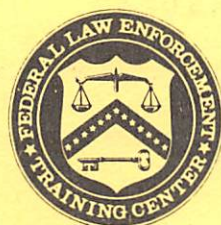


FEDERAL LAW ENFORCEMENT TRAINING CENTER



SOCIETY, LAW, & POLICE ROLE

DEPARTMENT OF THE TREASURY

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SOCIETY, LAW, AND THE POLICE ROLE

INTRODUCTION

In recent years, we have experienced a concerted movement toward professionalization in law enforcement. This has been accompanied by higher educational levels, stricter training requirements, better salaries, and more sophisticated tools and equipment. Despite all of this progress, and despite certain positive portrayals of law enforcement officers in the news and entertainment media, old attitudes and images persist. The dumb, brutal, stupid cop is still a handy target for media caricature.

It is difficult for any one to function within an emotional atmosphere of hatred and disdain. It is even more difficult if one is uncertain as to the basic significance or importance of his/her function.

The aim of this brief presentation is to convey to the officers a sense of the importance of the police role. We intend to explore the origins of society and of laws, to emphasize that without law the very notion of a society is inconceivable, and to show that law itself is meaningless without a force to implement it.

In a very fine series of programs entitled "Civilization" which appeared on Public Television several years ago, Lord Kenneth Clark, the moderator of the programs, was attempting to show the difference between the "Civilized Man" and the "Barbarian." Lord Clark said in

effect, The Civilized Man knows from whence he came and he can conjecture as to where he is going. He knows his origins and can project to some degree his future. The barbarian cannot or does not. We believe that it is better to be a civilized police officer than a barbarian. Therefore, we too, as law enforcement officers should have some idea as to our origins so that we may understand clearly that we are a part of a continuous historical process.

We fully believe that the officer who has a broad understanding of his/her role and purpose will, in general, function better than the officer who has no such understanding or background.

ANIMAL SOCIETIES

Inasmuch as we shall be discussing social groups and the law, it might be worthwhile for us to briefly look to the simple organization of the animal world.

If we examine the animal world, we find that living creatures may be classified in many different ways. One simple classification might be based upon whether the creature is a solitary or social animal.

Social animals are those which, for the sake of survival, have learned to live together with others of their kind as groups, herds, packs, etc. We can think of numerous examples of such creatures; cattle, deer, apes, horses, wolves and geese, to name a few.

Environmental dangers, predatory threats, the nature of the food gathering process - all of these and many others represent the forces which cause such creatures to seek the society of other

similar creatures and to finally become essentially dependent upon such social groups.

It is interesting to note that within such groups a certain order or organization develops. This may be evidenced by a general deference to the strongest, the oldest, or the most aggressive member of the group. A definite hierarchy is established, as demonstrated by the well-known "pecking order" of chickens, jackdaws, and in a more subtle way, by the hierarchy of government employees.

THE SOCIAL NATURE OF HUMAN BEINGS

What about human beings? Can we be compared to other simpler life forms? Are we in fact social creatures? One need not be a scholar to answer such questions. A simple look at the cities, villages, tribes, gangs, and miscellaneous groupings of the human race convinces the questioner that we are indeed social creatures. Like thousands of other life forms we seek the proximity of our own kind, not as an intellectual decision, but rather as a deeply rooted instinct or need. True, this is an instinct which varies in strength from individual to individual. There are indeed hermits and recluses who voluntarily isolate themselves from society. Such persons, however, must be considered as deviants from the overwhelming norm.

Every conclusion of psychology and of literature leads us to believe that the normal human being, isolated from all social contact may hallucinate, become disoriented, and suffer physical, mental and personality deterioration as a result of such social deprivation.

So it appears that we, as human beings, are compelled by our very natures to form social groups. Although the choice is not conscious it is nevertheless a wise choice, for such groupings tend to bring us comfort, security, and the mutual stimulation which allows us to develop a better life.

EARLY MAN

For the purpose of developing our thesis we ask the reader to let his imagination roam, to peer through the mists of evolutionary time. We are looking at primitive man, a relatively weak creature whose claws, teeth, and speed of foot are no match for the other creatures which share his environment. However, he has a superior brain and an opposed thumb which gives him manual dexterity. He can invent and he can manipulate objects.

With the dawn of intelligence, came the discovery of fire, the invention of tools and weapons. We can imagine the corresponding need for the development of specific rules delineating the behavior of individuals with relation to other individuals and to the group.

We are a small band of hunters. One of our ancient leaders discovered generations ago that there is a special rock, which can be chipped to form very sharp edges. When this is attached to the end of a long stick, it makes a far more efficient hunting weapon than the sharp pointed sticks we formerly used.

I had made a fine spear from the one piece I was able to get. This spear has served me well. I have been a good hunter and my woman and children eat well from the game I kill.

Now, on this morning, I awoke to find my spear missing. Clearly someone has stolen it. If we can identify the thief he will suffer, perhaps die. For it is the law of our tribe that a man's property is inviolate, not to be stolen. Surely such a law is just, for without my spear, my family will go hungry, my children may starve.

The cold time of the year is upon us. The winds whistle and the ground becomes white around us. We could have easily survived this season as we have others in the past. Why? Because in ancient days the Gods gave the secret of fire to one of our great ancestors. We know that fire is good and we do not fear it as do the beasts and some of our neighboring ape-like tribes.

Where does the fire come from? We know that in the hot season the Gods will send bolts of fire from the heaven. These will ignite the trees of the forest. This is to fulfill the promise made to our great ancestor that we, his children, shall always have the opportunity to replenish our fire with brands from the burning trees.

We know that once we have the fire we must constantly replenish it, never let it die out. For if we do, we must go without fire until the Gods see fit to

once again send us that precious gift from the sky.

Therefore, our tribe has established a special group of "firewatchers." This group is made up of some youths not old enough to hunt and some older or crippled hunters no longer able to participate in the chase. Theirs is the responsibility to gather the wood, to watch over the fires, to replenish the fuel so that the fire never dies. Thus, we have warmth in our caves, the fierce predators are kept at bay, and we know the pleasures of cooked food.

Last night disaster struck. Two firewatchers slept through the night and allowed the fire to die. This will be a miserable cold season. If we survive to see the next hot season there will be a terrible punishment meted out to the two offenders. They will be thrown into the first fire we are able to make when the Gods renew their gift. This is only justice, since they have violated our law which decrees "The watcher must not let the fire die out." By their carelessness they have placed all of our lives in danger and have angered the Gods.

We are surely the wisest and most blessed of the peoples of earth. We look around us at the way other peoples live, and realizing that our ancient forefathers

lived in such ways, we count ourselves fortunate indeed to have progressed to our present state.

Look at the Wambutos, primitive forest dwellers, forever on the move. They live by hunting game in the vast forest and they must constantly travel to go where the hunting is plentiful. They are uncivilized, savage hunters. This is understandable. They are so occupied with bare survival that they have no time for civilization.

And the Klatchee people who live across the far mountains. They are certainly superior to the Wambutos for they have a constant source of food, the horned animals who travel in great herds across the plains and mountains. But the Klatchees are also doomed to wander constantly, for they must follow the herds which go hither and yon seeking fresh pastures.

Forever on the move, the Klatchees have no time to develop a civilization. But our wise ancestors, inspired by the Gods, learned to till the soil, to plant and harvest the grain and grass. They learned to keep their own herds and to feed them through all seasons.

No longer must our people wander. We have our fields, our herds, and our village. We live in warm houses and we have fine tools with which to work. We also have laws which are important.

For example: You see that field with the oats growing so fine. Right there, by the stream, up to that giant oak tree and over to where that big rock sticks up. Well, that's my field. I've cleared it and worked it, and the village elders all know that. Now our law says that nobody else can gather the harvest nor feed his cattle or swine from my field. That's only justice after all. I was the one who worked so hard to grow that crop.

If anyone violates our law, all sorts of bad things are in store for him. He might be flogged in front of the whole village or stoned to death. If he's lucky, he can pay off the aggrieved victim in grain or cattle. And if he is a bad offender, he might be exiled from the village to spend the rest of his miserable life in the wilderness with the savages.

With these imaginary views of man's distant origins, we see how laws develop, how rules of conduct emerge. Such rules may be unwritten, handed down through the generations, but they are nonetheless binding. As we see, they govern the relations of individuals to each other and to the group.

Primitive man is aware of the natural phenomena which may be beneficial or disastrous to him. Because he is ignorant of the causes and origins of such phenomena as rain, drought, flood, volcanoes, hurricanes or the seasons, and yet would like to have some

control over them, he invents Gods of nature. By pleasing and appeasing such Gods, man seeks to avert disaster.

And so a code of behavior which is consistent with that which man perceives to be the God's desires is developed. Thus, ancient religions make their contribution to rules of human conduct. Taboos, symbols, and rites are developed - some which are carried down even into modern times.

Even more modern monotheistic religions incorporate codes of conduct which are basically directed as much at normal human behavior as at spiritual matters. A prime example is the "Ten Commandments:

Thou shalt not steal!

Thou shalt not kill!

Thou shalt not covet thy neighbors wife!

Thou shalt not commit adultery!

These are rules of social behavior, and it is interesting to consider that such codes recognize the inherent potential of humans to carry out exactly such types of behavior.

If some men were not inclined to kill, steal, lie, rape, etc., there would be no need to lay down injunctions against such behavior.

THE SOCIAL CONTRACT

In the 18th century a Swiss philosopher, Jean Jacques Rousseau wrote of man and his relationship to society. Rousseau, without the benefit of studies which show that man and his ancestors have

always been social creatures, believed that the only free man was the "noble savage" living a solitary life in the wilderness.

The opening line of his famous philosophical treatise "The Social Contract," "Man is born free, yet everywhere we see him in chains," expresses the feeling of this philosopher that society tends to corrupt and ruin the "noble savage."

However, Rousseau accepted that man is destined to live in society, and from this acceptance he derived the concept of the Social Contract. As we see it, in the Social Contract, as with any other contract in equity, something is given and something received. In this case, that which we receive is the benefit of living in society; the benefit of security, comfort, and the satisfaction of basic human needs. That which we give up is the absolute freedom to do exactly as we wish, to yield to each impulse, to satisfy each urge or whim. To gain the benefits of social life we must agree to conform to the mores and the laws of the society.

It follows also that a society, if it is not to disintegrate into chaos and anarchy, must insure that its members do conform to its rules. Those who do not conform are designated outlaws, renegades or criminals.

ENFORCING THE SOCIAL CONTRACT

We have suggested that any society, if it is to continue to exist, must have some means of enforcing its codes or laws. Such enforcement has varied throughout history and amongst different

societies. In most animal groups, the rule of force is in effect. "Might is Right." The strongest prevails. This is not absolutely universal. In some groups, age and experience are the keys to leadership. In others there appears to be a ruling group of older animals who support each other against challenges from younger, more powerful animals.

In primitive tribal groups, authority would appear to be given to the strongest, wisest or most able members, often with strong influence from the medicine - man or shaman.

Transgression from tribal rules would result in ostracism or expulsion from the tribe. The chief of the clan might exercise judicial, legislature, and executive powers, often assisted by a council of elders. The people of the tribe themselves provide the force necessary for compliance. Crimes against the individual were

handled by the victim or his/her family. This practice has persisted in some parts of the world until recent times. An example is the existence of "vendetta" in Italy, Corsica, and the middle

east. Crimes against the group are handled by the group. The philosophy of early justice was a simple one, mainly retaliatory.

We refer to this as the "lex talionis," the law of retaliation, "an eye for an eye, a tooth for a tooth."

Branding and mutilation were not uncommon, serving both as punishment and identification of the perpetrator. The practice of cutting off the hand of a thief as it persists today in some Arab countries, has some very interesting social connotations.

The thief, with his right hand missing, is no longer able to participate in the traditional communal dining ceremonies in which the left hand is never allowed to be inserted in the communal stew-

pot. Thus, the thief is effectively ostracized from such social ceremonies and becomes in essence a social outcast.

In the early days of group retribution, the "blood feud" developed in which family might be pitted against family for generations in bloody retaliation. As a means of reducing the attrition of prolonged clan warfare, the practice of settling disputes with property, evolved. Thus, was born the concept of civil restitution for damages.

The first known written code of law was the code of Hammurabi, King of Babylon, in the 21st century B.C. Hammurabi's Code delineates the responsibilities of the individual to the group, indicates penalties for wrong doing and relates to private dealing between individuals.

Persons known as "Messengers" are identified as those responsible for implementing the law.

The fact that the King should write the law is not too surprising, for if we examine the ancient civilizations of Babylonia, Persia, Egypt and others, we perceive the ruler to be an absolute monarch, incorporating in his person all the powers of government; legislative, executive and judicial.

The Roman Empire gave rise to new concepts of government. A division of governmental functions existed. There was a legislative body, the Senate. There were judges, "Quaestors." The military forces gave teeth to the law.

The fall of the Roman Empire was marked by a fragmentation of power. The dark ages descended upon Europe as Western civilization

regressed for hundreds of years. Such government as existed was represented by the feudal system.

The regional strong man, Baron or Prince, established his domain in a fortified castle surrounded by his fiefs or territories. Those who worked the land were his vassals. The lord held power over his serfs. They followed him in war, protected him and were bound to avenge his wrongful death. He, in turn, protected the serfs, settled disputes among them, and filled all of the functions of ruler, judge, and law-giver.

As the centuries passed, wars, marriages, and alliances gave rise to coalitions and mergers of estates and principalities, leading to the formation of kingdoms or nations.

During the dark ages in England, the vassal system was in effect. The Lord ruled his estates and justice was basically a family affair. The rules of blood feuds were closely regulated by custom as to the type and degree of vengeance which might be exacted. Thus, for example, if a man killed another while defending his Lord or a close female relative, no vengeance could be taken. Or if the man killed was a convicted thief, no retribution was allowed.

The king usually governed with a council of wise men who had the power to select his successor.

The Norman conquest in 1066 A.D. produced some changes. Instead of a somewhat informal council of wise men, the Normans created the Great Council or "Magna Curia." This consisted of the

King, all of the Lords who swore allegiance to the King, and the high representatives of the Church. This ultimately evolved into the House of Lords, and at a later time, the House of Commons was added. This system was to serve as a model for our present system of Senate and House of Representatives.

The King appointed special trusted agents to carry out administrative, judicial, and representative tasks. These people constituted the "Curia Regis" or King's Court.

An historical landmark in the evolution of our law was the issuing of the "Magna Carta" or "Great Charter" in 1215 A.D. This charter issued by King John, under pressure from the powerful Barons, guaranteed certain freedoms. It was also made clear that even the King was not above the law.

As later history has unfolded we have observed changing patterns of enforcement. Early enforcement by the total community as exemplified by "hue and cry" gave way to the evolution of special enforcement bodies. Night watchmen, constables, gendarmes, and police became recognized elements of society.

THE ENFORCEMENT FUNCTIONS

In all of the vast fabric of societies, ranging across the ages and cutting across all cultures from the most primitive to the most sophisticated we encounter certain common threads:

1. Societies must have rules and codes of conduct if they are to survive as societies. Let us say, law is essential to society.
2. These rules, codes of conduct, or laws have no meaning

unless the society has available the legitimate use of force or physical coercion.

Noted legal authorities have stated this in different words:

R. von Jhering:

"Law without force is an empty name." "A legal rule without coercion is a fire that does not burn, a light that does not shine."

Edward A. Hoebel:

"The really fundamental sine qua non of laws in any society - primitive or civilized - is the legitimate use of coercion by a socially authorized agent."

Oliver Wendell Holmes:

"The foundation of jurisdiction is physical power----"

CONCLUSION:

Man is a social creature and as such is destined to live with others of his kind in groups or societies.

Such societies cannot exist without rules of conduct or laws.

Laws are meaningless without methods of enforcement.

Officer Wes Barker received the call at 10:30 on Friday evening. A woman in trouble. Screams coming from the alley between Curtis and Broad Streets.

Arriving within minutes, Barker, gun in hand, took in the scene, the white faced struggling girl,

the three hulking youths, the torn dress.

His spotlight seemed to freeze the action as he shouted, "Hold it you mothers! Up against the wall! Hands up and feet spread!"

"Who the hell do you think you are?", screamed the largest of the three assailants as, with the light dazzling his eyes, he made a move in Barker's direction.

"I'm the law, Buster! "Now, up against the wall!" shouted Barker as he keyed the mike to call in a reinforcement unit.

The name of the man facing the group was Klinker, but with the exception of two of the older comrades, the members knew him only as Max. They were all dedicated and united in their commitment. Max knew of their commitment which was nothing less than the destruction of the hated government and all of its institutions; to totally eliminate this decadent exploitative democracy.

Yes, Max was convinced of their dedication, but he was less certain of their tactical knowledge as he began his speech.

"Comrades" he began, "if we are to succeed in our purpose, we must neutralize the police. This we can do in several ways. We must destroy morale. Selective assassinations, negative publicity, exploitation of

each embarrassing incident. We must demonstrate that the police are weak and corrupt. We must cause the public to lose faith in the police and we must cause the police to lose their faith in themselves.

When this happens, the whole rotten society will fall into our hands like a ripe plum."

"Of course you realize," he added, "we must act simultaneously on the armed forces."

The judge seemed almost dwarfed by the massive wing-backed chair in which he was sitting. Every one of his seventy-three years seemed to have etched lines and wrinkles in his face. His white hair was thin and his body almost emaciated.

It appeared to require a visible effort for him to raise the gavel and strike his desk top. However, his voice was strong as he started to speak.

The prisoner stood before the bench, his heavy frame stretching the cheap cloth of his suit. He was a large man and his surly features appeared to anticipate the judge's decision.

"----and as you have been found guilty of the crimes as charged, I hereby sentence you to a term of twenty years in the state penitentiary."

The prisoner's face turned red. A torrent of expletives rushed from his mouth as he lunged toward the frail jurist.

"You'll never put me behind bars." he screamed.

At that moment two powerfully built uniformed deputies stepped forward and grabbed the prisoner's arms. "O.K. Buddy, let's go." said one as they moved the angry prisoner toward the door.

What is the means of enforcement in our society? The law enforcement agent. In a very real sense, he is the glue that holds society together. If he did not exist, he would have to be invented.

We believe that the officer who has an understanding of this role will be better able to deal with the pressures and problems of his/her complex and difficult job.

