

THE INTERACTION BETWEEN ETHICS AND THE CRIMINAL JUSTICE SYSTEM

Do not copy, post, or distribute

Do not copy, post, or distribute

1

THE IMPORTANCE OF ETHICS IN CRIMINAL JUSTICE

To live ethically is to think about things beyond one's own interests. When I think ethically I become just one being, with needs and desires of my own, certainly, but living among others who also have needs and desires.

—Peter Singer (1995: 174)

THE MEANING OF ETHICS

Ethics, also known as moral philosophy, is a branch of philosophy concerned with the study of questions of right and wrong and how we ought to live. Ethics involves making moral judgments about what is right or wrong, good or bad. Right and wrong are qualities or moral judgments we assign to actions and conduct. Within the study of ethics, there are three branches: **metaethics**, concerned with methods, language, logical structure, and the reasoning used in the interpretation of ethical terms, for example, what exactly the term *good* means; **normative ethics**, concerned with ways of behaving and standards of conduct; and **applied ethics**, concerned with solving practical moral problems as they arise, particularly in the professions, such as medicine and law.

Ethics provides us with a way to make moral choices when we are uncertain about what to do in a situation involving moral issues. In the process of everyday life, moral rules are desirable—not because they express absolute truth but because they are generally reliable guides for normal circumstances (Singer 1995: 175). The focus of this book is on normative and applied ethics, particularly the exploration and analysis of ethical dilemmas and conflict situations that arise within the criminal justice system.

THE VALUE OF ETHICS

Do we need to study ethics? One view is that if we need to make a decision about a dilemma that confronts us, we can do so without any knowledge of ethics. From this perspective, ethics is too abstract and theoretical and is not related to the practical world. Another view is that we need a system of rules and principles to help guide us in making difficult decisions when moral issues arise. If we cannot draw on an ethical framework, we have to rely on emotion, instinct, and personal values, and these cannot supply an adequate answer to moral dilemmas. Among the reasons commonly given for studying ethics are the following:

- Ethical considerations are central to decisions involving discretion, force, and due process that require people to make enlightened moral judgments.
- Knowledge of ethics enables a person to question and analyze assumptions that are typically not questioned in areas of activity like business and politics. Questioning

the criminal justice system should also be encouraged. This includes raising issues regarding such topics as the relationship between crime and justice, the role of law enforcement, the place of punishment, the limits of punishment, the authority of the state, the proper function of prisons, fairness in the workplace through creating a safe working environment, and equal opportunity.

- The study of ethics increases sensitivity to issues of right and wrong and the right way to conduct oneself and aids in identifying acts that have a moral content.
- Only through studying ethics is it possible to define unethical behavior. A full understanding of ethical behavior demonstrates that it includes not only “bad” or “evil” acts but also inaction that allows “bad” or “evil” to occur.
- It is important to have the capacity to point to moral reasoning in justifying behavior, and the study of ethics develops that capacity.
- It is crucial that ethical decisions are made, and the study of ethics enables the development of tools that enhance ethical decision-making.
- Training in critical ethics helps to develop analytical skills and reasoning abilities needed to understand the practical as well as the theoretical aspects of the criminal justice system (Felkenes 1987).
- Understanding ethics enables an appreciation of the complexities of acts that involve ethical issues and dilemmas.
- Without knowledge of ethics, criminal justice professionals may be naive about moral issues occurring within the criminal justice system.
- The study of ethics helps criminal justice professionals quickly recognize the ethical consequences of various actions and the moral principles involved.

Within the criminal justice system, ethics is germane to most management and policy decisions relating to punishment and is the rationale used in making these decisions, such as whether to rehabilitate, deter, or impose just deserts. Examples of such management and policy issues include whether it is ethical to force someone to attend a treatment program against his or her will and, given that the system of punishment is based on an assumption of rehabilitation, whether it is ethical to send an offender to jail and not offer treatment programs to help him or her change behavior to regain freedom (Felkenes 1987).

The criminal justice system comprises professionals who exercise power and authority over others and who in some cases are authorized to use force and physical coercion against them. The law, or accepted standards of behavior, imposes ethical rules and responsibilities on these professionals. It follows that professionals in the criminal justice system must be aware of ethical standards in carrying out their functions. Ethics is crucial in decisions involving discretion, force, and due process because criminal justice professionals can be tempted to abuse their powers (Felkenes 1987).

In this book, the value of the study of ethics by criminal justice professionals will become apparent as the criminal justice system is analyzed to reveal how decision-makers sometimes fail to make the “right” choices or deliberately act unethically in carrying out their functions. It will become clear that studying and applying ethics is a prerequisite for any competent criminal justice professional. As an introduction to the kinds of ethical issues that can arise in criminal justice, two reports of criminal cases are presented in Case Studies 1.1 and 1.2.

In Case Study 1.1, it was not until three years after Archie was beaten to death that reports concluded that some officers had behaved brutally. Despite the extreme circumstances of this case, no police officers were prosecuted or sanctioned administratively, largely due to the police “code of silence,” a part of the institutional culture of the police. However, it is significant that the officers transporting Archie did not enter the hospital but instead took him to the police station. Archie is supposed to have slipped and fallen at the police station, and by the time he did receive medical treatment, he had been severely beaten to such an extent that he died as a result of what was termed “a homicide by police intervention.” Furthermore, Archie’s family was compensated by the city in an out-of-court settlement. Ethical questions concerning police use of force, possible police perjury, and a police cover-up of illegal acts ultimately surfaced. These and other ethical issues in policing will be addressed in Chapter 3.

In Case Study 1.2 involving a report of a death row inmate released from prison after 19 years of incarceration, the state admitted there was a lack of evidence linking him to the crime for which he was convicted. His lawyers alleged prosecutorial misconduct, pointing out that the prosecution withheld critical eyewitness evidence from the defense that contradicted the main evidence used to convict him originally. This case illustrates the need for prosecutors to adhere to ethical standards of conduct, a subject that will be more fully explored in Chapter 5.

CASE STUDY 1.1

POLICE BRUTALITY IN NEW ORLEANS

In March 1990, Adolph Archie, a Black American, was injured in an incident in which police claimed he shot and killed a white police officer during a downtown shootout. Archie later died under circumstances that are still far from clear. Transporting Archie to the hospital after the shooting took police 12 minutes, but the distance was only seven blocks. When he arrived, about 100 officers were present, having heard about the death of their fellow officer. While Archie was being taken to the hospital, police radios were used to utter death threats against him, and those accompanying him to the hospital believed there might be a lynching if he were taken there. According to their account, they decided not to take him to that hospital, and instead of taking him to a different hospital, they took him to the police station where the deceased officer had worked. Here, officers reported there was a scuffle involving Archie, and he fell, causing bloodstains on the floor. However, the sergeant at the police station denied seeing either Archie or the officers and did not ask about the bloodstains but simply ordered that they be cleaned up.

When Archie finally received medical treatment, it was clear that he had been severely beaten, but no officers were held responsible. At the hospital, X-rays of Archie’s injuries disappeared, and staff members were unable to record details of Archie’s name and background. He was injected with iodine, to which he was alleged to be allergic, for a medical test, and some concluded that this was the cause of his death. However, other accounts by pathologists reported that he had been beaten to death. Ultimately, his death was reported as a “homicide by police intervention” by the coroner. Within hours of his death, Police Superintendent Warren Woodfork cleared all officers involved in the incident of any violations of conduct. Reportedly, the rookie officer who arrested Archie was denounced by fellow officers for not killing Archie on the spot.

Subsequently, in May 1993, a report by the advisory committee on human relations found that some officers had brutalized Archie and that the department had failed to hold them accountable. The committee noted the existence of a police code of silence that was supported at the highest levels within the department.

Source: Human Rights Watch 1998.

CASE STUDY 1.2

POLICE BRUTALITY DURING KATRINA

On September 4, 2005, a week after Hurricane Katrina struck New Orleans, police shot six civilians who were crossing the Danziger Bridge, killing two and seriously wounding the others. It emerged that a cover-up of what happened there was organized by a high-ranking police officer. While police initially claimed that some of the civilians had been shooting at them, no guns were found at the scene, and the victims denied this version of events. A state grand jury charged seven officers with murder, but the case could not proceed for technical reasons. Then, in August 2011, Lt. Michael Lohman admitted to organizing a cover-up of the incident because he recognized it was a “bad shoot.” On August 5, 2011, a federal jury convicted five former or current officers on charges resulting from the cover-up, and they were sentenced in 2012 to prison terms ranging from 6 to 65 years (Bureau and Kunzelman 2012).

In concealing the truth of the incident, retired sergeant Arthur Kaufman and the four other officers planted a gun, fabricated witnesses’ statements, and falsified reports after they had shot at unarmed, defenseless civilians who were simply trying to cross the bridge in search of food and help. One officer did not dispute having shot an unarmed man in the back.

The prosecution had contended that Kaufman took a gun from his home weeks after the shootings and turned it in as evidence, trying to pass it off as a gun belonging to Lance Madison, the brother of one of the deceased, Ronald Madison, a 40-year-old mentally disabled man. Police arrested Lance Madison on attempted murder charges, but a grand jury later cleared him.

Source: “A Bad Shoot” 2010.

NORMATIVE ETHICS

Normative ethics is fundamental to ethical decision-making in the criminal justice system. A central notion in normative ethics is that one’s conduct must take into account moral issues; that is, one should act morally, using reason to decide the proper way of conducting oneself. Effectively, ethics, in prescribing certain standards of conduct, gives us a way of making choices in situations in which we are unsure how to act.

What are these standards of conduct, and how do we decide what is right and wrong? Some argue that because standards of conduct and ways of doing things differ from society to society, there can never be one single standard for all people everywhere and that we must make ethical decisions based on each situation. This approach to setting standards of conduct is called **ethical relativism**. Others argue that one set of ethical standards applies across all societies, and people have an obligation to do what is “known to be right”; that is, they argue in favor of **ethical absolutism**.

ETHICAL RELATIVISM

Ethical relativists argue that what is morally right or wrong may vary in a fundamental way from person to person or from culture to culture. In other words, as Robert Arrington (1983) argues, we cannot simply say that a moral judgment is true for all purposes, persons, and cultures—we can assert only that it is true for a particular person or social group. Relativism does not mean

that we cannot criticize people of other cultures on moral grounds, but it does mean that when we say that a person in another culture did wrong or acted immorally, we must judge that person by the standards of that culture and not by our own (Cook 1999: 35). In other words, there are objective moral standards as long as judgments about right and wrong are made relatively.

CASE STUDY 1.3

DEATH ROW INMATE SET FREE

On February 28, 2005, an Ohio judge dismissed all charges against Derrick Jamison in relation to the death of a bartender in Cincinnati. Prosecutors had elected not to retry him in the case. He had been convicted and sentenced to death in 1985 based in part on the testimony of a codefendant, Charles Howell, whose own sentence had been reduced for testifying against Jamison.

The prosecution decision not to retry him followed a finding that the prosecutor had withheld statements that would have contradicted the testimony of Charles Howell, would have undermined the prosecution's theory about the victim's death, and would have suggested other possible suspects for the murder. Two federal courts ruled that the prosecution's actions had the effect of denying Jamison a fair trial. The victim, Gary Mitchell, was murdered on August 1, 1984, at the Central Bar in downtown Cincinnati. Customers found him almost dead, having received blunt-force trauma to the head. He died several days later. Several eyewitnesses gave different accounts of persons entering and leaving the bar, and a shoe print was found on top of the bar. Jamison was arrested two months later after robbing a restaurant. He was wearing the gym shoes that had produced the impression on top of the bar. A few months after Jamison's arrest, Charles Howell was also arrested as an accomplice in the murder, and he informed police that he and Jamison had robbed the bar and that Jamison had attacked the bartender.

Before trial, the prosecution indicated that it was unaware of any exculpatory evidence, but in fact, such evidence had been excluded from the homicide book prepared by the Cincinnati Police Department. This is the book that is passed to the prosecutor for trial. Ultimately, Jamison argued that he did not receive 35 documents from the prosecution prior to trial and that the practice of the police department and the prosecutor's office had the effect of suppressing evidence material to his defense. Jamison's conviction rested principally on the testimony of Charles Howell, the shoe print found on the bar, and the testimony of a witness who positively identified Jamison as the perpetrator. She had identified him at the trial but, in the police offense report, had indicated that she could not make that identification. Obviously, the offense report could have been used to challenge her identification of Jamison at the trial.

Source: Death Penalty Information Center 2007.

Robert Holmes (1998: 163–164) discusses three forms of ethical relativism: ethical relativism, cultural relativism, and extreme or individual relativism. *Ethical relativists* agree that there is moral right and wrong but contend that what is right for one person or culture may be wrong for another.

Cultural relativism is a form of relativism that claims that moral beliefs and practices vary from culture to culture. It is important to understand, however, that cultural relativists do not argue that certain acts or practices are right or wrong in a particular culture. They simply note the differences.

Extreme or individual relativism takes the position that moral beliefs and practices vary from person to person. In contrast to ethical absolutists (see the later section “Ethical Absolutism”), ethical relativists draw attention to factors such as moral diversity among different cultures, the varying state of morals in a particular society at different historical periods, and the fact that at any given time, there is a high degree of moral disagreement within a particular culture. One example is the moral disagreement in the United States concerning abortion (Bunting 1996: 73).

CULTURAL RELATIVISM

The proponents of *cultural relativism* argue that every society has a different moral code explaining what acts are permitted or not permitted. They argue that we cannot judge one moral code as being superior to another because there is no objective standard to apply to make such a judgment. In other words, the moral code that we in the United States subscribe to is not special. Consequently, it is simply one moral code among many. If the moral code of a particular society determines that a certain act is right, then the act is right within that society. Accordingly, it is not for us to judge other people’s conduct in other societies. We should be tolerant and avoid being judgmental.

At first, the notion of cultural relativism seems to reflect the way many of us see the world; for example, we believe in tolerance and understanding, and we recognize diversity in society. However, a number of objections to cultural relativism show it cannot be viewed as a viable approach to ethical issues, including the following:

- There is the problem of identifying what constitutes a culture or society. For example, it is easy to imagine an isolated tribe in a far-off country as a separate culture with its own ethical standards and rules, but what of American culture? Although we may think of American culture as homogeneous, it is very diverse because many languages are spoken within it, and the various ethnic groups that make up American society may well maintain their own ethical standards of conduct, which differ from those of the dominant culture.
- If this difficulty in identifying a culture or society exists, then it is easy to see that we may end up in a position in which our own individual values, family background, education, or religion can determine ethical standards. In other words, cultural relativism can become transformed into a matter of individual ethics (individual relativism), where each person can claim that his or her moral standards are those that should apply to society and others.
- Cultural relativists are not able to explain which ethical standards should apply when cultures overlap. Cultures are no longer totally isolated from each other, and it becomes increasingly difficult to avoid interacting with other cultures. This raises the problem of deciding whose ethical standards are to apply.
- In all societies, standards of conduct change over time, and the cultural relativist is faced with the problem of acknowledging these changes while arguing that morality is relative to a culture. However, which values in which historical period should apply? On the face of it, the values applying in all periods have equal validity. For the cultural relativist, therefore, there is no overall standard to apply.
- A major problem with cultural relativism is that it operates as moral isolationism. This means that arguing that everything is relative tends to suggest this must be the end

of the issue and all debate must stop. It also suggests, in the view of Carol Gilligan (in Hinman 1998: 55), an attitude of “couldn’t care less,” because when we say that all things are relative, we are really saying we don’t care about them. Therefore, cultural relativism fails to provide us with answers to issues and in fact tends to close off debate altogether.

Cultural relativism is closely associated with anthropology, and some even refer to it as an anthropological theory. Some philosophers argue that cultural relativism is in fact a methodology that requires that they adopt a nonjudgmental framework toward the culture they study, and therefore, as a methodological practice only, cultural relativism does not involve moral relativism (Cook 1999: Chap. 7; Ladd 1973: 2). However, other philosophers contend that cultural relativism contains elements of both methodology and a value system (Womack 1995: 48).

ETHICAL ABSOLUTISM

This view argues that there exists an eternal and unchanging moral law, the same for all people, at all times and places (Holmes 1998: 165). The absolutist believes that certain moral principles apply to all people everywhere and that people can recognize or discover these principles and be guided by them in deciding the nature of their own conduct and in judging the conduct of others. Also, the ethical absolutist, being already aware of these principles, believes himself or herself qualified to pass judgment on anyone (Cook 1999: 7). Absolutism is considered valid regardless of thought and feeling. This position is the opposite of relativism in that there can be no consideration of other perspectives because, it is argued, there is only one “true” perspective.

An example of an absolutist position arises in arguments about capital punishment. As Jonathan Glover (1999: 245) points out, two absolutist views prevail on this question. One is emphatic that the murderer must be given the punishment he or she “deserves,” which is death, and the other can see no justification for “judicial murder” under any circumstances. An absolutist would not change his or her view with respect to capital punishment, no matter what arguments were put forward by either side. Among the questions that arise from adopting an absolutist position are, “If there are universally accepted values, what are they?” and “If universally accepted values exist, do they remain constant, or do they change over time?”

If there is disagreement about moral issues between societies, then how should we act? On one hand, the ethical relativist will say we should not judge and that there is no single truth that applies across societies and cultures. On the other hand, the moral absolutist will argue that one single truth must be applied across all societies and cultures regardless of beliefs and values. In favor of ethical relativism, it can be said that it is correct in warning us against assuming that our ethical standards represent some absolute standard, because many, although not all, of our ethical standards apply only to our own society. Also, ethical relativism teaches us the value of an open mind, of tolerance, and of understanding. One way of resolving this disagreement about relative and absolute ethical standards is the notion of *ethical pluralism*.

ETHICAL PLURALISM

Ethical pluralism argues that in most situations, there are many truths rather than one single truth. Lawrence Hinman (1998: 67–68) contends that ethical pluralism allows us to adopt four principles to resolve conflicts between differing ethical standards. These principles are the following.

The Principle of Understanding

This requires that we fully understand and appreciate the meaning of ethical standards found in another culture from the perspective of that culture. For example, before making any judgment about an issue such as female circumcision, we should possess a full understanding of the history and cultural context of this practice as it applies in the many societies in which it is performed. We should recognize that a Western response to an issue of this nature is shaped and constructed by our own cultural values.

The Principle of Tolerance

This means accepting the existence of differences as opposed to denying any diversity in ethical standards. This principle therefore rules out an approach based on ethical absolutism.

The Principle of Standing Up Against Evil

Hinman argues that understanding and tolerance ought not to lead us to a position in which “anything goes,” as the ethical relativists argue, but rather, we should be prepared to stand up against what he calls “egregious moral wrongdoing,” especially when such conduct affects the powerless and the marginalized of the world. An example of this kind of moral wrongdoing would be the crime of genocide, which is internationally recognized as a crime against humanity.

The Principle of Fallibility

This principle argues in favor of our own fallibility. We should always be prepared to learn from other cultures and to have our own moral shortcomings exposed. Most countries have prohibited capital punishment for children (see Chapter 9). However, until 2005¹ in the United States, the Supreme Court declared that states had the right to execute those as young as 16 years of age. The principle of fallibility would argue that the United States and its Court at that time did not choose the correct ethical position on the issue of capital punishment for juveniles and that it should be prepared to listen to the reasoning and experience of the rest of the world, which has outlawed capital punishment for juveniles.

Other philosophers seem to agree with an approach that emphasizes ethical pluralism, which Robert Kane (1996: 14–16) calls “openness.” He stresses that a pluralistic point of view only suggests the possibility that other views are correct; it does not demonstrate that they are in fact correct. Pluralism challenges absolute values but does not rule out their possibility. We can be open and tolerant to other points of view while still believing that some are better than others, even while we believe that only one is correct. Openness does not imply indifference; it only indicates recognition that we do not possess the truth and are willing to learn from others and to search for truths beyond our own limited point of view. Kane advocates an approach that assumes an attitude of openness to other points of view to allow others to prove themselves right or wrong.

John Cook (1999: 169) suggests an approach that sets aside an argument based on tolerance and instead advocates taking cases one by one and examining them in light of the details of each particular case. He therefore suggests that the question of whether we ought to interfere with the practices of another culture is not a philosophical question but a practical, moral one. The

¹ In March 2005, in a 5–4 decision in *Roper v. Simmons*, the U.S. Supreme Court abolished juvenile executions, arguing that it is unconstitutional to sentence anyone to death for a crime he or she committed while younger than 18. The Court argued that teenagers are too immature to be held accountable for their crimes to the same extent as adults given the “national consensus” against executing juveniles and the medical and social science evidence demonstrating their immaturity.

examination of a particular case means understanding the nature of the problem, what considerations would be relevant to a solution, and what a “right solution” would be. This seems to parallel Hinman’s point that there must be a full understanding of the cultural context of a particular case before any attempt is made to resolve conflicts among differing ethical standards.

RELIGION AND ETHICAL STANDARDS

As discussed earlier, when societies apply normative ethics, they are prescribing ethical standards for conduct. What is the origin of these standards? Many people believe that ethical standards and religion are connected and that ethical standards are derived from religious principles and tenets. For example, many hospitals in the United States have ethics committees that typically include representatives of the clergy as members, and when ethical issues are discussed in the media, religious representatives are often invited to comment on them. People assume, therefore, that religious representatives who interpret religion are also able to define ethical standards of conduct. The divine command theory expresses this view and argues that what is morally right is what God directs, and conversely, what is morally wrong is what God prohibits.

In a famous discussion, the Greek philosopher Socrates took up the question of whether divine command theory was concerned with the power of the gods to command or the “rightness” of the gods’ commands. He asked the question, “Is conduct right because the gods command it or do the gods command it because it is right?” The arguments about this question are considered in the following sections.

Conduct Is Right Because God Commands It

According to this perspective, the only issue is the simple matter of God requiring a particular kind of conduct. If God commands it, that is sufficient, and the conduct is right regardless of what reason tells us. However, this raises the question of how we discover what constitutes God’s will. If we argue that it is contained in religious texts, should we look to only one text—for example, the Bible? If not, how do we discover God’s will from the multitude of religious texts that exist in the many religions on earth? It is also difficult to determine the exact nature of God’s will. If we assume it is to be found from reading the Bible, what if we cannot find any statements there about a particular ethical issue, and what do we do if there are conflicting statements about God’s will regarding a particular ethical issue? Also, if we argue that conduct is right because God commands it, this means we are giving God the power to issue whatever commands He wishes. This, in turn, means that God can give a different command from the one He has already given, so His commands can be considered arbitrary. However, the notion that God’s commands are arbitrary is inconsistent with the belief that God is all-powerful and all-knowing. It is obvious that this argument raises a number of complex and difficult issues.

God Commands Right Conduct Because It Is Right

This is the second option offered by Socrates, and it means that God’s commands are not arbitrary but emanate from the application of His wisdom in knowing what is best for us. However, there is a problem, because in accepting the rightness of God’s commands, we must also accept that there is some standard of right and wrong outside God’s will that must exist prior to and independent of God’s command. In the final analysis, therefore, we must either accept that God’s commands are arbitrary or recognize that His commands have reference to a standard of rightness and wrongness independent of His will. Those who take the position that ethical

standards are set by God are therefore obliged to accept arguments that tend to conflict with their fundamental religious belief in God's goodness and omnipotence. The divine command theory raises so many complex and difficult issues that it leads to the conclusion that setting ethical standards by reference only to religion is highly problematic.

ETHICS AND NATURAL LAW

In looking at the origin of ethics, some ask whether natural law is the origin. The idea of natural law is that underneath the diversity of human cultures and beliefs about what is right and wrong, we can identify some factors that are common to our human nature. The notion of natural law was a favorite of ancient thinkers like Plato and Aristotle, who sought to identify universal traits of human nature with the aim of finding common goals or ends that would bring human fulfillment or happiness (Kane 1996: 46). This pattern of looking for natural laws continued into the medieval and later periods of Western culture, especially through the thinking of the 13th-century philosopher Thomas Aquinas (Haakonssen 2010: 76).

Natural laws are said to be laws that govern human behavior and define the right way to live. They are said to be "natural" because they are thought of as incorporating human nature and the goals that humans naturally seek. In effect, natural law represents a search for moral absolutes that define what is "normal" and "natural." For example, despite more progressive and inclusive modern attitudes toward homosexuality, some still argue that practicing homosexuality is "unnatural" because it is contrary to human nature. In modern ethics and law, natural law "refers to the more general idea that there is a 'higher' norm or law that is not the work of human action" (Haakonssen 2010: 76). In this sense, therefore, natural law is differentiated from positive law, such as the enactment of legislation.

Lloyd Steffen (2012), in an argument grounded in elements of natural law, proposes to bridge the gap between ethical theory and lived experience. Arguing that it often seems that ethical theories are far removed from people's actual experiences, Steffen suggests an ethical framework that will assist those faced with ethical issues and dilemmas to resolve them by applying what philosophers term "practical reason"—a form of reasoning that we apply when faced with decisions about how to live and act. Steffen points to the difficulties of Kantian and consequentialist theories (see Chapters 12 and 13), especially in relation to Kant's conception of ethical absolutism in which, for example, a person may be faced with a clash of duties such as protecting an innocent life or telling an untruth; the choice, according to ethical absolutism, must always be never to lie, whatever may be the consequences. As Steffen points out, this does not square well with general notions about lying that overlook so-called white lies where no harm is caused by the act of lying.

Steffen argues that consequentialist ethical theory, too, has its problems because it concerns itself solely with calculating the maximum utility of an act (see Chapter 13 for a critique of consequentialism) and therefore does not condemn any lying that yields the greatest good for the greatest number (Steffen 2012: 8). In other words, while the Kantian will adhere to principles, the consequentialist operates in the belief that nothing is intrinsically wrong or immoral. Steffen asks whether we should simply accept the shortcomings in these theories and apply them regardless or take a different approach that he terms a *hybrid*—"one that takes account of duty and principles yet steers clear of absolutism and that attends to consequences but avoids relativism."

Steffen's hybrid approach to ethical decision-making is based in natural law, which, as noted previously, effectively claims that human beings as rational persons are naturally endowed with the capacity for reason and are therefore capable of identifying goodness. According to Steffen,

the hybrid ethic is expressed most cogently in the structures and frameworks associated with “just war” thinking (see Chapter 10), itself a tradition found in natural law thinking. Essentially, the just war tradition argues that war, in certain circumstances, can promote the common good and serve the interests of justice. A war can therefore be said to be “just” if it satisfies certain criteria. Behind this just war framework, Steffen discerns an ethic that can guide action—namely, that “ordinarily force ought not to be used to settle conflicts” (2012: 44). This ethic, he suggests, as a moral presumption or “common agreement,” is applicable to war or to any use of force. It is, however, liable to be displaced by exceptions represented by the criteria that traditionally permit a just war, examples of which are acting in self-defense and protecting innocent civilians (p. 46). It is easy to see how this ethical approach can be applied to police use of force—that commonly, force ought not to be employed to settle conflicts and then only when necessary, applying exceptions using the graduated scale of responses such as those set out in Chapter 3.

Steffen (2012: 86) acknowledges that this hybrid ethic is not found in ethics textbooks and could be regarded as a more complex form of rule consequentialism (sometimes called rule utilitarianism; see Chapter 13). Other objections to Steffen’s perspective center on its abandonment of ethical absolutism—for example, in the case of abortion where some take an absolutist approach and would argue no criteria could trump the moral argument against it, as well as to his reading of natural law. The same objections could be taken to his position on lying and cheating, where he sees room for “just lying” and “just cheating” (pp. 101, 107). In spite of these challenges, Steffen’s perspective for “doing ethics” resonates because it blends theory and practice and provides a clearly expressed and practical method of resolving ethical issues.

ETHICS AND LAW

Is law a source of ethical standards, and what is the relationship between law and ethics? It is important to understand that ethics and law are distinct categories. By law, we generally mean legislation, statutes, and regulations made by states and by the federal government on a host of subjects for the public good and public welfare. Laws do not, and are not intended to, incorporate ethical principles or values, but sometimes, ethical standards will be reflected in laws. For example, both morality and the law prohibit the act of murdering another human being. Similarly, legislation regulating the legal profession or other professions may give legal effect to certain professional codes of conduct. It is possible to argue, therefore, that codes of conduct regulating legal practice have the force of law. However, on a whole range of subjects from business practice to driving a vehicle, laws do not set ethical standards.

It is important to appreciate, therefore, that ethical standards are not necessarily written down in the form of laws or other rules but represent the collective experience of a society as it regulates the behavior of those who make up that society. The fact that an ethical standard is not repeated or copied in a law does not affect the validity of that ethical standard. However, where ethical standards are incorporated into law—such as a law governing the right to choose an abortion—although people must obey the law, they are not necessarily required to hold the same ethical beliefs expounded by that law.

Sometimes, laws can conflict with ethical standards. For example, laws promoting apartheid in South Africa and slavery in the United States were both clearly in violation of ethical standards relating to the dignity of the person but were nevertheless lawful and were expected to be obeyed when in force. From time to time, a mass movement develops against a particular law or set of laws, reflecting a section of public opinion that claims that the law is wrong and should be repealed. Where there is a deliberate disregard of the law by those protesting its wrongness, the

result can be acts of civil disobedience. For example, in India during the British colonial period, Gandhi advocated and practiced civil disobedience to British laws because he and his followers wanted an end to the colonization of their country. Similarly, in the United States, civil rights workers and activists deliberately flouted laws that were racially discriminatory and were prepared to be arrested and jailed in pursuit of equal treatment for all citizens.

ETHICAL DILEMMAS

Ethical questions and issues arise for all people, not just for professionals in the criminal justice system or professors who teach ethics or members of the clergy. We may all have to make decisions involving ethical issues in our daily and professional lives because, as we have noted, ethical issues are concerned with questions of right and wrong and how we ought to act. For example, we might apply for a job, and to be considered for the position, we may have to decide whether to hide the fact that we were fired from a previous job for misconduct. In other words, we have to decide whether to lie to promote our own career interests or whether to reveal the truth. Another instance may arise as we walk down the street and see a person who is apparently homeless, panhandling from passersby. The ethical dilemma here is whether we should act to help the poor and needy or just pass by and give nothing.

We will have to make ethical decisions in our day-to-day lives, so it is helpful to recognize when an issue involves ethical considerations and then have the ability to apply a knowledge of ethics, including ethical terminology and concepts, in making our decision about what to do. A number of ethical approaches can be taken in making a decision about an ethical issue, and you will see in the following chapters that no ethical approach is the “correct” one; rather, different approaches are equally valid in ethical terms. The approach we adopt to an ethical issue will frame and give meaning to any decision we make and can be used to justify and validate our actions. Of course, it is always possible to abandon the responsibility for making an ethical decision. We might decide that we will simply follow the dictates of others rather than applying our own minds to a particular ethical issue. For example, during World War II, many war crimes were committed by members of the Nazi Party, who claimed they were simply following orders in committing those crimes. In effect, they abandoned their responsibility to make an ethical decision not to kill or murder and opted instead to obey unethical and inhumane directions.

Similar situations may arise in the criminal justice system. For example, a prosecutor may have to decide whether to seek the maximum penalty against an accused under three-strikes legislation. If he or she does decide to seek the maximum, the result may be that the accused will be incarcerated for the rest of his or her life. A prosecutor may decide to act ethically and fully weigh this issue in light of the facts of the case and the nature of the crime committed. Alternatively, he or she may choose not to follow that process and may simply take the position that the law reflects public opinion and that he or she should always exercise discretion so as to impose the full penalty provided by the law.

When we decide to accept responsibility and make a decision involving ethical considerations, we are faced with a *personal ethical dilemma*. A personal ethical dilemma can be contrasted with an *ethical issue*. The latter is usually an issue of public policy involving ethical questions. Examples of such issues include the morality of capital punishment, whether to incarcerate more people or use alternative sanctions for convicted offenders, and other important social issues. A further distinction between ethical dilemmas and ethical issues is that an ethical dilemma is the responsibility of an individual and requires a decision to be made. Ethical issues, on the other hand, being broad issues of social policy, do not require individual decision-making beyond the

decision of whether one is in favor of or opposed to a particular social issue. However, the fact that ethical issues do not require most individuals to decide the issue does not mean that an individual is helpless to influence the public debate on a social issue.

Ethical dilemmas are important in the criminal justice system because criminal justice professionals are often faced with having to make decisions that involve ethical issues. Much of the material in this book concerned with ethical practices in the criminal justice system will focus on ethical dilemmas faced by criminal justice professionals, and it will analyze options in light of ethical theories and any relevant rules and regulations.

How do we recognize when a dilemma is an ethical dilemma as opposed to merely a dilemma? An ethical dilemma arises only when a decision must be made that involves a conflict at the personal, interpersonal, institutional, or societal level or raises issues of rights or moral character.

What process is followed in resolving an ethical dilemma? Richard Hare (1987) argues that we initially use an **intuitive** level of moral thinking when we consider ethical dilemmas. This provides us with relatively simple principles derived from our upbringing and past experience of decision-making. **Critical thinking** is another process of thinking about moral decisions; in contrast to intuitive thinking, critical thinking applies principles established by philosophy and moral concepts, and it is therefore nonintuitive. In making moral judgments when faced with moral dilemmas, we may initially apply an intuitive form of thinking, relying on our intuition to identify possible courses of action to make the decision. However, we are likely to find that our intuitions do not adequately equip us to make moral decisions and that critical thinking is required. Consider the following scenario:

THE NEW RECRUIT: ANALYZING AN ETHICAL DILEMMA

A newly recruited correctional officer, Tom, overhears three other correctional officers, Fred, Bob, and Charlie, discussing arrangements to assault an inmate, Raymond, who has previously attacked another correctional officer, a close friend of the three officers.

Tom is faced with a dilemma: whether to prevent the attack on Raymond or not. His dilemma is an ethical dilemma because if he does act, this will involve a conflict between him and Fred, Bob, and Charlie. It is also an ethical dilemma because it raises issues of rights and morality—that is, the right of Raymond to safety and security even in prison and the morality of allowing a person to be assaulted other than in an act of self-defense. To resolve his ethical dilemma, Tom will need to pursue a process of analysis resulting in a decision. The following process is intended to provide Tom with a method for reaching his decision:

1. He will identify the fact that he is faced with an ethical dilemma and state the dilemma clearly.
2. In his mind, he will collect the facts and circumstances of what he overheard so that he is quite clear about what he heard, the identities of those involved, and all other relevant information.
3. He will collect all the facts and knowledge relevant to the decision, including his own values about the issue and the values of his workplace. He will consider his own position at the prison as a newly trained officer and the consequences of reporting the incident and of not reporting it.

4. This is an ethical dilemma, so he will call to mind his knowledge of ethical principles and theories with the aim of applying those ethical approaches to his possible courses of action.
5. Tom will now identify his available options for action. First, he could intervene in the situation by informing his supervisor of the conversation he overheard. This action will be based on his responsibility to ensure the safety and security of all inmates and to enforce the policies and rules of the institution. Second, he could choose to ignore the conversation because of his loyalty to his fellow officers and his need in the future to receive their assistance and support when carrying out his duties. Third, he could choose to intervene by talking to the officers involved in an attempt to prevent the misconduct with the aim of minimizing the harm for all involved parties. Tom must support each alternative action with reasoning derived from ethical principles to give credibility to his choice of action.
6. Tom will make his decision based on his analysis of the dilemma after applying the ethical approaches to each course of action. He will choose the option that for him is the most ethically appropriate. In other words, after considering the choices according to this process, he will decide, "This would be the right thing for me to do." He therefore resolves his ethical dilemma by making an ethical decision and acting on that decision.

Tom's process for making an ethical decision seems straightforward. However, making an ethical decision may involve factors such as personal values, personal priorities, or how a particular decision might affect friends or even strangers. Therefore, the most ethical choice is not always clear.

To act ethically is not simply a matter of deciding what is right and wrong in advance and stubbornly sticking to that position. Since there are many gray areas where there are no specific rules, laws, or guidelines laid out in advance, it is not always easy to know which decision is the most ethical choice. In addition, if we are to act in an ethical way, we have to justify what we do, and the justification must be sufficient to, in principle, convince any reasonable human being. As James Rachels puts it,

[a] moral judgment . . . must be supported by good reasons. If someone tells you that a certain action would be wrong, for example, you may ask why it would be wrong, and if there is no satisfactory answer, you may reject that advice as unfounded. In this way, moral judgments are different from mere expressions of personal preference . . . moral judgments require backing by reasons, and in the absence of such reasons, they are merely arbitrary. (1991: 438)

Hare (1987: 218) argues that moral judgments must be able to be applied universally. According to this principle, similar actions ought to be judged similarly unless there are morally relevant differences between them. For example, if I judge it wrong for you to cheat in examinations, I must be prepared to say that it is wrong for me as well unless I can explain how my situation is different from yours in a morally relevant way (Holmes 1998: 151). Thus, the principle does not say whether you should cheat, but it does require that whatever you do, you must be consistent. Singer (1995: 175) expands this notion somewhat by arguing that when thinking ethically, I ought to consider the interests of my enemies as well as my friends and of strangers as well as my family. If, after I have fully taken into account the concerns and preferences of all these people, I still believe that a particular action is better than any alternative, then I can honestly say that I ought to do it.

What weight do we give to our personal values when making ethical decisions? By *values*, we mean what individuals care about and what they think is important. This can include such things as people's desires, such as social approval; what they enjoy, such as sports or music; their goals or purposes; their ideas of happiness or success; and their highest ideals. Each person develops a set of values that forms his or her value system. We often assume that our values are similar to others'; however, we may define values differently than others do. For example, we may have different definitions of what constitutes a "family," but we may all share "family" as a value. Even if we do have similar definitions of values, we often prioritize them differently. Thus, one person might give the value of "freedom" a higher priority than the value of "preservation of life." Another may prioritize the value of "loyalty" higher than "personal freedom." The fact that we may order our values differently explains why our thinking about ethical decisions differs from that of others and why we arrive at different conclusions.

ETHICAL ISSUES IN CRIMINAL JUSTICE

To illustrate the relevance of the study of ethics to the criminal justice system, a number of specific ethical problems and issues that might arise for professionals in the criminal justice system are sorted into the sections that follow. These problems and issues might be concerned, for example, with how to exercise authority, with how to deal with conflicts between the personal and the professional, or with ethical issues confined within one particular part of the system, such as juvenile justice.

Ethical Problems in the Use of Authority

- The use of authority to promote personal values
- The use of authority to avoid accountability for wrongdoing
- Police gratuities, free meals, discounts on purchases, and so on

Ethical Problems in the Relationship Between Personal and Professional Interests

- Using professional status to promote personal interests (religious, philosophical, financial, etc.)
- Using institutional time and materials for personal gain unrelated to legitimate work activity
- Engaging in or promoting professional activities that are contrary to personal values
- Engaging in public or private personal activity that is contrary to professional values (use of drugs, driving under the influence of alcohol, etc.)

Ethical Problems in Personal and Professional Commitments to Clients

- Behaving unethically in personal relationships with clients
- Using relationships with clients or the public for personal gain (acquiring goods more cheaply, having work done for personal benefit, accepting gifts, etc.)

Ethical Issues in Criminal Justice and Public Policy

- The war on drugs
- Government policies having implications for criminal justice professionals in issues such as youth confinement, fingerprinting of juveniles, and compulsory treatment such as mandatory participation in substance abuse programs or anger management
- Capital punishment
- The move away from rehabilitative juvenile justice policies and toward more punitive policies
- Policies involving harsher penalties, resulting in “prisoner warehousing”
- Government-imposed mandatory sentencing (three-strikes legislation, mandatory minimum sentences)
- Truth in sentencing policies
- Increased surveillance of citizens in society
- The policies implemented in the war on terrorism
- Internet sexual exploitation
- Criminalization of immigration—“cimmigration”

Ethical Issues Resulting From Policing Policies

- Policing policy in domestic violence cases
- Racial profiling
- Use of force
- Use of police discretion
- Rules or practices relating to the retention or disposal of court records—for example, in the juvenile justice system, where some states have considered making juvenile records and court hearings open to the public and the media
- Body cameras
- “Stop and frisk”

Ethical Problems in Dealing With Human Rights Issues in the Criminal Justice System

- The administration of cruel and unusual punishment
- Human rights violations against prisoners (women, men, transgender individuals, juveniles)
- Capital punishment
- Armed drones and targeted killings
- Torture

Ethical Problems in Information Sharing

- The ethics of withholding information—for example, from a client, the court, or the police
- Problems of confidentiality and privileged communication—for example, counselor–client relationships and participation in research

Ethical Issues in the Media Reporting of Crime

- Crime and public opinion
- Crime as entertainment
- The politicization of crime
- Representation of particular groups of offenders and of women or girl offenders

SUMMARY

In this chapter, the role of ethics in shaping decisions has been explored. Ethics has been shown to be a central component in decisions involving ethical dilemmas, and the process of analyzing an ethical dilemma has been illustrated. Ethics is concerned with standards of conduct and with “how I ought to act,” and standards of conduct may vary among different societies. Approaches to setting standards range from cultural relativism to moral absolutism; a perspective that emphasizes moral pluralism seems to offer the best hope for resolving problems of relativities. Investigating sources of ethical standards reveals that religion, natural law, and other forms of law have an influence in shaping ethical standards. An understanding of ethics is essential to competent decision-making by criminal justice professionals and to the proper working of the criminal justice system. In this chapter, case studies in the form of media reports of unethical conduct by police and prosecutors have been presented. In the next chapter, ethical issues in law enforcement are explored in depth.

DISCUSSION CASE

In 2003, France legislated to ban the wearing of headscarves in public schools (“Chirac: Ban Headscarves” 2003). It was claimed that this action was necessary to protect the separation of church and state required by French law. There are an estimated 6 million Muslims living in France, many from former French colonies in North Africa, but very few wear headscarves. The French move seems to have spurred other European states to follow that lead, as a number are now advocating a ban on the burqa and niqab—the *burqa* covers a woman’s body from head to toe and totally conceals her face, and the *niqab* is a headscarf that covers a woman’s hair. In some German states and in Belgium, the niqab cannot be worn in schools.

In 2006, the right-of-center government of Holland committed itself to a prohibition on the wearing of the burqa and the niqab in public if it returned to office (Bell 2006; Clements 2006). Also in 2006, the British foreign minister was reported as having said that the niqab was a barrier to communication, and then-British prime minister Tony Blair commented that it was “a ‘mark of separation’ that makes people from other backgrounds feel

uncomfortable” (Grice 2006). In May 2010, Belgium banned covering the face, and in June 2010, Spain approved a motion to ban the wearing of the burqa in public by a narrow majority, despite the fact that only about 2,000 women out of a Muslim population of 5 million in Spain wore the burqa (BBC 2010).

Advocates of the prohibition claim that wearing the veil challenges, or can be seen as a threat to, “progressive” Muslim women who refuse to wear it. However, women who choose to wear the veil say that the veil symbolizes modesty, humility, and devotion to their faith (McCrea 2013).

DISCUSSION QUESTIONS

1. How is *ethics* defined?
2. Why is it important for criminal justice professionals to study ethics? Explain how applying ethical approaches helps criminal justice professionals make appropriate and “correct” decisions.
3. What are the possible sources of ethical rules? Discuss the problems inherent in each source.
4. Discuss the advantages offered by ethical pluralism over ethical absolutism and ethical relativism.
5. Outline the steps involved in analyzing an ethical dilemma.