Chapter 4. Human Rights and Police Ethics

(A) PREDICAMENTS OF POLICING

Policing can be extremely difficult and demanding – emotionally, intellectually and physically. In practising their craft and profession police can experience personal danger and discomfort, and severe trauma and anxiety. Furthermore, the sheer moral complexity of life itself is reflected in, and perhaps magnified by, the nature of police work, the demands that it makes on police officials and the costs to them of undertaking it.

Police are required to respond with restraint to physical attacks on their persons; they are required to respond dispassionately and compassionately to the immediate effects of serious criminality on victims; they experience the frustrations of being unable to deliver to justice the authors of shocking crimes; and they are subject to pressure from society, the news media, and from politicians to obtain results. In the case of really atrocious crimes, or where there is serious public concern about levels of criminality, or where ‘law and order’ has become or has been made an issue of party politics this pressure can be such that police feel they are entitled, or perhaps even required, to adopt unlawful and inhumane methods. Furthermore people engaged in organised crime, or certain types of financial criminality, have at their disposal vast sums of money that can be, and at times is, used to corrupt police.

These are some of the factors that combine to confront individual police officials with a variety of ethical problems and dilemmas. They are factors that create or reinforce a sub-culture that can be inimical to human rights and the rule of law, a sub-culture that can be comfortable with the absurd and sinister notion of ‘noble cause corruption’- law breaking for the purposes of law enforcement. They derive from the nature of the police task, and the nature of police organisations and their relationship to political systems and the societies within which they function, all matters referred to in the preceding two chapters.

Almost all of the ethical problems and ethical dilemmas that confront police can be resolved by reference to the legal rules and administrative guidelines applicable in a given situation, and by complying with those rules and guidelines. However given the factors referred to above, and these are by no means all of the significant factors, it is unsurprising that police do not, as a matter of course, respect the law. Moreover, the law can be unclear and it can be silent on some of the most intractable problems with which police are required to deal.

What is required then, is a means of reinforcing the law, a means of encouraging police to respect the law even when the reasons for not doing so appear to be very strong indeed. What is also required is a source of reference for police to consult when the law is inadequate or silent, or when they are required to exercise discretion in the course of their duties, or, conversely, when they have no choice but to carry out their professional duty.
This latter point is of great significance in policing, for police are probably more aware than practitioners of other crafts or professions that sometimes in doing their professional duty they have no choice, except perhaps in their attitude and in the method they adopt, but to carry out their duty.

Consider, for example, the situation of police required to respond to crime and disorder in a society where they feel, with some justification, that over-reliance is being placed on oppression and repression, and that other necessary measures in the realms of social and penal policy are not being taken. They may feel compelled to call for a more complete range of responses to crime and social tension but this would almost certainly put at risk their efforts to remain non-partisan and politically neutral. They may be able to implement some preventive strategies that take into account the wider causes of crime and disorder, but these would remain relatively ineffective within the prevailing social and political context.

Whatever they may feel about the situation within which they are required to operate, the duty of the police is to deal with criminality and disorder regardless of its causes, and in spite of any unsound or misconceived government policies that may be introduced. In such a situation the obligation on police to act lawfully and humanely is very high indeed if social injustice is not to be compounded by judicial and penal injustice.

(B) THE ETHICS OF POLICING

Reflections of this nature, wherever else they may lead, steer us to the discipline of moral philosophy, that branch of philosophy concerned with ethics. Primarily this is the study of morals in human conduct but it also, more specifically, addresses the rules of conduct appropriate to a particular profession or area of life. It is interesting to note, in this respect, that the Explanatory Memorandum to the European Code of Police Ethics states that, in the context of the Code, the word ethics “refers to that body of principled requirements and prescriptions that is deemed fit to regulate the conduct of the occupation. It is important to note that ethics in this sense represents an attempt to apply everyday ethics to the specialist demands and dilemmas of public organisations. It is in this sense that ‘ethics’ is used in ‘The European Code of Police Ethics’.” The study and development of ethical theory and the difficult process of applying it to practical work are the functions of philosophers. The ethics of policing is expertly and cogently elucidated in other publications by philosophical scholars.56