
The
ETHICAL
FOUNDATIONS *of*
CRIMINAL JUSTICE

Richard A. Spurgeon Hall

with the assistance of
Carolyn Brown Dennis
Tere L. Chipman

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Preface

There is a dearth of textbooks at the undergraduate level that address the ethics of criminal justice. This book is intended to meet that need. Its purpose is to acquaint students with the basic concepts, arguments, and methods of ethics as these relate specifically to the field of criminal justice. The field of criminal justice, as its name suggests, is ripe for treatment from the standpoint of ethics or moral philosophy; it fairly bristles with topics and concepts inviting philosophical inquiry, with issues and problems requiring philosophical resolution. Although this is a book in the ethics of criminal justice — a domain of legal ethics which, in turn, is a branch of applied ethics — it is no less an introduction to theoretical ethics. Ideally, ethical theory would be studied in a separate course as a prerequisite for a second course in the ethics of criminal justice, but this is often not feasible. The only introduction students may have to philosophical ethics is through a course in applied ethics, but “applied” ethics presupposes that students have prior knowledge of some theory which is to be applied. Thus, this text is designed to serve the needs of not only students who have already taken a course in ethics but also those who are coming to the field for the first time. This book seeks to acquaint students with the theory to be applied. It briefly surveys the entire field of theoretical ethics, both normative ethical theories and the fundamentals of meta-ethics. Among other things, it introduces students to the classic theories of normative ethics. Each of these theories is given an impartial exposition, then subjected to a thorough critical evaluation to separate the salvageable ore from the dross. This procedure provides students with a model of critical thinking which, it is hoped, they will emulate in thinking through substantive moral issues for themselves. Moreover, the book contains a distinct unit devoted to those topics in the ethics of criminal justice which help define it as a distinct field within the province of legal ethics. However, a course in the ethics of criminal justice may not only be a student’s first, and only, course in ethics, but also their first,

and only, course in philosophy. Again, ideally, students would not venture into any course in ethics without first taking an introductory course in philosophy, but this ideal of a system of prerequisites is far from being realized on college campuses. So this book is designed to remedy this need by furnishing students with some of the most basic concepts and methods of philosophy they need for ethical reflection, and to show them how ethics is essentially related to other branches of philosophy, so that they might apply ethics to criminal justice in a philosophically sophisticated way. This book is specifically addressed to the needs of students specializing in criminal justice, criminology, law, and cognate fields. Although the text is designed to be understood by undergraduates, the level of discussion is at a depth and breadth to be of interest and use to graduate students, as well. The text, though it aspires to the maximum of clarity and cogency, does not "talk down" to its readers. It is my belief that students ever need to be increasing their vocabulary, not only by mastering the jargon of a particular field, but also by acquainting themselves with the widest range of nontechnical English vocabulary, one of the richest and most diversified of any language.

My view is that a textbook, however good, being a merely secondary source, is no adequate substitute for primary sources. Students, instead of working their way through the actual writings of philosophers and thereby learning how to read philosophy and to extricate and analyze arguments for themselves, rely on the textbook editor to do the work for them. This not only deprives them of the opportunity of learning how to read and think for themselves, but also limits them to the editor's interpretation of the primary sources which, for all they know, may be mistaken or one-sided. Furthermore, the editor may exclude things from discussion which are important or are of especial interest to a particular student. The typical thinking behind a textbook is that students are incapable of doing the research necessary for finding the important original sources in a field, and then of reading and understanding them. The point of a textbook is to simplify things as much as possible. The effect is rather like that of the mother bird who predigests her fledglings' food, so as to make it more digestible for them, and regurgitates it into their mouths. Textbooks too often are the literary equivalent of pabulum; they all read the same way, being written in a dull, innocuous, and nondescript style. This book does not pretend to escape these defects endemic to textbooks, but it does seek to mitigate them as far as possible. It does so in two ways: by providing quotations from primary sources, enabling students to compare their

interpretations with mine and giving them a sense of the variety of literary styles used in philosophy, and by furnishing extensive footnotes, which will, it is hoped, both prompt and facilitate further research in the field, making the book especially useful to advanced students. This book should be taken minimally as a guide to the primary sources in the field. It will equip students with that set of concepts and methods which will enable them to do their own independent research if they so desire. Think of this book as a comprehensive and detailed atlas of the terrain of The Ethics of Criminal Justice. This is a book in applied ethics, and so the emphasis throughout is on practical issues and actual situations that the practitioners of criminal justice may typically encounter. Students will be encouraged to make rational and philosophically informed decisions in the face of some very perplexing choices. However, this book, because of its large section devoted to theoretical ethics, might be better regarded as less a textbook in applied ethics than as a textbook in ethics — with a specific application to moral issues in criminal justice. Not every moral issue in criminal justice is covered; for example, some issues pertaining to the courts and the behavior of attorneys and judges are omitted. It was thought that these issues were more appropriately treated by a book on legal ethics. Instead, this book concentrates largely on those moral issues most likely to be encountered by the police and other agents of law enforcement. As to any moral issue in policing that may have been left out or given short shrift, this book should give its readers sufficient grounding in theoretical ethics to enable them to work through that issue for themselves.

The authors

Richard A. Spurgeon Hall received his Ph.D. in philosophy from the University of Toronto. His specialties, other than ethics, include aesthetics, the philosophy of religion, and the history of American philosophy. Among his publications are a book and articles on the ethics of Jonathan Edwards, the premier 18th-century American philosopher and theologian. He is currently an assistant professor of philosophy in the department of philosophy and religion at Methodist College in Fayetteville, NC. Previously, he taught at Clarkson University, S.U.N.Y. at Potsdam, and Kutztown University in Pennsylvania. While at Clarkson, he received an award for excellence in teaching. Hall is also a playwright and actor. He currently tours the country with his own play, *Spurgeon Speaks Again!*, a one-character play about the life and ideas of Charles Haddon Spurgeon, the great Baptist preacher of Victorian England who is Hall's great-great-grandfather.

Carolyn Brown Dennis was born and raised in Fayetteville, NC. After graduating from Meredith College, Raleigh, NC, with a Bachelor of Arts in Sociology and Religion, she returned to graduate school a few years later and received a Master of Criminal Justice from New Mexico State University, Las Cruces, NM. Her work experience includes over 5 years as a probation/parole officer and extensive work with people with a variety of problems. In addition, she has been a fundraiser for a major medical center and has served as a child support enforcement agent. Currently, Ms. Dennis is teaching freshman and sophomore students in the discipline of Criminal Justice at Fayetteville Technical Community College. She resides with her husband and their four dogs.

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part one

Preliminaries

chapter one

What is ethics or moral philosophy?

CRITO: I agree with what you say, Socrates, but I wish you would consider what we ought to *do*.

SOCRATES: Let us look at it together my dear fellow; and if you can challenge any of my arguments, do so and I will listen to you; but if you can't, be a good fellow and stop telling me over and over again that I ought to leave this place without official permission.

—Plato (*Crito*)

Some moral dilemmas

A 1993 U.S. Supreme Court decision in a civil suit which drew wide outrage saw convicted subway mugger Bernard McCummings awarded \$4.3 million in a suit he had brought against the City of New York. McCummings was shot twice in the back in 1984 by Transit Authority Officer Manuel Rodriguez as he attempted to flee a subway platform after beating and robbing a 71-year-old man. At the time of the crime, McCummings had just gotten out of prison for robbery. Since the shooting, McCummings, who was 23 years old when he was injured, has remained paralyzed from the chest down. After pleading guilty to the mugging, he was sentenced to prison, where he served 2 years. When McCummings brought suit against the City, however, a jury and appeals court found that the officers had used excessive force. Before paying the award, the City appealed to the Supreme Court. In upholding the cash award to McCummings, the Supreme

Court reiterated earlier rulings that police officers cannot use deadly force against unarmed fleeing suspects who pose no apparent threat to officers or to the public.

McCummings's victim, Jerome Sandusky, who was carrying less than \$30 at the time he was attacked, decried the ruling, saying, "[I]t's justice turned upside down ... and it sends a terrible message that crime does pay. ... Ordinarily I would be sorry for anyone that was made a cripple, but he was made a cripple because of his own action." Gerald Arenberg, of the National Association of Chiefs of Police, sided with Sandusky. "The criminal is very well protected by the Supreme Court," Arenberg said in a national interview. Lawyers for the City were disappointed. "The message is," said one, when faced with a fleeing suspect, "it's probably wiser for a police officer to do nothing, in terms of civil liability."

Opinions on the case, however, varied. "It was the right decision," said David Breibart, McCummings' lawyer. "It gives me great faith in the system." A *Washington Post* editorial, in contrast, suggested that police are bound by the rules of fair play when criminals are not. "What if felons knew that cops could shoot them if they fled?" the editorial asked. "More of them would likely freeze and put up their hands. ... [C]riminal behavior should not be treated as if it were some sort of quasi-legitimate enterprise, governed by the laws of negligence. ... McCummings was as much a victim of his own criminality as he was of a violation of the rules regarding the use of deadly force. Once he chose to break the law he wasn't entitled to be compensated by it." McCummings' victim agreed. Recently, Sandusky filed suit against McCummings seeking to get the \$4.3 million award. Sandusky brought suit under New York's modified "Son of Sam" law, which is intended to prevent criminals from profiting from their crimes.¹

We have in the Bernard McCummings case a *bona fide* issue: There are two equally defensible sides, each boasting creditable defenders who gave plausible defenses of their respective positions. It is a classic legal issue which was addressed by three courts representing distinct levels of the judiciary. More fundamentally, it involves several perennial moral issues, a fact indicated by the public outrage elicited by McCummings' winning his suit. What are these specifically moral or ethical issues? One issue concerns whether or not a criminal suspect — who, it must be borne in mind, is nevertheless innocent until found guilty by a court — should lose any or all of his civil rights, among which are his rights to life and physical safety. A second moral issue is whether or not the interests of the state or

community should take precedence over the interests of any individual, even if that individual is a suspected felon; in other words, should the personal good or well-being of any individual be sacrificed to promote the public good and welfare of society? A third such issue concerns the nature of justice. Is it just that McCummings won his case? Is it possible that the enactment of civil justice, of the sort McCummings enjoyed, may be in flagrant violation of the canons of a "higher" order of justice? And should the demand of strict justice, as represented by the rules of fair play, ever be compromised in the interest of protecting society? These are some of the moral conundrums raised by the McCummings case.

Let us take another case, that of Mark Fuhrman, the Los Angeles Police Department detective involved in the O.J. Simpson trial. The defense attorneys alleged that Fuhrman had planted a bloody glove at Simpson's estate and tampered with blood stains extracted from the Ford Bronco that Simpson drove in his effort to escape.² Now suppose, for the sake of argument, that Fuhrman did indeed plant the glove and tampered with blood stains. And, suppose further, that Fuhrman was privy to information that showed that Simpson was incontrovertibly guilty of the double murder; however, that information had been destroyed and so could never be submitted in court. Frustrated by this, Fuhrman decided to try to clinch Simpson's guilt by planting the glove and tampering with the blood. He might have rationalized his decision as follows: "If I manipulate the evidence, then Simpson's conviction is assured and justice is served. If I don't, then Simpson may go free and both justice and society are betrayed." The moral issues involved in this case are similar to those in the McCummings case. These concern the nature and value of justice and the weight that should be given to considerations of the public good in making a moral decision. But, more particularly, the Fuhrman case raises two related issues: (1) whether or not one should break one's moral obligation (i.e., the duty to be honest in all our dealings in order to meet another no less imperative obligation — the duty to further the cause of justice in all things); and (2) whether or not one should abandon one's duty, trust, or oath for the sake of the public good. In other words, do immoral means justify a higher moral end?

Consider one last case, this time entirely fictional, although disturbingly close to reality. It is the subject of a film, *Magnum Force*, starring Clint Eastwood. In this film, a group of vigilante policemen, led by no one less than the police chief himself, is frustrated by the enormity of crimes being committed with impunity. Known felons are