell threats at officers and display various pre-assaultive cues that signal a possible physical assault on the officer, including, but not limited to:

- ignoring the officer;
- repetitious questioning;
- aggressive verbalization;
- emotional venting;
- refusing to comply with lawful request;

- ceasing all movement;
- invasion of personal space;
- adopting an aggressive stance; and
- hiding.

Grievous Bodily Harm/Death: Subjects in this category are attacking the officer with intent to injure or kill the officer, with or without weapons. This is the highest and most dangerous level of subject behavior and may result in the subject's death.

Response Options

Officers have five response options available to them. It is important to remember that, while these are not levels of force, each category of response options has levels of force, ranging from implied to lethal force.

Officer Presence: There are many elements of officer presence, including the officer's appearance in uniform, his/her perceived level of fitness, size, sex, number of officers, available equipment, etc. Included in this category are perception (all officers see a given situation uniquely) and tactical considerations (any available options to confront the situation, see below).

Communication: This category includes verbal and non-verbal communication; once the communication commences, it should continue throughout the incident.

Physical Control: Physical control is sub-divided into two categories: soft and hard. Soft physical control includes joint locks and manipulations, and takedowns. Hard physical control techniques include strikes, stuns, kicks, and neck restraints. All techniques in this category are typically performed with empty hands, and were formerly referred to as Empty Hand Control Tactics. These techniques range from implied to deadly force in context.

Intermediate Weapons: These "gadgets" that are available to police officers include: Conducted Energy Weapons, OC Sprays and other chemical agents, batons, impact energy weapons (ARWEN, bean bag, etc.), vehicles, weapons of opportunity, noise/flash diversionary devices, and the list goes on. As with other response options, levels of force in this category range from implied to deadly force.

Lethal Force: This category includes all of the other options available in the preceding categories, as well as the various firearms available to the police.

Perception and Tactical Considerations

Perception and Tactical Considerations are two separate factors that may affect the officer's overall assessment. Because they are viewed as interrelated, they are graphically represented in the same area on the model. They should be thought of as a group of conditions that mediate between the inner two circles (Subject Behavior and Response Options) and the responses available to the officer.

The mediating effect of the Perception and Tactical Considerations circle explains why two officers may respond differently to the same situation and subject. This is because tactical considerations and perceptions may vary significantly from officer to officer and/or agency to agency. Two officers, both faced with the same tactical considerations, may assess the situation differently and therefore respond differently, because they possess different personal traits or have dissimilar agency policies or guidelines. Each officer's perception will directly impact their own assessment and subsequent selection of tactical considerations and/or their own use of force options.

Perception

How an officer sees or perceives a situation is, in part, a function of the personal characteristics he or she brings to the situation. These personal characteristics affect the officer's beliefs concerning his or her ability to deal with the situation. For various reasons, one officer may be confident in his or her ability to deal with the situation, and the resulting assessment will reflect this fact. In contrast to this, another officer, for equally legitimate reasons, may feel that the situation is more threatening and demands a different response. The following list includes factors unique to the individual officer, which interact with situational and behavioral factors to affect how the officer perceives and ultimately assesses and responds to a situation.

Factors that may be unique to the individual officer include but are not limited to:

- strength/overall fitness;
- personal experience;
- skill/ability/training;
- fears;
- gender;
- fatigue;
- injuries;
- critical incident stress symptoms;
- cultural background; and
- sight/vision.

Tactical Considerations

An officer's assessment of a situation may lead to one of the following tactical considerations. Conversely, these same factors may impact an officer's assessment of a situation.

- disengage and consequences**;
- officer appearance;
- uniform and equipment;
- number of officers;
- availability of backup;
- availability of cover;
- geographic considerations;
- practicality of containment, distance, communications;
- agency policies and guidelines; and
- availability of special units and equipment: canine, tactical, helicopter, crowd management unit, command post, etc.

** Note: An officer's primary duty is to protect life and preserve the peace, however, when a situation escalates dangerously or when the consequences of continued police intervention seriously increase danger to anyone, the option to disengage may be considered appropriate. It is also recognized that, due to insufficient time and distance or the nature of the situation, the option to disengage may be precluded. If the officer determines the option to disengage to be tactically appropriate, the officer may consider disengagement with the goal of containment and consideration of other options such as seeking alternative cover, waiting for back-up, specialty units, etc.

The National Use of Force Model (NUFM) represents the process by which an officer assesses, plans and responds to situations that threaten public and officer safety. The assessment process begins in the center of the model with the Situation confronting the officer. From there, the assessment process moves outward and addresses the Subject Behavior and the officer's Perceptions and Tactical Considerations. Based on the officer's assessment of the conditions represented by these inner circles, the officer selects from the use of force Response Options contained within the model's outer circle. After the officer chooses a response option s/he must continue to Assess, Plan and Act to determine if his or her actions are appropriate and/or effective, or if a new strategy should be selected. The whole process should be seen as dynamic and constantly evolving until the Situation is brought under control.

Authority to use force separates law enforcement officials from other members of society, and the reasonable use of force is central to every officer's duties. The National Use of Force Model provides a framework that guides the officer in that duty.

Risk Assessment

An officer uses a risk assessment process to choose a response option. In order to choose the appropriate level of force for the situation before them, an officer must continue risk assessment throughout the situation. Observing only the demonstrated behavior of the subject and any related threat cues may not always be enough to justify using a particular level of force. There may be other times when valuable risk assessment information can be gathered and analyzed, prior to responding.

Stages of Risk Assessment

Risk Assessment should include two factors that officers must take into consideration:

1. The likelihood someone or something might be hurt or damaged.
2. Whether the police officer should intervene given the seriousness of the harm or damage that appeared imminent.

These are often difficult decisions, and the more adept the officer is at assessing risk, the more readily and appropriately they will respond under urgent circumstances.

Assessing the risk the officer may be exposed to during a call may begin very early in the evolution of the call.

- The officer should gather as much information as possible when the call is first received.
- The who, what, when, where and why of the call.
- Continue while enroute to the call.
- Upon arrival at the scene.
- During the officer's approach while at the scene.
- While entering onto the immediate scene.
- While in the interior of the scene.
- While exiting the scene.
- While handling prisoners at the scene and in a jail setting.

The officer's assessment of the risk will constantly evolve as more information is received. The closer to the scene the officer gets, the better their assessment may be. While on scene they must continue to assess the risk. If they have controlled the risk, they must maintain control with the effective method. They must not afford the subject the opportunity to re-escalate. Even while exiting the scene, the officers should monitor the possible risks that may occur from bystanders or associates. In some instances, the officer(s) may be afforded very little initial risk assessment information. Spontaneous attacks, by their nature, afford the officers very little initial risk assessment opportunities.

Legal Justification for the Use of Force

Officers may have plenty of operational discretion, however in use of force, discretion is limited by the criminal code. An officer's ethical values, in relation to use of force, must closely align with the criminal code and the legal parameters set out. If the officer's values do not align, the officer is destined for either legal consequences for excessive use of force or injury for not using the appropriate level of force. The law is very clear regarding the limits placed on an officer's use of force and the legal consequences for officers who use excessive force. The use of force must satisfy the following two tests. It must be:

1. Subjectively reasonable (based on the officer's genuine thoughts, feelings and beliefs). Here the officer is given some leeway, in that they may have mistakenly used force against an unarmed subject in the belief that the subject was armed. This may be because the subject appeared to be reaching for a gun in their pocket after acting in a suspicious manner. The courts may believe that this was subjectively reasonable.
2. Objectively reasonable (facts that would convince an ordinary reasonable person that the officer acted reasonably). Here the courts may compare the officer against what would be expected of a reasonable person. In this way the courts determine whether or not the actions are consistent with those of a reasonable person.

What the courts actually require is for judges to apply the "doppelganger test." Here, a judge will "go" with the officer from the time the officer was first sent to the place where the incident took place, and consider that officer's training and experience, to determine if the officer acted reasonably. The judge must then consider what a reasonable officer with the same training and experience as the officer who took action would have done. This is significantly different from a judge considering what he or she would have done.

The discretion police have regarding the use of force is controlled by law. The primary authorization in law that allows police officers to legally use force on a person is contained in Section 25 of the *Criminal Code*. It reads as follows:
25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law
(*a*) as a private person,

(*b*) as a peace officer or public officer,

(*c*) in aid of a peace officer or public officer, or

(*d*) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm [1] (Grievous bodily harm means serious hurt or pain. In determining a defense under this section the jury must be directed to the circumstances as they existed at the time that the force was used, keeping in mind that the officer could not be expected to measure the force used with exactitude) unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(*a*) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(*b*) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(*c*) the person to be arrested takes flight to avoid arrest;

(*d*) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(*e*) the flight cannot be prevented by reasonable means in a less violent manner.

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act,* if

(*a*) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and

(*b*) the escape cannot be prevented by reasonable means in a less violent manner.

Police officers are required to discharge various duties authorized by legislation, such as preserving life and protecting property, preserving the peace, enforcing the law and preventing crime. Under Section 25(1) of the Criminal Code of Canada, police must satisfy three elements to justify the use of force:

1. Be "required or authorized" by law to do "anything" in the "administration or enforcement" of the law.
2. The police officer must act on reasonable grounds.
3. The police officer can only use "as much force as is necessary" for the purpose in question.

Additionally, the *Criminal Code* contains the following sections dealing with the use of force, not only by peace officers, but also by members of the public:

Section 27 – Prevention of a crime

Section 30 – Prevention of a breach of the peace

Section 31 – Actual breach of peace

Section 32 – Suppressing a riot

Section 34 – Self-defense against an unprovoked assault

Section 35 – Self-defense in case of aggression (property)

Section 43 – Correction of a child by force

Section 45 – Surgical operations

When considering if the use of force can be justified under law, legal and effective methods of force occur when:

- the method is reasonable;
- it is necessary; and
- it is not overly aggressive under the circumstances presented.

In order for police to use force to control a subject, three elements **MUST** exist.

- **A –** Did the suspect have or reasonably appear to have the **ABILITY** to cause injury or death to the officer or others?
- **I –** Did the suspect **demonstrate INTENT?** Did words and/or actions lead the officer to believe the suspect had the intent to cause injury or death to the officer or others?
- **M –** Did the suspect have the **MEANS** to deliver the perceived threat?

If the suspect demonstrates the above noted elements, the officer is justified in using the force option most appropriate to control the suspect. There are several considerations that a police officer must be aware of when controlling the suspect, such as:

- Was there a lower level of force available to gain control?
- Did or could the officer identify he or she as a police officer?
- Did or could the officer provide the suspect(s) the opportunity to de-escalate his/her level of resistance towards the officer?

  (A warning) There is an onus on the officer, if the situation allows, to provide the opportunity to de-escalate. If the suspect

  de-escalates, the member must de-escalate their use of force.
- Did the officer identify the proper risk before intervening accordingly?
- Was the subject isolated? What would the officer hit if the officer missed the suspect?

If the officer(s) involved cannot reasonably articulate the reason(s) for their use of force actions, Section 26 of the *Criminal Code* (excessive force) may apply:

26. Everyone who is authorized by law to use force is criminally responsible for any excess thereof, according to the nature and quality of the act that constitutes the excess.

Theory Meets Practice and Case Law – Subject Behaviour

Subject behavior can be displayed overtly through physical acts of aggression and/or violence toward others, or covertly through gestures, changes in posture, verbal statements, states of intoxication, inattentiveness, feigned compliance, and the list goes on.

A guiding principle in the use of force that officers follow when classifying subject behavior is that if the officer detects two or more pre-assaultive cues, the officer can intervene with force prior to an overt physical assault by the subject. To justify his/her actions as self defense in a civil action, the officer must prove two elements:

1. The circumstances warranted defensive action.
2. That the force used was not excessive.

When judging the level of force used by an officer, case law anticipates that the use of force is not to be measured to a “nicety” and that reasonableness “fails to be determined in light of the circumstances and not through the lens of hindsight”. What this means is that hindsight is not to be used by the trier of fact in determining the reasonableness of an officer’s use of force. While these are both important points, special consideration ought to be given to the second point. Those who will judge the use of force actions of the police: lawyers, judges, supervisors, media, peers, family, and the public – generally forget or simply are not aware of this standard. This can be referred to as the “would have, could have, should have” principle.

We see the hindsight principle being abused more and more with the availability of video recordings. Members involved in force-related incidents usually provide duty reports and/or statements without the benefit of having seen video of the incident, and they are only required to answer questions about their actions and corresponding statements during a frame-by-frame review and analysis of the video. Often the first opportunity for officers to see the video is at trial, and their testimony may conflict with their

initial reports and statements.

In a recent report published in the *Force Science News*, Dr. Bill Lewinski asserts that officers should be allowed to review video footage of their critical incident and conduct a walk-through of the scene prior to giving their official statement of account. Lewinski says, “After a high-stress experience, such as a major force confrontation, an officer’s memory of what happened is likely to be fragmentary at best,” and added, “An incident is never completely recorded in memory.”

According to Dr. Lewinski’s research into force-related encounters and memory recall, “The average person will actually miss a large amount of what happened in a stressful event and, of course, will be completely unaware of what they did not pay attention to and commit to memory.”

Compounding the problem, a participant or witness, “…may unintentionally add information in their report that was not actually part of the original incident,” Lewinski explained – not in a plot to deceive, but rather in a humanly instinctive effort to fill in frustrating memory gaps.

Timing of the interview is a major factor because an officer’s version of an incident will vary, depending on whether his/her statement is taken before, after, or without a walk-through or a viewing of a videotape of the incident. The most enriched, complete, and factually accurate version of a high-stress encounter is most likely to occur after a walk-through and/or after the officer has had at least one opportunity to view an available video of the incident.”

Ideally, Lewinski believes, a video review should be permitted *before* an involved officer gives his/her official statement.

Dr. Lewinski cautions that relying solely on video of a critical incident may be misleading. He cited the following reasons to support his research conclusions:

- Video cameras generally record only a portion of an incident and are bereft of the context of the event.
- Video is a 2-dimensional representation of an incident from a particular perspective and tends to distort distance and other aspects associated with depth of field.
- Generally, video does not faithfully record light levels and does not represent what a human being in the incident would perceive.
- A video does not present the incident as viewed through the officer’s eyes.
- Video cameras recording at less than 10 frames per second can leave out significant aspects of an incident that occur at speeds faster than that.

Allowances for Misconceptions

Police officers arresting a suspect are even afforded the privilege of misjudging the degree of force necessary to affect their purpose during the exigencies of the moment. It has also been determined in case law that it is both unreasonable and unrealistic for officers to use the least amount of force which might successfully achieve their objective, as this would result in unnecessary danger to the officer(s) and others. Case law confirms that injuries suffered by subjects as a result of a peace officer’s use of force do not necessarily establish the use of excessive force.

The use of force is to be judged on a subjective-objective basis. Police actions should not be judged against a standard of perfection, but according to the circumstances as they existed at the time that the force was used.

Use of Force on Persons Held in Custody

As long as the force is reasonably necessary, a constable holding a person in custody is legally authorized to use force to the same extent as a constable who seeks to place a person in custody.

An officer acting on reasonable grounds who is charged with maintaining lawful custody of a subject may use force to return that subject to their cell if they refuse to comply with the operation procedures of the prison.

Authorization for Use of Mechanical Restraints

A peace officer who lawfully arrests a subject is entitled to secure his/her prisoner using mechanical restraints to handcuff or bind the subject. The restraint must be performed reasonably and the officer(s) involved must articulate their reasons for the use

of restraints.

Supreme Court

Recently, the Supreme Court of Canada, in Wood versus Shaeffer (2013 SCC71), ruled that a police officer's notes are to be written immediately after the incident and without discussion with a lawyer. Supreme Court Justice Michael Moldaver, on behalf of the majority residing justices, wrote:

Permitting officers to consult with counsel before preparing their notes runs the risk that the focus of the notes will shift away from the officer's public duty toward his or her private interest in justifying what has taken place. This shift would not be in accord with the officer's duty.

Applying the SCC rationale in BC, it appears that this decision prevents officers from specifically demanding a right to counsel prior to completing their notes, particularly as there is no specific statutory entitlement to counsel during a professional standards investigation interview (in BC). However; the SCC ruling specifically states:

nothing ... prevents officers who have been involved in traumatic incidents from speaking to doctors, mental health professionals, or uninvolved senior police officers before they write their notes.

Articulation of the Use of Force

There are seven crucial elements that an officer who is involved in a use of force encounter should record in their notes. Each element has several questions that must be addressed objectively to fully assist in articulating the use of force. They include:

1. Scope of Employment

One of the basic points that must be proven by officers involved in a force-related incident is whether or not they were in the lawful execution of their duty and had reasonable grounds to arrest or detain the subject(s) implicated. If excessive force can be proven, the officer's actions can be considered illegal, and s/he could be liable for criminal and/or civil litigation and/or disciplinary action under the Police Act. Therefore, it is important that the involved officer(s) clearly articulate their reasonable grounds for contacting the subject and their use of force.

The following questions should be considered by the involved officer(s):

What was the work assignment?

- What was the date, time, and location of the incident?
- Were they in uniform (describe: Patrol, ERT, K9, etc.) or plain clothes (describe)?
- Where were they when dispatched to the incident?
- What was the nature of the assignment or on-view activity of related persons?
- What were they told and by whom?
- What did they observe?
- What was their role in the incident and who assigned them that role?
- Who reported the incident and what did they report?
- Did they identify themselves as a police officer?

2. Severity of the Crime

It is important that an officer have all the vital information about the severity of the crime to enable a safe and proper approach to the scene. To properly assess the reasonableness of an officer's actions in a force-related encounter, it is necessary to articulate what was known at the time of the incident. Likewise, if the offence is minor in nature, the officer should consider the ramifications of using force for a minor infraction.

The following questions should be considered by the involved officer(s):

- What specific subject behavior was observed?

- What were they told that led them to believe a crime was about to occur or had occurred?
- What were the elements of the crime?
- If the alleged crime was violent in nature, what threat did they perceive to the officer or others?
- Prior to the actual use of force, were they aware if the subject had a history of violence or weapons?
- If so, how did they learn this information (history with the subject, dispatch, other officers, etc.)?
- Did they believe that the subject had access to weapons?
- If so, how was this determined?
- Were the subject's actions or behavior connected to criminal activity?
- Were there reasonable grounds to believe that the subject's actions posed a real threat of Grievous Bodily Harm or Death to the officer or another?
- If so, how was this determined?

3. Level of Force Used

The level of force used by a police officer must be subjectively and objectively reasonable. Whenever reportable force is used by an officer, it must be thoroughly documented in the officer's notebook. Officers are also obligated to complete a report called a 'Subject Behavior – Officer Response Report'.

The following questions should be considered by the involved officer(s):

- What was the specific type and amount of force used?
- Why?
- Did the officer have other reasonable force options available?
- Did the officer try these other reasonable force options?
- If not, why were they not tried?
- Specifically, what did the subject do that caused the officer to use force?
- Once under control, did the officer handcuff the subject?
- Did another officer assist in the use of force, or after the force was used?
- If so, who?
- Were the handcuffs double-locked to prevent tightening?
- Who double-locked the handcuffs?
- Did the officer tell the subject that s/he was under arrest?
- If not, who did?
- Did the officer know the subject was lawfully arrestable?
- How did the subject refuse to submit to the arrest?
- Did the officer use special restraints to control the subject after arrest?
- If so, what were they?
- Is the officer trained in that specific restraint device?
- If so, how recently was the officer certified and by whom?
- If not, what were the exigent circumstances that prompted the officer to choose that restraint device?

4. Warnings

Warnings are considered an alarm, signal or admonition of a person to stop what is presumed to be unlawful or unwanted behavior. Warnings are reasonable and, when appropriate and reasonable to do so, should be given to subjects and by-standers.

The following questions should be considered by the involved officer(s):

- Was a warning given?
- Provide a description of the specific warning (to whom, how many times, specifics, etc.).
- Did the officer attempt Crisis Intervention De-escalation (CID) Techniques?
- If yes, what was the degree of effectiveness?
- If no, why not?
- Was the officer's warning consistent with department policy?
- Were there any known barriers to the subject's understanding of the warning (language, hearing loss, background noise, etc.)?
- Was the warning tape recorded?
- Were other officers aware of the officer's warning?

- Was the officer aware of other officers' warnings?

5. Nature of the Crime

In order to show that the officer's level of force was subjectively and objectively reasonable, the officer must articulate what he or she knew at the time of the force-related encounter, based on the totality of the circumstances. The officer's state of mind and facts that were perceived, known, or told to the officer are important. The nature of crime dictates the appropriate force response option.

The following questions should be considered by the involved officer(s):

- Is the location of the force-related encounter described as a business, residential area, park, school, open area or another type?
- What were the environmental conditions in the area at the time of the force-related encounter (weather, lighting, footing, terrain, background noise, other parties present, etc.)?
- Was the area of the force-related incident considered to be a high crime area?
- Can this be corroborated?
- How many subjects were involved in the incident?
- Did the officer know the subject(s)?
- How did the officer know the subject(s)?
- Was the officer aware of or did he or she suspect the presence of weapons at the scene?
- What was the known or suspected crime the officer was investigating?
- Was it a violent crime?
- Was anyone injured?
- If so, who, how, and can the officer describe the severity of the injury?
- Was the suspect armed, suspected of being armed or known to be prone to violence?

6. Officer's State of Mind

Under current Canadian law, the officer's use of force is not to be judged with the benefit of 20/20 hindsight, but on the totality of the circumstances of the incident, using the objective standard and including the facts that would convince an ordinary, reasonable person that the officer acted appropriately. Finally, the officer can only use information known to the officer prior to the officer's use of force in the officer's articulation of the why the officer did what the officer did.

The following questions should be considered by the involved officer(s):

- What training relevant to the scope of the officer's duties (including this incident response) did the officer receive?
- Describe any similar experiences the officer has had that can relate to the officer's response to this incident.
- Did the officer identify themselves as a police officer?
- Provide details of why the officer felt threatened, fearful and that the officer's safety or that of others was in jeopardy.
- Did the officer see a weapon?
- How many subjects were present?
- What led the officer to believe that the subject(s) posed a threat of Grievous Bodily Harm or Death to the officer or others (known, perceived, learned)?
- What was the subject's state of mind?
- Did the subject appear to be under the influence of alcohol, drugs, or both?
- Did the subject appear to be an Emotionally Disturbed Person (EDP)?
- Did the subject appear to be in a state of Excited Delirium (ExDS)?
- What was the subject's sex, perceived age, physical size, and perceived abilities (martial arts, military, etc.)?
- According to the National Use of Force Model, what subject behaviors were demonstrated (Cooperative, Passive Resistance, Active Resistance, Assaultive, Grievous Bodily Harm or Death)?
- Explain the noted behavior(s) in detail.
- Did the subject(s) pose a tactical advantage that adversely affected the officer's or another person's safety?
- What force options did the officer employ to resolve the situation?
- For each force option used, can the officer describe the effect(s) on the subject(s)?
- Was tactical repositioning considered or employed?
- If not, why?

7. Medical Care

Any subject that is injured as a result of an officer's intervention using force has the absolute right to medical assessment and treatment, when it is safe and reasonable to provide it. Simply, the officer has a duty to care for those under the officer's control. The officer should report and document all circumstances surrounding the need for medical care of the subject(s) as a result of the force-related encounter.

The following questions should be considered by the involved officer(s):

- Did the officer receive any injuries attributable to the force-related encounter?
- Who caused the injuries?
- What is the nature and extent of the officer's injuries?
- Did the officer require medical treatment or hospitalization for injuries?
- Was the officer aware of any subject injuries prior to the officer's use of force?
- If so, what was the nature and extent of the injuries?
- Did the officer's application of force result in any injury to the subject?
- If so, which force option?
- What was the nature and extent of the injuries caused by the officer's application of force?
- Once the subject(s) and scene were under control, were the injured parties provided first aid?
- Was PAS summoned?
- If so, by whom?
- Is the officer aware whether anyone else was injured as a result of the subject's actions?
- If so, what was the nature and extent of the injuries?
- Was PAS summoned?
- If so, by whom?
- Who, if any, of the injured parties went to the hospital?

Conclusion

The detail that officers are required to use to articulate their use of force is extensive. In the past, legal counsel was provided to police prior to providing written details of the force-related incident. According to the Supreme Court of Canada, police are no longer afforded this opportunity.

Officers employing force on subjects resulting in serious injury will experience a great deal of mental trauma. Care should be taken that the involved officers provide detailed notes and duty reports that fully articulate the nature and scope of the incident and their reasonable attempts at a non-violent resolution. In some cases, a non-violent resolution cannot be achieved; it is for these situations that this guide is intended.

Above all, remember that if the officer has been involved in a traumatic incident, nothing prevents the officer from speaking to doctors, mental health professionals, or uninvolved senior police officers before the officer writes their notes.

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5: ACCOUNTABILITY AND INVESTIGATION

5.1: Autonomy and Accountability
5.2: British Columbia's Police Act
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5.1: Autonomy and Accountability

The police must remain autonomous and free from the influence of government and mass media. Law enforcement executives should not be forced into decisions based upon the dictates of a mayor, premier, prime minister, or the media. Law enforcement executives should remain autonomous and concern themselves with the effective and efficient operation of their agencies to achieve an ethical law enforcement agency with high standards and values. Likewise, officers on the line must remain impartial, and, in doing so, should avoid comment on political and judicial matters. This does not mean that officers do not have the right to comment like everyone else, but that their comments should not be made in their capacity as police officers.

While the independence of law enforcement is important, oversight of law enforcement is also crucial. Oversight includes ensuring agencies are accountable to the public for resource allocation, are fiscally responsible, and have law enforcement policies and procedures. Law enforcement agencies must balance the need for accountability with the need for independence, but doing so can create tension. According to Reiner (2010) there are four ways in which law enforcement is held accountable:

1. Officers are charged and prosecuted for crimes (under the Criminal Code or the Police Act).
2. Officers are held civilly liable in court.
3. Judges ruling on cases find the evidence brought before them is as inadmissible.
4. Judicial review of policy forces changes upon the police.

Griffiths (2013, p.58) further identifies six processes that hold police accountable in Canada:

1. Political accountability to governing authorities
2. Legal accountability through the courts
3. Accountability to administrative agencies
4. Freedom of information legislation
5. Community policing committees
6. Special ad hoc mechanisms such as royal commissions

In cases that may not warrant a criminal investigation, police officers in British Columbia are governed by statutes. In British Columbia, municipal police officers are governed by the Police Act and RCMP officers are governed by the Royal Canadian Mounted Police Act. Offences alleged under these acts are often investigated by police officers in their own agencies. For more serious and/or high-profile cases, police officers from other agencies may conduct the investigations. These are known as *internal investigations, professional standards investigations,* or *police act investigations*.

These specialized investigations are conducted by units within departments, which are often referred to as Professional Standards Units.

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5.2: British Columbia's Police Act

In British Columbia, the Police Act allows for complaints against municipal police officers to be made directly by an aggrieved party or by a complainant who is acting as a third party. The latter, called a *third-party complaint,* allows a person who is otherwise uninvolved in the incident to make a complaint. The rationale is to protect those people who have been victimized by police who do not want to complain (or are not capable of doing so) to be safeguarded. The third-party complaint rule essentially protects those who do not complain, and in doing so allows for the investigation of officers whose unethical conduct may have otherwise gone uninvestigated.

Complaints about police misconduct under the Police Act must be related to the following:

- Allegations of misconduct by individual police members
- Complaints concerning various aspects of the administration of a municipal police department
- Matters that concern the maintenance of discipline within a police department and that do not directly impact the public

The nature of the allegations against police officers under the Police Act is varied; however, two complaint types that face police officers are corruption and breach of public trust.

Corruption as defined by the Police Act includes such things as not promptly returning money or property while performing one's duty; using or attempting to use the position of police officer for personal gain; and using or attempting to use equipment or facilities for purposes unrelated to duty.

Breach of public trust encompasses a wide range of activities that are used as a "catch-all." When an officer engages in behaviour that is unethical, but not against the Criminal Code or other legislation under which civilians would be charged, the officer can be charged under the Police Act. Charges can be brought against an officer for unethical activities such as:

- Anything that discredits the reputation of the member's police department
- "Abuse of authority," referred to as oppressive conduct toward a member of the public
- Using unnecessary force, or detaining or searching a person without good and sufficient cause
- On or off duty, when in uniform, using profane, abusive, or insulting language to any person. The language can be used to intimidate people or disrespect them

The Police Act states that the regulations detail the expected or code of professional conduct for municipal police officers within the province of British Columbia. Along with the expectations for conduct are the consequences that may occur when an officer commits a disciplinary default.

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5.3: The Royal Canadian Mounted Police Act

The Royal Canadian Mounted Police Act is comparable to British Columbia's Police Act in that it provides a legal framework that defines the way in which disciplinary procedures will be administered. The Royal Canadian Mounted Police Act contains two provisions for investigating wrongdoing by the RCMP, the External Review Committee, and the Public Complaints Commission.

The External Review Committee reviews appeals made by RCMP officers who have been disciplined under the Royal Canadian Mounted Police Act. The Public Complaints Commission is an independent team of civilians that rule on the outcome of investigations of police complaints. Critics suggest that the investigators will favour the police officer and investigate an offence with bias.

In June 2013, the federal government passed Bill C-42, which created the Enhancing Royal Canadian Mounted Police Accountability Act that is designed to enhance accountability and transparency by:

- Creating a new Civilian Review and Complaints Commission (CRCC) for the RCMP to replace the existing Commission for Public Complaints (CPC) against the RCMP and providing it with enhanced powers
- Establishing a statutory framework for handling investigations of serious incidents involving RCMP members, which will improve the transparency and accountability of these investigations
- Modernizing the RCMP's discipline, grievance, and human resource management processes, with a view to preventing, addressing, and correcting performance and conduct issues in a timely and fair manner, which includes enabling the commissioner to establish a specific process for the investigation and resolution of harassment when a member of the Force is a respondent

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This enactment enhances the accountability of the RCMP by reforming the Royal Canadian Mounted Police Act in two vital areas. First, it strengthens the RCMP review and complaints body and implements a framework to handle investigations of serious incidents involving members. Second, it modernizes discipline, grievance, and human resource management processes for members, with a view to preventing, addressing, and correcting performance and conduct issues in a timely and fair manner.

It establishes a new complaints commission, the Civilian Review and Complaints Commission (CRCC) for the RCMP. Most notably, it sets out the authority for the CRCC to have broad access to information in the control or possession of the RCMP, it sets out the CRCC's investigative powers, it permits the CRCC to conduct joint complaint investigations with other police complaints bodies, and it authorizes the CRCC to undertake policy reviews of the RCMP.

It establishes a mechanism to improve the transparency and accountability of investigations of serious incidents (death or serious injury) involving members, including referring the investigations to provincial investigative bodies when possible and appointing independent civilian observers to assess the impartiality of the investigations when they are carried out by the RCMP or another police service.

It modernizes the RCMP's human resources management regime. In particular, it authorizes the Commissioner to act with respect to staffing, performance management, disputes relating to harassment, and general human resource management.

It grants the Commissioner the authority to establish a consolidated dispute resolution framework with the flexibility to build redress processes through policies or regulations. It provides for a disciplinary process that will empower managers or other persons acting as conduct authorities to impose a wide range of conduct measures in response to misconduct and that requires conduct hearings only in cases when dismissal is being sought.

Jurisdiction of the Current Commission for Public Complaints

The Commission for Public Complaints (CPC) has jurisdiction over a complaint from a member of the public that concerns the conduct of an RCMP member while performing a policing duty or function. These duties and functions include criminal investigations, public complaint investigations, policing public events, security assignments, and intelligence operations.

A complaint must also involve:

- An RCMP member or other person appointed or employed under the authority of the Royal Canadian Mounted Police Act.
- An RCMP member or other person who, when the complaint is made, is not deceased, retired, or resigned, or has been dismissed from the Force.
- Conduct that occurred after September 30, 1988, the date the CPC became authorized to take complaints.

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1. Enhancing Royal Canadian Mounted Police Accountability Act, http://laws-lois.justice.gc.ca/eng/a.../FullText.html 5.03: The Royal Canadian Mounted Police Act#return-footnote-838-1

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5.4: Investigation Models

Griffiths (2013) describes three different models that are used in different jurisdictions to investigate the police: the dependent model, the interdependent model, and the independent model.

The *dependent model* includes police departments in which police officers investigate allegations against their own members, or members of another police department. The benefits of a dependent model include the following: the officers being investigated are easily accessible to the investigator; there are lower costs associated with the investigation; and the investigators are fluent in the local police culture and organizational values and have greater legitimacy among officers. Conversely, the criticism associated with the dependent model of investigation is primarily directed at the lack of accountability toward subject officers. The lack of accountability is a result of investigators being part of the same subculture and therefore not being independent enough to be objective. Without independence, the investigation can be viewed as biased and therefore not legitimate by society.

The *interdependent model* is a system in which investigators investigate allegations against their own members, or members of another police department with civilian oversight. One of the benefits of this model is that it demonstrates independent oversight of the investigation. This enables the community to believe that the investigation will be balanced and not in favour of the police or the civilian party. Additionally, the community is able to provide feedback and suggestions regarding the investigation from a civilian perspective. Criticisms include the inability to gain the cooperation of the police should they decline to participate in the investigation. Furthermore, given their own experiences with investigations, police officers may be reluctant, in some instances, to follow the directions of civilians who may not be aware of flaws in an investigation's process.

The *independent model* includes a civilian body of investigators that receive complaints and initiate and conduct the complete investigation independently from the law enforcement agency that is involved in the allegation. The public generally views this model as the most effective due to the independence of the investigators, which offers greater accountability for the actions of officers. The independent model allows citizens to feel more comfortable complaining about officer misconduct, without the fear of reprisals or the fear of being interviewed in a manner in which they are the "them" in an "us versus them" situation. Arguments against an independent model include are that investigators may not have a full understanding of police techniques and police culture and they may lack experience in criminal investigations. Additionally, independent investigators will likely be unable to gain trust within law enforcement agencies, therefore eliminating such important investigative tools as source information and the necessity to bond with subjects.

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5.5: Independent Investigations Office

Ensuring accountability under British Columbia's Police Act and the Royal Canadian Mounted Police Act is difficult and can often be correlated to the "mechanics" of investigations into law enforcement misconduct. To ensure these investigations are carried out fairly and with due process, the Police Act designates a police complaint commissioner who has the duty and responsibility to oversee municipal internal investigations.

Operating under Griffiths' (2013) independent model, the Independent Investigation Office (IIO) investigates cases that involve serious injury or death resulting from the actions of RCMP or municipal police members. The Police Act designates the IIO as a police force in British Columbia and thus its members are subject to provisions under the Act.

The IIO's team is composed of ex-police officers and civilians. The civilians are trained at the Justice Institute of British Columbia (JIBC) alongside police recruits. Their training does not include all the curriculum followed by the police recruits, but it does include lessons that cover becoming investigators and understanding how the police may act in certain use-of-force scenarios.

Two issues to consider:

1. Is the IIO truly independent when its members are covered under the Police Act?
2. Many investigators in the IIO are trained at the JIBC in the Police Academy. Does this inculcation into police culture make them less independent from the police they are investigating?

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6: POLICING

6.1: Noble Cause Corruption
6.2: Policing Public Demonstrations and Crowd Control
6.3: Sex Offender Notification Laws
6.4: Ethics of Private Policing
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6.1: Noble Cause Corruption

According to Caldero and Crank (2004, p.17) noble cause is a “moral commitment to make the world a safer place.” This commitment is why most people join law enforcement agencies, and while this is an admirable goal, when the commitment to make the world a safer place becomes more important than the means to accomplish these goals, corruption may result. There are reasons why within law enforcement the means to accomplish the ends are particularly magnified. Caldero and Crank (2004, p.17) describe the “scent of a victim’s blood,” which means officers in law enforcement are motivated by the suffering of victims and their families. As officers sworn to uphold the law, they are duty bound to stop further violence against other victims. The vivid recollection of victims suffering can, at times, compel officers to focus only on the end result of making the world a safer place. Officers generally join law enforcement to protect the vulnerable, to help others, and to enforce the law; their cause is generally a noble one, filled with good intent.

When officers reach a point where they are more concerned with the end result, they may resort to unethical and even unlawful activities to protect victims from further victimization and other citizens from becoming victimized. This rationale is an example of teleological thinking where the means are not as important as the ends. Utilitarianism would be an example of an ethical system that would be used to justify such an action. Ultimately, as Pollock (2010) reminds us, the values that an officer brings to the job are those that induce him or her to use unethical means to fulfill the end value: to “make the world a safer place.”

When confronting a situation in which an officer is faced with noble cause misconduct, Pollock (2010) suggests the following questions be considered by the officer:

- Is the activity he or she about to partake in illegal?
- Is the activity allowed under departmental policy?
- Is the activity unethical?
- Is the activity acceptable under any ethical system, or just utilitarianism?

While acknowledging that there is a need for tenacity in law enforcement, often the lines may be blurred between tenacious police work and noble cause corruption. By asking these questions, it is possible to determine whether the act is good police work, or noble cause corruption.

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6.2: Policing Public Demonstrations and Crowd Control

Peaceful public demonstrations are a right in liberal Western democracies. Such demonstrations must be permitted to enable free speech. In Canada, this right is protected under section 2 of the Canadian Charter of Rights and Freedoms as a freedom of peaceful assembly and expression. While police officers must respect and allow freedom of peaceful assembly and freedom of expression, tension arises when these freedoms are at times contrary to the duty of law enforcement officers to ensure public safety and security.

Policing public demonstrations is historically difficult. Police reaction to public demonstrations often results in criticism of the police for either being too lax in enforcement, resulting in riotous situations, or too restrictive, resulting in the restriction of the rights enshrined under the Charter. Police reaction is also criticized when the mere presence of officers escalates a situation or the public perceives their use of force to be excessive. This tension is exacerbated by the nature of public demonstrations, as demonstration groups can range from violent anti-authority groups to groups that historically participate only in peaceful protest.

Because of the potential volatility of protest groups, the police use intelligence sources to identify potentially aggressive or violent members. Once identified, police may apply a technique called **strategic incapacitation** to counter the violence that may result from aggressive protesters within protest groups (Gillham and Noakes, 2007). Although this tactic allows police to preserve or restore short-term order, it is also gives them a potential tool to suppress the civil liberties of protesters, which may result in further protest against the police, and turn arrested protesters or protesters who have been illegitimately treated by police into martyrs. Techniques used by police are not meant to protect civil rights, but to ensure peace, protect property, and safeguard society and the government against a state of anarchy. Police strategies include the establishment of no protest zones, increased use of less lethal weapons, strategic use of arrests, and the surveillance and infiltration of protest groups (Gillham and Noakes, 2007).

The establishment of no protest zones was used during the Quebec City Summit of the Americas in 2001. As protesters from a wide range of causes descended upon Quebec City, large fences were erected allowing the meetings of officials to proceed unhindered (King and Waddington, 2005). The fences prevented protesters from assembling at any meaningful location, essentially muting their voices to the dignitaries attending the summit. To the protesters, these tactics represented a suppression of their right to voice legitimate grievances and strengthened their resolve to protest (King and Waddington, 2005). Such actions by police, while increasing the potential for order, served as evidence to protesters that the police and the government did not respect the rights of citizens to protest (Redekop and Pare, 2010). In Quebec City, the final conclusion drawn by protesters was that the police were acting illegitimately, thus providing ample ammunition to further their protest (Redekop and Pare, 2010). As protesters penetrated the fence, their grievances spread beyond their original cause to the perceived illegitimacy of police actions that denied their rights to express their opinion. The police countered that the protest was not peaceful, and thus the protesters' rights were not protected by the Canadian Charter of Rights and Freedoms. The severity of these new grievances caused the protesters to focus directly on those officers who, in their minds, were directly responsible for these egregious actions. Therefore, the police must be mindful that their actions are constantly observed and weighed as being for or against the democratic right to protest, and, when such actions are taken, protesters view the actions as illegitimate even if they are legitimate.

Increasing the use of less lethal weapons is also fraught when this tactic is used in situations where there is no legitimate threat to safety and property. In Canada, using weapons on crowds is unlawful and unjustified under the Criminal Code unless officers feel their lives or the lives of the general public are threatened (Criminal Code, 2015, Sec. 25). Weapons can only be used against the person who is posing the threat as there are no provisions allowing the use of a weapon on a collective mass, no matter how benign the weapon. A protest that is not a riot as defined in the Criminal Code is not an appropriate venue for the police to use weapons. A riot is defined in the Criminal Code as an "unlawful assembly that has begun to disturb the peace tumultuously" (Criminal Code, 2015, Sec. 64).

Even in situations that can be deemed to be a riot, police can face criticisms by the public and the media and in judicial reviews. Police can also be subject to civilian lawsuits and criminal charges. In the 2011 Stanley Cup riots in Vancouver, police were criticized for using the Anti Riot Weapon Enfield (ARWEN) gun, which propels plastic batons (Furlong and Keefe, 2011; Lee, 2011). Less lethal weapons, such as water cannons and ARWEN guns, are not approved for use in Vancouver due to concerns with the civil litigation resulting from the first Stanley Cup riot in 1994 (Furlong and Keefe, 2011).

The use of non-lethal weapons is also symbolic of repressing the right to protest and can cause police to lose legitimacy among the public and the protesters. In the August 2011 riots in England, Peter Waddington (Kelly and Fraser, 2011) stated that the use of water cannons and baton rounds symbolically "looks like the end of the world" and may cause the police to lose "the moral high

ground," and thus lose legitimacy with protesters and the general public. Since the implementation of these weapons is frowned upon when used against rioters committing criminal acts, their use against protesters would likely be even less acceptable.

The strategic use of arrests should only be implemented when there are sufficient grounds for arrest, regardless of the context. When police pre-emptively arrest potential agitators on charges that would not normally be entertained, their legitimacy can only be questioned. Arrests were strategically utilized in the 1997 Asia-Pacific Economic Cooperation (APEC) conference in Vancouver. While the arrests resulted in incapacitating the protest, they ultimately demonstrated, in the long term, the illegitimacy of police and government actions with respect to protesters' rights (Ericson and Doyle, 1999). Of the 49 arrests made, only one party was eventually charged for the original arrest, and this charge was eventually dropped (Ericson and Doyle, 1999).

In the APEC example, noted Canadian anti-globalization protester Jaggi Singh was arrested for assault days before the APEC conference was to start (CBC News, 1999 Panitch, 2002). The charge of assault occurred as a result of Singh talking through a megaphone and causing temporary damage to a security guard's ear. Singh was imprisoned during the APEC conference, thus suppressing his right to protest (CBC News, 1999; Panitch, 2002). Once the APEC conference was over, Crown counsel determined that the charge was not worth pursuing and charges were stayed (CBC News,1 999). This strategy, while preventing some protesters from protesting, abuses police authority and is demonstrative of the tactics used to achieve an end (institutional protest) without regard to the means (legitimate protest). This utilitarian example of using any means to justify a peaceful end resulted in the denial of Singh's rights to express his opinion under the Canadian Charter of Rights and Freedoms. From a police standpoint, this tactic also resulted in the future mistrust of police making legitimate arrests or conducting active surveillance for public safety. While some measure of safety and security may have been accomplished by pre-emptively arresting Singh, we will never know whether the consequences of arresting him were positive or negative in this regard; we know only that the end result was negative.

Surveillance of protest groups by police is a tactic used on groups that do not cooperate with the police. This lack of cooperation by some groups results in a lack of intelligence-gathering through open communication (Waddington, 1998). These tactics may include surveillance of protesters before a protest begins (Waddington, 1998), or the surveillance of online activities of protesters (della Porta, 2006). della Porta (2006) argues that, when used, these tactics demonstrate a suspension of civil liberties and a lack of respect for protesters' rights, and that their use must be limited to those rare occasions when police feel the group is threatening the safety of the general public, or, in Canada, where the peace will be disturbed tumultuously (Criminal Code, 2015, Sec. 63).

The infiltration of protest groups is a way in which police can gather information about protesters' strategies when there is no communication between the police and protestors. However, tactics such as these were used in the 1960s in the United States, and were widely seen as an abuse of civil liberties and are disallowed in some American jurisdictions (Gillham and Marx, 2000). Police, in response to the perception of such tactics, must continue attempts to communicate with all protest groups regardless of the cause of the protest or the plans of the protesters.

To achieve ethical control of protest groups, communicating with these groups is important because it enables law enforcement officers to understand the goals of a protest and to assess the type of protest they will face (Reicher, Stott, Cronin, and Adang, 2004). Reicher et al. (2004) consider communication with protesters to be a vital part of crowd control. Without it, police lack vital intelligence that would inform them about how to manage and differentiate the crowd. These are important considerations for police if they are to behave in a manner that will allow protesters their freedom of speech while maintaining public order, which is the end result desired in order for police to fulfill their common law duties.

Policing all public order events is a difficult task regardless of the groups involved. Protest groups are especially difficult to police due to the lack of a hierarchical structure affecting communication. In attempting to police disorder resulting from protest groups, police must continually assess whether their values lean toward public order or respect of the right to protest and civil liberties. When this assessment leans toward public order, tactics of strategic incapacitation may result in the public order being maintained at the expense of the right to protest in a meaningful way. The tactics used against protest groups may have lasting implications regarding the credibility of the police. Additionally, institutionalizing protest groups may yield few results immediately, compared to strategic incapacitation, but may result in long-term meaningful protest that is also peaceful. Ultimately, police must demonstrate their legitimacy through their acceptance of the democratic right to protest. In doing so, police must recognize that their duty is also the protection of rights under the Canadian Charter of Rights and Freedoms, and not merely their duty to uphold the Canadian Criminal Code. Often these two duties are at odds with one another, which can create a situation where law enforcement leaders responsible for crowd control and public order face an ethical dilemma that is high profile with high stakes.

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6.3: Sex Offender Notification Laws

Sex offender notification laws are an example of how a community attempts to provide a sense of security for its citizens against horrific crimes that often target the most vulnerable in society (Sample and Kadleck, 2008). These laws are predominantly found in the United States. Levenson and Cotter (2005, p.50) generally view U.S. notification laws as "intended to enhance community safety from sexual violence through awareness and education combined with vigilant surveillance and collaboration between law enforcement agents and citizens." Thomas (2003, p.217) further strengthens this link between community safety strategies and notification laws by asserting that American notification laws are "a form of regulation to achieve greater community safety and public protection." Notification laws, he asserts, are not additional punishment but rather regulation used to enhance the safety of the community. Gilling (2001) adds that risk and the management of risk are required to protect vulnerable victims, and the management of risk is a theme of community safety, which is the stated goal of American notification laws (Levenson, Brannon, Fortney, and Baker, 2007; Sample and Kadleck, 2008). Notification laws in the American context are laws that require offenders to register and make the offender's information available to the community. In Canada, there is no such legislation; however, notification is made on a case-by-case basis, which requires a subjective analysis to determine which offenders to notify the public about.

In the United States, notification laws have evolved from the Jason Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, which requires sex offenders to register with the police (Levenson et al., 2007). Commonly known as Megan Laws after murdered child Megan Kanka, offender information contained in sex offender registries is made available to the public ostensibly to enhance the safety of children and in theory to limit the risk of the offender reoffending (Anderson and Sample, 2008; Levenson et al., 2007). Megan Laws are administered at the state level where individual states are left to decide the manner in which the information will be made public (Levenson et al., 2007). However, there is inconsistency in the application of such laws as some states circulate information about all sex offenders, while other states use risk assessment tools to determine whether the offender is a risk and whether or not the public is notified (Small, 1999).

While sex offender registries seem on the surface to make sense, they may motivated more by politics than public safety. As such, the democratic freedoms and the rehabilitative ability of offenders may be hindered. Initiated by politicians as a response to urging by the media and other interest groups, notification laws in the United States have greatly exaggerated the risk of and the inherent dangers of strangers (Zgoba, 2004). Such laws may cause more harm than good, creating with them a culture that views not only the offender as a risk, but all strangers as risks. As such, these strategies, which are heavily influenced by the media, cause moral panic in the community (Sandler, Freeman and Socia, 2008; Zgoba, 2004).

Moral panic is an increased sense of danger, which can be a result of the media, entrepreneurs, and public institutions portraying high-profile and disturbing incidents as relatively common place and a risk to the public. Such media events capture the attention of the public, and leave some people in a state of fear, afraid that this crime could easily happen to them. The reality is that random crimes are very rare in our society (Emsley, 2007).

Some entrepreneurs contribute to moral panic by suggesting it is critical to have security devices such as panic alarms installed at home (Emsley, 2007), because without them the public is at risk of victimization. As well, police and corrections agencies may add to moral panic by making public announcements about the release of offenders or of crimes committed in the community.

Politicians exploit the moral panic climate by using emotive strategies that tap into a community's fears. Emotive strategies rely on emotions of fear that are the result of terrible crimes that frighten the public. Such strategies involve using the names of child victims for laws aimed at protecting the community, such as Megan's Law, which evoke emotion and public anger toward all offenders and a general sense of moral panic (Anderson and Sample, 2008; Petrunik, 2002). It is this anger and moral panic that heightens the perceived risk and allows the notion of risk to influence notification laws.

The risk of children being abducted or sexually assaulted by strangers is minimal compared to the threat that lies at home or among family and friends (Quinn, Forsyth, and Mullen-Quinn, 2004; Small, 1999; Zgoba, 2004). In spite of this, moral panic causes the community to exaggerate the risk from outside offenders (Petrunik, 2002; Zgoba, 2004).

Ethical considerations include weighing the rights of the offender, in spite of the heinous crimes that he or she has committed, against the safety of the community. The resulting moral panic created is perpetuated by the media in the form of non-stop news programs, which heighten the perception of risk, and thus perpetuate the demand for extreme laws to control the perceived risk (Sample, 2003, as cited in Quinn et al., 2004). While anger may well be justified for any offences against women and children, it is the manner in which such anger forces politicians to react by implementing laws that may have no empirical evidence to

support them.

Although notification laws reflect strong emotions held by the public, there is little to suggest that they make communities safer. Strategies such as notification and registry laws have been shown to have little effect on the ability to prevent offences (Anderson and Sample, 2008; Levenson et al., 2007; Vess, 2008). If such strategies were effective, little could be argued against their use if they saved even one child; however, the unintended consequences of their use may lead to an even greater risk of recidivism than if they hadn't been employed at all (Levenson et al., 2007).

Crime prevention programs using such strategies as notification laws are based on utilitarian principles, in which consequences are more important than the means to achieve the end results. Such teleological programs are often unethical as they may appear to be noble because of their emotional connection to victims, but they are often not assessed with as much scientific rigour as they ought to be. It is important that such programs be objectively studied so that their true utility can be assessed, rather than assumed.

Assessing crime prevention programs, such as those using notification laws, demands scientific rigour and academic skepticism and auditing (Eck, 2005). Ekblom and Pease (2005) note that it is rarely possible for the evaluator to determine an irrefutable conclusion about whether a program is effective or not. Programs such as juvenile intervention in the United States seem, on the surface, to appear intuitively good; however, a disturbing picture emerges after an empirical review. Such U.S. programs were once thought of as valid tools for preventing at-risk youths from committing future crimes (Petrosino, Turpin-Petrosino, and Finckenauer, 2000). Through the "scared straight" program, high-risk youths were identified and required to meet with hard-core offenders in prison (Petrosino, et al., 2000). This program attempted to rehabilitate young offenders and spread rapidly through the United States after the airing of the *Scared Straight!* documentary. Despite the well-meaning intentions of the program, research by Petrosino et al. (2000) shows that it has adverse effects and may actually cause participants to reoffend more often than those in the control groups. Moreover, in spite of the significant evidence about the harm caused by this program, positive media attention and a political climate conducive to reducing risk have ensured its continuation.

In much the same way, notification laws have been subject to empirical study, which has failed to support their stated goals of notifying the public of offenders in the community. The conclusion drawn (Levenson et al., 2007) is that notification is not successful in reaching its target audience; therefore, notification laws are unsuccessful. Levenson et al. (2007) have studied residents in Florida and learned that they were not aware of notifications in their community. This study was corroborated by Anderson and Sample (2008), who found that the majority of citizens sampled did not access the registry to gain information about offenders in their area. However, even if notification laws were successful in reaching their intended audience, it is doubtful whether this information would be taken in the spirit for which it was intended: to lessen the risk of children.

The purpose of notifying a community about offenders is to allow parents to adjust their parenting and lessen the risk to their child. Anderson and Sample (2008) found that of those who were aware of such information, only 42% of respondents with children took preventive actions. Consequently, Anderson and Sample (2008) conclude that the laws are ineffective at reducing risk, are a response to moral panic, and have little empirical evidence to support them. The negative consequences of such ineffective laws affect the offenders and may actually lead to a greater chance of reoffending because they cause difficulties in reintegrating into society (Levenson et al., 2007).

Notification laws can also cause offenders to suffer unnecessarily. Pratt suggests that strategies such as public notifications serve to "humiliate, degrade or brutalize the offender before the public at large" (2000, p.418). O'Malley (2010) further argues that the influence of risk on sentencing in the name of community safety has, in fact, a negative impact on offenders by creating difficulties that go well beyond the intent of offenders' sentences. Such difficulties include bouts with isolationism and exposure to vigilantism, affecting not only the offender but also the offender's family. While O'Malley (2010) acknowledges that the influence of risk theories on community safety strategies can be positive, in terms of using statistical models to predict risk factors, the use of risk-based sentences does nothing to reform the offender and, in fact, turns the community into an extension of the prison system.

Offenders' rights must be protected regardless of the offences committed; however, "The pendulum of justice is now focused on the protection of society, rather than individual rights" (Quinn et al., 2004). While certain rights must inevitably come to an end when an offender is identified and convicted, basic human rights should never be eliminated. Ward et al. (2007) identify basic human rights as those that belong to all humans simply because they are members of the human race. The rights that must be afforded to humans include rights that are centred on the "dignity of persons and their significant interests" and ought never be extinguished (Ward, Gannon, and Birgden, 2007, p.198).

Alternatively, from a utilitarian viewpoint, there are circumstances in which basic human rights are extinguishable if other rights are overridden (Gerwith, 1981). In the case of notification laws, this would include the rights of the future victim overriding the

rights of the offender. However, as pointed out earlier, empirical research has shown that notification laws in the United States are unsuccessful in their stated goals; therefore, any such removal of the basic rights of offenders is unnecessary, even from a utilitarian perspective. Ward et al. (2007) acknowledge the right of the state to punish and restrict the movement of sex offenders in the name of community safety but suggest these powers must be balanced without unnecessarily harming the offender and limiting the potential of the offender to reintegrate successfully into society.

Risk-based strategies that employ limits on basic human rights are neither rehabilitation nor treatment. Petrunik (2002, p.484) views such strategies as not only extraneously punitive but also debilitating as a result of extraordinary measures that "override conventional understandings of justice and civil rights." As risk is determined and used as a basis for community safety, offenders' rights are diminished. While the rights of the community, victims, and future victims are important, the rights of sex offenders must also be considered, and the two should not be competing interests (Sanders and Young, 2007). The rights of the state to protect the community from sex offenders is a right that must be tempered by justification and deliberation so that the offender is not subject to obstacles, but rather is helped to become a contributing member of society.

Basic human rights protect dignity, security of person, and the right to work, and are essential for successful assimilation into society (Ward et al., 2007). Notification laws are the antithesis of such positive characteristics because by publicizing an offender's private information, they can unnecessarily subject the offender to physical assaults and threats from vigilantes, cause the loss of jobs and job prospects, and can promote harassment of and indignity for family, friends, and neighbours (Small, 1999; Tewksberry and Lees, 2006, Thomas, 2003; Ward et al, 2007; Zgoba, 2004). Such violations have caused offenders to be treated as "...objects, simply as means to other people's ends rather than ends in themselves" (Ward et al, 2007, p.199).

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6.4: Ethics of Private Policing

The private policing sector has grown to take over the security and, by extension, the policing of public land. Private police are often seen on public land, providing security to access points of adjacent private land. In doing so, private police are acting on behalf of corporate interests, at times against the rights of civilians and potentially by using force. Loss prevention officers also act as private police who, in the interests of the corporation that employs them, restrict the liberty and freedom of citizens who are observed breaking the law. This leads to private police using force to apprehend citizens who have been identified as breaking the law. Ultimately, it can be argued, that the private sector should not engage in functions that will likely result in the use of force, which should be the exclusive domain of the state.

Cohen provides a practical description of the private policing sector by stating: "The state ceases to provide a particular service and it is then supplied by the private enterprises which are directly paid by the public as a customer" (Cohen, 1985, p.64). Cohen's description does not include private sector agencies that augment existing and parallel police services.

Policing is a practice that may involve authorizing coercive power, and this power must be used responsibly and with accountability (Department of Criminology, 2006/7; Girodo, 2000). The very suggestion of allowing an under-regulated private sector body to police society therefore strikes at the very core of democratic statehood (Marks and Goldsmith, 2006; Pastor, 2003). The importance of accountability cannot be minimized as it ensures that policing services are provided in an ethical manner and that service providers act with integrity, thus lessening the potential for misconduct (Girodo, 2000). The accountability of the private sector and regulations enforcing that accountability are controversial issues and opinions on them are varied. However, some argue that allowing the state to enforce accountability on private security is intrusive and unnecessary (Rothbard, 1973).

Rothbard (1973) believes state regulation of private police is not necessary because the free market rewards companies that self-regulate. Private police would therefore be answerable to their clients and would "enforce whatever their clients are willing to pay for" (Rothbard, 1973, p.221). It follows, therefore, that private policing companies, which do not satisfy their clients, would soon find themselves out of business due to free market forces. In Rothbard's view, regulation is provided by market forces (not the state), as the market will eliminate companies that do not produce.

The most obvious problem with Rothbard's conception of privatization is his failure to address accountability and the goals of the client. Given that the client of a private police service is seeking security, the client would be content to see the civil rights of its adversaries diminished, if that meant more security (Davis et al., 2003). The private police's goal would be to satisfy the client who pays for the services (U.S. Congress Senate Committee on Education and Labor, 1939). Rothbard assumes the client's goals will be altruistic and that the client will be concerned that justice is served. With this in mind, it is useful to look at two examples: one of the need for the state to tightly regulate policing and the other of the consequences when such regulation is absent.

In 1939, the U.S. Government held an inquiry into the use of privately paid police to battle protests staged by the burgeoning labour movement. The conduct of the police was anything but altruistic (U.S. Congress Senate Committee on Education and Labor, 1939). The Committee on Education and Labour was formed as the result of murder committed by the private police while serving their clients, the embattled corporations. In its final report, the committee concluded that private police systems were "...created to meet the economic needs and desires of private interests. Because there is no accountability other than the criminal code, they cannot be considered as *agencies of law and order*" (U.S. Congress Senate Committee on Education and Labor, 1939, p.2). The committee recognized the need for police agencies to be accountable in order to protect the interests of the public at large and stated that the criminal code – the only mechanism to enforce accountability among private police – was insufficient to fulfill this purpose.

The consequences of lax regulation were more recently seen in South Africa, where private policing resulted in the murder of civilians suspected of being criminals (Baker, 2002; Shearing and Berg, 2006). The citizens' group Mapogo-a-mathaamaga consisted of 70,000 members and was considered a formal, albeit voluntary, police organization dedicated to assisting public police with the investigation of crimes and punishing the transgressors (Shearing and Berg, 2006). Mapogo-a-mathaamaga members were citizens from all walks of life, and the group was formed as an altruistic response to the murder of business people by gangsters (Baker, 2002). Without any mechanisms in place to ensure their accountability, the Mapogo-a-mathamaga were allowed to do as they wished and act without regard to due process, with the end result being murder. Such abuses are certain to occur when accountability is not required of a policing agency.

McLeod (2002), a security company owner, views the private security business as having distinct advantages over public police.

From the perspective of crime control, McLeod believes that private police are able to do things public police agencies cannot do because of the complex procedural processes required by their large bureaucracies and the restraints imposed upon them by the Canadian Charter of Rights and Freedoms (McLeod, 2002). These observations demonstrate that due process and the guarantee of statutory rights can only be delivered by a public police agency, which is governed by the state. In McLeod's (2002) experience, the powers of private security may be at odds with policing in a democratic society.

The problem of private policing accountability is further illuminated by comparing private police agencies to public police agencies (Wakefield, 2003). Ceyssens (2000, p.62) outlines the nine principle forms of regulation that Canadian public police are bound by: the Criminal Code, the Canadian Charter of Rights and Freedoms, supervision by independent authorities, internal processes, public complaint processes, police services, human rights legislation, commissions of inquiry, and coroners' inquests. In contrast, Canadian private police are bound only by the Criminal Code, market accountability, insurance restrictions, and minimal licensing requirements (McLeod, 2002). McLeod states that private-sector entrepreneurs' greatest responsibility is not accountability to government, but rather the "requirement that I meet a payroll every two weeks" (McLeod, 2002, p.60). This standpoint reflects the primary shortcoming of private policing, which is its reliance on generating money versus accountability.

Though government regulation is at times ineffective, private police require more accountability to be on a par with public police (Davis et al., 2003). Stenning, as cited in Davis et al. (2003), states that the private sector is not only regulated by market pressures but also by civil liability, and that both compensate for the lack of state regulations and controls. While civil litigation may at times be a viable method to achieve accountability, the cost of legal representation is prohibitive for many citizens. More formal, codified sanctions and rules are necessary to provide citizens whose rights have been violated by private police or security with the proper means of redress.

State regulations and controls that ensure a measure of accountability are daunting and force public police to obey the law and guarantee the rights of citizens, suspects, and lawbreakers. In Canada, Britain, and the United States, public police are required to follow procedures to ensure suspects retain their rights. From a Canadian perspective, these rights, enshrined in the Canadian Charter of Rights and Freedoms, include the right to retain counsel upon arrest (Department of Justice, 2010). Any statement taken without that right being upheld is potentially inadmissible in criminal courts (Law Commission of Canada, 2006). Private police and security officers are exempt from the requirement to uphold the Charter (Hutchinson and O'Connor, 2005; Rigakos and Greener, 2000). Private police officers are therefore able to breach the Charter to gain statements resulting in a value system based not on integrity and accountability, but rather on profit and efficiency. Furthermore, market variances affect private sector companies and would ultimately dictate the allocation of resources (Johnston, 1992). The more lucrative populations can afford more services, while the poor would be left without adequate police service. Loader (1997) refers to this as a two-tier system, which is unbalanced by its very nature. A two-tiered policing system would deliver high-quality services to the affluent and lower-quality services to the poor.

Alleviating the public police's stretched resources has been heralded as one of the benefits of expanding private policing. The reasoning behind this is that the private sector is able to augment public policing and thereby allow public police to concentrate on activities requiring specialization related to their function as a servant of the state (Davis et al., 2003). Marks and Goldsmith (2006) assert that the public's acceptance of the private policing phenomenon is an acceptance of private security as an extension of the state. The public sees private police as a part of the policing continuum and believes they are able to relieve the police of some of their vital and complex duties (Marks and Goldsmith, 2006). McLeod (2002) recognizes the limits of the private security sector and cannot foresee the private sector ever taking over core policing; rather, he sees the private sector absorbing up to 60% of non-core policing. In an attempt to find a middle ground, the state has permitted private companies the ability to create private policing agencies at their own costs, with state-imposed conditions.

This complex model, known as **hybrid policing,** allows certain private organizations to obtain official status as police (Johnston, 1992). However, hybrid policing organizations have been successful as semi-private entities due to the state's regulation of their powers. For example, B.C. Transit Police are paid by the transit authority to serve customers who use the transit system and to protect transit system property. Officers are governed by the Police Act, which governs all municipal public police in British Columbia (Transit Police, 2009). The state ensures some accountability of the hybrid policing service, but it does not ensure an equitable allocation of the service's resources.

Unlike private police or hybrid police, public police are available to all segments of society and will respond to calls no matter where they originate. Police often have a strong presence in urban pockets of poor or disadvantaged citizens (Johnston, 1992). The ability of disadvantaged citizens to pay for private security is limited, and if they were not served by public police, their communities would be under-policed or policed by volunteer organizations.

To resolve this issue, Rothbard (1973) suggests that private police would be expected to voluntarily police these areas out of goodwill, ignoring the market costs and essentially providing welfare policing. He furthers his extreme libertarian argument by

suggesting that those who don't pay for security would not receive the service. Here, the poor and disadvantaged would be at the mercy of the goodwill of other private police companies and societies formed by police. Even without considering the earlier example of the Mapogo-a-mathaamaga, Rothbard's perspective is problematic. He does not consider how unlikely it is for police officers to be convinced that they should volunteer a day of their time to police-disadvantaged areas or the likelihood of a company donating labour costs to police such areas. In addition, policing can be a risky occupation and to expect the private sector and volunteers to provide adequate policing for a specific area, at all hours, is unrealistic and certainly not possible for an extended time frame. Consequently, if private sector policing replaced the public police, the impact on underprivileged neighbourhoods would most likely be increased crime and violence, thus increasing the likelihood of the police using force.

In their assessment of underprivileged neighbourhoods in South Africa, Koonings and Kruijt (2004) found that the incidence and impact of violence in underprivileged neighbourhoods is disproportionate to that in other neighbourhoods. If we accept that disadvantaged neighbourhoods are more prone to violence, it follows that the use of force by policing agencies in these areas is likely to be more common than in affluent neighbourhoods. Private police without accountability should not investigate crimes of violence or be placed in a position where the use of force is probable.

Although private security officers have a right to protect themselves, this right should extend no further than the rights afforded to other citizens. The state should be the only body entitled to legitimately use force, and this entitlement should be granted only to designated state representatives (Walker, 2000). This notion is not only shared by proponents of public police, but also by libertarians such as Nozick (1974), who advocate that the use of force be restricted to the domain of the state. Nozick (1974) reluctantly draws this conclusion in spite of his desire for a minimalist state that adopts a privatization approach in all other areas of public service. He concedes that as a state becomes more powerful or extensive, it becomes more coercive and civil rights are increasingly stripped. However, he makes an exception to this rule with regard to the use of force:

> A state claims a monopoly on deciding who may use force when; it says that only it may decide who may use force and under what conditions; it reserves to itself the sole right to pass on the legitimacy and permissibility of any use of force within its boundaries; furthermore it claims the right to punish all those who violate its claimed monopoly (Nozick, 1974, p.23).

The second half of Nozick's statement reveals a second function of policing that should never be conducted by the private sector: the investigation of crimes where force was used. The state, as the sole legitimate purveyor of the use of force, should also be the sole investigator and punisher of those who do use force illegitimately. Prominent philosophers Thomas Hobbes and Jean Bodin, as well as Max Weber in the 20th century, have also professed the axiom of the state's sole responsibility for the use of force to protect against internal and external threats. Walker (2000) adds that a "key defining feature of statehood is ultimate control over the legitimate use of force" (Walker, 2000, p.228). Surprisingly, Nozick (1974), who argues for minimal state involvement, also concedes that statehood requires those who use force without the consent of the state be punished in order to legitimize the use of force. Furthermore, it is imperative that the arms of the law which are not focused on a profit margin must investigate the illegitimate use of force that results in violent crimes. The investigations of such offences need to be tightly controlled, highly accountable, and ethical to protect the integrity of the state.

Private security companies not only lack accountability but also likely lack an effective ethical structure (Livingstone and Hart, 2003). Ethics are a necessary component of violent crime investigations because such cases too often present a temptation to tamper with the evidence. While public police organizations cannot always guarantee ethical conduct, rules and protocols are in place to maximize it (Livingstone and Hart, 2003). Ethical conduct is far less likely to be a concern for private organizations that have to answer to their paymaster. The goal of private companies is ultimately to make profit, and ethics act as an impediment to making profit. In his analysis of corporations, Alvarez (2001, p.107) notes that many companies "create cultures of amoral calculation in which values and ethics are less important than eliminating competition and increasing profits." This practice of ignoring ethical considerations is unlikely in a public policing environment due to the mechanisms of accountability that public policing is subject to and the freedom from the need to increase profits.

The lack of an ethical code of conduct among the private sector is reflected in private policing agencies' lack of commitment to ethical standards. Livingstone and Hart (2003, p.168) have observed that there is a need for an "ethical component and commitment on the part of the security sector that goes further beyond strict legality and the pursuit of profit." Until the private policing sector is forced to adopt structured ethical constitutions and mechanisms to ensure accountability, it is not qualified to use force or be directly involved in the investigation of violent offences.

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7: DISCRETION, SUPERVISION, AND LEADERSHIP

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7.1: The Ethics Surrounding Discretion

According to McGregor (Kleinig,1996), discretion can only be interpreted as those decisions that are made with lawful authority rather than decisions made for illegal reasons. Furthermore, the individuals within an institution must have lawful authority to make the decisions and must operate under the constraints acceptable to others within the organization or profession. This definition is useful as it allows discretion to be considered in a legal context rather than only when police officers operate illegally and decide to commit prohibited acts, which is not considered to be lawful discretion. Kleinig (1996) accordingly considers these illegal acts not as discretion but rather as a decision to engage in forbidden conduct. In a law enforcement context, discretion only concerns decisions that are made in a legal setting. When decisions that are made by officers do not yield the desired positive results, but are made in good faith, these decisions still fall under the umbrella of discretion. Decisions made by officers without good faith are not classified as discretionary.

Discretion in law enforcement, and especially within policing, is critical to both the functioning of the police department and to the relationship with the public the police department serves. It is unusual within the paramilitary policing environment, due to the inverse relationship between discretion at the top of the rank structure and that of the lower end of the rank structure, compared to military bodies and some commercial enterprises (Manning, 2010). Officers who have recently started in patrol exercise more discretion than the chief constable or the highest rank within the department. In comparison, a general in the army possess discretionary powers at a much higher level than does a low-ranking soldier.

There is an inevitable tension that exists between paramilitary agencies that require members of all ranks to follow orders and those agencies that acknowledge discretion among members of lower ranks is necessary to function. In the military, discretion is seldom used at lower levels. Orders are given and are to be followed regardless of the feelings or desires of the subordinate. The move toward more discretion inevitably leads police services away from the military hierarchical structure to a more organic structure in which decisions are made throughout the organization (Hughes and Newton, 2010). Key to the argument, however, is that some in law enforcement view professionalism as partially gauged on the amount of discretion that is afforded to an occupation, and it is in this respect that a shift toward more discretion will result in police services being more professional.

It is also important to explain how the term *professionalism* will be used in the context of law enforcement. While arguments persist as to whether or not policing is a “profession” or an “occupation,” it is important to note that **professionalism**, within a law enforcement context, is related to the ability of police officers to exercise discretion with a level of autonomy (Villiers, 2003). More specifically, the meaning of professionalism in this context is related to the freedom of police to make discretionary operational decisions. When discretion is removed from police due to managerialism and accountability, professionalism decreases. Klofas, Stojkovic, and Kalinich (1990) use the term *deprofessionalization* to describe this process. Without discretion, it is argued, an organization loses its professionalism.

The shift to more professionalism requires the need for management to proactively promote operational decisions in a manner that is reflective of an organic organization and still be able to control its members (Jones, 2008).

However, Sanders and Young (2007) take a dim view of police management’s ability to control the discretion of operational police officers. Discretion, they argue, has the potential to:

- Lead officers to fabricate evidence
- Look for guilt rather than truth
- Summarize statements with bias
- Handle exhibits poorly and fail to disclose evidence

The ability to control and provide effective leadership to officers, who possess more discretion and autonomy than the management, raises serious implications for police managers.

Crawshaw, Devlin, and Williamson (1998, p.24) argue that it is due to the discretion afforded to police at the operational level that police work is unsupervised and for large amounts of the officer’s day “unsupervisorable.” Pagon (2003, p.159) refers to this as the “discretionary paradox” in which police officers are answerable to their superiors even though they operate with a high degree of autonomy and out of view of their supervisors.

An irony within law enforcement exists because while a law enforcement structure is different from the military, the police still have a quasi-military structure. To further complicate matters, within policing specifically, sergeants have an increased role

in administration, which has limited their ability to provide supervision on the street. Ultimately, this does not allow for close supervision of junior officers who are forced to exercise their discretion often without the benefit of the wisdom of experienced supervisors (Butterfield, Edwards, and Woodall, 2005). Lipsky (1980) warns that the need for a high degree of control through supervision is critical in allowing discretion to be effective; without such control, officers will make decisions that are self-promoting and in opposition to organizational goals. Direct supervision and control is a difficult task for front-line managers who are faced with an increased workload.

Because of the discretionary mistakes that are inevitably made by officers, attempts have been made to control operational decision making among police officers (Butterfield, Edwards, and Woodall, 2005). Lipsky (1980) notes that discretion has been curtailed in regards to domestic assaults where police officers are encouraged to charge offenders rather than informally resolve the situation. In British Columbia, the Violence Against Women in Relationships Policy was introduced in 1993 and underwent changes in 2010. The policy makes clear to officers the protocols, roles, operational procedures, and responsibilities they must adhere to when investigating instances of domestic assault (British Columbia Ministry of Public Safety and Solicitor General Ministry of Attorney General, Ministry of Children and Family Development, 2010). Policies such as these are regarded as examples of positive arrest policies (or legislation) where the intention is to limit discretion in favour of arrests (Rowe, 2007). Since this policy is intended to limit discretion, it ultimately holds officers accountable if they choose not to arrest while still affording them the facade of autonomy (Rowe, 2007).

Studies have shown that there are problems with such policies and legislation, and an examination of such problems highlights the benefits of a shift to more discretion (Fyfe, 1996; Mastrofski, 2004; Neyroud, 2008; Rowe, 2007). In a study of officers' perceptions of the Domestic Violence, Crime and Victims Bill, an equivalent example from Britain, Rowe (2007) found that officers were concerned about the ethics of positive arrest policies in cases where they would not have arrested had it been left to their discretion. Officers felt that when they are forced to arrest suspects in cases where they would otherwise operationally decide against charges, their ethical standards would be compromised as they believed that such charges would be unjust. Other problems associated with the legislation included such things as increased workload, reduced professionalism, and the potential for worsening a situation due to the arrest (Rowe, 2007). The Domestic Violence, Crime and Victims Bill (2003) demonstrates inherent problems when discretion is curtailed either through legislation or organizational policy; however, it does highlight three benefits that would result from a shift to more discretionary powers in operational decision making, namely greater efficiency or a smaller workload (Davies and Thomas, 2003), professionalism and ethics (Villiers, 2003), and leadership within the junior ranks of the service (Bass, 1990).

It is impossible for the police to detect all crimes all the time. However, even if the police were able to detect every crime, resources would not be sufficient to investigate each one and make an arrest. Discretion is needed to filter offences so that only those that are most important will be investigated, even though at times such discretion may be misused (Tillyer and Klahm IV, 2011). Without discretion the police, and indeed the whole criminal justice system, would become overwhelmed with cases, resulting in public displeasure (McLaughlin, 2009). Lipsky (1980) further asserts that discretion among police officers will always be mandatory due to the inevitable lack of resources and the need for an efficient service. Decisions, ethically made, will allow for charges to be limited to only those that matter and will render the police service more efficient in prosecuting only such offences.

However, while efficiency is important in all public organizations, there is the danger that police agencies will lose their way if efficiency is promoted over ethical and rightful decisions concerning the protection of the public and if citizens are denied justice. Rawls (1971, p.71), in his seminal theory on justice, observes that "the principle of efficiency cannot serve alone as a conception of justice." Discretion, according to Rawls (1971), should not be used as a means of ensuring efficiency but rather as a way of applying a utilitarianism counterbalance to unjust laws within the justice system. The end result should never be efficiency at the expense of human rights and ethical policing. Dobel (2005, p.161) extends this thought process to discretion when noting "that the existence of discretion increases the tension between liberal democracy and public management and administration." The end result of using discretion as a means to ensure maximum efficiency potentially leads to an abuse of process in which the rights of individuals are superseded by the will to maximize results with minimal resources (Dobel, 2005).

Therefore, the goals of the organization can become ambiguous, caught between ensuring democracy and individual rights and promoting efficiency. Goal ambiguity can lead to placing the rights of individuals at lower levels of importance and can be further fostered by the different subcultures within the police service (Lipsky, 1980).

Goal ambiguity is consistent with some of the inherent problems faced by police officers in operational decision making. Lipsky (1980) identifies a conflict that police confront between client-oriented goals, social-engineering goals, and organizational-centred goals, and spousal-assault policies are an example. In this instance, an officer is mandated to charge where there is evidence even if the officer feels charges are not appropriate and go against the goals of the client—for example, if the victim does not wish to pursue charges (Rowe, 2007). Likewise, an officer who is acting only to comply with policy guidelines may be inclined to perform poorly to compromise the investigation, thereby subverting the charge which he or she was obliged to make,

however reluctantly (Lipsky,1980).

Proper use of discretion, within the parameters of McGregor's definition (as cited in Kleinig, 1996), will effectively allow the state to save resources while enforcing only the violations that the public want enforced. According to Reiner (2010), police require the ability to use discretion due to the inevitable lack of police resources to enforce all laws all the time. While police services chronically lack the resources to formally enforce all laws, they must, as a result, allow officers to determine which laws will be enforced at the operational level (Crawshaw, Devlin and Williamson, 1998; Lipsky, 1980). The discretion allowed at the lower levels of the hierarchy allows police services to spare precious front-line resources while concentrating on those offences that should be enforced in accordance to the police service's values and/or the values of the community the agency serves. While discretion creates an efficient system, the proper operational decisions must be made at the lower levels of the hierarchy, which will benefit the agency by fostering leadership throughout the organization.

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7.2: Discretion and Supervision

Police officers who believe they are professional will more likely act in a professional manner and therefore act with accountability and ethics. In his qualitative study, Rowe (2007) observed that when discretionary powers are reduced, officers report a feeling of frustration due to the perception that superiors do not view them as trustworthy enough to make decisions. One could logically infer from this that when discretion increases so too does the feeling of professionalism. Therefore, discretion, when professionally instructed, will lead to ethical decision making and ultimately an ethical police service (Neyroud, 2008). The alternative is having a police service where trust is not shown to the lower ranks, which results in officers who do not view themselves as professionals and who likely would not conduct themselves so. Neyroud (2008) concludes that although police do possess a large amount of discretion, unfortunately, the legal framework under which they operate sharply limits their discretion and therefore their professionalism.

Professionalism in policing is also problematic due to the military hierarchical nature of policing structures previously outlined. This means that the military organizational model of the police is not compatible with a profession that uses discretion as much as it is used by the police (Hughes and Newton, 2010).

In policing, to further complicate matters, the position of sergeant in the past was that of an operational police officer with some supervisory duties whose principal responsibility included mentoring and training constables to ensure their welfare, discipline, team leadership, and ultimately controlling subordinates (Butterfield, Edwards, and Woodall, 2005). Currently, there is a devolving of the duties and responsibilities of the executive rank to those of the sergeant rank (Butterfield, Edwards, and Woodall, 2005). While sergeants were once seen as mentors and experienced practitioners on whom constables relied, they essentially have become office managers who are concerned with budgets and target-setting and are unable to spend time monitoring their subordinates (Butterfield, Edwards, and Woodall, 2005). The lessening of the direct supervisory role of the sergeant has had a negative impact on the ability of the police service to rely on the discretion of the individual officer in his or her operational decisions, and it is in these conditions that discretion is likely to be misused, thus highlighting the need for more control.

Discretion among the lower ranks in policing organizations makes control by the organization imperative so that the operational decisions represent the organization's values. Panzarella (2003) suggests that organizational control of police discretion is a facade because police officers are an uncontrollable entity and that an increase in police discretion will further erode such control and more unethical practices will ensue. Additionally, Punch (2003) suggests that systemic failures within policing organizations result in corruption: the outcome of a lack of control by managers who, he asserts, are all too willing to let rules be bent or broken. At issue then, according to Panzarella (2003) and Punch (2003), is the inability of police management to monitor and control the inevitability of police discretion.

While police managers have access to technology that enables them to closely monitor the discretion exercised by police officers at all times (Alderson, 2003), a manager watching an officer's every move is a superficial solution, which suggests a lack of trust in the ethics and values of the officer. Managers must instead act in ways that promote values that reflect the organization's goals; they must also pass these values on to their subordinates so that they too will use their discretion in a similar fashion. The goal is to lead officers in enabling the effective use of discretion rather than merely overseeing their every operational decision.

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7.3: Selective Enforcement

Law enforcement officers are given enormous discretion to choose which laws to enforce and when. While discretion enables them to decide when and what to investigate, issues arise when an officer's decision may be questionable. Officers often refer to the "ways and means act" to explain selective enforcement that results in "legally" punishing poor behaviour in a way that may not be justified. An example is best used to illustrate this line of thinking.

A police officer who is accosted by a rude and obnoxious citizen may find an obsolete charge with which to charge the person to teach him or her a lesson. The charge is usually something minor, such as riding a bicycle without a bell. While technically the bylaw may require riders to have a bicycle bell, it may very rarely be used. In addition, the police officer may not have enforced this bylaw in the past and is aware that numerous people ride bicycles without bells.

While the officer has a legal right to charge the citizen, he or she should reflect on how this case will look if it is taken to court. The officer's credibility will be questioned after the circumstances of the case are read in court. Typically, the citizen's obnoxious behaviour, when recalled later on, will pale in comparison to what the court could rule as an abuse of authority by the police officer. Officers must be objective and treat everyone equally, regardless of the behaviour exhibited. When confronted with obnoxious citizens, officers must strive to remain unmoved, unnerved, and calm. Using discretion as a tool to charge a citizen with obsolete laws and bylaws should be avoided for the good of the officer, the agency, and society.

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7.4: Loyalty

Most branches of law enforcement are paramilitary, having a formal rank structure while still possessing some traits of a civilian organization. One of the characteristics of a military environment is loyalty and camaraderie: loyalty to other members of the agency, loyalty to the system of rank structure, and loyalty to the values possessed by the agency. Correction guards and other law enforcement personnel work most of their careers in an unsafe environment, in which they have to rely on one another for their safety. In this context, when a law enforcement member is in danger, that member must be secure in the belief that fellow members will be loyal to him or her, even in dangerous situations or situations involving emotional risk. Loyalty is critical for ensuring law enforcement members understand that their colleagues will be willing to ignore danger and assist them regardless of the peril. Without loyalty and camaraderie, law enforcement personnel would be ineffective as they would likely be reluctant to put themselves in harm's way.

Police investigators for one agency often assist other investigators in different agencies. Part of this compelling duty to assist in an investigation is because of a sense of loyalty to other members of the same profession. The loyalty felt by officers fosters teamwork in investigations and in general duty or patrol work. Loyalty and teamwork in all branches of law enforcement are critical in preventing crime, investigating crime, and guarding prisoners.

While loyalty is important, there are limitations; officers should be aware of how far their loyalty extends before they report misconduct. Westmarland (2010) surveyed police officers about corruption and the "blue code" of silence. Specifically, Westmarland sought the following:

- What officers think about violations of rules
- When to inform superiors of rule breaking
- Whether informing superiors of rule breaking is just as bad as the behaviour of the original rule breaker
- Behaviour the officer would definitely not report on
- What the appropriate punishment would be for each sort of behaviour

The survey included scenarios that ranged in seriousness from off-duty business interests to theft and assault. Scenarios varied and included themes that were acquisitive (where greed was the motivating factor, such as theft), administrative or internal disciplinary infringements (rule bending), and noble cause corruption. The survey was administered to 171 serving police officers in the United Kingdom. Based on the survey results, Westmarland concluded the following:

- Acquisitive cases were regarded by the officers as being the most serious.
- Officers in judging acquisitive cases severely depended largely on the perceived dollar amount that was taken.
- It is not clear whether the money amount, or the way the money/property was taken, is correlated to the perceived seriousness of the case.
- Of the acquisitive scenarios, taking bribes (95% of respondents), stealing at a crime scene (99% of respondents), and taking money from a wallet (95% of respondents) were described as very serious.
- Of these acquisitive scenarios, taking bribes (82% of respondents would report to their superiors), stealing at a crime scene (95% of respondents would report to their superiors), and taking money from a wallet (88% of respondents would report to their superiors) were highly reportable.

Of particular interest is that some officers who stated that these offences were serious said they would not report them to a supervisor. For example, 95% of officers described taking money from a wallet as very serious. However, 88% stated they would report to their supervisors, meaning 7% who considered this as very serious would not report something that they thought was very serious to their supervisor. This is a demonstration of officers who value loyalty more than the morality of other officers. Westmarland also concluded the following:

- Officers generally appear to be forgiving of noble cause corruption, brutality, and rule bending.
- Officers were generally unwilling to report the behaviours related to noble cause.

Westmarland's study provokes the following questions:

- Are police officers right in grading the seriousness of the infringements?
- Are officers who do not report infringements as guilty as those who commit the original infringement?
- Does loyalty stop police from reporting infringements?

- Are questionnaires of this nature reliable, or do officers respond only in a way in which they think they should respond?

Police officers who breach loyalty to report minor ethical violations may be seen to damage the overall team or structure of a law enforcement agency. The importance of loyalty within law enforcement is an inhibitor for reporting instances of ethical misconduct, and law enforcement officers are required, at times, to alter their loyalty from individuals in their agency or profession to their agency or society at large. This requires a more comprehensive world view that looks past the individual and focuses on the values of the organization or society. The reporting officer will inevitably have his or her loyalty questioned by other officers in the agency; however, it is the loyalty of the officer participating in the misconduct that should be questioned, and that person should be viewed as disloyal to society and to the goals and values of his or her organization.

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7.5: Ethical Leadership

As we have learned, ethical conduct in law enforcement is critical. Leaders within law enforcement agencies play a significant role in determining the ethical orientation of their agency. Specifically, leaders must regard ethics as a key component of the agency's culture in which officers behave ethically and respect the rights of others. This can only be accomplished by leaders demonstrating ethical actions to all members of the agency.

Zuidema and Duff (2009) believe that agency leadership can facilitate an ethical workforce in the following ways:

- Incorporate agency values or ideals through mission statements. Mission statements are a tool agencies can use to explicitly state their values for all to see. Some agencies develop mission statements and present them to their workers who sign a confirmation that they hold the same values as the agency and will adopt the values stated in the mission statement. The confirmation is strictly symbolic in nature, but it can be a powerful reminder of the values that are important.
- Focus on ethical behaviour as part of formal events and training sessions. Ethical behaviour should be woven throughout all training and stated in lesson plans. Leaders should not assume that ethical decisions are made, but rather they should remind and train members that ethical considerations are a critical component of their daily business activities.
- Emphasize ethical behaviour in the agency's philosophy. The agency must reflect ethics in all policies and philosophies. In law enforcement, agencies must be aware of the problems that arise when crime control models are too closely adhered to at the expense of ethical behaviour.
- Do not tolerate any unethical activities, including unethical behaviour at the executive level. This means that agencies should consider a policy of zero tolerance for any unethical activity by executives. Agencies should consider universality as a test for executives: assessing the ethics of the behaviour by assessing whether the behaviour would be appropriate for every member of the agency.

Mayer et al. (2009) have proposed a "trickle down" model in which the effects of ethical leadership are mimicked by workers throughout the ranks and are eventually replicated by employees at all levels of the hierarchy. In a survey administered to employees and leaders in corporations in southeastern United States, Mayer et al. (2009) found:

- Top management has an effect on employee behaviour indirectly through supervisory leadership.
- Employees imitate the behaviour of leaders.
- Employees will behave in a manner consistent with what they believe are the values of the employer.
- It is likely that leaders who demonstrate ethical behaviour influence middle managers who influence all employees.

Mayer et al. (2009) further suggest that these findings have practical implications in large organizations; that is, because of the relationship between leaders and subordinates, it is critical to promote or hire ethical leaders. Ethics training for management is important for enhancing the ethical decision making of leaders, thereby promoting ethical behaviour throughout the hierarchy.

By extension, we can extrapolate that employees will replicate the unethical behaviour of leadership. In law enforcement, this can lead to corrupt practices among patrol officers who model the behaviour of corrupt leaders. The implication is that law enforcement agencies cannot tolerate unethical behaviour among members of the lower ranks and especially among those who serve in leadership roles.

Frisch and Huppenbauer (2014) studied ethical leadership by conducting a series of interviews with 18 executive leaders. They determined that ethical leadership leads to the following outcomes:

- Enhanced well-being of themselves, society, nature, and other people
- Financial success of their enterprise due to benefits resulting from a positive reputation
- Satisfaction from customers and employees

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7.6: Transactional and Transformational Leadership

Huberts, Kaptein, and Lasthuizen (2007) found that effective role modelling is especially significant in demonstrating moral behaviour, while strictness is especially effective in limiting fraud, corruption, and the misuse of resources. As an extension of strictness, the ethics of law enforcement agencies are likely to be greater when there are rules, regulations, and systems of oversight that carefully manage law enforcement behaviour. In the case of law enforcement agencies, the behaviour usually occurs on the street, where street police officers are interacting with civilians without supervision. Because the police are out of view and not supervised for much of their working day, leadership must evolve away from strictness as a way to promote ethical conduct.

There are two distinct models of leadership that operate within large organizations: transformational and transactional. Historically, due to the paramilitary nature of law enforcement, leadership has largely been transactional. **Transactional leadership** in law enforcement is a style of management used by those who are more oriented toward bureaucracy and maintaining the status quo. Transactional leaders tend to take the decision-making powers away from those they supervise and to make decisions on their own, not yielding power to those beneath them in the hierarchy. This leadership style often runs contrary to what is practised in law enforcement: the requirement to exercise discretion throughout the ranks (Bass, 1990).

Bowie (2000) asserts that leadership is not effective unless managers empower subordinates to make decisions; however, the empowerment of subordinates is at odds with the military hierarchical system. What is required is a system that allows subordinates to make operational decisions and leadership that is willing to risk the mistakes that result from these decisions. Mastrofski (2004) suggests the way to achieve these goals is through **transformational leadership**, which guides officers to make the right decisions by following the moral lead of their managers who possess the moral standards that are shared by the organization. Failure to promote these values will lead subordinates to mirror the unethical practices of their leader, resulting in poor decisions. There are risks associated in allowing subordinates to use discretion, such as forgetting, missing, or just not adhering to the morals of their leader; risk is unavoidable when subordinates are given increased discretion.

The risk of poor decisions at the operational level requires strong leadership in which managers not only understand the risk but also are willing and able to bear the weight of this risk (Villiers, 2003). Such a style of leadership is difficult within a culture that is so deeply entrenched in a military type of structure, where following policy and rules are expected throughout the hierarchy. Villiers (2003, p. 28) describes this as “mechanistic bureaucratization” in which the policing service operates in an autocratic style, which is contrary to the autonomy police officers have in exercising their discretion. Villiers (2003) further argues that a more democratic style of leadership is required in order to effectively lead the officer who exercises more discretion than his or her manager.

Transformational leadership is conducive to discretionary policing and, in its purest form, empowers subordinates to make moral decisions that are reflective of the organization (Bass, 1990). The transformational leader requires followers to transcend their own interests to uphold the interests of the organization by focusing on future and long-term goals instead of short-term satisfaction (Bass, 1990). A transformational leader is required to exert his or her organizational morals on subordinates who will in turn make decisions that reflect the leader’s values and therefore the organization’s values. The result of such effective leadership is a subordinate who, when confronted with operational decisions, will be able to make the same decisions that his or her leader would make. In this way, a transformational leader is a “developer of people and a builder of teams who inspire their followers to act and make decisions” (Bass, 1990, p.54). Bass (1990) further describes those that possess such qualities as being naturally gifted and suggests that one is either born with the trait or not, which renders them a valuable commodity.

The notion that transformational leaders are born, not made, presents a problem for law enforcement agencies that need sergeants and other managers to possess both operational knowledge and transformational qualities. The possibility that managers cannot be taught transformational qualities potentially eliminates those who hold only operational knowledge as an attribute. Tourish, Craig, and Amernic (2010, p.41) describe such leaders as “exceptional people” who are also powerful and have the ability to understand organizational values as well as the personalities of their followers. Police managers, having risen through the ranks, may or may not be capable of developing such attributes and as result, require training. In their qualitative study of managers, Hay and Hodgkinson (2006) found managers who felt that training in these qualities is a difficult prospect and something that cannot be learned in courses. This makes it difficult for those police managers who are not born with these qualities to learn and apply them on a regular basis. Courses in leadership are used to train officers of all ranks; however, there have been few studies that have determined whether this training leads to transformational leadership or not. The question remains: can competent operational officers learn the skills to be transformational leaders?

The notion of transformational leadership in policing is sometimes at odds with police culture for the following reasons:

- Officers are unlikely to embrace the transformational leader due to their inculcation in the blame culture where blame is assessed when discretion has failed and a mistake is made (Villiers, 2003). The blame culture is a double-edged sword:
  - First, operational officers mistrust their superiors, believing that if they make a mistake, they will be held accountable.
  - Second, managers have difficultly extricating themselves from the blame culture when assessing the poor discretionary decision of a subordinate.
- Police culture is generally characterized by cynicism toward leadership, and this is especially true toward leaders who are charismatic and are purveyors of transformational leadership values (Villiers, 2003).
- Transformational leaders must fight the blame culture and be willing to accept the inevitable risk associated with decisions made at the operational level. As discretion increases, so too does the risk of more mistakes. The manager who assumes the role of transformational leader must accept this risk as a part of officers' development rather than as an opportunity to blame.
- In acknowledging the inevitability of discretion, Mastrofski (2004) maps out transformational leadership as the best way to ensure proper and effective control of discretion among operational police officers. Transformational leadership convinces officers to make the right discretionary choices by persuading them to achieve the right goals without the need to directly supervise them. Officers functioning beyond the view of their superiors will need to use discretion, and if they have adopted the values of their leader (and therefore their organization), they will likely make decisions that are based on these shared values (Bass, 1990).

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8: THE CULTURE OF LAW ENFORCEMENT

8.1: Police Subculture
8.2: Socialization of Police
8.3: Skepticism and Cynicism
8.4: Moral Culpability versus Legal Culpability
8.5: References

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8.1: Police Subculture

At the root of all that is good and bad in law enforcement, there is a strong subculture that permeates most agencies. While a common theme in academic discourse is that police culture is negative, entrenched in cynicism, masochism, loyalty above all else, and an “us versus them” mentality, it has positive aspects that are often overlooked. Members of the law enforcement subculture share values that enable officers to survive what at times is a difficult and emotionally taxing job. Values such as supportiveness, teamwork, perseverance, empathy, and caring enable officers to cope with post-traumatic stress; they are part of team of colleagues who care for their coworkers. The support received from other officers is the result of shared values within the culture. Officers who are faced with dangerous situations are able to rely on their comrades because of other values they believe these members also possess. Values such as bravery, camaraderie, and sacrifice will embolden members to place themselves in harm’s way.

The following table outlines both positive and negative attributes within the police culture.

Table 8.1 Police Culture: Positive and Negative Attributes

Positive attributes	**Negative attributes**
Safety	Cynicism
Camaraderie	Close-mindedness
Empathy	Biases
Support	Prejudice
Caring	Non-scientific tactics
Teamwork	Overly conservative
Loyalty	Loyalty
Sacrifice	Alienated
	Suspicion
	Authoritarianism

In spite of the positive aspects of police subculture, what society may define as ethical or good conduct may not be viewed within the subculture as relevant to the task, which is, among other things, to continue the mission of “safe-guarding social order” (Reiner, 2010, p.120). The tactics that are relevant to the police subculture may include using trickery and lies to elicit confessions and receiving minor gratuities to foster community relations (Reiner, 2010). Examining ethics and its relation to the police subculture is important to help delineate not only the grey area of ethics but also the grey area within which the police operate.

Once selected and hired by municipal police agencies, police recruits are exposed to police subculture during their training partially due to the instruction they receive from police officers who are recently retired or seconded to the police academy. However, the choice to become a police officer is not made in a vacuum. When recruits start their training, they often think like police officers on a visceral level, because generally certain individuals are drawn to the occupation (Conti, 2010). In an ethnographic study observing police recruits at an American police academy, Conti (2010) observed that the evolution of recruits into members who reflect the police mindset likely started at an early age when they formed the belief that they would become police officers. As potential officers enter the selection process, they become involved in an extensive application process, which is their first introduction into the police subculture. Rokeach, Miller, and Snyder (1971) concluded that a police personality distinct from others does exist, and proposed the idea that individuals come into an occupation with predetermined attributes that are identified with their new occupation. However, Rokeach et al. (1971) also found that this distinct police personality is attributed to predispositions of personality that are present before the recruits’ induction into the police subculture. These distinct predispositions are conducive to a career in policing and allow the individuals to comfortably choose and fit into the subculture (Conti, 2010; Rokeach et al., 1971). While the police subculture is distinct, at times it does attempt to catch up to the norms of the mainstream culture and can shift from negative attributes to positive attributes (Skolnick, 2008).

A historical look at the police subculture offers a view into the changing nature of how police officers see the world. In analyzing

the police subculture in the 1940s, Myrdal (1964) observed in an ethnographic study of police officers in America that officers behaved in an overtly bigoted fashion toward African Americans. Myrdal (1964) observed that these were the norms of the day and that the police subculture reflected the attitude of mainstream society toward African Americans. While not supported empirically, it would be a logical conclusion that police recruits or rookie police officers would have shared the same cultural bigotry as mainstream society and their fellow police officers. More recently, when we see and question incidents involving police use of force on racial minorities, it is important to look broadly at society as well. The shooting of Michael Brown in Ferguson, Missouri, is an example where prominent civic leaders pointed out that the incident was merely a manifestation of a broader issue of racism that is widespread throughout the United States.

As society has evolved so too have law enforcement agencies. Ethical conduct and diversity play a large role in recruiting and are considered important attributes of potential officers. Crank and Caldero (2010) have concluded that due to society's emphasis on ethics and the stringent hiring process, recruits are typically very ethical. The subculture, they argue, is not only present but also highly influential; the recruits' ethical orientations are formed earlier, well before their application process commences (Crank and Caldero, 2010). Conversely, Conti (2010) and Banish and Ruiz (2003) argue that the police subculture is present when the officers start at the police academy and that its influence on recruits' ethics is negative and destructive.

Conti views a recruit's induction into the police academy as a transformation of the recruit into the "organisational ideal" (Conti, 2010). It is in this way, Conti (2010) argues, that the police subculture, ever-present at the police academy, assists in the conversion of the recruit from civilian to police officer. These cultural nuances are passed on through a variety of means such as:

- Parades and drills (Campbell, 2007)
- Marching (Davis, 1996)
- Storytelling (Banish and Ruiz, 2003; Ford, 2003; Newburn and Reiner, 2007).

Storytelling by instructors in the police academy can be a valuable and effective teaching tool, as demonstrated by Conti's (2010) study of an American police academy. Stories told by trainers must reflect ethical conduct and be relatable to the lesson plan goals and outcomes. Conversely, stories by instructors may inflate the recruits' perception of danger (Banish and Ruiz, 2003) or cynicism (Ford, 2003), but instructors' stories can also serve to relay positive outcomes, such as surviving life and death situations confronted by police (Conti, 2010). Ultimately, storytelling perpetuates the police subculture by passing on both truisms as well as not-so-true legends (Newburn and Reiner, 2007). Banish and Ruiz (2003) further contend that storytelling affects the police culture negatively by instilling negative traits of cynicism, suspicion, conservatism, and authoritarianism.

These negative traits are often associated with a police subculture that affects senior police officers, and it is specifically these traits that define an individual as a police officer. Skolnick (2008) considers the police vocation as being similar to that of a priest or the clergy: the culture wholly defines what it means to be a police officer by the traits that police officers share. These traits, according to Skolnick, include "skepticism, cynicism, mistrust of outsiders—all are traits observers of police apply to them and that they apply to themselves" (2008, p.36). Twersky-Glasner (2005) concurs, noting that the police are members of a unique occupation in which they are the insiders and the rest of society are the outsiders. The insiders are those who are trustworthy while outsiders are viewed with suspicion (Skolnick, 2008). This is reflected not only in the culture in which recruits find themselves, but also in the training they receive and the way in which they as civilians are accepted into the academy to begin training.

In a qualitative study of police officers, Loftus (2010) followed officers on the street and determined that two characteristics are ever-present in the police culture: cynicism and moral conservatism. While older officers exhibit these traits, Loftus (2010) did observe that newer officers are hired from a more diverse background that includes different sexual orientations, cultures, and races. This may enable the police subculture to adapt and overcome its more negative characteristics.

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8.2: Socialization of Police

It is through socialization that police recruits are inducted into the police subculture, enabling the subculture to maintain its norms and to continue its existence (Newburn and Reiner, 2007; Volti, 2008). Socialization is the process in which recruits are introduced to police officers who impart not only their knowledge but also any negative qualities they possess. The influence of socialization is enormous: it can erase the positive influences from training and introduce the recruit to the darker side of the police subculture (Ellwanger, 2012; Volti, 2008). Ironically, within law enforcement the negative aspects of the socialization of officers are also, at times, positive. Two examples are loyalty and solidarity, which can be both positive and negative. The stories told in police academies may lead to confusion about what is ethical loyalty and solidarity and what is unethical solidarity and loyalty.

Ford (2003) examined this phenomenon in a content analysis study in which he observed the use of parables or stories told by experienced police officers to police recruits during lessons, showing that shifts in the ethics of the recruits resulted from the socialization process that occurs when introducing recruits to the police subculture. To Ford's surprise, 85% of the parables were neutral about the law and only 11% referred to illegal activities, such as excessive use of force, unconstitutional searches, and lying in court.

Typical of all studies using content analysis, Ford's (2003) study contains flaws because it relied exclusively on the memory of police recruits. The possibility of poor recollection by police recruits can render the validity of such studies susceptible to bias (Gilbert, 2008). Even police recruits who correctly recall the parables may be mistaken about their intent and may bias their meaning by failing to understand what the instructor was trying to convey (Gilbert, 2008).

Socialization is not just a law enforcement phenomenon. Socialization occurs at all levels of employment, from assembly line workers (Thompson, 2003) to medical students (Becker and Geer, 2003). In most occupations, socialization is a positive influence, as it is a means of learning unwritten rules that help the new worker assimilate into the new work environment (Coffey and Atkinson, 1994; Harper and Lawson, 2003; Volti, 2008). While some occupations possess a strong organizational subculture, which assists new workers beyond their formal training and education, other occupations have little in the way of socialization to help new workers assimilate into the organization (Volti, 2008). However, according to Harper and Lawson (2003), the socialization of all workers is a necessary component for all occupations and professions. Because police exercise a high level of discretion and at times operate outside the realm of rules, the policing occupation relies heavily on socialization to help its recruits (Volti, 2008).

Two primary conditions that Volti (2008) identifies as being associated with higher levels of socialization are occupational isolation and danger. While the policing profession is not statistically dangerous, police officers perceive certain aspects of their job as more dangerous than they are (Banish and Ruiz, 2003; Loyens, 2009; Twersky-Glasner, 2005). Unlike other more dangerous occupations, police officers are subject to acts of willful harm, in which citizens target them intentionally. These dangers are different from those faced by other occupations in which accidents occur. The belief by officers that they are targeted by some citizens who mean them harm reinforces the perceived need to protect one another. The belief in the dangerousness of the police occupation, according to Volti (2008), reinforces the need for socialization in which experienced members of the occupation share information with new recruits that will protect and keep them safe.

Isolation, as identified by Volti (2008), reflects both physical isolation (as with oil rig workers), and social isolation (as with shift workers). Police officers, according to Newburn and Reiner (2008), suffer from isolation based not only on their shift work but also from their subculture, which emphasizes moral conservatism, suspiciousness, and internal solidarity (Naus, van Iterson, and Roe, 2007). Together these make for a potentially toxic level of socialization that police recruits confront when they first start on their journey as police officers. Police officers, as a by-product of their isolation, rely on the solidarity and loyalty of other officers, which may cause increased tension between upholding this solidarity and performing ethically (Reiner, 2010).

Police socialization is particularly invasive early on due to the dominant nature of a police academy's paramilitary structure (Chappell and Lanza-Kaduce, 2010). Police recruits at the B.C. Police Academy, located at the Justice Institute of British Columbia, are immediately introduced to a formal military-style inspection in their first hour. The nature of paramilitary-style education has historically been to strip a person of his or her individuality and force a culture of compliance upon the individual (Chappell and Lanza-Kaduce, 2010). In doing so, the individual's personal values are replaced with those of the organization. Chappell and Lanza-Kaduce (2010) further argue that such a pervasive culture should be closely examined, and attempts should be made to neutralize it.

In spite of the negative aspects of socialization, there can be some benefits to the socialization of experienced police officers with junior officers. Paoline (2004) asserts that while socialization within the police subculture is generally negative, there are values that are learned in the process of socialization with senior police officers. Learning the craft of any complex occupation or profession is enhanced when senior members pass on vital information learned from experience (Paoline, 2004). However, it is critical for the recruit to adhere to the organization's values even if they conflict with information received during negative socialization (Sato, 2003). Socialization can impart to a recruit values and ethics that are not formally written down, yet are needed for the recruit to function well in the job while on the road (Gould and Moore, 2003). A value that recruits learn through socialization is loyalty, which is strongly associated with the military (Loyens, 2009; Sunahara, 2002).

Campbell (2007) further states that the police academy process institutionalizes the culture of the organization in the recruit. This institutionalization is enhanced through the use of artifacts such as wearing uniforms and taking part in drill parades, which are overseen by experienced police officers who ultimately are responsible for enforcing the expectations they have of recruits to adopt the institution's values and to prove they are suited to continue on the path of a policing career (Campbell, 2007). This is evident at the B.C. Police Academy where police recruits learn how to march and stand for inspection under the watchful eyes of senior officers. The process is designed to ready recruits for ceremonial duties and to learn formations that may be applied in situations such as crowd control.

Ellwanger (2012) agrees that recruits are socialized through these means, but sees a more sinister side to the police subculture, noting that the process of job socialization and enculturation may both purposefully and inadvertently threaten the positive ethical ideals and values brought to the police profession by new recruits. A strong or pervasive deviant subculture, according to Ellwanger (2012), may exist in some instances, which can passively or actively teach unethical behaviours to new police officers.

Chappell and Lanza-Kaduce (2010) add to this concept through their ethnographic study of a police academy in Florida. Here they observed the negative influences of the military nature of the police academy. The attributes of a military-style academy led to periods of socialization in which the recruits were indoctrinated into a paramilitary-style culture whose values included loyalty, solidarity, and dress and deportment (Chappell and Lanza-Kaduce, 2010). The socialization within the walls of the police academy was sufficient as an introduction to police culture; on the road socialization simply reinforces these ideas. Chappell and Lanza-Kaduce (2010) argue that the socialization within the academy is so pervasive that it creates an "us versus them" mentality, which is contrary to values found in community policing. Ellwanger (2012) further suggests that the socialization recruits experience on the job unintentionally thwarts the values and ethical practices they develop at the police academy. The subculture, Ellwanger (2012) argues, is responsible for teaching recruits unethical behaviours.

Additionally, to demonstrate the importance of socialization, Mastrofski and Ritti (1996) investigated the perspective of officers regarding impaired driver investigations. They found that officers trained in impaired driving investigations who returned to supportive organizations were more likely to follow their training. Those officers who returned to organizations that did not value impaired driving investigations eventually considered their training to be "technically irrelevant" (Mastrofski and Ritti, 1996, p.318). The implications of these findings suggest that socialization in a negative organization can undermine positive training.

In taking a different approach, Rokeach et al. (as cited in Twersky-Glasner, 2005) found that socialization plays a secondary role when recruits bring established values into their careers. These personality traits are congruent with those of other experienced police officers, and the socialization process is minor, likely reinforcing recruits' long-held beliefs. According to Rokeach et al. (as cited in Twersky-Glasner, 2005), these distinctive personality traits are present when the recruit is deciding upon his or her career, and it is these traits that attracts the person to policing.

The socialization of police and other law enforcement officers has both positive and negative components. The negative components create an atmosphere that may lead some officers to immoral and/or unethical conduct that runs contrary to the stated values of the agency. As mentioned previously, citizens who have demonstrated a high level of moral conduct are recruited into policing. Despite demonstrated morality being a key required attribute, a small percentage of officers act immorally on occasion. The socialization of some of these officers may be where they learned their immoral behavior.

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8.3: Skepticism and Cynicism

Cynicism, as mentioned previously, is a major negative component of the police subculture. Cynicism should not be confused with skepticism as they are vastly different. Skepticism refers to critical thinking, which is what we should all strive for. It allows us to question commonly held beliefs that may not be true. It forms the basis of scientific inquiry that has enabled humanity to evolve from a reliance on superstition to an ability to address difficult questions and problems in society using research and reasoned approaches. Skepticism is especially important in law enforcement as it is a critical component of being an objective investigator, one who is willing to view issues from a neutral perspective. According to Kurtz (2010, p.13) "a skeptic is one who is willing to question any claim to truth, asking for clarity in definition, consistency in logic, and adequacy of evidence." The ability to question any claims of truth is critical for all law enforcement officers who are confronted on a daily basis with people who are disinclined to tell the truth in order to protect their own interests. Furthermore, investigators should strive for empirical evidence that eliminates a biased conclusion that can potentially lead to wrongful accusations and convictions.

Skepticism is endangered when we have difficulty distinguishing between "questioning truth" and "questioning and rejecting truth. Kurtz (2010) defines this as "nihilistic skepticism." In essence, this is the assertion that nothing should be believed as truth, because it is unprovable. As such, nihilistic skepticism is based upon subjectivity. Nihilistic skepticism is essentially skepticism in which there is no basis for "objective moral judgment" (Kurtz, 2010, p.15).

Cynicism is similar to nihilistic skepticism; however, it embodies an element of pessimism toward everyday occurrences that may ignore the objective truth. Cynicism can include a negative response to morality that illustrates a contempt for community standards. Truth is unimportant to a cynic, and the distrust that is exhibited by the cynic belies the facts. Specifically, law enforcement officers often see themselves in an "us versus them" environment in which officers are attacked from all sides of society. Officers routinely say that the biggest stress they face is not on the streets from dangerous people but in the office before they make it to the streets. This notion is, to a degree, cynical. The objective truth is that the streets are not as safe as the office; however, officers ignore this due to their frustration in dealing with management.

Another example of cynicism is the belief some officers have that the only way to remove sex-trade workers from the area they patrol is to verbally abuse them to the point they feel threatened. In cynical officers' minds, such behaviour is acceptable even though it may be contrary to community standards and their agency's values.

Sunahara (2002) draws a further link between cynicism, alienation, and estrangement from management and departmental policy, suggesting that police officers who become alienated are likely to become disengaged from performing their duties and could slip into unethical behaviour. The cause of alienation is unclear, raising the possibility that cynicism begets alienation, or that alienation begets cynicism.

Graves (1996, as cited in Sunahara, 2002, p.12) describes police cynicism as "an attitude of 'contemptuous distrust of human nature and motives.' A cynic expects nothing but the worst in human behaviour." The feeling of alienation stems from this attitude as officers shield themselves from those they believe they cannot trust and from those who are potentially dangerous to them and their families. This feeling is likely the result of working in a negative environment in which officers see and do things that mainstream society is not privy to. Police officers often talk about happenings on the job that "you couldn't write in a movie script, because they are so unbelievable." Much of what police officers see is rarely talked about in mainstream society because it is alarming and disturbing. Yet officers are confronted with these issues not only on a daily basis but multiple times a day, depending on where the officer works. It is little wonder that officers in this environment tend to want to alienate themselves from society, and little wonder why alienation, at the very least, isn't coupled with cynicism.

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8.4: Moral Culpability versus Legal Culpability

Moral culpability is loosely tied to mens rea, meaning that there is an explanation for the intent of the actor. However, with moral culpability, the explanation put forth by the actor may excuse the immoral action from being caused due to intentional immorality. An example would be a mother who has killed her infant while suffering postnatal depression. The mother would not be charged with murder, as would a stranger who killed the same infant, or a mother who is not suffering postnatal depression who killed her infant. However, because the mother suffers from a medical diagnosis of postnatal depression, she would be charged with the lesser offence of infanticide. A mother with postpartum depression is suffering an illness, and her decision to kill her infant is not a moral one, rather it is a decision she has made due to her illness. A further example would be a person who kills someone because he threatened serious bodily harm to another person. Although the action is homicide, there may be no moral culpability because the intent was first to save another person even though the mens rea may have existed to kill the victim in order to stop him. Because the moral culpability is less than if someone killed for his or her own gain, a manslaughter charge would be used instead of a murder charge. Here we weigh moral culpability against legal culpability.

A police officer on the street may, in some instances, use his or her discretion when determining moral culpability or legal culpability for minor investigations. Where a suspect of a crime may be charged with an offence, the officer may decide not to charge because of diminished moral culpability. An example is a minor theft in which a homeless suspect steals a blanket in order to survive a frigid night on the streets. The officer may choose to forgo charges and locate a shelter for the homeless suspect.

The distinction between moral culpability and legal culpability is at times blurred; law enforcement officers must be aware that what may be legally permissible may not be morally permissible. While it is true that in solving ethical dilemmas, officers should consider the laws or regulations that are applicable, so too must they consider the moral culpability in all their actions regardless of the lack of legal restrictions. An example in a law enforcement context may be an officer who ignores a homeless person waving her hand for assistance. While there may be no policy or legal infraction, the officer's conduct may be regarded as morally culpable if the homeless person is later harmed when the officer's assistance may have protected her from harm. The officer who ignored the person may be regarded as morally culpable for the injury by not assisting the person. Another example would be an officer who fails to investigate a crime due to a heavy caseload. Should the omission of the investigation lead to a preventable assault, the argument may be made that the investigator's decision not to investigate made him or her morally culpable, depending on the reasoning behind the officer's decision. If the officer decided that the case was not as serious as others, then it may be determined that the officer was not morally culpable. However, if the officer's decision was based upon the ethnicity of the victim, then the officer would be morally culpable for the assault that occurred as a result of the officer's decision.

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GLOSSARY

S

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