

ETHICS IN CRIME *& Justice*

DILEMMAS & DECISIONS

JOYCELYN M. POLLOCK-BYRNE

ETHICS IN CRIME AND JUSTICE Dilemmas and Decisions

Joycelyn M. Pollock-Byrne
University of Houston-Downtown



Brooks/Cole Publishing Company
Pacific Grove, California

Consulting Editor: *Roy Roberg, San Jose State University*

Brooks/Cole Publishing Company
A Division of Wadsworth, Inc.

© 1989 by Wadsworth, Inc., Belmont, California 94002. All rights reserved. No part of this book may be reproduced, stored in a retrieval system, or transcribed, in any form or by any means—electronic, mechanical, photocopying, recording, or otherwise—without the prior written permission of the publisher, Brooks/Cole Publishing Company, Pacific Grove, California 93950, a division of Wadsworth, Inc.

Printed in the United States of America
10987654321

Library of Congress Cataloging-in-Publication Data

Pollock-Byrne, Joycelyn M., [date]—

Ethics in crime & justice : dilemmas and decisions / Joycelyn M.

Pollock-Byrne.

p. cm. — (Contemporary issues in crime and justice series)

Bibliography: p.

Includes index.

ISBN 0-534-09768-5 (pbk.) :

1. Criminal justice, Administration of—Moral and ethical aspects.

2. Criminal justice, Administration of —United States—Moral and ethical aspects. I. Title. II. Title: Ethics in crime and justice. III. Series.

HV7419.P65 1988

364'.973—dc19

88-21724
CIP

Sponsoring Editor: *Claire Verduin*
Marketing Representative: *Ragu Raghavan*
Editorial Assistant: *Gay C. Bond*
Production Editor: *Phyllis Larimore*
Production Assistant: *Marie DuBois*
Manuscript Editor: *Catherine Cambron*
Permissions Editor: *Carline Haga*
Interior Design: *Roy R. Neuhaus*
Cover Design: *Erin Mauterer, Bluewater A & D*
Printing and Binding: *Malloy Lithographing, Inc.*

CONTEMPORARY ISSUES IN CRIME AND JUSTICE SERIES

Roy Roberg, *San Jose State University*: Series Editor

Crime and Justice: Issues and Ideas (1984)

Philip Jenkins, *Pennsylvania State University*

Crime Victims: An Introduction to Victimology (1984)

Andrew Karmen, *John Jay College of Criminal Justice*

Hard Time: Understanding and Reforming the Prison (1987)

Robert Johnson, *The American University*

The Myth of a Racist Criminal Justice System (1987)

William Wilbanks, *Florida International University*

Gambling without Guilt: The Legitimation of an American Pastime (1988)

John Rosecrance, *University of Nevada at Reno*

Ethics in Crime and Justice: Decisions and Dilemmas (1989)

Joycelyn M. Pollock-Byrne, *University of Houston*

Sense and Nonsense about Crime: A Policy Guide, Second Edition (1989)

Samuel Walker, *University of Nebraska at Omaha*

TO TONY

FOREWORD

Through the Contemporary Issues in Crime and Justice Series, students are introduced to important topics that until now have been neglected or inadequately covered and that are relevant to criminal justice, criminology, law, political science, psychology, and sociology. The authors address philosophical and theoretical issues and analyze the most recent research findings and their implications for practice. Consequently, each volume will stimulate further thinking and debate on the topics it covers, in addition to providing direction for the development and implementation of policy.

The topic of ethics has always been of critical importance to the field of criminal justice and criminology. Judging from recent reports of frequent ethical violations throughout the criminal justice system, this primer on morality, ethics, and human behavior could not be more timely. The sensitivity and critical nature of the subject matter makes it seem surprising that greater attention has not been devoted to this topic. Since no similar text is currently available, this work represents the breaking of new ground, for which Joycelyn Pollock-Byrne is to be commended.

The author's approach is well grounded in the philosophical as well as the practical ethical dilemmas and issues confronting the modern system of criminal justice. Consequently, criminal justice students and practitioners will come away with a better understanding of these dilemmas and learn how to identify and confront difficult ethical decisions they are likely to face in their daily routines.

To this end, the first half of the book is devoted to a discussion of the philosophical, psychological, moral, and ethical underpinnings of human behavior in general and justice and law in particular. The second half of the book covers critical ethical concerns regarding the police, courts, punishment, and corrections. In order to help the reader more fully understand the complexity of ethics and morality as they pertain to the practice of criminal justice, a set of discussion questions and moral dilemmas is presented at the end of each substantive chapter. The book concludes with an informative discussion of how ethical decisions are made. Overall, this work is an important contribution to the ethics literature in criminal justice and criminology, as well as a useful guide to practitioners in the field.

Roy Roberg
San Jose State University

PREFACE

I began work on this book about five years ago when I was asked to teach a new course entitled *Criminal Justice Ethics*. I quickly learned that there were several challenges to teaching such a course. The first was finding a suitable text. I used readings for several years and as more books were published in the field, I hoped that one would emerge as a good comprehensive text that would match the course content I had developed. Eventually it became clear that the book I wanted was not going to appear unless I wrote it myself. I hope this text meets others' needs as well as my own.

Another challenge in teaching ethics is the necessity of presenting enough background in moral analysis while still allowing sufficient time to explore criminal justice issues. I think, though, that adding philosophical texts to a reading list, in addition to this small volume, is often needed to do justice to the moral issues raised. I have made no attempt to comprehensively describe moral systems in this work. The treatment is exceedingly elementary and I strongly encourage interested (or confused) readers to seek other, more thorough, sources.

Along with challenges, of course, an ethics course offers many rewards. It is without doubt the most stimulating and exciting class in the curriculum to teach. There are students who "own" this work as well as I, since over the years their ideas, concerns, and examples have shaped my thinking on these topics. For this reason I would like to express my gratitude and appreciation to the students in many ethics classes here at the University of Houston-Downtown, and in earlier years at Columbus College. The spring 1987 and 1988 classes especially spent a great deal of time and effort critiquing early versions of this work.

I would also like to thank some of my colleagues here at the University of Houston-Downtown who read various parts of the manuscript: Kathleen Haney, John Hummel, Bob Walsh, Bill Brigman, and my chairman, George Hampton, who contributes in his own inestimable way to everything that goes on in my department. Individuals at Brooks/Cole, especially Ragu Raghavan, Claire Verduin, and Phyllis Larimore also deserve thanks for their help in the development and production of the book. Roy Roberg contributed excellent suggestions for revisions, as did the several reviewers: Thomas Barker, Jacksonville State University; John Broderick, Stonehill College; David Carter, Michigan State University; John Conley, University of Wisconsin, Milwaukee; Thomas Reed, Eastern Kentucky University; and Bud Stephenson, Weber State College. To all these individuals, I would like to extend my sincere appreciation. The result is much better for their efforts. Of course, for the weaknesses that still exist, I must reserve blame for myself.

Joycelyn M. Pollock-Byrne

CONTENTS

1	MORALITY, ETHICS, AND HUMAN BEHAVIOR	1
	Defining Moral Behavior	1
	Morals and Moral Behavior	9
	Conclusion	9
	Discussion Questions	10
	Moral Dilemmas	10
2	DEVELOPING MORAL BEHAVIOR	12
	Ethical Systems	13
	Psychological Theories of Moral Development	25

	Teaching Ethics	31
	Conclusion	36
	Discussion Questions	36
3	THE PRINCIPLES OF JUSTICE	38
	Components of Justice	39
	Distributive Justice	42
	Retributive Justice	47
	Discussion Questions	52
	Moral Dilemmas	53
4	ETHICS AND THE LAW	54
	Law and Society	55
	Morality and the Law	62
	Discussion Questions	70
	Moral Dilemmas	71
5	ETHICS AND THE POLICE	72
	Formal Ethics	73
	Graft and Gratuities	84
	Duty	88
	Investigation and Interrogation	90
	Training and Police Ethics	95
	Conclusion	98
	Discussion Questions	98
	Moral Dilemmas	98
6	ETHICS AND THE COURTS	100
	Perceptions of Judicial Processing	105
	Professional Ethics	107
	Defense Attorneys	109
	Prosecutors	116
	Judges	120
	Conclusion	123
	Discussion Questions	124
	Moral Dilemmas	124

7	THE ETHICS OF PUNISHMENT AND CORRECTION	126
	Rationales 127	
	Ethical Frameworks 135	
	Punishments 139	
	Correctional Professionals 140	
	Conclusion 151	
	Discussion Questions 151	
	Moral Dilemmas 151	
8	HOW TO MAKE AN ETHICAL DECISION	153
	Discussion Questions 157	
	BIBLIOGRAPHY	159
	INDEX	167

1 MORALITY, ETHICS, AND HUMAN BEHAVIOR

The words *morality* and *ethics* are often used in daily conversation. For instance, when public officials use their offices for personal profit, or when lawyers are caught bribing jury members, 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 describe that individual as a moral person. Very often *morals* and *ethics* are used interchangeably to describe right or wrong actions. In order to ensure a clear understanding of these terms, this first chapter will discuss how they are commonly used and some additional concepts related to them.

DEFINING MORAL BEHAVIOR

To begin with, we need to define what is included in the "moral arena"—that is, what sort of actions one can analyze based on moral or ethical criteria. We see that while some actions are always defined in moral terms, others are not. First of all, most writers

agree that morals and ethics always refer to *behavior*. We are concerned, for instance, with the act of stealing or the act of contributing to charity, rather than the belief that stealing is bad and charity is good. These situations involve decisions and actions made by an individual. 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. Although thoughts may be important in a philosophical discussion of good and evil, they are not as relevant to ethics or morals as behavior is. One cannot believe an action to be moral, do the opposite, and still be thought of as a moral person. One must behave in a moral and ethical manner to be considered so.

Second, the behavior we can analyze in terms of morals or ethics is specifically *human behavior*. A dog that bites is not considered immoral or even bad, although we may make that judgment about careless pet owners who allow their dogs an opportunity to bite. Neither 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 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 only been ascribed to humans because of the rationality that separates them from other animals. 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."

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*. Guilt 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 commonly exempt from responsibility in this sense are the insane and the young. For both these groups, we do not consider morality a factor in their behavior. 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 irresponsible.

Admittedly, at times we are a little unclear about deciding whether behavior originates with free will or not. Historically, the insane and even those with physical illnesses such as epilepsy and leprosy were punished in the belief that they suffered these afflictions because of their own sinfulness. Even today, our views on such problems as alcoholism and drug addiction tend to be mixed. Some believe these are serious illnesses and therefore the person performing the negative behavior associated with the illness is not morally culpable; others believe the drinking or addiction and the consequent behavior is caused by moral weakness or another personality defect.

Attitudes toward *the age of reason* and when a child is said to have reached it also seem to be changing. Many states are now revising their laws regarding the trial and

punishment of juveniles because of changing beliefs regarding the age of *rationality* and responsibility. Several states have reduced the age at which a child is considered an adult or have developed procedures allowing youngsters who have committed serious crimes, such as murder, to be remanded to adult courts for trial and sentencing. Part of the impetus for this change has been the apparent increase in juvenile crimes and in the seriousness or viciousness of the crimes. Whether this increase is a reality or not is irrelevant; the public believes it to be so and the law responds to public perception. This greater degree of ascribed responsibility is also reflected in new laws regarding the insane. Several states have recently passed laws that create a "guilty but insane" conviction rather than the previous acquittal "by reason of insanity." This unwillingness to excuse persons determined to be insane for their actions is probably also a result of public fear and a perception of widespread abuse of that legal defense.

Because of the lack of rationality and intent, it is also difficult to assign moral culpability when one hurts another while doing something negligently or carelessly, such as driving while intoxicated or playing with a loaded weapon. Although we usually assign a certain degree of responsibility to these individuals, we do not necessarily hold them as blameworthy as a person who had the intention to cause harm. Because the element of deliberation is missing in negligent and careless actions, one acting negligently or carelessly cannot be said to choose immoral action. One assumes that an individual who has weighed the consequences and knows the outcome and all the ramifications of the action and then proceeds has greater moral culpability than someone who has not proceeded after such deliberation.

The decision as to moral culpability may be analyzed on teleological and deontological grounds. In a teleological system only consequences are important; in a deontological system one looks toward motive and intent to judge the morality of an action. Obviously, then, a teleological ethical system would be more likely to judge negligent action as morally culpable. A middle position might be to ascribe moral responsibility to the careless action that led to the unintended consequence—so that, for instance, an individual has responsibility for drinking and driving, but not for killing a pedestrian. From this viewpoint, the responsibility would be for the negligent action rather than the resulting harm. However, we are seeing a hardening of public opinion toward careless behavior in the mandatory sentencing of DWI offenders and negligent homicide convictions for those who drive carelessly.

Intent and free will presuppose voluntary control over behavior. However, there is an argument that some actions are caused by life circumstances and therefore are not completely voluntary. For instance, the liberal perspective on crime defends the idea that people who come from impoverished backgrounds and have known nothing but criminal role models cannot help their subsequent delinquency. According to this viewpoint, we may need to examine the relative freedom of choice for all groups. To paraphrase a famous quote, "It is just as illegal for a rich man to steal a loaf of bread as a poor man, but why would he want to?" This exemplifies the idea that we are all bound by limitations of birth and circumstance. If we were to limit moral culpability to those who had free choice, it might be that some people who commit serious crimes would be less blameworthy than others who come from better backgrounds and commit less serious crimes because of their respective life positions. For instance, the em-

bezzler who already makes a good salary might be more culpable than the mugger who has no job and steals because it is the only thing he or she knows how to do.

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 would affect no one; if someone were, however, you might endanger that person's life. All the moral dilemmas we will discuss later involve at least two parties, and the decision to be made affects the other individual in every case. Although it is more difficult to conceptualize, 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 involved in human society, and 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 may thus be defined as immoral, and so relevant actions include not only actions done to people, but also to animals. To abuse or exploit animals, then, can also be defined as immoral. We see these questions come up in evaluations or criticisms of cockfighting, dog racing, laboratory experimentation on animals, and hunting.

It is much easier to think of examples of immoral behavior for those of us who do live and work together in society. In fact, as we just mentioned, it is difficult to think of any action as completely isolated and without effects on others. Even self-destructive behavior is said to harm the people who love us and 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!" Thus far we know morality and ethics concern the judgment of behavior as right or wrong. Furthermore, it concerns only voluntary human behavior that affects other people (or animals).

Morals and Ethics

One might ask at this point whether there is a difference between morals and ethics. Several authors describe the difference in the following way: morals and morality refer to what is judged as good conduct (immorality is, of course, bad conduct), whereas ethics refers to the study and analysis of what constitutes good or bad conduct (Barry 1985, 5; Sherman 1981, 8). The following dictionary definitions are consistent with the formal use of these terms: *morals* are "principles of behavior in accordance with standards of right and wrong," and *ethics* is "the philosophical study of the moral value of human conduct and of the rules and principles that ought to govern it" (Collins 1979).

There are several branches or schools of ethics. "Metaethics 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. *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; this meaning is highlighted in a phrase such as "unethical behavior" and in codes of ethics prescribing certain behaviors. 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 for certain specific types of behaviors, usually relating to a profession. Reference to dictionary definitions provides support for this contemporary use of the terms: *ethics* is "a social, religious, or civil code of behavior considered correct, esp. that of a particular group, profession, or individual" (Collins 1979, 502). While discussions of morality and immorality can often get tied up with sin and other religious concepts, ethics is usually restricted to 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. Most professions, in fact, have their own set of ethical standards or canon 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, rules regarding relationships with patients, for doctors, or students, for professors, are usually included in codes of ethics for these professions. We are very much aware of how private behavior may affect a person's professional reputation in politics. When politicians are embroiled in controversial love affairs or are exposed as spouse abusers, these instances have a definite effect on their future, even if the behavior has nothing to do with competency in their field. 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 what is commonly referred to as morality and what is considered to be in the realm of ethics.

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 definitely an applied ethics text, as opposed to a morals text, in that we will be concerned with how individuals make decisions about right and wrong when confronted with difficult choices in the course of their professional activities. It is also a professional ethics text, because we are primarily concerned with professional ethics in criminal justice. We will, throughout the book, try to be consistent with the formal definition of ethics, except when it is beneficial to do otherwise.

Law and Morality

Our *laws* legislate 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 life. They are, to some, 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