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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 does the term “good” mean; *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 upon 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 naïve 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 rehabilitation, whether it is ethical to send an offender to jail and not offer treatment programs to help him or her change behavior in order 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, impose 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 the following sections.

CASE STUDY 1.1 POLICE BRUTALITY IN NEW ORLEANS

In March 1990 Adolph Archie, an African American, was injured in an incident in which police claimed he shot and killed a white police officer during a downtown shootout. Archie was later to die himself in circumstances that are still far from clear. Transporting Archie to the hospital after the shooting took police 12 minutes, but the distance was only 7 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 blood stains on the floor. However, the sergeant at the police station denied seeing either Archie or the officers and did not ask about the blood stains, but simply ordered that they be cleaned up.

When Archie finally got medical treatment it was clear that he had been severely beaten, but no officers were held responsible. At the hospital, Archie's X rays of his injuries disappeared, and staff 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 pilloried 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, www.hrw.org/reports98/police/uspo93.htm.

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 (see Chapter 2).

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 2.

CASE STUDY 1.2 DEATH ROW INMATE SET FREE

On December 28, 2001, Michael Ray Graham Jr., 37, was freed from death row at Louisiana State Penitentiary at Angola after 14 years of incarceration. The state had dismissed all charges against him because it did not have any credible evidence linking him to the crime for which he had been incarcerated. As compensation he received only a check for \$10 from the prison to cover his transportation out of Angola.

In another trial, Albert Ronnie Burrell, 45, had been convicted of the same crime as Mr. Graham, the murder of an elderly couple in Louisiana, and he, too, had spent almost 14 years at Angola on death row. He, too, had all charges against him dismissed by the state. Mr. Burrell, who is mentally challenged and illiterate, came very close to being executed, missing by only 17 days.

The release of the men brings to 8 the number of wrongfully imprisoned death row inmates in the year 2000 who have since been exonerated; altogether 92 such inmates on death row have been cleared of all crimes and released since the reintroduction of the death penalty in 1973.

According to their lawyers, prosecutorial misconduct was the cause of the incarceration of these two men. No physical evidence linked them to the crime, and their convictions rested largely on the evidence of a jailhouse snitch, who, according to law enforcement officials, was known to them as a habitual liar. The snitch claimed that both men had confessed to the murders while in jail, but he admitted at his own trial that he had spent time in several mental hospitals and had written countless bad checks. The fact that the prosecution had made a plea agreement with the snitch had not been revealed at Mr. Graham’s trial nor had the fact that he had previously been found to be mentally incompetent. As well, demonstrating the weak case against Mr. Graham and Mr. Burrell, even the prosecutor had admitted to the court that the case should never have been taken to the grand jury.

Source: Truth in Justice, www.truthinjustice.org/no92.htm.

In this report of a death row inmate released from prison after 14 years’ incarceration, the state admitted there was a total lack of credible evidence linking him to the crime for which

he was convicted. His lawyers alleged prosecutorial misconduct, pointing out that he and another man convicted for the same crime in separate trials were convicted largely on the

evidence of a “jailhouse snitch.” The lawyers also pointed to the lack of any direct evidence of guilt and to the fact that the jailhouse snitch suffered from manic depression and had spent time in several mental hospitals. The lawyers commented that the kind of prosecutorial misconduct shown in this case is not unusual, but is intrinsic to the criminal justice system. This case illustrates the need for prosecutors to adhere to ethical standards of conduct, a subject that will be more fully explored in Chapter 4.

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. Essentially, ethics, in prescribing certain standards of conduct, gives us a way of making choices in situations where we are unsure about 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 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 right or wrong are used relatively.

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 following 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; it is simply another 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. 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, there are a number of objections to cultural relativism that 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 where 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 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: Chapter 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 that 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 whether they opposed or supported capital punishment, whatever arguments were put forward by either side. Among the questions that arise from adopting an absolutist position include, “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 the one hand, the ethical relativist will say we should not judge and 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 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 where “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. However, in the United States, the Supreme Court has declared that states have 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 may not have chosen the correct ethical position on the issue of capital punishment and should be prepared to listen to the reasoning and experience of the rest of the world, which has outlawed it.

Other philosophers seem to agree with an approach that emphasizes ethical pluralism, which Kane (1996: 14–16) calls “openness.” He stresses that a pluralistic point of view only suggests the possibility that other views are correct, but 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.

Cook (1999: 169) suggests an approach that sets aside an argument based on tolerance and that 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 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, and 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 of 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. 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. Nowadays, natural law arguments have tended to gravitate towards arguments in favor of human rights.

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 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, activists in the civil rights movement deliberately flouted laws that were racially discriminatory, and civil rights workers 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 in order 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 to be able 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 one 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 mind 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 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? 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 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:

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 or not to prevent the attack on Raymond. His dilemma is an ethical dilemma because if he does act, this will involve a conflict between himself 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. In order 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 in order 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 one's 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 that it could in principle convince any reasonable human being. As Rachels (1991: 438) 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.

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 and 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 which forms his or her value system. We often assume that our values are similar; however, we may define values differently than others. 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 others, and why we arrive at different conclusions.

ETHICAL ISSUES IN CRIMINAL JUSTICE

In order 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 set out in the following sections. These problems and issues might, for example, be concerned 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

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/public for personal gain (to acquire goods more cheaply, have 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 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

Ethical Issues Resulting From Policing Policies

- Policing policy in domestic violence cases
- Police profiling
- Use of force
- Use of police discretion

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
- Rules or practices relating to the retention or disposal of court records; for example, in the

juvenile system where some states are now considering making juvenile records and court hearings open to the public and the media

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

- The administration of cruel and unusual punishment
- Human rights violations against prisoners (women, men, juveniles)
- Capital punishment

Ethical Issues in the Media Reporting of Crime

- Crime and public opinion
- Crime as entertainment
- The politicization of crime

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 will be explored in depth.

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.

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