

Ethical Issues in Policing



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Contents

Introduction	1
1 A Theory of Policing: The Enforcement of Moral Rights	5
2 Authority and Discretion in Policing	31
3 The Moral Justification for Police Use of Deadly Force	61
4 Privacy, Confidentiality and Security in Policing	83
5 Corruption and Anti-Corruption in Policing	111
6 Restorative Justice in Policing	141
<i>Bibliography</i>	<i>159</i>
<i>Index</i>	<i>165</i>

Introduction

This book is a contribution to the literature on police ethics, and it is written from the standpoint of applied philosophy. One author, Miller, is a professional philosopher, the other, Blackler, is a former long-serving police officer in the New South Wales Police Service. It is hoped that by providing an integrated mix of ethico-philosophical analysis and practitioner knowledge and experience, the various ethical problems dealt with in this book will be better illuminated than otherwise would have been the case.

Many occupations exist to secure some fundamental *end* or goal, and this end is a human *good*. For doctors the end or goal is health, for lawyers justice, for journalists truth. In this book we argue that the central and most important end of policing is the protection of moral rights. The achievement of this fundamental end requires specialised skills, knowledge and individual judgment. However, there is a crucial further defining feature of policing, namely the routine and inescapable use of harmful methods, including coercive force, deception and the infringement of privacy. This combination of good ends and morally problematic means is, we argue, a distinctive feature of policing.

Ideally, members of occupations *internalise* the fundamental ends which define their particular profession. This process of internalisation may only be implicit. These ends may guide the actions of (say) doctors, even though they may not be very often explicitly aware that this is so.

Most important, members of such occupations, if they are to be successful practitioners, must identify with these defining ends. That is, their *self-worth* comes to depend in part on their capacity to realise these ends. The good teacher is one who not only has a capacity to impart knowledge, she also suffers a loss in self-esteem when she fails to successfully exercise this capacity. Similarly, the good police officer is one who not only has a capacity to detect crime and apprehend criminals, he also suffers a loss in self-esteem when he fails to successfully exercise this capacity.

Occupations are not only in part defined in terms of the end to which they ought to be directed, they are also in part defined in terms of the characteristic activities that members of the occupation engage in. In the case of the police, these characteristic activities are quite diverse, and include law enforcement activities, such as investigating and apprehending criminals, and peace-keeping activities, such as intervening in bar-room brawls or domestic disputes. When members of an occupation not only habitually engage in these activities, but do so skilfully and in a manner that secures the ends of the occupation, they are successful practitioners who can be said to possess the characteristic virtues of that occupation.

Individual police officers belong not only to an occupational group whose members have specialised knowledge and skills, they belong to a group which displays a high degree of solidarity and loyalty to one another. This is in part due

to the trust that individual police officers need to be able to place in one another, given the dangers that they face in their work. Notoriously, the virtue of loyalty becomes a vice when it leads police to protect corrupt or incompetent colleagues.

In Chapter 1 of this book, we outline a distinctive philosophical theory of policing, according to which policing is an occupation and institution defined in part by the end of protecting moral rights and in part by the routine use of harmful methods, specifically coercive force. In this chapter we also criticise alternative accounts of the police role, including Egon Bittner's definition of policing purely in terms of the use of coercive force. Arguably, recent developments in human rights legislation in the European Union have given some impetus to conceptions of policing, such as our own, that emphasise the human rights dimension of police work.

In Chapter 2, we discuss and define the related notions of police authority and police discretion. The problematic concept of operational autonomy and its importance in relation to the need for investigatory independence of police from government – given individual politicians may themselves need to be the subjects of investigation – is explored, as is the concept of the original authority attaching to the office of constable in the United Kingdom and Australia. We offer a qualified defence of original authority in policing.

In Chapter 3, we turn our attention to one of the key harmful methods deployed by police, namely coercive force, and specifically deadly force. The use of deadly force in self-defence is distinguished from the use of deadly force to defend the rights of others, and both in turn from (the overlapping category of) the use of deadly force to enforce the law. The existence of this basic tripartite distinction has the implication that – contrary to much recent work in this area – there is a somewhat different moral justification for police use of deadly force than there is for the use of deadly force by ordinary citizens. The difference arises from the role that police have to *enforce* laws against serious crimes.

In Chapter 4, we consider another harmful method, or methods, deployed by police, namely surveillance, data-gathering, integrating and accessing of data-bases, and other like methods that have implications for the individual's right to privacy. In this connection, we discuss encryption and the ethical issues that it gives rise to in policing. We also consider in detail the various forms of entrapment, and the moral arguments in relation to the so-called "subjective" and "objective" tests for entrapment. We argue that entrapment is morally justified, but only under a quite restricted set of conditions.

Our focus in Chapter 5 shifts to police corruption. We begin by offering a new definition of the concept of corruption. We then detail various causes of police corruption in particular. There follows a distinctive account of noble cause corruption in policing.

In the final chapter of this book, Chapter 6, we discuss restorative justice in policing. Restorative justice techniques, such as conferencing and diversionary schemes for juveniles or first offenders, are a relatively recent development, and have arisen in part as a consequence of the perceived failure of reactive policing driven simply by the goal of investigating, apprehending, convicting and imprisoning offenders. Contrary to the views of many advocates of restorative

justice methods, we argue that – properly understood – restorative justice implies, rather than contrasts with, retributive justice.

Earlier versions of some of the material in this book appeared in the following publications by Seumas Miller:

Issues in Police Ethics (Keon, 1996); *Police Ethics* (with John Blackler and Andrew Alexandra) (Allen and Unwin, 1997); *Corruption and Anti-Corruption* (with P. Roberts and E. Spence) (Prentice Hall, 2004); *Social Action* (Cambridge University Press, 2001); *Police Ethics (Vols. 1-4: Case Studies for Street Police; Cases Studies for Detectives; Case Studies for Police Managers; Bibliography)* (with J. Blackler) (Charles Sturt University and NSW Police Service, 2000); "Privacy and the Internet", *Australian Computer Journal*, Vol. 29, No. 1, 1997; "Corruption and Anti-Corruption in the Profession of Policing", *Professional Ethics*, Vol. 6, Nos. 3 & 4, 1998; "Authority, Discretion and Accountability: The Case of Policing", in C. Sampford, N. Preston and C. Bois (eds.), *Public Sector Ethics* (London: Routledge, 1998); "Noble Cause Corruption in Policing", *African Security Review*, Vol. 8, No. 3, 1999; "Shootings by Police in Victoria", in T. Coady, S. James, S. Miller and M. O'Keefe (eds.), *Violence and Police Culture* (University of Melbourne Press, 2000); "Restorative Justice: Retribution, Confession and Shame", (with J. Blackler) in J. Braithwaite and H. Strang (eds.), *Restorative Justice* (Aldershot: Dartmouth Press, 2000); "Noble Cause Corruption in Policing Revisited", in P. Villiers and R. Adlam (eds.), *A Safe, Just and Tolerant Society: Police Virtue Rediscovered* (Winchester: Waterside Press, 2004); "Human Rights and the Institution of the Police", in T. Campbell and Seumas Miller (eds.), *Human Rights and the Moral Responsibilities of Corporate and Public Sector Organisations* (Dordrecht: Kluwer, 2004).

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Chapter 1

A Theory of Policing: The Enforcement of Moral Rights

In this chapter, we discuss the relationship between moral rights and the institution of the police.¹ We argue that the protection of moral rights is the central and most important moral purpose of police work, albeit a purpose whose pursuit ought to be constrained by the law. So while police institutions have other important purposes that might not directly involve the protection of moral rights, such as to enforce traffic laws or to enforce the adjudications of courts in relation to disputes between citizens, or indeed themselves to settle disputes between citizens on the streets, or to ensure good order more generally, these turn out to be purposes derived from the more fundamental purpose of protecting moral rights, or they turn out to be (non-derivative) secondary purposes. Thus laws against speeding derive in part from the moral right to life, and the restoring of order at a football match ultimately in large part derives from moral rights to the protection of persons and of property. On the other hand, service of summonses to assist the courts is presumably a secondary purpose of policing.²

It is important to state a number of things at the outset. First, this is a *normative* account of policing, not a *descriptive* account; it is an account of what policing *ought* to be about, not what it has been or is about. Moreover, it is a normative theory of the *institution* of the police, i.e. of the proper ends and distinctive means of the institution of the police. So it is not a theory about specific police methods or strategies; it is not a theory of, so to speak, best practice in policing. Accordingly, we will not here offer detailed arguments in relation to the disputes between “crime-fighter” and “peace-keeper” models of the role of police officers, or between “community-based” policing and “zero-tolerance” policing. That said, a

¹ See the *United Nations Code of Conduct for Law Enforcement Officials*. Most of the articles in this code specify the human rights constraints on police officers. However, Article 1 stresses the duty to protect persons, and the commentary (under c) notes the duty of police to provide aid in times of emergency. An earlier version of the material in the first two sections of this chapter appeared in John Blackler and Seumas Miller, *Police Ethics (Case Studies for Police Managers)* (Canberra: Charles Sturt University, 2000). Another version is to appear in Tom Campbell and Seumas Miller (eds.), *Human Rights and the Moral Responsibilities of Corporate and Public Sector Organisations* (Dordrecht: Kluwer, 2004).

² Naturally we acknowledge that many laws do not derive from moral rights, and also that those that do often do not do so in any straightforward manner.

normative theory of the institution of the police will have important implications for questions of police methods and strategies, though often these will not necessarily be straightforward or obvious. At any rate, such questions are not our concern in this chapter; rather, we take some of them up in later chapters.

Naturally, whether or not a descriptive theory of an institution is warranted depends on empirical facts. Moreover, the falsity of the *descriptive* theory would put pressure on the acceptability of any *normative* theory of institutions. If it turned out that no institution of that kind at any time or place *in fact* involved to any extent the pursuit of the moral good proposed in some normative theory of that institution, then this would make it implausible to claim that the institution, nevertheless, in general *ought* to aim at that good. That said, there is inevitably *some* mismatch or space between normative theory and descriptive theory. It is precisely this space that can and should be occupied by the work of those institutional designers seeking to apply or concretise an adequate normative theory of the institution in question.

Second, we are assuming a particular notion of moral rights. Moral rights are of two kinds. First, there are human rights; moral rights that individuals possess solely by virtue of properties they have as human beings, e.g. the right to life and the right to freedom of thought.³ Second, there are institutional (moral) rights; moral rights that individuals possess in part by virtue of rights-generating properties that they have as human beings, and in part by virtue of their membership of a community or morally legitimate institution, or their occupancy of a morally legitimate institutional role. Thus the right to vote is an institutional right, since it exists in part by virtue of possession of the rights-generating property of autonomy, and in part by virtue of membership of a political community. Again, the right to arrest and detain someone for assault is a moral right possessed by police officers. This right is in part dependent on membership of a morally legitimate police institution, but it is also in part dependent on the human right of the victim not to be assaulted.

Moreover, we are assuming the following properties of moral rights. First, moral rights generate concomitant duties on others, e.g. A's right to life generates a duty on the part of B not to kill A. Second, human rights, but not necessarily institutional moral rights, are justifiably enforceable, e.g. A has a right not to be

³ The intuitive idea is that there are certain properties that individual human beings possess that are at least in part constitutive of their humanity. Naturally there is room for dispute as to what these properties are; indeed, some putative properties might be criteria rather than defining properties. Moreover, while some putative properties, e.g. the capacity to reason, are more salient than others, e.g. the capacity for bodily movement, we do not have a worked-out theory to offer. However, the main point to stress here is that the properties in question are ones that are held to have *moral* value, e.g. individual autonomy or life. This conception is consistent with a view of human beings as essentially social animals. See Seumas Miller, "Individual Autonomy and Sociality", in F. Schmitt (ed.), *Socialising Metaphysics: The Nature of Social Reality* (Lanham, Maryland: Rowman and Littlefield, 2003).

assaulted by B, and if B assaults or attempts to assault A, then B can legitimately be prevented from assaulting A by means of coercion.⁴ Third, bearers of human rights, in particular, do not necessarily have to assert a given human right in order for them to possess it, and for the right to be violated, e.g. an infant may have a right to life even though it does not have the ability to assert it (or for that matter to waive it).

Third, the conception of policing that we are offering is a teleological conception; it is a conception in terms of the ends or goals of policing.⁵ Moreover, it is a teleological conception according to which the most important end or purpose of policing is the protection of moral rights.

Fourth, on the view that we are advocating, while police ought to have as a fundamental purpose the protection of moral rights, their efforts in this regard ought to be constrained by the law. In so far as the law is a constraint – at least in democratic states – then our view accommodates “consent” as a criterion of legitimacy for the police role.⁶ However, on our view legality, and therefore consent, is only one consideration. For we are insisting that police work ought to be guided by moral considerations – namely, moral rights – and not simply by legal considerations. This enables us to avoid the problems besetting theories of policing cast purely in terms of law enforcement, or protection of the State, or even peace-keeping.⁷ Such theories are faced with the obvious problem posed by authoritarian states, or sometimes even democratic states, that enact laws that

⁴ Note that we are here asserting a *normative* conceptual connection between *human* rights and enforcement. We are not making the more familiar (and controversial) claim that for something to be a moral right, it must be able to be enforced. Here it is also useful to distinguish between different orders of rights and duties. For example, the right to life gives rise to the duty not to kill, but also the duty to protect someone from being killed.

⁵ Miller has elaborated a teleological account of institutions in his *Social Action: A Teleological Account* (New York: Cambridge University Press, 2001), Chapter 6.

⁶ We acknowledge that in common law countries the law reflects tradition, and therefore perhaps “consent” in another sense. See John Kleinig, *The Ethics of Policing* (Cambridge: Cambridge University Press, 1996), Chapter 2.

⁷ John Alderson (*Principled Policing*, Winchester: Waterside Press, 1998) at times seems to advocate a view close to the one that we are proposing. However, at other times he seems to be elaborating the view that human rights are merely side constraints on policing, rather than a *raison d'être* for police work. (See especially Chapter 1.) By contrast, John Kleinig (Kleinig, *op. cit.*, p. 27) offers a social peace-keeping theory, and as such is vulnerable to the objection that he leaves the way open for authoritarian policing in the name of social pacification. Naturally Kleinig can qualify the social peace-keeping model by recourse to law. However, the problem is not thereby removed. For a legal system might itself simply be an instrument for authoritarian governmental control – as it was in Nazi Germany. In fact Kleinig qualifies his social peace-keeping account by recourse to democracy (Kleinig, *op. cit.*, p. 28). This still leaves open the possibility of social pacification in the service of the tyranny of the majority. What is called for is the constraint provided by some form of objective morality, e.g. moral rights.

violate human rights, in particular. Consider the police in Nazi Germany, Soviet Russia, or Iraq under Saddam Hussein. These police forces upheld laws that violated the human rights of (respectively) Jews, Soviet citizens, and Iraqi citizens (including Shi'ite Muslims' religious rights). By our lights, the officers in these police forces simultaneously violated human rights, and abrogated their primary professional responsibility as police officers to protect human rights.

Further, we reiterate that on the view that we are advocating, police engaged in the protection of moral rights ought to be constrained by the law, or at least ought to be constrained by laws that embody the will of the community in the sense that: (a) the procedures for generating these laws are more or less universally accepted by the community, e.g. a democratically-elected legislature, and; (b) the content of the laws are at least in large part accepted by the community, e.g. they embody general policies with majority electoral support or reflect the community's moral beliefs.⁸ So we are in part helping ourselves to a broadly contractarian moral constraint on policing, namely the consent of citizens; although by our lights consent is not the *raison d'être* for policing, rather it provides an additional (albeit necessary) condition for the moral legitimacy of police work.⁹ Moreover, we are refraining from providing police with a licence to pursue their (possibly only individually) subjective view of what counts as an enforceable moral right. What counts as an enforceable moral right is an objective matter. Nevertheless, some particular person or group has to specify what are to be taken to be enforceable moral rights and what are not to be so taken; and in our view ultimately this is a decision for the community to make by way of its laws and its democratically-elected government. Here we take it that in a properly constituted democracy, the law embodies the will of the community in the sense adumbrated above. Moreover, we can further distinguish between local, regional and national communities, especially in states that have sub-national elected bodies such as local councils. This enables us to give substance to notions of community-based policing or

⁸ Here we are assuming that large fragments of a legal system can consist of immoral laws, and yet the system remain recognisably a legal system. See Ronald Dworkin's *Law's Empire* (Oxford: Hart Publishing, 1998), p. 101. We are also assuming that for a legal system to express the admittedly problematic notion of the will of the community, it is at least necessary that the overwhelming majority of the community (not just a simple majority) support the content of the system of laws taken as a whole – even if there are a small number of individual laws they do not support – and support the procedures for generating laws, e.g. a democratically-elected legislature. (See Miller, *Social Action*, pp. 141–151.) Finally, we are assuming that the fact that a party or candidate or policy or law secured (directly or indirectly) a majority vote is an important (but not necessarily decisive) consideration in its favour, and a consideration above and beyond the moral weight to be given to the existence of a consensus in relation to the value to be attached to voting as a procedure.

⁹ See Howard Cohen and Michael Feldberg, *Power and Restraint: The Moral Dimension of Policework* (New York: Praeger, 1991), Chapter 2.

partnerships between police and local communities. For at the sub-national level, and especially the local level, it becomes feasible for police to consult and work with communities to address law enforcement issues in a consensual manner.¹⁰

There is a further point to be made here. The law concretises moral rights and the principles governing their enforcement, including human rights as well as institutional moral rights. To this extent, the law is very helpful in terms of guiding police officers and citizens in relation to the way that abstract moral rights and principles apply to specific circumstances. For example, there is a human right to life that can be overridden in accordance with certain moral principles, such as self-defence or defence of the lives of others. However, it is the laws governing the use of deadly force by police officers that provide an explicit and concrete formulation of these moral rights and principles, and thereby prescribe what is to be done or not done by police officers in specific circumstances.

In short, in our view police ought to act principally to protect certain moral rights, those moral rights ought to be enshrined in the law, and the law ought to reflect the will of the community. Should any of these conditions fail to obtain, then there will be problems. If the law and objective (justifiably enforceable) moral rights come apart, or if the law and the will of the community come apart, or if objective moral rights and the will of the community come apart, then the police may well be faced with moral dilemmas. We do not believe that there are neat and easy solutions to all such problems.¹¹ Clearly, if the law and/or the citizenry require the police to *violate* moral rights, then the law and/or the citizenry will be at odds with the fundamental purpose of policing. Accordingly, depending on the circumstances, the police may well be obliged to disobey the law and/or the will of the community. On the other hand, what is the appropriate police response to a citizen violating someone else's objective moral right in a community in which the right is not as a matter of fact enshrined in the law, and the right is not supported by the community? Consider, in this connection, women's rights to (say) education under an extremist fundamentalist religious regime such as the former Taliban regime in Afghanistan.¹² Under such circumstances, an issue arises as to whether police are morally obliged *qua* police officers to *enforce* respect for the moral right

¹⁰ Moreover, community-based policing might reconstitute itself as problem-based policing, and thereby be more effective. See Herman Goldstein, *Problem-Oriented Policing* (New York: McGraw-Hill, 1990), and "Team Policing", in Steven G. Brandl and David E. Barlow (eds.), *Classics of Policing* (Cincinnati, OH: Anderson Publishing Co., 1996), p. 86f.

¹¹ See William C. Heffernan, "The Police and their Rules of Office: An Ethical Analysis", in William C. Heffernan and Timothy Stroup (eds.), *Police Ethics: Hard Choices for Law Enforcement* (New York: John Jay College Press, 1985).

¹² Regarding the role of the religious police of the Taliban in the Department of the Promotion of Virtue and Prevention of Vice, see Ahmed Rashid's *Taliban: The Story of the Afghan Warlords* (London: Pan Books, 2001), Chapter 8.

in question. Again, we suggest that they may well be obliged to intervene to enforce respect for such a moral right.

Normatively speaking then, the protection of fundamental moral rights – specifically *justifiably enforceable* moral rights – is the central and most important purpose of police work. As it happens, there is increasing recourse to human rights legislation, in particular, in the decisions of domestic as well as international courts. This is an interesting development. However, it must also be pointed out that the criminal law in many, if not most, jurisdictions already in effect constitutes human rights legislation. Laws proscribing murder, rape, assault and so on, are essentially laws that protect human rights. So it is clear that whatever the historical importance of a “Statist” conception of human rights – human rights as protections of the individual against the State – such a conception is inadequate as a *general* account of human rights. Human rights, in particular, and moral rights more generally, also exist to protect individual citizens from their fellow citizens, and individual citizens from organisations other than the organisations of the State. Moreover, tort law is also relevant here, e.g. tort law provides for compensation for the unintended infringement of human rights.

In this connection, please note that we do not say that the protection of (legally enshrined, justifiably enforceable) moral rights ought to be the *only* goal of policing; merely that it ought to be the *central and most important* goal, and that other important roles derive from it. Here it is important to note that we are rejecting the dichotomy sometimes offered between police as law enforcers and police as peace-keepers. Both roles are important, but our account shows why they are important. Law enforcement is important mainly because laws embody moral rights. Likewise, peace-keeping is important in large part because disorder typically consists of, or is a prerequisite for, violations of moral rights, including rights to security of person and of property.

Moreover, there are numerous service roles that police play, and ought to continue to play, because they consist of, or facilitate, their central and most important role of protecting moral rights. Consider, in this connection, police assistance in relation to missing persons who might have come in harm’s way, or assisting drunks who might otherwise harm themselves¹³ or be harmed.

Nevertheless, we do not hold that police are, or ought to be, preoccupied with seeing to it that *all* moral rights are secured. Roughly speaking, police are, or ought to be, engaged in moral rights work to the extent to which the moral rights in question are ones that justify and potentially require the use of coercive force for their protection.¹⁴ Some moral rights are not justifiably enforceable, e.g. a wife’s

¹³ Note that on our view there are moral rights to assistance. So a drunk person in danger of (say) collapsing on his way home and freezing to death in the Finnish winter would have a moral right to assistance. Indeed, coercive force might need to be used to prevent such a person from endangering himself.

¹⁴ Though no doubt all *human* rights need protection from time to time.

moral right to the sex her husband promised her when they got married. Other moral rights do not necessarily, or in general, require the use of coercive force for their protection. For example, a physically disabled person might have a moral right to appropriate access to public buildings such as libraries and government offices, and such access might necessitate the provision of sloping paths as opposed to stairs. But the securing of this right for the disabled might call only for action on the part of the local council; there might be no need for the police to be involved.

Here the distinction made by Henry Shue is relevant. Shue distinguishes between three sorts of duties that correlate with what he calls "basic rights".¹⁵ These are the duties to: (a) avoid depriving; (b) protect from deprivation, and; (c) aid the deprived.

In relation to police work, (b) above, the duty to protect from deprivation, is especially salient. Police are typically engaged in protecting someone from being deprived of their right to life, liberty or property. Note that police provision of rights protection is distinctive in part by virtue of police use of, or more often the threat of the use of, coercive force. This is not, of course, to suggest police always or even typically use coercive force, or threaten to use it; rather the claim is that this recourse to coercion is a distinctive and routine feature of policing, and is in some sense "the bottom line" when it comes to realising the proper ends of policing.

At any rate, the account of the institution of the police that we are offering promises to display the distinctive defining features of the institution of the police; namely, its use of coercive force in the service of legally enshrined moral rights. On this account, the institution of the police is quite different from other institutions that are either not principally concerned with moral rights, or that do not necessarily rely on coercion in the service of moral rights. Consider business. Many business organisations do not have the securing of moral rights as a primary purpose; nor should they. On the other hand, moral rights are an important side constraint or stricture on business activity. Now consider welfare institutions. There is a human right to a subsistence living, and aiding the deprived (to use Shue's terminology) is a fundamental purpose of welfare institutions. However, aiding the deprived does not necessarily or routinely involve the use of, or threat of the use of, coercive force. Thus welfare institutions are different in kind from policing institutions.

It might be argued that contemporary military institutions meet our definition of the institution of the police. Consider so-called "humanitarian" armed intervention in places such as Somalia, Bosnia, Rwanda, Kosovo and East Timor. Whether or not each of these armed interventions was principally undertaken to protect human rights is a matter of controversy. At any rate, we make three points in response.

¹⁵ Henry Shue, *Basic Rights* (Princeton: Princeton University Press, 1996), p. 52.

First, the nature and evolution of military and policing institutions is such that the lines have often been blurred between the two. For example, in the British colonies the police historically had a paramilitary role in relation to what was regarded as a hostile population, e.g. the Royal Irish Constabulary. Indeed, according to Richard Hill:

Coercion by army and by police have always been distinguished by differences of degree, rather than kind, and through most of the history of policing there was no clear demarcation between the two interwoven strands of control situated towards the coercive extremity of the control continuum... Historically, constables were generally considered to be a reserve military body for mobilisation by the state in potential or actual emergency; conversely soldiers were frequently called upon to conduct duties generally considered to be of a 'policing' nature.¹⁶

But from this it does not follow that there are not good reasons for a *normative* theory of *contemporary* policing in liberal democracies to make distinctions between the fundamental role of the police and that of the military. Such reasons would include the well-documented and highly problematic character of paramilitary police forces, including in relation to the violation by such forces of individual moral rights, and the tendency for such forces to become simply the instrument of governments rather than the protectors of the rights of the community and the servants of its laws. (We will deal more directly with this issue in Chapter 2.)

Second, while contemporary military forces may undertake humanitarian armed interventions from time to time, this is not, or has not been, their fundamental purpose; rather, national self-defence has avowedly been their purpose.

Third, to the extent that military institutions do in fact take on the role of human rights protection by means of the use of coercive force, then they are being assimilated to police institutions. It is no accident that recent humanitarian armed interventions are referred to as episodes of "international *policing*."

There are some other objections to our account of the institution of the police. We try to deal with the most important of these later on in this chapter. In the following section of the chapter, we offer a brief account of moral rights and the cognate notion of social norms. In the section after that, we present our theory of policing as the protection of legally enshrined moral rights by means of coercive force. In the final section, we deal with some residual issues arising from the use of harmful methods in policing, including methods that under normal circumstances would themselves constitute human rights violations.

¹⁶ Richard S. Hill, *Policing the Colonial Frontier: The Theory and Practice of Coercive Social and Racial Control in New Zealand, 1767-1867* (Wellington, NZ: Government Printer, 1986), Part One, p. 3.

Moral Rights and Social Norms

Moral rights are a basic moral category; but they are far from being the only moral consideration. Here we note that moral rights comprise a relatively narrow set of moral considerations. There are many moral obligations that are not, and do not derive from, moral rights, e.g. an obligation to assist a friend who is depressed, or not to cheat on one's boyfriend.

The point of human rights is to protect some basic human value or values. On James Griffin's account, human rights arise from the need to protect what he calls "personhood".¹⁷ At the core of his notion of personhood is individual autonomy. Certainly, autonomy is a basic human value protected by a structure of human rights. However, we have some reservations about Griffin's account; specifically, it might turn out to be too narrowly reliant on autonomy. Perhaps the right not to be tortured does not simply derive from a right to autonomy; perhaps it derives, at least in part, from the right not to suffer extreme pain intentionally inflicted by another.¹⁸

Moreover, we want to suggest that there is a coherent notion of individual *identity* that: (a) underpins certain human rights, and; (b) is not reducible to individual liberty or autonomy.

According to the so-called "Stolen Generation Report" commissioned by the Australian government, in the 19th and 20th centuries thousands of aboriginal children were taken from their families by Australian state welfare officials and police and placed in white Australian families or non-indigenous institutions.¹⁹ The official reasons given included that these children were at risk or neglected, and that these white families or institutions could provide better care for the children. The Report disputes the validity of these reasons.

Subsequently, many of these children who are now adults have come forward and expressed moral outrage at what happened to them; evidently the experience profoundly harmed them. It is now widely accepted that this policy was a violation of human rights. Let us accept that this is the case. The question that now arises is: By virtue of what property of parents and their children does this human right exist?

Presumably the right exists by virtue of an acknowledged deep relationship between parents and their children, and between siblings. To simplify, we will

¹⁷ James Griffin, "Human Rights", in Tom Campbell and Seumas Miller (eds.), *Human Rights and the Moral Responsibilities of Corporate and Public Sector Organisations* (Dordrecht: Kluwer, 2004).

¹⁸ This is a point made by Tom Campbell in discussion.

¹⁹ *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (Commonwealth of Australia, 1997).