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Human Rights, Those Who Are Governed and the Legitimacy of Law Enforcement

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Most everyone, if not all of us, wants to be happy. Peace is a common denominator frequently sought. It is human nature to seek security, another word for happiness. Human Rights, as we know, are basic rights and freedoms that inherently belong to every person.

In order to have a stable civilization, to govern and be governed, there must be a sense of legitimacy and trust by those who are governed. Actual legitimacy by policing forces must not only be perceived to be but actually be legitimate and administered according to trust and rule of law, among other considerations.

Social order is not possible without a sense of real legitimacy, compliance, and cooperation. In order to strive for the greater good, society has allowed itself to be policed by consent. In many places around the world this condition is being more openly questioned and challenged.

Factors influencing human rights, civil rights, public trust, and the role of policing must be better understood and properly carried out by law enforcement agencies and the respective (or expected) public partnership involved. Many agencies are now trying to describe anew their roles as guardians as opposed to being known simply as police. A guardian is an ally, someone who watches, protects, and takes appropriate action. Discretion and trust are fundamental and essential to their role. But making a wholesale transition to an active role as *guardian* from that of *police* will not happen quickly. It will require institutionalizing new learning fundamentals, training, partnerships, understanding, policies and law. It requires, in some instances, the transition from a *warrior* model of policing to a *guardian* model of policing.

The Washington State Peace Officer Standards and Training Academy is leading the way in changing law enforcement training from a warrior to a guardian mentality. Together with Blue Courage, the Police Foundation, and other innovators, they are developing a national blueprint and toolkit training model funded with a planning grant from the MacArthur Foundation. Guardian policing is enjoying new consideration and has appeared in the Final Report of the President's Task Force on 21st Century Policing issued by President Obama (Co-Chairs, 2015). A key recommendation of that report directs law enforcement agencies to acknowledge the role of policing in past and present injustice and discrimination, and how it is a hurdle to the promotion of community trust.

Another advises that communities should support a culture and practice of policing that reflects the values of protection and promotion of the dignity of all, especially the most vulnerable.

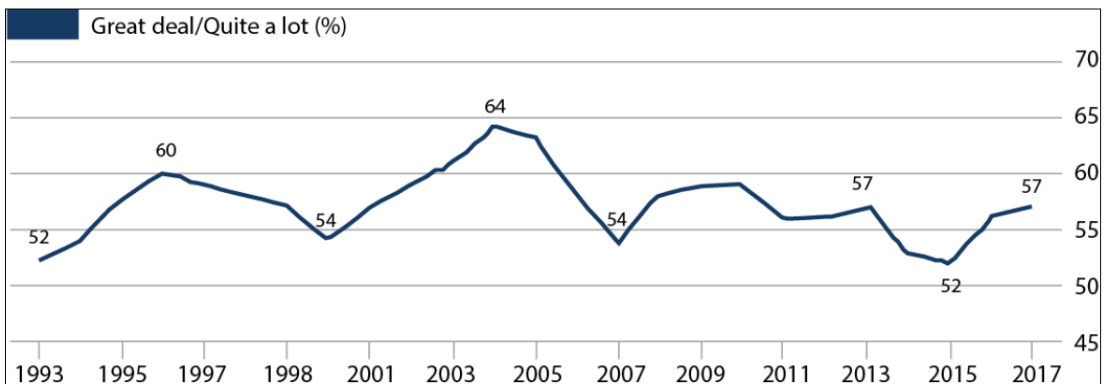
Legitimacy of policing forces and the permission that we, the people, give to those forces to conduct policing services, is an issue at the very crossroads of today's societies. People desire to be able to decide whether their life is good or bad when evaluating how their experience, their family, and their professional and societal lives are grounded, and what meaning and security those experiences provide today. Collective responsibility helps guide the directions and the development of our experiences.

The pervasiveness of social media and awareness of it in aspects of everyday life have helped to bring into focus the disparity in which policing is often undertaken and the sense of legitimate questions by those governed. In the U.S. and internationally, heightened awareness of these issues shows law enforcement departments struggling with perceptions that the departments are not in touch with real-life situations and how best to provide policing services. Some will say that modern policing is in a crisis mode and is rated low in public confidence.

Figure 1 below from the *Public Trust and Law Enforcement – A Discussion for Policymakers* report, shows a measure of confidence in police between 1993-2017.

Figure 1. Overall Confidence in the Police, 1993-2017

Percentage who have a "great deal" or "quite a lot" of confidence in the police



Source: Figure taken from Jim Norman, "Confidence in Police Back at Historical Average," *Gallup*, July 10, 2017.

The same report also breaks down the confidence level by race/ethnicity, political ideology and age, shown in Table 1.

Table 1. Confidence in the Police, by Demographic Group

Percentage who have a “great deal” or “quite a lot” of confidence in the police

| Demographic Group | 2012-2014 | 2015-2017 |
|---------------------------|------------------|------------------|
| Race/Ethnicity | | |
| Hispanic | 59% | 45% |
| Black | 35% | 30% |
| White | 58% | 61% |
| Political Ideology | | |
| Liberal | 51% | 39% |
| Moderate | 56% | 53% |
| Conservative | 59% | 67% |

What distinguishes liberal democracies from dictatorships and absolute monarchies is the “rule of law.” Laws are unlike the orders or whims of single, absolute powers (Executive, Legislative, and/or Judicial), and operate with an independent press to serve as a check on abuse of power by any of these other institutions.

“Norms,” agreed upon behaviors beyond force, are the habitual behavior of most citizens and most officials. If the public does not honor these norms, Rule of Law cannot work.¹

Social order is not possible without a sense of real legitimacy, compliance and cooperation with the administration of law. Enforcement agencies are searching for better ways to build trust in their communities and many use community policing programs and strategies. After all, law enforcement is a public-trust-protection program, there to provide not only public but environmental, natural and cultural resource protection as well. It works best when it is conducted in a collaborative manner; in some circles, this is known as basic Community Policing or Public-Trust-Policing.

In ancient societies, there was no official law enforcement function and very little, if any, attempt at organizing this function. Instead, individuals, families and clans took it upon themselves to take revenge against those who might have injured or offended them. The idea of trust and crime prevention was almost non-existent in the early history of law enforcement and criminology (Rufa, 2019).

¹ Laina Farhat-Holzman, *The Rule of Law is Not a Given*, October 25, 2019. Retrieved January 5, 2020. <http://www.globalthink.net/global/columns.php?ID=702>

Throughout the ages, civilizations have contributed significantly to the development of criminal justice in society, as early as 8000-4000 BC in the middle east, through the rise of the Roman Republic, to Robert Peel's 9 Principles of Policing in London. Legitimacy of policing forces and the permission given by those governed to conduct this kind of public service is the subject of more scrutiny, awareness, hopeful and skeptical expectations. Rebuilding and restoring real, legitimate public trust will be a partial measure of success and societal stability for the future.

When the basic values of providing public-trust-protection are formally built into an organization, the methods and policies used to accomplish the protection generally follow those values. A department or administration's policy should describe how law enforcement, in keeping with those values, is a positive, necessary public service and a natural complement to their role as guardians and protectors.

Law enforcement powers are only tools to achieve compliance. In many cases, simply informing people that their behavior is illegal will gain compliance. At times, the law must be explained, or warnings issued. At other times, specific and increasingly consequential law enforcement action is necessary. Sometimes, behavior is serious enough to warrant immediate arrest or escalated force. The key rests with the intelligence, judgement and discretion of each officer in partnership with the public trust.

A department's policing policies may reinforce collaboration with the public, one in which its primary jurisdiction and the community exist interdependently as part of a more complex social, economic, and environmental system (collaborative and community based). Using a community-public-trust policing model and rather than focusing only on visible symptoms of crime, all partners work together to address public safety, law enforcement and resource protection concerns. With all parties participating, community members are better able to prevent or solve problems that erode society and public trust. Public trust then leads to better understanding, cooperation, problem-solving, a stronger sense of legitimacy, and effective enforcement that does not infringe on human or civil rights. Legitimacy is the foundation of the authority given to the leadership by those governed, via promulgation of sound laws and policies or the removal and restriction of such laws through the democratic process as trust erodes.

Rising crime and various social impacts now encroach upon every aspect of life long considered sanctuaries for peace and enjoyment, places to relax, to be carefree, to get away from it all. Society's expectations for safety and security have not changed, but it is becoming increasingly difficult to find these sanctuaries and for peace officers to preserve this expectation.

Regardless of the increased impacts and rising crime rate in many areas, all people have the right to be treated with dignity and respect. Law enforcement agency goals would be wise to demonstrate and emphasize that they are a key provision of ensuring public trust and the human rights experience.

The contributions law enforcement departments provide to the people are ideally twofold: 1) oversee the suppression of crime and the enforcement of laws within their jurisdiction(s), and 2) on a broader level, utilize programs, services and resources that contribute to society by providing a release from the social stresses that often result in crime. Law enforcement departments and their programs, services and other resources are an integral part of community crime prevention and trust efforts.

Under the public-trust-policing philosophy, “the department” and “community” do not exist independently. Both are interdependent parts of a larger, more complex social, economic and environmental system. Public-trust-policing requires a fundamental change in responsibility for policing by law enforcement agencies alone, to the collaborative, community-trust based system.

Due to their enforcement powers and responsibilities, peace officers are held to higher standards of conduct than other employees and citizens. In addition, in order to perform their duties, peace officers frequently must place themselves in conflict with violators. It can be, and often is, newsworthy if a peace officer fails to meet the higher standards and expectations of the public. To counteract this phenomenon, especially relating to social media, it is the responsibility of departments to promote positive accomplishments of their public safety program with the media, local community, allied agencies, and within the department, while at the same time being transparent about their mistakes and challenging issues.

International human rights law is binding on all states and their agents, including law enforcement officials. Human Rights is a legitimate subject for international law and international scrutiny. Therefore, law enforcement officials world-wide are obliged to know and to apply international standards for human rights. The extent to which they do, and the extent to which they are trained can be confirmed with individual agencies and their conduct along with measures provided by community engagement. Ethical and legal-conduct human rights standards, as adopted by the United Nations, outline the following practices and expectations of conduct for law enforcement officers:

Human Rights Practice

- Adopt a comprehensive human rights policy for your organization
- Incorporate human rights standards into standing orders for the police
- Provide human rights training to all police, at recruitment and periodically thereafter
- Cooperate with national and international human rights organizations

Human Rights Standards

- Human rights derive from the inherent dignity of the human person
- Law enforcement officials shall, at all times, respect and obey the law
- Law enforcement officials shall, at all times, fulfill the duty imposed on them by law, through serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession
- Law enforcement officials shall not commit any act of corruption. They shall rigorously oppose and combat all such acts
- Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons
- Law enforcement officials shall report violations of those laws, codes and sets of principles which protect and promote human rights
- All police action shall respect the principles of legality, necessity, non-discrimination, proportionality and humanity

In addition to referencing expected conduct, the report issues clear expectations for law enforcement to uphold human rights standards for the people who they serve and govern. Importantly, law enforcement officials are to respect and protect human dignity, and maintain and uphold the human rights of all persons and shall be accountable to the community as a whole. Effective mechanisms shall also be established to ensure internal discipline and external control as well as the effective supervision of law enforcement officials (Rights, 2004). This summary report should serve as a model for local, state, national and international law enforcement policies and does for many.

Human Rights are the rights and freedoms that every person inherently possesses. Civil rights are obtained by virtue of a legal grant of that right. In the United States, civil rights are embodied in the United States Constitution, and in amendments and by acts of Congress. Even though the rights are based on the federal constitution, the 14th Amendment makes them also applicable to the states. Civil rights are often categorized into the rights of due process and equal protection under the law, and freedom from discrimination. In the U.S., the Civil Rights Act of 1964 extended civil rights protection by making discrimination because of race, color, national origin, or religion unlawful in certain federally funded entities.

Law enforcement agencies have the ethical and legal responsibility to abide by and uphold civil rights in addition to basic human rights. The difference between civil rights and human rights is how these rights are afforded. In simplest terms, the difference between a human and civil right is why you have them. Human rights arise simply by being a human being. Civil rights, on the other hand, arise only by virtue of a legal grant of that right (Resources, 2019).

Despite imperatives to protect civil and human rights, officers occasionally lapse in terms of their requirements to uphold them. When this happens and officers either intentionally or unknowingly violate these rights, law enforcement and community leaders are obligated to act. Violations, both small and large, must be addressed. Without addressing the violations in the strongest of terms, the agency credibility and the public trust are eroded. Motivation to address the violations takes clear leadership and an engaged community and will help to rebuild, reinforce and retain the public trust. There are many tools available to assist departments in addressing civil rights and human rights violations. One such toolkit is provided in the report *Protecting Civil Rights: A Leadership Guide* (Police, 2006), and provides guidance and policy suggestions along with supporting agencies available to render assistance. In addition, INTERPOL (International Criminal Police Commission) provides comprehensive and readily available resources as well.



Figure 2 INTERPOL Strategic Framework 2017-2020

Policing culture, rules and laws evolve. With the rise of community policing and public-trust-policing the daily environment and integration of police and the community have also evolved along with expectations on all sides. Some see community policing and public-trust-policing as trendy or not substantial while other communities and departments say they cannot imagine policing without it.

There are elements of both that increase the level of civil and human rights protections. Recognizing that the culture of an agency can contribute to effective rights protections can help elevate the culture both internally and externally. Confidence is a must. Acknowledging the need for cultural change is not new and is ongoing. Many commissions have studied policing and evaluated the need for minimizing and addressing misconduct. A large part of this reform requires training to educate officers about values, attitudes and behavior about themselves and the policing profession, both those already held and those learned.

Perceptions and the reality of legitimacy may be key in securing such public feelings of obligation and responsibility toward the law. Research conducted in the US suggests that when people view the police as a legitimate authority they are more likely to cooperate with officers and comply with the law (Sunshine, 2003).

In 1829, when Sir Robert Peel successfully lobbied for the legislative act that created London's Metropolitan Police Force, the constables with the force were given a book of General Instructions including the nine directives for officers. Those directives are known today as the Peelian Principles. Principles 3 and 7 state: To recognize always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police *are* the public and that the public *are* the police, the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence (Stoughton, 2016).

Cooperation must be active and vibrant between the people and those enforcing the law. If legitimacy is not well founded, or remains fragile, the people, when sufficiently motivated and with enough resources, will begin to change the laws and the authority currently granted to those who administer such laws.

Legitimacy may be key in securing such public feelings of obligation and responsibility toward the law. According to Tyler, legitimacy is the public feeling of obligation to voluntarily defer to the police (Tyler, 2006).

Such a deference is not due to fear of sanction, nor due to personal morality regarding the law, but rather out of a pure responsibility to obey the authority of legal rules and law enforcement agents. Such legitimacy results from the authorization of authorities to determine appropriate behavior. This authorization removes the need to activate one's own moral principles. Instead, we obey an authority because normatively, that is the right thing to do.

Human rights reflect the basic standards for people in order to live with dignity. They give people the ability to choose how they live, how they express themselves, and how they are governed. Finally, by guaranteeing life, liberty, equality, and security, human rights protect people against abuse by those more powerful. This, in turn, enables the ability to pursue happiness and peace.

Legitimacy is the right to govern and the recognition by the governed of that right (Beetham, 2013).

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