

**POLICE ETHICS AND
THE JEWISH TRADITION**

ABOUT THE AUTHOR

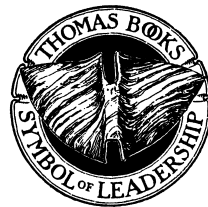
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POLICE ETHICS AND THE JEWISH TRADITION

By

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For All the Good Cops I Have Known.

PREFACE

Over the last half century cultural diversity has emerged as an ever more salient fact of American life. Further, there has been increasing interest in the possibilities of productive and creative conversation among the diverse elements of American society. One cultural element may serve to enrich and enhance another. This brief book is one result of the enormous possibilities of cultural diversity and the idea that one part of the cultural mix may have something to say about another, and entirely different, part of it. Thus it is suggested that Jewish tradition, which developed in the Middle East and Europe over many centuries, understood as a cultural tradition which may be usefully discussed without reference to its theological bases, may add something to considerations of police ethics, a very modern and practical area of secular philosophical discourse that explores the ethical problems that beset law enforcement officers in the discharge of their sworn duties and the qualities of character that law enforcement demands.

This work is divided into five chapters and a brief appendix. The first chapter sketches the background of the work, its purpose and focus. There are sections on both the term *Jewish tradition*, in the sense it is used here, and on police culture and the role of ethics in it. This chapter also describes the methodology employed to bring the two clearly disparate elements into contact: the transposition of ideas or concepts. The second chapter treats the substantive matter of group loyalty characteristic of police culture. Indeed loyalty is not merely expected in the police world, it is demanded. The Jewish concept of group loyalty is examined in order to determine what, if any, implications it may have for the concept of loyalty in a modern police force. The next chapter takes up the matter of bribery and gratuities. Although Jewish tradition roundly condemns bribery in any form and

in any degree, there is not necessarily the same negative view of gratuities if they are defined and delimited. The final substantive chapter deals with the thorny matter of deception in police work. Jewish tradition requires honesty and probity among people, yet what if one is dealing with a criminal suspect whose behavior has already shown him to be dishonest and deceitful? Jewish tradition presents possible rationale for approaching persons whose activities demonstrate they are not among the decent and law-abiding of society. There is also some discussion of deception in courtroom testimony and the attitude of Jewish tradition toward such deceit. The summary chapter reviews the various concepts and perspectives that have been introduced; the appendix deals with Jewish tradition and the Lockean theory of social contract, which ultimately provides the philosophical justification for the concept of policing in a modern free society.

This work is unique; it breaks new ground. It may perhaps enhance and expand the discussion of police ethics; it is at least a new voice on the subject. It will certainly be of interest to clergy, particularly clergy who serve as law enforcement chaplains and to students of the Jewish tradition. Police managers and administrators may find something worthwhile to consider in it, as may police ethicists.

This book is the result of years of experience working with police officers of all ranks, and of all races, religions, and points of view—and all shades of moral rectitude. No claim is made that the suggestions noted here or the ideas advanced will resolve moral problems and steer officers to the straight and narrow path, but something in it may help illuminate at least a provisional answer to some difficulty. One idea may spark another and something good may come of it. So it is hoped. That is why it is dedicated to *all the good cops I have known*.

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Professor John Kleinig of the John Jay College of Criminal Justice has been a friend and mentor throughout the preparation of this work. He was ever available to consult and advise and is always a most gracious friend. I am much in his debt for many penetrating and useful comments that have improved this monograph immeasurably.

I am also indebted to Prof. David Ellenson, President of the Hebrew Union College–Jewish Institute of Religion; Commander William McSweeney, Los Angeles County Sheriffs Department; Prof. Steven Resnicoff, De Paul University College of Law; Garrett W. Zimmon, Chief, San Bernardino, California Police Department; Sgt. Craig Hungler, Dublin, Ohio Police Department; Chaplain Jack Poe, Oklahoma City, Oklahoma Police Department; Chaplain James Wieging, River Rouge, Michigan, Federal Bureau of Investigation; and Ms. Sarah Hronsky, who all read the first draft of this monograph and offered very useful suggestions. The remaining errors of omission and commission herein, and any other faults, are my responsibility.

I also wish to acknowledge the excellent research assistance I received from Ms. Linda Bertenthal and Mr. Jordan Friedman. They were invaluable helpers all along the line. I am especially grateful to Mr. Anthony W. Spearman, Jr. whose patient care with preparation of the manuscript has been monumental.

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Chapter 1

INTRODUCTION

1.1 PURPOSE AND SCOPE

This study will attempt to view various problems in the field of police ethics and integrity against the backdrop of traditional Jewish legal and narrative materials. No other inquiry of this type exists; in fact the meager bibliography on police and policing in Jewish materials, except for a few brief articles, virtually never touches upon any substantive tactical, operational, or administrative aspects of actual police work and there is nothing at all on the ethical implication of law enforcement or the ethical principles that are involved in it.¹ There

1. The bibliography of studies or articles on policing in Jewish sources and materials is very sparse indeed. *The Jewish Law Bibliography of Sources* in English by P. H. Weisbard and D. Schonberg (Littleton, CO: Rothman, 1989) does not contain a specific entry on police or law enforcement. Nachum Rakover's *Multi-Language Bibliography on Jewish Law* (Jerusalem: Jewish Legal Heritage Society, 1990) offers six references out of a total of 14,911 on all subjects: two are encyclopedia articles, three are well over a century old, and one is an article by the present author. The same compiler's Hebrew bibliography, *Otzar Hamishpat* (Jerusalem: Harry Fischel Institute, 1975) has seven entries out of a total of 12,098 on all subjects: three of them concern police work and Sabbath observance; one is an encyclopedia article; one is a discussion of the organizational position of police force in Jewish law; and two articles—one short and one rather extensive—concern police work in the light of Jewish law. Part Two of the Rakover Hebrew bibliography, published by the Jewish Legal Heritage Society (Jerusalem, 1990), containing 8,965 entries, adds nine more citations: one encyclopedia article; three on police work and Sabbath observance; one on police work in very general terms; one on “historical glimpses of police activity” in Jewish sources; one on the use of firearms to dispense terrorist demonstrations; and two very brief articles on the meaning of the phrase “police officer” and the officer's general duties. The material noted in Part Two is of course the more recent. A review of the books and articles, etc. in the field of Jewish law since 1990 does not disclose any fresh material on policing or police ethics except as noted below in this note.

Among the very few items that examine some operational or tactical aspects of police work are my “The Use of Excessive Force by a Police Officer,” *Jewish Law Association Studies*, I: 1985; “Reflections of Reasonable Cause in the Halakkah,” *Jewish Law Association Studies*, VI: 1992; and “The Rabbinic Law on Entry and Seizure,” *Jewish Law Association Studies*, XI: 1994. The bibliography in languages other than English, for the most part, includes rather semi-popular essays, anti-

are reasons why these two subjects have not been considered together and those reasons will be suggested in due course.

Any work that breaks new ground, as this one does, must have a clear focus. The articulation of that focus is the first consideration. The focus here is on specific problems in police ethics and what the Jewish tradition may or may not contribute to the discussion of them. Two questions are implicit. First, does the Jewish tradition present ideas, values, or concepts that are pertinent to, or in harmony with, specific areas of modern law enforcement ethics, and second does Jewish tradition suggest a perspective that offers scope for useful discussion of a specific topic in law enforcement ethics. Section by section, the focus is on presenting some problem or position in law enforcement ethics and the assessment of the Jewish material, which appears relevant to it. That and only that is the focus of this work.

The Jewish materials of course have their own contexts of interpretation both traditional and modern. It is tempting to include the fruits of that scholarship, but that enterprise would expand this work far beyond its present limits and in the long run detract from its narrow focus. The intention here is uncovering for some implication or implications that bear upon an ethical question in policing, not the explication of this or that Jewish legal rule in detail or the probing of this or that rabbinic legend in all its possible facets. The narrow focus adopted here also precludes for practical purposes an inquiry into the nature of law enforcement as it might have existed in Jewish communities of the past. That is clearly a major study in its own right involving analy-

quoted material, or disquisitions on matters of ritual law (the Sabbath) rather than police work as such. Only a very few items come close to presenting any useful material on police work or criminal justice and none broaches the subject of police ethics.

Prof. David Ellenson showed the author a responsum by R. Haim David Halevi which demonstrates that four modern police tasks (crime prevention, crime suppression, detention of criminals for investigation and the preparations of indictments against them, and the guidance of society toward lawful behavior) are all well attested in traditional sources. This essay, published in 1983, escaped the notice of Prof. Rakover in the preparation of Part Two of his *Bibliography*. The text rehearses much of what is contained in other articles. It does not, however, suggest at all that the tradition might have any bearing on the ethics of law enforcement, only that police tasks in society today reflect an ancient and honorable part of Jewish legal tradition. I am indebted to Prof. Ellenson for bringing this responsum to my attention. R. Haim David Halevi, פ' פ' *'Ase Lekha Rav* (Hebrew), part five (Tel Aviv: publisher unknown, 1983) pp. 285–297.

In September, 1998, the Human Resources Department of the Israel Police published a textbook in Hebrew: *Ethics in the Israel Police*. This is a solid introductory work used as a training resource, but it says nothing at all about Jewish sources and materials that may be useful for teaching police ethics.

sis of the structure of those communities and their relationship to non-Jewish host communities over the past 2500 years. As useful as that study might be in developing an understanding of traditional views on law enforcement and perhaps of some matter of ethics, it falls outside the scope of this work.

Further, the present work does not undertake to provide a full review of the state of scholarship in police ethics relevant to the specific subjects that will be addressed. A brief review of the principal schools of thought suffices. Nor does this narrow focus allow excursus into theories of ethics; that is, it precludes examination of the propositions that ground systems of ethics, which are shaped in the context of human interaction, and in turn attempt to shape human behavior. The topic is clearly of interest but beyond the horizons of this inquiry.

By the same token, the various biblical materials cited have attracted a greater or lesser amount of exegesis, interpretation, and commentary over the centuries. This distinguished apparatus is easily accessible, and some reference to it would certainly enhance the understanding of the passages in terms of, e.g., their history or linguistic phenomena or place in biblical literature. The same is true for the rabbinic materials. But all the passages here are cited to demonstrate only one thing and one thing only: their possible implications for specific questions in law enforcement ethics. The surface meaning, the simple meaning, will be sufficient for that purpose. The secondary works on the Bible number in the thousands, but the *Anchor Bible Series* published by Doubleday provides a meticulous scholarly assessment of scriptural material. The old *International Critical Commentary* is still useful as well, and the Soncino Books of the Bible, published by Soncino Press, London, offers a traditional Jewish commentary for English-speaking readers. For those who wish to consult traditional commentary in Hebrew, it goes without saying that the Rabbinic Bible, the *Miqraoth Gedoloth*, and several collections of *midrashim* are available in translation as well as the Babylonian Talmud itself. The *Encyclopaedia Talmudit* (Hebrew) is an extremely useful general source for various rabbinic concepts mentioned. The apparatus of footnotes that is provided here will guide the reader to places where relevant source material or background material is available.

If, however, one is looking for indications of police matters in general or police ethics in particular in any of the secondary literature, except as noted in the first footnote, the search will alas be both long