WOLVES AMONG THE SHEEP: DECEPTION AND THE POLICE

C. Lynne Fulmer

Using a philosophical point of view, this paper will examine the ethical dilemma of deception in undercover police work. Deception is a central element in undercover operations. In such operations, lying is done routinely as the officers "pretend to have a different identity" (Skolnick and Leo 3). This gives rise to an ethical dilemma because of the moral injunctions that exist against lying.

Critics of undercover police work have also described various practical (as opposed to philosophical) problems that may arise as a result of deceptive practices. For example, police deception may reduce the public trust and thereby diminish the effectiveness of the police "as controllers of crime" (Skolnick and Leo 3). It has also been argued that "state-sponsored deception" as in police undercover work is contrary to the symbolic role of the government in establishing societal values and avoiding "setting bad examples" (Marx 13). Some writers have expressed concern over the idea that deception in undercover police work might lead to further acts of immorality on the part of the undercover officers; thus, "when courts allow police to deceive suspects for the good end of capturing criminals—even as, for example, in 'sting' operations—they may be tempted to be untruthful when offering testimony" (Skolnick and Leo 3).

Related to this, there is evidence that the typical personality traits of undercover officers may contribute to making them prone to corruption. Michael Girodo, a psychology professor, conducted a study involving more than 200 undercover agents at the FBI Academy in Quantico, Virginia. Girodo noted that the best-qualified undercover agents were those who were aggressive, willing to take risks, and skilled in such things as "manipulation, deception and lying" (Bladow 12). According to Girodo, these traits make it relatively easy for undercover officers to "cross the line" and succumb to the temptations of corruption.

Deception in undercover work is also problematic because of the various philosophical issues that it raises. For example, an ethical concern can be seen in the fact that deception betrays the trust that is supposed to be an integral part of forming interpersonal relationships. In this regard, it has been said that "lying is wrong because it constitutes a breach of trust" which in turn "compromises and corrupts our relationships" (Solomon 60). Writing in *Criminal Justice Ethics*, Gary T. Marx agrees with the idea that undercover police operations show a "lack of respect for the sanctity of intimate relations" (Marx 13). According to Marx, a person's sense of freedom and well-being depend in part on being able to enter into relationships that are free from coercion and deception. However, "covert operations, with their duplicity and betrayal, trade on the trust that is essential to, and defines, these primary relations" (Marx 13). This is a situation that is ethically undesirable, in Marx's point of view. Another argument against the use of deception in undercover police work is that it represents a double standard. In other words, the police engage in similar practices to those that they are supposed to be

eliminating. An undercover officer lives among criminals and contributes to the commission of crimes. Yet, the criminals go to prison while the officer gets away with the crimes (Bladow 12).

Some philosophers have argued that there are absolutes in morality and that lying, for example, is always wrong no matter what the circumstances are. This was the position of Kant, with his theory of the categorical imperative. However, other philosophers have taken a more utilitarian or relativist perspective and have argued that lying is not always wrong. According to the utilitarian point of view, the ethics of a case needs to be evaluated in terms of that specific case. What is right in one specific case might not be right in a different specific case. Therefore, based on this logic, "there might be a number of contexts in which lying is actually justified" (Solomon 60). The utilitarian point of view also holds that an act is right when it does the most good, and/or causes the least harm. Therefore, according to this point of view, an act of deception is only wrong if it "does, in fact, cause more harm than good" (Solomon 60). The twentieth-century philosopher G. E. Moore took the utilitarian position and argued that there are no universal commands to prohibit lying or other acts that are commonly regarded as immoral. Such commands are nothing more than "generalizations," and a case can only be judged in accordance with "the effects that will be produced" and "the comparative value of those effects" (Moore 205).

Some classic examples have been given to show that the ethics of lying is a relative matter. For example, "the traditional case put to the absolutists is that of the murderer chasing a fleeing innocent victim, whose whereabouts are known by the third party" (Skolnick and Leo 3). Almost everyone would agree that it would be permissible for the third party to lie to the murderer in order to protect the life of the innocent victim. In another case, "the Nazis come to your door and ask if you are hiding a Jewish family" (Solomon 60). Assuming that you are hiding a Jewish family, do you commit the "unethical" act of lying to the Nazis, or do you speak the truth knowing that the family will be subsequently killed? According to Robert C. Solomon, the relativism of lying even applies to mundane situations in life. For example, if your wife asks you if you like her "utterly silly new hairdo. . .does morality dictate that you ruin the evening?" (Solomon 60). In this case, a little white lie would result in good feelings and would mitigate the harm that would be caused by hurt feelings. Applying the utilitarian argument to the case of deception in undercover police work, it can be seen that the apprehension of criminals results in a major "good" by protecting potential victims. The apprehended criminals experience "harm" in that they will be prosecuted and may have to serve prison time. However, the criminals are thus prevented from committing even worse harm to others in the future. Therefore, in balance, the use of deception in undercover police work provides more good than harm.

The ethics of deception also needs to be judged in terms of degree and intention. In other words, some types of deception are more ethically problematic than others (a matter of degree). In addition, lying is not so bad if it is motivated by a desire to obtain a good result (a matter of intention). As an example, T. M. Scanlon notes that it is harder to

justify the desire to intentionally mislead others than it is to justify "wanting to be able to protect one's own and others' interests by avoiding disclosure" (Scanlon 318). As another example, Gary T. Marx notes that ethical difficulties may arise in undercover police work as a result of the use of "false friend deception." However, even worse problems arise when the police-criminal interaction involves a sexual relationship. According to Marx, the "betrayal involving another's body adds an additional troubling element, beyond that occurring with the mere exchange of tangible objects or the failure to keep a promise" (Marx 13). Nevertheless, although Marx argues against "trading in the currency of intimate relations," he agrees with the view that deception in undercover work is not unethical, *per se*.

The use of deception in undercover police work can also be justified on the basis of the justice point of view. In this regard, although it is important to strive for the truth in most circumstances, undercover police work (with the deception that it necessarily involves) is even more important in terms of providing "public safety and the imposition of just desserts" (Skolnick and Leo 3). In this regard, justifying the use of deception in undercover work is not the same as justifying the use of lying in general. Rather, the "justice" point of view approves "of police deception as a necessity, measuring the cost of police deceit against the benefits of trickery for victims of crime and the safety of the general public" (Skolnick and Leo 3). Further insight into this point of view is provided by Jeffrey Reiman, writing in the journal *Social Justice*. Reiman's concern is with determining cases in which the use of coercion or force can be regarded as just or unjust. As noted by Reiman, the use of force by police is generally "in the interest of all citizens —even the citizens against whom the force is used." By contrast, "a criminal uses force to serve his own interests at the expense of his victim's" (Reiman 134). Although Reiman is concerned with just and unjust uses of force, a similar logic applies to the use of deception in undercover operations. Thus, the deception in undercover police work can be regarded as just in comparison to deception in general because it is intended to benefit society as a whole.

As seen in this paper, the use of deception in undercover police work creates an ethical dilemma because it is generally believed that lying and deceit are wrongful activities. Although deception by undercover police can cause certain problems regarding betrayal of trust, this paper has taken a utilitarian/relativist point of view and has argued that undercover police work, despite its need for deception, does more good than harm in the long run. Undercover police work protects potential victims and results in increased public safety; by contrast, the only major harm of such work is found in regard to the rights of criminals. This perspective on the issue is related to the justice point of view, which holds that concerns about the use of deception by police are far less important than the effort to stop crime. In short, deception in undercover police work can be justified because it is intended to serve the public interest and its harms are mainly limited to those who seek to harm others through the use of criminal activities.

Works Cited

Bladow, Janel. "Good Guys and Bad Guys: The Temptations of the Undercover Cop." *Omni* 16.8 (1994): 12-24.

Marx, Gary T. "Under-the-Covers Undercover Investigations: Some Reflections on the State's Use of Sex and Deception in Law Enforcement." *Criminal Justice Ethics* 11.1 (1992): 13-24.

Moore, G. E. *Principia Ethica*. Rev. ed. Cambridge: Cambridge U P, 1993.

Reiman, Jeffrey. "From Criminal Justice to Moral Philosophy: Reply to Dragan Milovanic." *Social Justice* 19.3 (1992): 134-142.

Scanlon, T. M. *What We Owe to Each Other*. Cambridge, MA.: Harvard U P, 1998.

Solomon, Robert C. "Is It Ever Right to Lie? The Philosophy of Deception." *The Chronicle of Higher Education* 44:25, 27 Feb. 1998: 50-60.

Skolnick, Jerome H., and Richard A. Leo. "The Ethics of Deceptive Interrogation." *Criminal Justice Ethics* 11.1 (1992): 3-12.