Morality, Ethics, and Human Behavior

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age of reason
negligence
recklessness
regulations
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Chapter Objectives

- Become familiar with the major arguments supporting the importance of studying ethics in the criminal justice field.
- Understand the vocabulary of ethics—that is, morals, ethics, values, ethical codes, ethical standards, and dilemmas.
- Understand how to analyze an ethical dilemma.
- Become sensitive to the types of ethical dilemmas faced in one's professional life.

Consider the following dilemmas:

- You are a police officer patrolling late at night and see a car weaving back and forth across lanes of traffic. You turn on your siren, and the car pulls over. The driver stumbles out of the car, obviously intoxicated. There is no question that the driver meets the legal definition of intoxication. He also happens to be your father. What would you do?

- You are a correctional officer working the late night shift. Your sergeant and another officer from the day shift come onto the tier you are working and ask you to open up an inmate's cell. You do so, they enter the cell, and you hear a series of sounds, including grunts, cries, and moans. They exit, muttering about how the inmate has been taught a lesson. You believe that you have just been a party to an assault, but say nothing. The next night, you find out that the inmate never reported the incident, nor did any other inmates. You believe that if you come forward and report what you saw, you will be severely ostracized, that you may not even be believed (especially if the inmate doesn't back you up), and that you might lose your job. What would you do?

- You are a student interning in a criminal defense lawyer's office. As part of your duties, you sit in court with the lawyer you are working with, help her with legal research, and assist in interviewing witnesses. During the course of the internship you conclude that the lawyer is, in your opinion, extremely negligent. She does not return client calls, she misses appeal deadlines, and she ignores or does not follow up on promising leads that might lead to exculpatory evidence. You are appalled that several of her clients are advised to plead guilty, even though you think that the evidence against them is weak. After bringing up these issues with her, she fires you on the spot, and tells you that all her clients are guilty anyway and she is just another "cog in the wheel" of the justice machine. What, if anything, would you do?

WHY STUDY ETHICS?

How would you decide what to do in these situations? Learning how to determine the “right thing to do” is the central purpose of this book. We make ethical decisions all the time, whether we recognize them or not. Think about some ethical choices you have been faced with in the last couple weeks. Perhaps the choice occurred at work when you were asked to cover for an employee who wanted to go home early and not report the time lost; or when...
a friend and co-worker took something from the store where you both worked and expected you to say nothing. Perhaps the choice occurred when a friend asked you to lie, or when you, yourself, felt compelled to tell a professor a “white lie” when asking for an extension on an assignment or a different test time.

All of us are faced with choices that can be judged under ethical standards. Furthermore, we frequently judge other people’s behaviors as right or wrong. Criminal justice professionals, whether they work in law enforcement, the courts, or corrections, experience a multitude of situations where they must make choices that can be judged after the fact as right or wrong. A characteristic of every criminal justice profession is that the role entails a public trust that involves power over others. Those who have such power over others must be especially sensitive to the ethical issues that may arise in their professional lives.

Criminal justice issues are serious, difficult, and affect people’s lives in fundamental ways. These are just a sample of the criminal justice issues that have ethical implications:

■ Decriminalization of soft drugs
■ Megan’s Law and similar legislation that require sex-offender registries (perhaps spurring vigilante actions)
■ A moratorium of the death penalty
■ Mandatory DNA testing in death penalty cases
■ Three-strikes legislation
■ Racial profiling
■ Law enforcement corruption (i.e., the Ramparts scandal)
■ Waiver of juveniles to adult courts
■ Citizen oversight committees for police departments
■ The Patriot Law and other challenges to civil liberties in the wake of terrorism

The criminal justice system is often examined using political, organizational, or sociological approaches. Let us shift the lens somewhat and look at the steps in the system through an ethics perspective. Although our primary discussion concerns ethical dilemmas faced by individuals, the same analytical approach might be used to help shed light on the issues listed, as well as others.

Legislators have the power to define behavior as illegal and, therefore, punishable. They also have the power to set the amount of punishment. They do so usually from some rationale of public safety, but also employ moral definitions for deciding which behaviors should be legal and which should be illegal. For instance, there is obviously a public-safety rationale for laws against murder or armed robbery, but is there a public-safety rationale for laws that prohibit same-sex marriages? It seems that the only argument against same-sex marriages is a purely moral one. “Protection of public morality” is the rationale for a number of other laws, including abortion, sodomy between consenting adults, drug laws, gambling, and prostitution. Legislators impose the public
“will” and define what is wrong. Ultimately, that definition leads to deprivations of liberties for those who do not believe in the wrongness of the action. For example, although you might not believe there is anything morally wrong with small amounts of marijuana, you act on that belief at your peril. Thus, one might question how legislators use their great discretion and how they balance the rights of all people. Chapter 5 explores these questions in more detail.

Police officers have the power to deprive people of their liberty (through arrest), they have the power to decide which individuals to investigate and perhaps target for undercover operations, and they have the power to issue a ticket or provide “mercy” and let a driver off with a warning. They serve as the interface between the awesome power of the state and the citizenry governed. In some countries, police operate as a fearsome coercive force for a controlling political body. In this country, some see police operating in a similar way; however, we do enjoy constitutional protections against untrammeled police power. In Chapters 6, 7, and 8, the ethical use of police discretion will be discussed in more detail.

Prosecutors probably face the least public scrutiny of all criminal justice professionals, which is ironic since they wield incredible power in their discretion in deciding who and how to prosecute. They decide which charges to pursue and which to drop, which cases to take to a grand jury, how to prosecute a case, whether to pursue the death penalty in homicide cases, and so on. They often make general decisions about the types of crimes to pursue, affecting police officers’ enforcement decisions. They have ethical duties to pursue “justice” rather than conviction, but one might argue that, at times, their decision making may seem to be more political than just. Judges also hold incredible power, typically employed through decision making in accepting plea bargains, decisions regarding rules of evidence, and decisions about sentencing. Chapters 9 and 10 deal with the ethical issues of legal professionals in the criminal justice system.

Finally, correctional officials also have immense powers over the lives of certain citizens. Probation officers make recommendations in pre-sentence reports and violation reports that affect whether an individual goes to prison. Prison officials decide to award and take away “good time,” and they make decisions regarding placing inmates into segregation—in both types of decisions, the individual’s liberty is affected. Correctional officers make daily decisions that affect the life and health of the prisoners they supervise. The discretion of parole officials includes the decision to file a violation report, as well as less serious decisions regarding the parolee’s life. In short, all correctional professionals have a great deal of discretion over the lives of those they control. The ethical issues of correctional professionals are discussed in Chapters 11, 12, and 13.

All the professionals discussed have several elements in common:

1. They each have discretion, meaning the power to make a decision. While the particular decisions are different, they all involve power over others and potential deprivation of life, liberty, or property.
2. They each have the duty of enforcement of the law. Although this concept is obvious with police, it is also clear that each of the professionals mentioned has a basic duty to uphold and enforce all laws; they serve the law in their professional lives.

3. They must accept that their duty is to protect the constitutional safeguards that are the cornerstone of our legal system, specifically, due process and equal protection. Due process protects each of us from error in a governmental deprivation of life, liberty, or property. We recognize the right of government to control and even to punish, but we have certain protections against arbitrary or inaccurate use of that power. Due process protects those interests. We also expect that government’s power will be used fairly and in an unbiased manner. Equal protection should ensure that what happens to us is not determined by the color of our skin, our gender, nationality, or the religion we practice. Laws are for everyone, and the protection of the law extends to all of us. Although there is a fair amount of evidence to indicate that different treatment does exist, the ideal of equal protection is an essential element of our legal system and should be an operating principle for everyone working in this system.

4. They are public servants. That is, their salaries come from the public purse. Public servants possess more than a job; they have taken on special duties involving the public trust. Individuals such as legislators, public officials, police officers, judges, and prosecutors are either elected or appointed guardians of the public’s interests. Arguably, they must be held to higher standards than those they guard or govern. Temptations are many, and often it seems we find examples of double standards, where public servants take advantage of their positions for special favors, rather than higher standards of exemplary behavior.

QUOTE

Part of what is needed [for public servants] is a public sense of what Madison meant by wisdom and good character: balanced perception and integrity. Integrity means wholeness in public and private life consisting of habits of justice, temperance, courage, compassion, honesty, fortitude, and disdain for self-pity.


Obviously, the law governs many of the decisions that public servants make, but because of the discretion that exists at every step of the criminal justice process, there is always the possibility of an unethical use of such discretion. Understanding the ethical issues involved in one’s profession might help to guide such discretion and prevent abuse. Therefore, all professionals in the criminal justice field must be sensitive to ethical issues. These issues may involve their relations with citizens and others over whom they have power, their relationships with their agency, or their relationships with one another. The “Principles of Public Service Ethics” box considers how ethics should be applied by public servants.
Principles of Public Service Ethics

1. **Public service.** Public servants should treat their office as a public trust, only using the power and resources of public office to advance public interests, and not to attain personal benefit or pursue any other private interest incompatible with the public good.

2. **Objective judgment.** Public servants should employ independent objective judgment in performing their duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.

3. **Accountability.** Public servants should assure that government is conducted openly, efficiently, equitably, and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.

4. **Democratic leadership.** Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.

5. **Respectability.** Public servants should safeguard public confidence in the integrity of government by being honest, fair, caring, and respectful, and by avoiding conduct creating the appearance of impropriety or which is otherwise unbefitting a public official.

SOURCE: Josephson Institute of Ethics.

Felkenes (1987: 26) explained why the study of ethics is important for criminal justice professionals:

1. Professionals are recognized as such in part because [a] “profession” . . . normally includes a set of ethical requirements as part of its meaning. . . . Professionalism among all actors at all levels of the criminal justice system depends upon their ability to administer policy effectively in a morally and ethically responsible manner.

2. Training in critical ethics helps to develop analytical skills and reasoning abilities needed to understand the pragmatic and theoretical aspects of the criminal justice system.

3. Criminal justice professionals should be able to recognize quickly the ethical consequences of various actions, and the moral principles involved.

4. Ethical considerations are central to decisions involving discretion, force, and due process which require people to make enlightened moral judgments.

5. Ethics is germane to most management and policy decisions concerning such penal issues as rehabilitation, deterrence, and just deserts.

6. Ethical considerations are essential aspects of criminal justice research.

In answer to a similar question, Braswell (2002: 8) explains the five goals of a study of ethics:

1. Become aware and open to ethical issues.

2. Begin developing critical thinking skills.
3. Become more personally responsible.
4. Understand how the criminal justice system is engaged in a process of coercion.
5. Develop **wholesight** (which roughly means exploring with one’s heart as well as one’s mind).

The comprehensive nature of these two lists requires no additions. We will simply reiterate some basic points. First, we study ethics because criminal justice is uniquely involved in coercion, which means there are many and varied opportunities to abuse such power. Second, almost all criminal justice professionals are public servants and, thus, owe special duties to the public they serve. Finally, we study ethics to sensitize the student to ethical issues and provide tools to help identify and resolve the ethical dilemmas that may be faced in their professional lives.

**QUOTE**

*Raise the salaries [of public servants], we are encouraged, and then you can expect better. I doubt it. . . . Raise the salaries if the jobs merit higher pay but not in expectation of buying integrity. Nobody sells that. People who have it give it for free.*


**DEFINING TERMS**

The words **morals** and **ethics** are often used in daily conversations. For instance, when public officials use their offices for personal profit or when politicians accept bribes from special interest groups, they are described as unethical. When an individual does a good deed, engages in charitable activities or personal sacrifice, or takes a stand against wrongdoing, we might describe that individual as a moral person. Very often, **morals** and **ethics** are used interchangeably. This makes sense because they both come from similar root meanings. The Greek word *ethos* pertains to custom (behavioral practices) or character, and **morals** is a Latin word with a similar meaning.

**Morals and Ethics**

**Morals** and **morality** refer to what is judged as good conduct. (**Immorality** refers to bad conduct.) The term **moral** is also used to describe someone who has the capacity to make value judgments and discern right from wrong (Souryal, 1992: 12). **Ethics** refers to the study and analysis of what constitutes good or bad conduct (Barry, 1985: 5; Sherman, 1981: 8).

There are several branches or schools of ethics. **Meta-ethics** is “the highly technical discipline investigating the meaning of ethical terms including a critical study of how ethical statements can be verified” (Barry, 1985: 11). **Normative ethics** and **applied ethics** are concerned with the study of what
constitutes right and wrong behavior in certain situations. Normative ethics determines what people ought to do and defines moral duties. Applied ethics is the application of ethical principles to specific issues. Professional ethics is an even more specific type of applied ethics relating to the behavior of certain professions or groups.

To many people, ethics has come to mean the definition of particular behaviors as right and wrong within a profession. Very often, in common usage, morality is used to speak of the total person, or the sum of a person’s actions in every sphere of life, and ethics is used to refer to behaviors relating to a profession, and is an analysis of behavior relevant to a certain profession. For instance, the medical profession follows the Hippocratic Oath, a declaration of rules and principles of conduct for doctors to follow in their daily practices; it dictates appropriate behavior and goals. In fact, most professions have their own set of ethical standards or canons of ethics.

Even though professional ethics typically restricts attention to areas of behavior relevant to the profession, these can be fairly inclusive and enter into what we might consider the private life of the individual. For instance, doctors are judged harshly if they engage in romantic relationships with their patients, as are professors if they become involved with students. These rules are usually included in codes of ethics for these professions. We are very much aware of how politicians’ private behavior can affect their career in politics. When politicians are embroiled in controversial love affairs or are exposed as spouse abusers, these revelations have definite effects on their future. It is clear that, in some professions, anyway—typically those involving public trust such as politics, education, and the clergy—there is a thin line between one’s private life and one’s public life.

**QUERY**

- Should we be concerned with a politician who has extramarital affairs? Drinks to excess? Gambles? Uses drugs? Abuses his or her spouse? What if the person was a police officer? A judge?
- Should a police officer be sanctioned for drinking to excess in public and making a spectacle of himself or herself in a bar? Should a police officer be sanctioned for posing naked in a men’s magazine, but identified as a police officer, using pieces of the uniform as “props”?
- Should a probation officer socialize in bars that his or her probationers are likely to frequent?

It does not make a great deal of difference for our purposes whether we use the formal or colloquial definitions of morals and ethics. This text is an applied ethics text, in that we will be concerned with what is defined as right and wrong behavior in the professions relevant to the criminal justice system and how people in these professions make decisions in the course of their careers. It is also a professional ethics text, because we are primarily concerned with professional ethics in criminal justice.
Making Moral Judgments

We make moral or ethical judgments all the time: “Abortion is wrong.” “Capital punishment is just.” “It is good to give to charity.” “It is wrong to hit your spouse.” These are all judgments of good and bad behavior. We also make choices that can be judged as right or wrong. Should you call in sick even though you aren’t, to get a day in the sun? Should you give back extra change that a clerk gave you by mistake? Should you tell a friend that her husband is having an affair even though he asked you not to tell? Not all behaviors involve questions of ethics. In order to more specifically draw the boundaries of our ethical discussion, we need to know what sorts of behavioral decisions might be judged under ethical standards. Decisions that can be judged involve human acts of free will that affect others.

Act First of all, we must have some act to judge. For instance, we are concerned with the act of stealing or the act of contributing to charity, rather than an idle thought that stealing a lot of money would enable us to buy a sailboat or a vague intention to be more generous. We are not necessarily concerned with how people feel or what they think about a particular action unless it has some bearing on what they do. The intention or motive behind a particular behavior is an important component of that behavior; for instance, in ethical formalism (which we will discuss in Chapter 2) one must know the intent of an action in order to be able to judge it as moral, immoral, or neither. However, one must have some action to examine before making a moral judgment.

Only Human Acts Second, judgments of moral or ethical behavior are directed specifically to human behavior. A dog that bites is not considered immoral or evil, although we may judge careless pet owners who allow their dogs the opportunity to bite. Nor do we consider drought, famine, floods, or other natural disasters immoral, even though the death, destruction, and misery caused by these events are probably greater than that caused by all combined acts that humans have perpetrated on their victims. Behaviors of animals or events of nature cannot be judged in the same way as actions performed by human beings. The reasons we view them differently may become apparent in the next paragraph. Morality (or immorality) has been applied only to humans because of their capacity to reason. Because only humans have the capacity to be “good,” which involves a voluntary, rational decision and subsequent action, only humans, of all members of the animal kingdom, have the capacity to be “bad.”

Free Will In addition to limiting discussions of morality to human behavior, we also usually further restrict our discussion to behavior that stems from free will and free action. Culpability is not assigned to persons who are not sufficiently aware of the world around them to be able to decide rationally what is good or bad. The two groups traditionally exempt from responsibility in this sense are the young and the insane. Arguably, we do not judge the morality of their behavior because of a belief that they do not have the capacity to reason
and therefore cannot choose to be moral or immoral. Although we may punish a two-year-old for hitting a baby, we do so to educate or socialize, not to punish, as we would an older child or adult. We incapacitate the mentally ill to protect ourselves against their violence and strange behavior, but we consider them sick, not evil. This is true even if their actual behavior is indistinguishable from that of other individuals we do punish. For example, a murder may result in a death sentence or a hospital commitment, depending on whether the person is judged to be sane or insane, responsible or not responsible. Admittedly, at times we have difficulty in deciding whether behavior originates with free will, or we do not care whether it does. This issue will be addressed in more detail later in this chapter.

**QUERY**

- Do you agree that a child before the legal age of reason is not morally culpable for his or her actions? Why or why not? What should the age of reason be?
- What are some situations in which the individual cannot be considered rational or, alternatively, is not acting from free will? Is the behavior that results moral or immoral?

**Affects Others** Finally, we usually discuss moral or immoral behavior only in those cases where the behavior significantly affects others. For instance, throwing a rock off a bridge would be neither good nor bad unless you could possibly hit or were aiming at a person below. If no one were there, your behavior is neutral; if someone were below, however, you might endanger that person's life, so your behavior would be judged as “bad.” All the moral dilemmas we will discuss in this book involve at least two parties, and the decision to be made affects the other individual in every case. In reality, it is difficult to think of an action that does not affect others, however indirectly. Even self-destructive behavior is said to harm the people who love us and who would be hurt by such actions. We sense that this is an important aspect of judging morality when we hear the common rationale of those who, when caught, protest, “But nobody was hurt!” Indeed, even a hermit living alone on a desert island may engage in immoral or unethical actions. Whether he wants to be or not, the hermit is part of human society; therefore, some people would say that even he might engage in actions that could be judged immoral if they degrade or threaten the future of humankind, such as committing suicide or polluting the ocean.

One's actions toward nature might also be defined as immoral, so relevant actions include not only actions done to people, but also to animals and to nature. To abuse or exploit animals can be defined as immoral—judgments can be made against cockfighting, dog racing, laboratory experimentation on animals, and hunting. The growth of environmental ethics reflects increasing concern for the future of the planet. The rationale for environmental ethics may be that any actions that harm the environment affect all humans. It might also be justified by the belief that humankind is a part of nature—not superior to it—and part of natural law would be to protect, not exploit, the world of which we are a part.
QUERY

- Can you think of any action that does not affect other people?
- Do you believe the state should regulate behavior that arguably doesn’t hurt anyone else (such as motorcycle or bicycle helmet laws)?
  Prostitution? Gambling?
- Do you hold someone just as accountable for acts that are reckless and acts that are deliberate?

Thus far, we know morality and ethics concern the judgment of behavior as right or wrong. Furthermore, such judgments are directed only at voluntary human behavior that affects other people, the earth, and living things. We can further restrict our inquiries regarding ethics to those behavioral decisions that are relevant to one’s profession in the criminal justice system. Discussions regarding the ethics of police officers would concern issues such as whether to take gratutities, whether to cover up the wrongdoing of a fellow officer, whether to sleep on duty, whether to call in sick when one wants to play golf or go fishing, and whether to lie on an expense sheet. All of these actions affect other people. Review the “Inventory of Ethical Issues.” Notice that ethical work decisions fall into major categories: effects on citizenry, effects on other employees, and effects on the organization one works for.

<table>
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<tr>
<th>Inventory of Ethical Issues</th>
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<tbody>
<tr>
<td>The Individual and the Organization:</td>
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<tr>
<td>work ethic</td>
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<tr>
<td>petty theft</td>
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<td>overtime abuse</td>
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<tr>
<td>gifts and gratuities</td>
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<tr>
<td>falsifying reports</td>
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<tr>
<td>misuse of sick days</td>
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<tr>
<td>personal use of supplies or equipment</td>
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<tr>
<td>personal demands interfering with work performance</td>
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<tr>
<td>The Individual and Other Employees:</td>
</tr>
<tr>
<td>sexual or racial harassment</td>
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<tr>
<td>discouraging honest criticism</td>
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<tr>
<td>unfair decisions</td>
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<tr>
<td>inadequate compensation</td>
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<tr>
<td>The Organization and Employees:</td>
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<tr>
<td>no recognition of good performance</td>
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<tr>
<td>inadequate training</td>
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<tr>
<td>unrealistic demands</td>
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<tr>
<td>The Individual and the Public:</td>
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<tr>
<td>backstabbing and lack of support</td>
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<tr>
<td>gossip</td>
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<tr>
<td>sexual or racial harassment</td>
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<tr>
<td>lying to cover up blame</td>
</tr>
<tr>
<td>taking credit for other’s work</td>
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<tr>
<td>misuse of authority</td>
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<tr>
<td>inadequate performance of duty</td>
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<tr>
<td>sexual, racial, ethnic harassment</td>
</tr>
<tr>
<td>special treatment</td>
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<tr>
<td>lack of expertise in profession</td>
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</table>
Another comment we should make about behavior and morality is that philosophers distinguish between moral duties and superogatories. **Duties** refer to those actions that an individual must perform in order to be considered moral. For instance, everyone may agree that one has a duty to support one’s parents if able to do so, one has a duty to obey the law (unless it is an immoral law), and a police officer has a moral and ethical duty to tell the truth on a police report. Duties are what you must do in order to be good.

Other actions, considered **superogatories**, are commendable but not required. A Good Samaritan who jumps into a river to save a drowning person, risking his or her own life to do so, has performed a superogatory action—there is no moral condemnation of those who stood on the bank, because the action was above and beyond anyone’s moral duty. Of course, if one can help save a life with no great risk to oneself, then a moral duty does exist in that situation. Police officers may have an ethical duty to get involved when others do not. Consider the World Trade Center. One of the most moving images of that tragedy was that police officers and firefighters ran toward danger while most people ran away. This professional duty to put oneself in harm’s way is why we revere and pay homage to these public servants. Many civilians also put themselves in harm’s way, and since they had no professional duty to do so, they could be said to be performing superogatory actions.

There are also what are called **imperfect duties**. These are general values that one should uphold, but without specific application as to when or how. For instance, most ethical systems would support a general duty of generosity, but there is no specific duty demanding a certain type or manner of generosity.

**Values** are defined as elements of desirability, worth, or importance. Values and judgments of worth are often equated with moral judgments of goodness. We see that both can be distinguished from factual judgments, which can be empirically verified. Note the difference between the factual judgments “He is lying” and “It is raining” and the value judgments of “She is a good woman” or “That was a wonderful day.” The last two judgments are more similar to moral judgments in that “facts” are capable of scientific proof, whereas values and moral judgments are not.

Some writers think that value judgments and moral judgments are indistinguishable, since neither can be verified (Mackie, 1977; Margolis, 1971). Some also think that values and morals are relativistic and individual. For these people, there are no universal values; they are subjective rather than objective. Thus, they are not “truth,” but, rather, something closer to opinion (Mackie, 1977: 22–24). Because they are only **opinions**, in this view, no value is more important than any other value. Others believe that not all values are equal. Values such as honesty, for instance, are always more important than values such as pleasure. Universalists would not hesitate to propose that valuing money over life, for instance, would be wrong, as would valuing pleasure over charity.

Discussions concerning values imply a choice or judgment. If, for instance, you were confronted with an opportunity to cheat on an exam, your values of
academic success and honesty would be directly at odds. Values and morals are similar, but while values merely indicate relative importance, morals prescribe or proscribe behavior. The value of honesty is conceptually distinct from the moral rule against lying.

Individual values form value systems. All people prioritize certain things that they consider important in life. Behavior is generally consistent with values. For instance, some individuals may believe that financial success is more important than family or health. In this case, we may assume that their behavior will reflect the importance of that value and that these persons will be workaholics, spending more time at work than with family and endangering their health with long hours, stress, and lack of exercise. Others may place a higher priority on religious faith, wisdom, honesty, and/or independence than financial success or status. Most of us live our lives in rough accordance with our values. But it is also true that very often we live our lives without taking a close look at the value system that influences our behavior. See the “Exercise” box.

This discussion concerning values is fairly explicit in Messner and Rosenfeld's (1994) theory of crime. In their explanation of why the United States experiences a higher rate of violent crime than other Western countries, they propose that the American value system that emphasizes consumerism over family, honesty, or other (more honorable) values creates an environment where crime results. Success in the United States is defined almost exclusively by the accumulation of material goods, not by doing “good.” Since behavior is influenced by one's value system, individuals who place material success over any other value will behave dishonestly or even violently in the pursuit of such goods.

An explicit value system is a part of every ethical system, as we will see in Chapter 2. Certain values hold special relevance to the criminal justice system. Privacy, freedom, public order, justice, duty, and loyalty are all values that will come up again in later discussions. The values of life, respect for the person, and the continued survival of society can be found in all ethical systems.

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**Exercise**

Rank the following values in order of importance, with #1 representing the most important value to you, and so on. Now go through the list again and rank these values according to how you believe most people would rank them. Compare your answers with others as a class exercise.

<table>
<thead>
<tr>
<th>Achievement</th>
<th>Friendship</th>
<th>Power</th>
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<tbody>
<tr>
<td>Altruism</td>
<td>Health</td>
<td>Recognition</td>
</tr>
<tr>
<td>Autonomy</td>
<td>Honesty</td>
<td>Religion</td>
</tr>
<tr>
<td>Beauty</td>
<td>Justice</td>
<td>Success</td>
</tr>
<tr>
<td>Creativity</td>
<td>Knowledge</td>
<td>Wealth</td>
</tr>
<tr>
<td>Duty</td>
<td>Love</td>
<td>Wisdom</td>
</tr>
<tr>
<td>Emotional well-being</td>
<td>Loyalty</td>
<td></td>
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<tr>
<td>Family</td>
<td>Pleasure</td>
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CHAPTER ONE

MORALITY AND THE LAW

Laws govern many aspects of our behavior. **Laws**, in the form of statutes and ordinances, tell us how to drive, how to operate our business, and what we can and cannot do in public and even in private. They are the formal, written rules of society. Yet they are not comprehensive in defining moral behavior. There is a law against hitting one’s mother (assault) but no law against financially abandoning her, yet both are considered morally wrong. We have laws against “bad” behavior, such as burglarizing a house or embezzling from our employer, but we have very few laws prescribing “good” behavior, such as helping a victim or contributing to a charity. The exception to this would be the “Good Samaritan laws” that exist in some states and are quite common in Europe. These laws make it a crime to pass by an accident scene or witness a crime without rendering assistance.

Some actions prohibited by law are thought to be private decisions of the individual and not especially wrong or harmful. Many people object to sodomy laws and other laws regulating sexual behavior because they feel this is private behavior and outside the parameters of social control. When laws prohibit behaviors that are not universally condemned, such as laws prohibiting alcohol, drugs, and prostitution, enforcement is more subject to criticism and, not incidentally, more prone to corruption because there is a greater ability to rationalize underenforcement or preferential treatment. Consider, for instance, the argument that organized crime grew tremendously during Prohibition and unknown numbers of law enforcement officers were corrupted by bribery and protection rackets. Some argue the same scenario is occurring again today in the drug war.

We have had laws in the past that were or are now considered immoral—for instance, the internment of Japanese Americans during World War II, “Jim Crow” laws before the Civil Rights era, and pre–Civil War laws that mandated the return of runaway slaves to their owners. An important question in the study of ethics is whether one can be a good person while obeying a bad law. Civil disobedience occurs when someone voluntarily disobeys what they consider to be an unjust or immoral law. In Chapter 4 and 5, we discuss morality and immorality in relation to the legal system.

**QUERY**

- Which, if any, laws do you believe legislate what should be private decisions of individuals?
- Which, if any, laws do you believe are themselves morally wrong (or support immoral behavior)?
- If one followed all laws, would that make them a moral person?

A crime is composed of three elements: an **actus reus**, a **mens rea**, (with concurrence between the two), and causation. The **actus reus** is the physical act that is defined as the **crime**. Furthermore, the act must have been the result of the defendant’s own volition. If, for instance, the act was performed while sleepwalking or when the person was not fully conscious, then there was no **actus reus**. The **mens rea** is the level of culpability required for each crime in order to
find guilt. The four levels of legal culpability are negligent, reckless, knowing, and intentional. Causation is when the *actus reus* creates the result prohibited or described by the law. For instance, when the defendant's blow injures or kills the victim, “proximate” cause is the law’s attempt to use common sense to limit a defendant’s capability. For instance, if the defendant’s assault puts the victim in the hospital and then the person is killed in an accidental fire, even though death ultimately resulted from the assault, the defendant is not guilty of homicide because the assault was not the “proximate cause” of the death.

**Criminal Culpability/Moral Culpability**

The law recognizes different levels of responsibility by the different levels of *mens rea*. First-degree homicide, for instance, requires proof of *intent*, while second-degree homicide requires only evidence of *knowing*. Crimes that require only evidence of negligence or recklessness have less-severe punishments attached to them because the level of culpability, fault, or blame is less severe. Careless actions, such as driving while intoxicated or killing someone while playing with a loaded weapon, are judged as less “bad” than those actions performed with deliberation and intent. An individual who has weighed the consequences and knows the outcome and all the ramifications of the action and then proceeds has greater legal culpability than someone who has proceeded without such deliberation, albeit with a negligent disregard for potential or probable consequences.

It might be that one's mental state prevents the state from considering any level of guilt. If one is found “incompetent to stand trial,” it means that there has been a legal determination that the individual is incapable of understanding the proceedings and assisting in his or her own defense. We have a long legal tradition of requiring the defendant to be at least minimally competent and rational and recognize different levels of culpability.

Historically, two groups have been considered “excused” from criminal culpability: the insane and juveniles. This is because of a belief that individuals in one or both of these groups are not rational—in other words, they cannot weigh the consequences of their actions and, therefore, should not be held accountable. Thus, even those found competent to stand trial may be acquitted by reason of insanity. Or they may not. We continue to imprison and even execute those who show obvious signs of mental illness, despite our legal tradition of holding only “rational” people legally culpable.

**QUOTE**

[An expert witness discusses Albert Fish, who killed and ate children and engaged in other bizarre practices such as sticking needles in his body, eating his own feces, and setting fire to his rectum.]

*Well, a man might for nine days eat that [human] flesh and still not have a psychosis. There is no accounting for taste.*

Quoted in Miller and Radelet, 1993: 7.
The Mentally Ill Miller and Radelet (1993) discuss the long history of excusing the mentally ill, a practice that dates back to medieval times. The supporting rationales for not punishing those judged insane are as follows:

1. Humanitarian reasons require mercy.
2. They can’t help themselves.
3. Retributive goals are not met because they don’t appreciate their suffering.
4. They can’t spiritually prepare for death, so it is cruel to execute them.
5. Deterrence is not served because others identify only with premeditated acts, not those borne of insanity.
6. They can’t help in their own defense, calling into question the accuracy of guilt. (1993: 2–4)

Even so, there are many examples of individuals who were not only prosecuted but convicted and executed, arguably because of the extreme nature of their crimes, rather than a belief that their actions stemmed from rational thought. Several states have passed laws that create a “guilty but insane” conviction rather than the previous acquittal “by reason of insanity.” Thus, they need no legal fiction of “sanity” in order to punish. Individuals are housed in forensic facilities until (or unless) they are “cured,” at which time they are transferred to penal facilities for punishment.

Juveniles The other group that has traditionally been excused from criminal culpability is juveniles. Attitudes toward the age of reason and when a child is said to have reached it seem to be changing. In the early twentieth century, there was a concerted effort to remove juveniles from the adult legal system and to create a legal system for juveniles that would include protection as part of its mission. The system would adhere to a parens patriae model (standing in the stead of a parent), rather than act purely as punisher. This different philosophy of the juvenile system was because of the belief that the juvenile acted with less rationality than the adult. Today that trend seems to be reversing itself. States have reduced the age at which a child is considered an adult, have developed procedures allowing youngsters to be remanded to adult courts for trial and sentencing, and have allowed juveniles, even though sentenced in the juvenile system, to be held in facilities for adults. The United States is one of the few countries in the world that will execute seventeen-year-olds, a distinction shared by such countries as Iran, Iraq, and Nigeria (Miller and Radelet, 1993: 8).

Part of the impetus for this harsher treatment of juveniles has been a public perception that juvenile crime is increasing and is becoming more violent. Since lawmakers respond to public pressure, public perceptions affect laws. For instance, the public perceives there is a growing risk of mass murders in schools; therefore, we have seen an incredible escalation of security procedures and zero tolerance treatment of juveniles who express hostile feelings. The reality is that victimization in schools has actually decreased in the last ten years, but this fact carries less weight than the pictures of the grieving relatives after such an event. We will discuss trends in the juvenile justice system in more detail in Chapter 5.
The insane and juveniles have traditionally been excused because they lack the rationality to weigh their actions. Some argue that there are other individuals who are not fully responsible for their actions. For instance, the myriad “abuse excuses” dominate the legal landscape today. These defenses argue that the defendant might have committed the crime, but did so under some explanatory and excusing reason, i.e. they were battered or abused, they suffered from post traumatic stress syndrome, they suffered harassment, they were under the influence of alcohol or drugs, and so on. Other reasons why the defendant might be held to be less than fully responsible for their actions might be that they were unduly influenced by music, television or movies; that they were affected by sugar or food additives, or they were driven to desperate acts by the actions of a spouse. Dershowitz (1994) argues that we have gone too far in allowing a multitude of excuses for criminal behavior; a conclusion that is somewhat ironic since, as a criminal defense attorney, he has helped introduce some of these defenses himself.

**QUERY**

An upper middle class professional woman found her husband at a hotel with his mistress after he had sworn to her that he had broken off the affair. She was devastated because the couple had young toddler twins and she had attempted to save her marriage through changing her appearance and de-emphasizing her career. She fought with the mistress in the hotel lobby and was dragged off the woman and pushed down by her husband. Then, in the parking lot of the hotel where the confrontation occurred, in front of many witnesses, she ran over her husband and killed him. Would you find her guilty of first degree murder, second degree, or some other crime? What punishment does she deserve?

The moral culpability of an actor is not necessarily equivalent to legal culpability, although we often use the legal terms negligence and recklessness in discussions concerning ethical judgments. These concepts are useful for us in moral judgments, yet we should not be misled that moral judgments and legal judgments are always the same. One might not be guilty of a crime and might still be considered morally culpable. Alternatively, one might be guilty of a crime and be considered morally blameless; the last dilemma at the back of this chapter involves a loving mother who killed her suffering sons. Is she legally culpable but morally blameless; both legally and morally culpable; or some other combination?

**QUOTE**

*Laws are just like spider’s webs, they will hold the weak and delicate who might be caught in their meshes, but will be torn to pieces by the rich and powerful.*

Anacharsis, 600 B.C.

*Lao-Tze, 600 B.C.*

Quoted in Roth and Roth, 1989: 3.
There is an argument that some actions are caused by life circumstances and, therefore, are not completely voluntary. For instance, if someone came from an impoverished background and was exposed only to criminal role models, is this person responsible for his or her subsequent delinquency? Do all people truly have freedom of choice? It is illegal for a rich man or a poor man to steal a loaf of bread, but a rich man doesn’t have to, nor does he have to engage in armed robbery to obtain goods. He might, however, commit tax evasion, toxic waste dumping, or embezzlement.

We are all bound by limitations (or opportunities) of birth and circumstance. If we were to analyze moral culpability on the basis of life choices, it might be that, because of their respective life positions, some people who commit serious crimes are less blameworthy than others who come from better backgrounds and commit less serious crimes. Who is more culpable, the head of a company like Enron who made millions in salary but (allegedly) committed fraud to make a few million more; or the burglar who has no job and steals your television set? You might argue that both are equally culpable. Remember, the idea of moral culpability may be quite different from legal responsibility.

**Regulations, Standards, and Rules**

In addition to laws, we have a vast number of regulations governing the activities of occupations from physician to plumber and organizations from governmental agencies to private clubs. Regulations typically come from a governmental authority and often specify sanctions for noncompliance; standards may come from private or public bodies and are often used as a basis for some type of accreditation; guidelines may come from a professional group and are usually recommendations rather than directions. Distinctions can be made among these terms, although they are often used interchangeably. These rules for behavior do not carry the formal sanctions of criminal law, but some may carry civil liabilities.

Most regulations are set by state and federal governments. For instance, the Food and Drug Administration prescribes certain procedures and rules for pharmaceutical companies to follow in developing, testing, and distributing drugs. The Environmental Protection Agency watches over industry to make sure that safe methods for disposal of hazardous wastes are implemented. The Occupational Safety and Health Agency sets safety standards for the workplace in order to avoid or reduce the number of workplace injuries.

Noncompliance with standards and regulations is not equated with immoral behavior as readily as is criminal lawbreaking. Although fines may be levied against the construction supervisor who ignores Occupational Safety and Health Agency standards or the automaker who violates standards of the Consumer Safety Board, ordinarily they are not considered criminals, even when these actions result in injury or death.
Why do 26 dead miners amount to a “disaster,” and six dead suburbanites a “mass murder”? “Murder” suggests a murderer, while “disaster” suggests the work of impersonal forces. But if over 1,000 safety violations had been found in the mine—three the day before the first explosion—was no one responsible for failing to eliminate those hazards? And if someone could have prevented the hazards and did not, does that person not bear responsibility for the deaths of 26 men? Is he less evil because he did not want them to die, although he chose to leave them in jeopardy? Is he not a murderer, perhaps even a mass murderer?


When rules or standards are violated, other relevant criminal charges may be imposed as well. For instance, if a company blatantly violates safety regulations by forcing employees to work with toxic chemicals, company officials may be charged with negligent manslaughter if a worker dies. However, this situation is extremely rare, and there is usually a great deal of difference between the sanctions related to a violation of regulations and criminal lawbreaking.

Examples of businesses or individuals in business routinely violating standards and/or regulations include the recent WorldCom, Enron, and Arthur Anderson scandals. Insider information trading on Wall Street, toxic waste dumping, and marketing of unsafe products are frequent topics in the news. Some of the individuals who are caught and punished are truly surprised that their actions could result in criminal punishment. In no way would these individuals define themselves as criminal, even after they put on a prison uniform.

In addition to guidelines and standards, professions usually have a code of ethics or set of professional rules to educate and encourage their members to perform in accordance with an ideal of behavior. These may be fairly general or fairly specific; for instance, lawyers have extensive rules, but police officers are often given the International Chiefs of Police Code of Ethics, which is only a page. Laws, standards, regulations, guidelines, and codes of ethics are all designed to control and guide behavior.

It is interesting to observe that regulations and rules for behavior often seem to expand in inverse relation to the practiced ethics of a particular profession or organization. Frequently, when a breakdown in ethical behavior is detected, there is an attempt to bring people back in line by the use of rules. However, it seems that in any profession, the most effective ethical guides are not those that specify behavior, but rather those that are consistent with and support an organizational ideal. People can find many ways of violating the spirit of an administrative rule while complying with its exact wording. There are always current examples of politicians engaged in behavior involving conflicts of interest, but without actually breaking any laws, and lawyers who get around their ethical responsibilities by complying with the letter but not the spirit of the
rules. However, decision makers in organizations often feel it is necessary to
give employees extensive lists of rules. In an office these may include injunc-
tions not to take supplies, not to make personal telephone calls, and not to
spend more than fifteen minutes on breaks. Enforcing rules is very different
from promoting an ethical standard of honesty and integrity in the workplace.
Where ethical standards are nonexistent, it is doubtful that multitudinous rules
of behavior will be able to eliminate wrongdoing.

MORALITY AND BEHAVIOR

One of the most difficult things to understand about human behavior is the
disjunction between moral beliefs and behavior. We all can attest to the fact that
believing something is wrong does not always prevent us from doing it. Very
often, in fact, we engage in acts that we believe are bad, such as lying, stealing,
and cheating. In any group of people (such as a college class), a majority will
have engaged in some type of wrongful act at least once.

Why do people engage in behavior they believe to be wrong? Criminol-
ogy attempts to explain why people commit unlawful acts, but the larger ques-
tion is, why do any of us engage in wrongful acts? Psychological experiments
show that a large percentage of schoolchildren will cheat when given the
opportunity to do so, even though they know it is wrong (Lickona, 1976).
More recent studies show that many people will keep found wallets or purses.
Theories that endorse everything from learning and role modeling to biolog-
ical predisposition abound, but we still haven’t answered fundamental questions
of causation. Even with all the scientific and philosophical attempts to explain
human action, we are left with troubling questions when we read or hear about
people who kill, steal, or otherwise offend our sense of morality. Evil is still one
of the great mysteries of life.

In discussions concerning these questions, basic beliefs about the nature of
humankind must be considered. Are people fundamentally bad and only held
in check by rules and fear of punishment? Or, are they fundamentally good and
commit bad acts because of improper upbringing or events that subvert their
natural goodness? Or, are there fundamentally bad and fundamentally good
people who are just “born that way” for no reason?

Ironically, our society seems to define “goodness” in one way, while glori-
ifying just the opposite. Al Capone and Jesse James are, in some ways, cultural
heroes even though they were known criminals. We have also glorified busi-
ness executives when their actions could be defined as exploitative, as in the
movie Wall Street. Yet when real men engage in such behavior, we prefer to see
them punished. We are dismayed by the amount of violence and crime in our
society; yet the television programs that play on these themes are the most pop-
ular. We abhor lying, but politicians who tell the truth are rejected by voters.
We profess to be a country that cherishes our Constitution and due-process
rights, but we clap and cheer in movie theaters when “Dirty Harry” types kill
the “bad guys.”
Why do we idolize people who have done things we know and believe to be wrong? Some say we sublimate our wish for excitement and our greed through their exploits. Many of the ideals of success in this society involve aspects of ruthlessness and aggression—traits hard to reconcile with an ideal conception of the good person. At least in Western culture, a “good” person who upholds the ideals of honesty, charity, and selflessness is considered somewhat of a weakling. The fact that our society has mixed values regarding what is considered good and desirable is reflected both in our popular culture and in individual action.

ANALYZING ETHICAL DILEMMAS

Ethical discussions in criminal justice can be either issues or dilemmas. Issues are broad social questions, often concerning the government’s social control mechanisms and the impact on those governed—for example, what laws to pass, what sentences to attach to certain crimes, whether to abolish the death penalty, and whether to build more prisons or use community correctional alternatives. The typical individual does not have much control over these issues. Ethical dilemmas are those situations in which one person must make a decision about what to do. Either the choice is unclear, or the “right” choice will be difficult because of the costs involved. Ethical dilemmas involve the individual struggling with personal decision making, whereas ethical issues are those topics wherein one might have an opinion, but rarely a chance to take a stand that has much impact (unless one happens to be a Supreme Court judge or a governor).

It should be noted, however, that there are times when one’s belief regarding an ethical issue gives rise to a personal dilemma. George Ryan, the ex-governor of Illinois, declared a moratorium on the use of the death penalty in his state in 2000 when at least five individuals on death row were exonerated through the use of DNA evidence. One of his last acts as he left office at the end of 2002 was to pardon the rest of those on death row and commute their sentences to life without parole. Governor Ryan faced a difficult personnel dilemma because he was in a position to do something about his belief that the death penalty was implemented in a way that could never be just. The fact that there was strong support and strong opposition to his action indicates the depth of his dilemma and the seriousness of the issue. Although most of us do not have the power to commute death sentences, we can do something about our beliefs. Writing letters, petitioning our legislators, marching in demonstrations, and working to pass (or overturn) laws are all examples of acting on our moral beliefs.

Personal ethical dilemmas occur when the individual is forced to choose between two or more choices of behavior. In order to analyze such dilemmas, one must discover all relevant information. The following analytical steps might be taken in order to clarify the dilemma:

1. Review all the facts. Make sure that one has all the facts that are known—not future predictions, not suppositions, not probabilities.
2. Identify all the potential values of each party that might be relevant.
3. Identify all possible moral issues for each party involved. This is to help us see that sometimes one’s own moral or ethical dilemma is caused by the actions of others. For instance, a police officer’s ethical dilemma when faced with the wrongdoing of a fellow officer is a direct result of that other officer making a bad choice. It is helpful to see all the moral issues involved in order to address the central issue.

4. Decide what is the most immediate moral or ethical issue facing the individual. This is always a behavior choice, not an opinion. For example, the moral issue of whether abortion should be legalized is quite different from the moral dilemma of whether I should have an abortion if I find myself pregnant. Obviously, one affects the other, but they are conceptually very distinct.

5. Resolve the ethical or moral dilemma.

Let us use the dilemma at the beginning of this chapter of the correctional officer who must decide what to do about the possible beating he observed. First, this officer needs to make sure he has all the facts. Was the inmate hurt? Did his injuries occur during the time the two other officers were in his cell? Is the officer sure that no one reported it? Would the inmate come forward if he believed that someone would testify against the other two officers, or would he deny the assault (if there was one)? What other facts are important to know? Remember that facts are those things that can be proven; however, it does not necessarily mean that the individual facing the dilemma has the proof. Second, the officer might examine the relevant values. In this situation, one can identify duty, legality, honesty, integrity, safety, protection, loyalty, self-preservation, and trust. Are there any other values important to resolve the dilemma? The next step is to resolve the dilemma. For this step, it is helpful to work through Chapter 2 first because the way to resolve ethical dilemmas is to decide on an ethical system. If the officer was a utilitarian, he would weigh the costs and benefits for all concerned in coming forward and in staying quiet. If he followed duty-based ethics (ethical formalism), he would find the answer once he determined his duty.

In order to resolve any dilemma, think of ethical judgments as a pyramid, as indicated in Figure 1-1. The tip of the pyramid is the judgment itself. We make ethical judgments all the time. The moral rules that support such judgments make up the body of the pyramid. Suppose someone said, “Capital punishment is wrong.” If one asked, “Why is capital punishment wrong?” the answer might take the form of moral rules, which are general rules of right and wrong or value statements. For instance, in this case, the rules cited might include: One should never take a life. One should preserve life. One should abhor violence. Two wrongs don’t make a right. And so on. These rules, in turn, must be supported by ethical systems, which will be covered in the next chapter. Some rules are inconsistent with some ethical systems, however. For instance, “One must always follow the law” may be consistent with ethical formalism and inconsistent with ethics of care.

These concepts will be clearer as we work through a number of ethical systems in the next chapter. Suffice to say for now that ethical judgments always have some rationale behind them. These rationales tend to be consistent with
In this chapter, we defined the terms morals and ethics as both relating to standards of behavior. It was noted that not all behaviors would be subject to ethical judgments—only those that are performed by humans who are acting with free will and that affect others. Professional ethics deals only with those behaviors relevant to one’s profession. We also discussed the relationship between law (and regulations) and ethics and discovered that, while there is an overlap, the two are not synonymous. Our ethical judgments (what we consider right and wrong) are made using rationales derived from historical and traditional ethical systems. These ethical systems will be described in the following chapter.

This chapter closes with some review questions to answer in class or in a journal. Ethical dilemmas are also presented to encourage the reader to practice ethical analysis. Throughout the text, ethical dilemmas will be presented that are relevant to the topics discussed in each chapter.

**REVIEW QUESTIONS**

1. Why should we study ethics or morals?
2. Define morals, ethics, values, duties, and ethical systems.
3. What types of behaviors are judged under ethical criteria?
4. Do laws cover all moral rules? If your answer is no, explain why.
5. What are the steps in analyzing an ethical dilemma?

**ETHICAL DILEMMAS**

**Situation 1**

Patty was a rich businessman’s daughter. She had the best of everything all her life. Her future would have been college, a good marriage to a successful young man, and a life of comparative luxury, except that she was kidnapped by a small band of radical extremists who sought to overthrow the government by terror, intimidation, and robbery. After being raped, beaten, and locked in a small, dark closet for many days, continually taunted and threatened, she was told she must participate with the terrorist gang in a bank robbery; otherwise, she and her family would be killed. During the course of the robbery, she shot a bank guard. Was her action immoral? What if she had killed the guard? What if the terrorists had her mother or father, too, and told her if she didn’t cooperate, they would kill her parents immediately? What would you have done in her place? [Many readers might recognize this dilemma as the Patty Hearst case. In the 1970s, the Symbionese Liberation Army, a terrorist group, kidnapped the daughter of Randolph Hearst, the tycoon of a large newspaper chain. Her subsequent capture, trial, conviction, and prison sentence has been portrayed in books and movies and provide ripe material for questions of free will and legal and moral culpability.]

**Situation 2**

You are taking an essay exam in a college classroom. The test is closed book and closed notes, yet you look up and see that the person sitting next to you has hidden a piece of paper filled with notes under his blue book, which he is using to answer some questions. What would you do? Would your answer change if the test was graded on a curve? What about if the student was a friend? What would you do if the student was flunking the course and was going to lose the scholarship he needed in order to stay in school?

**Situation 3**

You are selected for a jury in a trial of a 64-year-old mother who killed her two adult sons. The two men were institutionalized and suffered from Huntington's disease, a degenerative brain disease. They were certain to die and would endure much pain and suffering before they did. Her husband had also died from this same disease and she had nursed him through his suffering. She took a gun into the nursing home, kissed her sons goodbye, and then
shot them both through the head. She was arrested for first-degree murder. The prosecutor informs you that there is no “mercy killing” defense in the law as it is written. How would you decide this case? What punishment does she deserve? [See Ellington, K. 2003, “Justice Tempered With Mercy,” Houston Chronicle, January 30, 10A. The prosecutor took a plea of guilty to assisting suicide.]

SUGGESTED READINGS


