

# **MORAL ISSUES IN POLICE WORK**

Edited by  
**FREDERICK A. ELLISTON**  
and  
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## Introduction

The police are among the most powerful agents of the state. They can disrupt the daily routines of citizens more than any other public official by deciding who shall be stopped, who shall be detained, who shall be arrested, and who shall go free. Not even the President of the United States has their immediate and direct power over life and death. Yet despite their awesome capacities, until recently they have been studied little by social scientists or philosophers. This book is intended to document, aid and abet the work of analysis now well underway and to enhance the discussions that have begun.

## The Audience

The moral issues that arise in police work affect and are a concern of people of diverse backgrounds, different interests, and orientations.

First, this work is addressed to police officers themselves. The recent debate over the quality of police education reflects their legitimate aspirations for professional status and recognition. But there is more to being a professional police officer than a college degree plus 240 hours of training. Professionals possess not only what sociologists call "dangerous knowledge," but the moral insights into when and how to use it. Without the latter one is a mere technician. For example, a good doctor must possess the medical knowledge and surgical skill to perform complex operations and the ability to make difficult judgments about whether an operation is necessary, justified, or desirable. When to perform an abortion or when to permit euthanasia are questions that cannot be decided on the basis of technology and technique alone. Human values are woven into the fabric of a doctor's professional life.

So, too, the police must have not only the skill to shoot accurately, but the intellectual and moral abilities to decide when to exercise that skill. They must not only know how to store and access information on a computer, but when it is appropriate to share that information with another public or private agency. Value judgments are integral to professional life, and the ability to make reasoned and informed choices among conflicting values is a vital skill for professional survival.

For police academy instructors, ethics is another tool to build the character a good cop needs. The virtues, which have recently become philosophically fashionable, are seldom more important to society than in the guardians of the state. Police ethics reemphasizes the significance of honesty, loyalty, integrity, and obedience. Indeed, such virtues are more than useful: in many situations they are a matter of life and death.

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Police ethics is also necessary for effective police administration. A police chief must set and implement policy, taking into consideration the requirements of law, the traditions of his department, the changing attitudes of the community, the preferences and concerns of local politicians, and the dictates of his own conscience. Moral reasoning enables him to navigate among these complementary and sometimes conflicting principles, to identify the fundamental values at stake, and to assess the arguments put forth from different quarters.

Police ethics is most visibly, but not necessarily most critically, a concern of academics. Those who study police officers quickly realize their largely unsupervised and unstructured discretion. Given an officer's latitude in decision-making, his or her personal, departmental, professional, and social values become determinative. Part of the task of social scientists is to analyze the value systems of change agents in the criminal justice system.

Some researchers insist that their task is simply to describe and explain. In the name of science they believe they can and should remain neutral and that their own values, personal and professional, play no role. But insofar as they seek to describe accurately and understand completely, some values--scientific and epistemological--obviously come into play. In the shape of verifiable generalizations that form a coherent whole, social researchers seek the truth about police work. The value of truth animates and directs their inquiries.

Moreover, in studying the police, where illegality and immorality are witnessed constantly, social scientists may be forced to consider other values. They may be forced to weigh their duties as researchers against their legal obligations as citizens and their moral obligations as human beings. What should a researcher do during a field observation study of domestic violence if she sees a police officer, caught by the tensions of a family quarrel, attack a distraught husband who challenged his authority? How should a researcher respond to a subpoena to provide testimony gathered under a commitment of confidentiality? Should an experiment to test the effectiveness of preventive patrol be stopped if preliminary findings indicate the random allocation of police cars is placing members of one community at significant risk? Strictly speaking these are not issues in police ethics, but ethical questions in the interface between policing and police science. Yet they point to a common ground between police ethics and social science research.

A second group of academics are philosophers. What does police ethics mean to them? For the moral philosopher, police ethics can call into question standard ethical precepts and provide a wealth of examples to test moral principles. That we should not intentionally harm others borders on a moral platitude, yet it is challenged when a police officer incarcerates a prostitute or

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warns a fleeing felon to stop or he will shoot. The justification of police harms, prior to adjudication in a courtroom, raises fundamental questions of distributive, retributive, and procedural justice. A moral philosopher placed in a position of having to make a decision whether to shoot a fleeing robber, whether to conduct an undercover operation on stolen appliances, or whether to share confidential information about a heroine addict with maternity hospital staff appreciates not just the drama of police work, but the tensions of concrete moral decision and the viability of commonly shared principles of conduct.

For those in professional ethics, the study of moral issues in police work promises to break new ground with instructive comparisons across professions. From earlier work in bioethics we can appreciate how simplistic and misleading the notion of applied philosophy is: taking standard ethical principles or theories, such as utilitarianism, and plugging in the specific problems of a profession has not proven fruitful in capturing the complexities and nuances of the values at stake. A first difficulty is targeting the moral issues. In the classroom an ethical problem comes clearly labeled in a text, but in live situations it is often overladden with other meanings. What for the police administrator is a personnel problem may be a political problem for the city council and a moral problem in affirmative action for the philosopher. Police ethics first creates a challenge to identify the important moral problems. Once identified, the problems require an unbiased characterization. The very definition of the problem is all too easily biased in favor of one perspective or outcome. An accurate statement requires sensitivity to the competing viewpoints and careful assessment of its seriousness, scope, and implications.

The primary tools of the philosophers' trade are logic, reason, and finely honed theoretical terms. What can be accomplished by bringing them to bear on the moral issues in police work? The series by the Hastings Center on the teaching of ethics in higher education provides a convenient point of departure for identifying four objectives. The first goal of police ethics can be to sensitize line officers and upper-level administrators to the moral dimensions of their work. Typically, they approach problems as legal, political, economic, institutional, or personal. In contrast to all these, philosophers need to teach them the moral point of view. Second, police ethics can teach the language of morals. "Right" and "wrong" are not just legal terms but moral terms, too, and their meanings need to be carefully delineated and sharpened by contrast with everyday discourse. Third, teaching police ethics can help identify and appraise moral arguments and articulate principles for clear moral reasoning. Not only do the canons of formal and informal logic need to be stated and explained, but the fundamental principles of alternative ethical frameworks, as well. And, fourth and finally, police ethics can

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unravel complex moral issues and locate an optimal solution grounded in an ethical theory and social analysis of the role of the police in a democratic society.

The study of moral issues in police work can also make a contribution to the philosophy of law. By illustrating the law in action as opposed to the law on the books, philosophers can come to see the behavioral difference to different laws and legal systems. How does a weakening of the exclusionary rule to allow the admission of evidence gathered in good faith efforts affect the behavior of the police and its impact on suspects? The empirical data can shed light on the significance of theoretical debates in the philosophy of law. The study of police behavior enriches our conception of the law and its affect on the lives of citizens.

Finally, police ethics is and should be a concern to the public at large. As taxpayers they support the police and, indirectly, all that they do. Through their elected representatives they typically have a say in the policies of police departments. And more directly as victims, violators, or suspects, they suffer the consequences of police conduct and misconduct. Understanding the moral issues in police work enables the public to support more enlightened policies, advocate reform measures more persuasively, and criticize outdated or inefficient practices more intelligently.

### Approaches to Police Ethics

Several approaches can be taken to police ethics, and these are ably illustrated by the literature to date. One early but still prevalent approach is that of the moral administrator as illustrated by the police officer's code of conduct. It enjoins officers to be honest and fair in all their dealings with citizens, fellow officers, and superiors. But it does little to reconcile conflicts among these demands and exhortations. Nor does it provide moral guidance when the law or departmental regulations are ambiguous, contradictory, or in flux.

A second approach is that of the armchair philosopher. With little or no knowledge of everyday police work, and only the light of pure, unadulterated reason as a guide, he provides detailed explanations of what the police are for. Such metaphysical speculations on the policeman, his nature, and his duties reveal more about the philosophers' preconceptions and occasional encounters with the law than the realities of police work. Fortunately, we have advanced significantly beyond these two approaches. Today the field is rich with informed and reasoned analyses.

A third approach could be termed "humanistic social science" as illustrated by William Ker Muir's Police: Street-Corner



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Politicians. The ethics of police work emerges out of the ethos of the police culture merging with each officer's history, personality and position. Muir constructs a rigorous typography of styles of policing such as the enforcer or the avoider. He captures and schematizes the moral values that the police act on in everyday encounters with citizens. But the success of this approach, namely its richly nuanced descriptions, is also its shortcoming: How are we to decide among these different styles? Answering this question requires moving beyond the social sciences into philosophy.

Three philosophical approaches have been tried to date. The first adopts the standpoint of the philosophy of law. For example, an analogy between deadly force and capital punishment can serve to illuminate the factors to be weighed in an ethical analysis of police killings. The law and the literature in the philosophy of law provide a basis for analyzing law enforcement practices.

The second approach draws on social and political philosophy. Here the police are seen as one institution in our society, a public agency, whose governing principles and mission compare to other state organizations. Just as affirmative action is a practice in private and public organizations whose moral grounds can be questioned, so too the preferential treatment of women and minorities in police hiring and promotion can be subject to moral scrutiny.

The third philosophical approach is that of moral philosophy. One judges police conduct and practices according to well-established ethical principles and precepts. So, if it is generally wrong to lie, then it is wrong for a police officer to lie on the witness stand. Or if it is permissible to shoot in self-defense, then it is permissible for a police officer to shoot an armed robber who is attacking him.

One other approach deserves to be mentioned although it has not been tried to date: reasoning by analogy with other professions. The extensive literature in bioethics, business ethics, and legal ethics invites fruitful comparisons on questions of whistleblowing, truth-telling, or confidentiality. At the very least this approach would identify neglected issues that merit attention. For example, the distribution of scarce medical resources has been much debated in bioethics and the structure of the arguments and counterarguments delineated. But the proper and just distribution of scarce police resources has never been argued by a philosopher. If the argument by analogy succeeded, it might sharpen our perception of the moral issues in police work and the operative principles and moral considerations.

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### The Rise of Police Ethics

Before a field can be established, a core of materials needs to be created. Once a critical mass is reached, sustained dialogue and argumentation are possible. The summer of 1984 marks the 15th birthday of the founding of the Hastings Center and the coming of age of bioethics. Some excellent texts have been published in the philosophy of medicine that demarcate the issues and advance debate on them. Research tools have been developed, such as the Encyclopedia of Bioethics and useful data bases and bibliographies. The Hastings Report serves as a convenient conduit for disseminating information within a community of teachers, scholars, and researchers.

By contrast police ethics is still in its infancy. Five conferences have been held over the past ten years that examine value conflicts in law enforcement. The first took place in the mid-'70s: with a grant from the National Endowment for the Humanities Emilio Viano and Jeffrey Reiman brought together humanists not only from philosophy, but history, literature, and the humanistic social sciences. They edited the proceedings as The Police in Society. The field was then only vaguely defined, key issues had not yet been targeted, and philosophers drew mainly on their personal experiences or the history of philosophy.

The second conference, codirected by Norman Bowie and Frederick Elliston, took place five years later at the University of Delaware's Center for the Study of Values. It was the first conference to bring together criminal justice administrators, criminologists, and philosophers. Major presentations were edited for publication as Ethics, Public Policy and Criminal Justice. The more visible and controversial issues in police work, such as deadly force and affirmative action, began to receive attention.

In the fall of 1981, Michael Feldberg and Frederick Elliston organized the first conference that attempted to address comprehensively the full array of moral issues in police work, and to do so in such a way as to involve philosophers, police scientists, and police administrators. The essays in this volume are the fruits of their labors.

As a sign that the Zeitgeist or spirit of the times was afoot, the following spring two conferences were held. The first, aptly entitled Ethics and the Police, took place at Old Dominion University in Norfolk, Virginia, in the spring of 1982. It was followed the same month by a conference at John Jay College of Criminal Justice. Proceedings from the last, Police Ethics: Hard Choices in Law Enforcement, were edited by Timothy Stroup and William Heffernan for publication this year.

One other meeting deserves mention. In February of 1981, the Hastings Center brought together many individuals teaching police science and concerned about value questions or teaching the philosophy of law or professional ethics with a special interest in

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the police. Their efforts nurtured the field, and the monograph they published, Teaching Ethics in Criminal Justice, by Lawrence Sherman, located it within crime-related education.

No conferences on police ethics have taken place since then. Some may take this as a sign that the field is dormant or declining, but the inference would be erroneous. Ethics has become an integral component of the annual meetings of the two major associations in criminology and criminal justice: the Academy of Criminal Justice Sciences (ACJS) and the American Society of Criminologists (ASC). Indeed, the last meeting of the ACJS included four panels on ethical issues in criminal justice, and Grant Stitt of Michigan State University and James Fyfe of American University are organizing panels for next year's meeting. Significantly, the American Philosophical Association (APA) has never scheduled a panel on police ethics at any of its three annual meetings. Police scientists are more concerned with ethics than philosophers are with the police.

Conference presentations and the ensuing publications have created a body of literature on which police ethics as a discipline can grow. The four conference proceedings constitute ample material for courses and research. Their publication in 1984 marks the creation of the critical mass for scholarship and research.

### The Literature

In the bibliography at the end of this volume, we have listed works we believe will be useful to teachers and scholars. The collection of essays by Carl Klockars, Thinking About Police, is especially informative about the many aspects of police work. On more limited topics, Abscam Ethics is noteworthy, as is Gary Marx's forthcoming book on undercover work. So too are the publications on deadly force and women on patrol by the Police Foundation. For a discussion of issues that arise in research on the police, readers may consult William Geller's Who Runs the Police, Who Should?, forthcoming from the American Bar Foundation. Those who prefer a case-study approach to teaching ethics might want to use Human Relations and Police Work by Larry Miller and Michael Braswell, as well as the instructor's guide.

Just as the Hastings Report keeps those in bioethics abreast of developments, Criminal Justice Ethics serves as a central clearinghouse on recent events and provides comprehensive reviews of the literature. Its editor, William Heffernan, also serves as the director of the Institute for Criminal Justice Ethics at John Jay College.

In addition to the conferences described above, there has been one major research project on police ethics. In 1979 the Police Foundation received an award from the National Endowment for the Humanities to conduct a survey of curricular materials. The re-

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sults are now available from the Police Foundation as a four part monograph covering The Police in the Western Tradition; A Guide to Audio-Visual Aids; The Police, the Law and the Courts; and a Police Ethics Directory. The first contains a short synopsis of writings by philosophers on law enforcement and policing from Plato to the present. The second lists films on topics like deadly force, affirmative action, and community relations. The third provides a citation and abstract for major court cases, and the last lists comprehensively the individuals, organizations, and research tools.

### The Prospects for Police Ethics

Future work in the area of police ethics can take several forms: more interaction on issues already identified; work on new issues that have not yet engaged the attention of philosophers; breaking new ground between philosophy and the police; and developing new models for conducting work on philosophy and the police.

To date the issue that has attracted the most attention from philosophers is deadly force, and not surprisingly. For deadly force is one of the most visible, compelling, and consequential police practices. Philosophers Applebaum, Elliston, Reiman, and Wertheimer have written on it and brought the discussion to the point of an informed, well-reasoned debate largely about the rationale rather than the policy. Yet since the average police officer discharges his gun less than once every ten years, their concern does not reflect those of on-duty officers. For the cop on the beat, discretion in the use of force is a less dramatic but more familiar concern. Over the coming years a comparable philosophical debate may emerge on affirmative action, privacy, the use of computers, weaponry, and undercover work. These are public and professional issues that are urgent, problematic, and deserving of careful elucidation.

One important but neglected issue was already mentioned: the distribution of scarce police resources. Much has been written in bioethics about which patient should get the one and only kidney dialysis machine. The problem appears straightforward, people can easily identify with it, and difficult questions of fairness can easily be generated from few medical facts or patient's histories. This case is well suited for discussion because it can be easily adapted to raise principles of distributive justice based on need, utility, or equality.

Yet nothing comparable has been written by a philosopher on the proper allocation of police resources. If the community erroneously believes preventive patrol or a neighborhood station will make them safer in their homes, what should a police administration do? Feeling safer, even if one is not, is arguably better for a community. In part, such problems reflect that public's

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lack of knowledge, but they also reflect difficult moral dilemmas for policy-makers.

Philosophers have written on whistleblowing, discretion, computers, and unionization. But no philosopher has written on police corruption, although it is no doubt just a matter of time. Nor have they written on the right to strike, although that too may happen. Their selection of topics is affected by the tools they have available, the visibility of the issues, their personal experiences with the police, and their estimate of the contribution they can make to the field.

Curiously, some areas of overlap between philosophy and the police have not been broached at all. No philosopher of science has written on criminological theory, nor the empirical research in police science. The omission is puzzling inasmuch as the scientific study of policing over the past 15 years is ample grist for the mill of the philosopher of social science.

A second major gap is historical. While very little has been written by major philosophers in the Western tradition on the police, there are a few notable exceptions. After Plato's guardians in the Republic, one must leap almost 2,000 years through time to Fichte's Science of Rights to find an equally sustained discussion of the police. Yet as the monograph The Police in the Western Tradition documents, suggestive and occasionally insightful remarks are scattered throughout major and minor texts by Aquinas, Locke, Berkeley, Hume, Smith, Rousseau, Montesquieu, Bacon, Kant, Hegel, Green, Collingwood, Russell, and Santayana. Some historian of philosophy may yet attempt to analyze, schematize, and thematize them.

Plato had a dream that philosophers would become kings or that the kings would become philosophical. He sought the union of political power and enlightenment. More than two millenia later, we have made precious little progress toward enlightening the guardians of the state. With the rise of police ethics, we have an opportunity to make that dream real. We have an opportunity to sensitize the officers of the state to the moral values and principles in their daily work.

Philosophers must have the courage to test their theories against the harsh reality facing the cop on the beat. For both it is an exciting and trying venture, but one we can ill afford to forego. Unenlightened guardians become demagogues and a threat to the civil liberties of all. Philosophy is certainly no panacea for the problems of today's guardians of law and order. Yet it can be a catalyst in a critical discussion that illuminates one path to doing justice.

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### Postscript

God's faithful servant stood quietly on the ground as the storm clouds began to darken the sky. As the winds rose and the sun disappeared, he could hear the sound of distant thunder. An impenetrable night gradually descended until it hid everything around him. Suddenly a deafening clap burst just above him. He turned his head upwards and said sternly: What we need down here, Lord, is a little less noise and a little more light!

As the 1984 Olympics begin, this book is dedicated to the bearers of light.

Chicago, Illinois  
1984.

PART ONE  
AUTHORITY, DISCRETION, AND THE POLICE FUNCTION

The essays in this section address a basic but complex issue: what are the police authorized to do, and what is the proper way for them to do it? In a formal sense the police are authorized to enforce the law, and only to enforce the law. More specifically, they are required to enforce the law at all times and in every case. Yet there are so many laws, and so many violations of them, that the police are compelled to set priorities about which laws to enforce and which violations to overlook. In this sense, the police are given discretion in their role as law enforcers to choose from several options regarding how and when to enforce particular laws.

In addition, we all know from experience that the police do many more things than simply enforce the law. As a service agency, they are responsible for maintaining the public peace and order. Thus, we see them giving first aid to victims at accident scenes, offering directions to strangers who are lost, guarding school crossings, directing traffic at parades and athletic events, and escorting dignitaries and celebrities. These service and order-maintenance functions also require the police to exercise a wide range of discretion, both in what functions to perform and how to perform them. Discretion, then, means that the police must not only choose which ends they will pursue--law enforcement or order maintenance--but which means they will employ to achieve them.

The problem of discretion in the exercise of authority is the problem of good judgment, and in this sense discretion poses ethical dilemmas for the police. Officers have to ask themselves whether their choices are influenced by prejudice or hostile personal feelings toward some individuals or members of a group; whether their actions are motivated by a sense of duty, personal gain or mere convenience. In each decision to enforce a law or restore order an officer must carefully avoid injuring anyone's rights, or at least not violate one set of rights to protect less basic rights.

Then there is the issue of fairness. If two officers handle two offenders in different ways, they may be committing an injustice. For example, if one speeder is arrested and another only given a warning, the one who was arrested can claim to have been treated unfairly. Since treating similarly situated people in similar ways is one of the criteria of justice, use of discretion by police officers allows the possibility of inconsistent, unequal, and unjust treatment of citizens. Because discretion can lead to unjust or unequal treatment, police administrators are often unwilling to admit that their officers ever use discretion, at least with departmental permission.

One way to eliminate inconsistencies in the use of discretion is to narrow its use and to require all police officers to en-

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force all laws equally, regardless of the intent or impact of the offense. But to require such strict enforcement without any latitude would be to violate another aspect of justice: to accord each individual what he or she deserves. To return to the speeding example, what if the arrested speeder were simply out joyriding or trying to impress his friends, while the one who received the warning was rushing a sick child to a doctor's office? Would it be fair to arrest both? In cases like these, discretion can be a police officer's means for doing justice by adapting the law to the contingencies of particular circumstances.

The essays in this section attempt to solve some of the dilemmas of discretion (a) by establishing a basis for the use of discretion in the nature of police authority and (b) by specifying limits on the use of discretion that do not force the police to treat citizens unfairly or unjustly. They share some principles and perceptions: (a) that the police have a special moral responsibility because they are authorized to use force and to harm unwilling or uncooperative citizens, and (b) that the responsibilities of the police include solving problems and providing services as well as enforcing the law. Each of these essays finds authority for police discretion in the public acceptance or public expectations of what the police ought to do. The authors are concerned with this perceived legitimacy of police authority because it explains why the police are able to do many things not explicitly authorized or required by written law. For police discretion to be widely accepted, its social legitimacy is more important than its strict legality. But police behavior will continue to generate public acceptance only as long as it is wise, just, and prudent.

In the first essay in Part One, sociologist Egon Bittner boldly asserts that "The role of the police is to address all sorts of human problems when and insofar as their solutions do or may possibly require force at the point of their occurrence." According to Bittner, the public expects the police to intervene in their problems so that things do not get worse. Such expectations by the public grant the police a wide range of latitude in choosing one or another method to solve problems, methods that may range from making their presence felt in a firm but gentle manner to the threat of force, even deadly force.

Bittner's conception of the police as problem-solvers defines the police role but sets no limits on their discretion or authority. Philosopher Howard Cohen, by contrast, seeks the limits of police authority in the broader context of social authority--the authorization by society for some social agency or agent to intervene in a situation. Thus the authority of the police to assist at an accident scene or to remove an abused child from a home does not derive simply from the fact, as Bittner would have it, that something needs to be done, but from a consensus that these are the kinds of problems in which society has a right to inter-



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vene. As general problem-solvers and social agents, the police have discretion to act as "stand-in" authorities in society's name until a more-qualified person (doctor, fireman, or social worker) arrives.

Police-administrator-turned-philosopher Wayne Hanewicz seeks the source and limits of police discretion in the psychological concept of "closure": people's desire to bring a satisfactory conclusion to an unsatisfactory encounter. Hanewicz's standard for "good" police work is the optimization of outcomes for the parties to a dispute. Like Bittner, Hanewicz is less concerned with legal constraints on the police and more concerned with their effectiveness, as long as their actions are morally defensible. Like Cohen he seeks a source of public legitimation for police action. Yet his working experience in police work injects a tone of diminished expectations: the police cannot satisfy everyone completely, but must negotiate compromises for the situations in which they are asked to intervene.

Finally, sociologist Carl Klockars asks us to consider an extreme situation in which the police must solve a problem for which there is no authorized solution. This dilemma Klockars labels a "Dirty Harry problem," a situation in which the ends of police work are good but can be achieved only by "dirty" or prohibited (in this case unconstitutional) means. Klockar's solution is that officers be willing to employ dirty means in pursuit of good ends and also be willing to be punished for violating regulations, laws, or constitutional limitations. He claims that such use of "dirty means" satisfies the public's expectations, even if it is illegal. He places in a precarious balance the public's acceptance of police actions and strict adherence to the limits of the law. Which should outweigh the other is a difficult choice not just for the police and police administrators, but for their critics and concerned citizens generally.