



ETHICS FOR CRIMINAL JUSTICE PROFESSIONALS

CLIFF ROBERSON
SCOTT MIRE



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Preface

The text *Ethics for Criminal Justice Professionals* is designed for ethics-related classes in criminal justice and for the professional in the field who desires to increase his or her knowledge in this critical area. The text is intended to be a reader-friendly introduction to the practical study of ethics. It is also designed to provide students with a vehicle to promote critical thinking and engaging discourse on ethics.

Ethics in criminal justice is a subject that has gained prominence in the past two decades with the increasing concerns about the accountability of criminal justice professionals, from the police chief to the officer on the beat, from the warden to the correction officer on the ward, and from the judge to the court clerks. Each of these professionals is currently under examination by the public.

The approach is to examine each aspect and each element within the criminal justice system with the goal of encouraging critical examinations of the various decisions that criminal justice professionals are required to make and stand accountable for in the performance of their public duties.

In the study of ethics, we are reminded of an excerpt from Lewis Carroll's *Alice in Wonderland*:

“Where shall I begin, please your Majesty?” asked the White Rabbit.

“Begin at the beginning,” the King said gravely, “and go on till you come to the end: then stop.”

Acknowledgments

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Scott Mire: I would like to thank my wife, Crystal, for all of the support she has provided throughout this journey. The constant pressure of having to write was much more tolerable as a result of your understanding and compassion. Thank you!

About the Authors

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His nonacademic legal experience includes being the head of the Military Law Branch, U.S. Marine Corps; trial and legal services supervisor, Office of State Counsel for Offenders, Texas Board of Criminal Justice; private legal practice; judge pro tem in the California courts; and trial and defense counsel and military judge as a marine judge advocate. Cliff is admitted to practice before the U.S. Supreme Court, the federal courts in California and Texas, the Supreme Court of Texas, and the Supreme Court of California.

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Cliff has authored or coauthored numerous books and texts. His recent texts on criminal justice subjects include the following:

- *Constitutional Law and Criminal Justice* (Taylor & Francis, 2009)
- Roberson and Das, *An Introduction to Comparative Legal Models of Criminal Justice* (Taylor & Francis, 2008)
- *Identify Theft Investigations* (Kaplan, 2008)
- Birzer and Roberson, *Police Operations* (Pearson, 2008)
- Birzer and Roberson, *Policing Today and Tomorrow* (Prentice Hall, 2006)
- Wallace and Roberson, *Principles of Criminal Law*, 4th ed. (Allyn and Bacon, 2008)

- *Criminal Procedure Today: Issues and Cases*, 2nd ed. (Prentice Hall, 2000)
- Roberson, Wallace, and Stuckey, *Procedures in the Justice System*, 9th ed. (Prentice Hall, 2009)
- Roberson and Wallace, *Introduction to Criminology* (Copperhouse, 1998)
- *Introduction to Criminal Justice* (Copperhouse, 1994; 2nd ed. 1998; 3rd ed. 2000)
- Masters and Roberson, *Inside Criminology* (Prentice Hall, 1996)
- Birzer and Roberson, *Introduction to Private Security* (Pearson, 2008)

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What Is Ethics?

1

Working Definition of Ethics

No man is above the law and no man is below it, nor do we ask any man's permission when we require him to obey it. (Theodore Roosevelt, 1913)

Serving in law enforcement provides officers with many privileges not conferred upon most other professions. ... The law enforcement profession is highly revered by those employed within its ranks and by the public. Officers, regardless of rank or position, must be leaders in their departments and communities. Most criminal justice professionals, as well as citizens, will follow the example set by their respected leaders. When charged with enforcing the social contract society has with its citizens, officers must realize that their actions must represent, at a minimum, the same behaviors expected by society. Law enforcement officers who hold themselves to a higher ethical standard offer their communities the appropriate example to follow. (Boetig, 2007, pp. 12–13)

Ethics is a difficult term to define. Cyndi Banks (2004, p. 3) noted that ethics provides us with “a way to make moral choices when we are uncertain about what to do in a situation involving moral issues.” Banks also noted that ethics involves making moral judgments about what is right or wrong, good or bad.

A few years ago, sociologist Raymond Baumhart asked businesspeople, “What does the term ‘ethics’ mean to you?” Among their replies were the following:

“Ethics has to do with what my feelings tell me is right or wrong.”

“Ethics has to do with my religious beliefs.”

“Being ethical is doing what the law requires.”

“Ethics consists of the standards of behavior our society accepts.”

“I don’t know what the word means.” (Velasquez et al. 1987, p.4)

What Ethics Is Not

It may be helpful to identify what ethics is not. Manuel Velasquez, Claire Andre, Thomas Shanks, and Michael J. Meyer (1988) provided a list of what ethics is not. Their list includes the following:

- Ethics is not the same as feelings. According to Velasquez et al., feelings provide important information for our ethical choices. Some people have developed habits that make them feel bad when they do something wrong, but many people feel good even though they are doing something wrong. Many times, our feelings will tell us it is uncomfortable to do the right thing if it is hard.
- Ethics is not religion. Religions for the most part advocate high ethical standards. But what about those people who are not religious, ethics also apply to them.
- Ethics is not the same as following the law. While legal systems incorporate many ethical standards, law can become ethically corrupt, as some totalitarian regimes. Law can be a function of power alone and designed to serve the interests of narrow groups.
- Ethics is not following culturally accepted norms. Some cultures are quite ethical, but others become corrupt or blind to certain ethical concerns. As noted by Velasquez et al., “When in Rome, do as the Romans do” is not a satisfactory ethical standard.
- Ethics is not science. While social and natural science provide important information to help us make better ethical decisions, science alone does not tell us what we ought or ought not to do.

Ethics is not the same as values. Values are judgments of worth of attitudes, statements, and behaviors. Value judgments are subjective in nature and can be verified only through reason. Ethics may also be considered as moral philosophy because we are concerned with the study of questions of right and wrong. Often, individuals mistake morals for ethics. Morals constitute acceptable rules of behavior, whereas ethics is the study of morality, that is, an analysis of what constitutes good conduct. Ethics is central to criminal justice since morality is what distinguishes right from wrong. Only by being moral can we distinguish our conduct from the conduct of criminals that the system condemns (Albanese, 2008, p. 3).

For the purpose of our discussions on ethics, “ethics” will be used to refer to the study of the standards of behavior that tell us what choices we should make in the many situations in which we find ourselves as criminal justice professionals. In other words, ethics is the study of morality. This is by far not a perfect definition, but it provides us with a framework in which to discuss ethical issues.

Role of Critical Thinking

We should be teaching students how to think. Instead, we are teaching them what to think. (Clement & Lochhead, 1980, p. 1)

Critical thinking means correct thinking in the pursuit of relevant and reliable knowledge about the world. Another way to describe it is reasonable, reflective, responsible, and skillful thinking that is focused on deciding what to believe or do. A person who thinks critically can ask appropriate questions, gather relevant information, efficiently and creatively sort through this information, reason logically from this information, and come to reliable and trustworthy conclusions about the world that enable one to live and act successfully in it. (Schafersman, 1991, p. 1)

Jay Albanese (2008) contended that critical thinking is fundamental to ethics. Critical thinking is the process of evaluating viewpoints, facts, and behaviors in an objective manner in order to assess the presentation of information or methods of argumentation in order to ascertain the worth of an act or course of conduct. According to Albanese (2008), continued examination of one's beliefs or actions is the only way to know all aspects and implications of a belief or an action and whether that belief or action constitutes ethical conduct. Albanese also noted that education currently is largely based on the accumulation of facts, and critical thinking involves the development of abilities to intelligently sort through those facts, as well as half-truths, lies, and deceptive arguments.

The ethical problems encountered by police can generally be divided into two classes. The first class is concerned with integrity, for example, taking bribes, giving perjured testimony, or inflicting serious injury on suspects by the use of illegal force. This class of problems involves obvious cases of misconduct or corruption, and it does not take an understanding of ethical concepts to know that these actions are wrong. The second class involves those problems that require hard choices in law enforcement and moral judgments. An issue that would fit in the second class is whether or not it is acceptable to accept a free cup of coffee offered by a restaurant owner (Heffernan, 2001).

Heffernan (2001) contended that we should use two approaches in the ethical training of officers. According to him, our first approach should be to develop police integrity. Education involving this approach should only devote incidental time to the justification of moral values and be primarily concerned with developing both the capacity to recognize basic values and the strength of character to act on this recognition. Heffernan contended that effective law enforcement in a democratic society is possible only when the police honor basic standards of integrity. Police integrity can be applied in police academies by example and by direct instruction.

Heffernan's (2001) second approach concerns the making of hard moral choices. According to him, hard choices in policing usually arise within the confines of the law. The distinction between the first and second approaches is that the first approach always focuses on the illegality of the act or conduct whereas the second approach generally does not. Some of the choices

involving the second approach include the use of deceit in undercover operations, the selection of targets in undercover operations, privacy issues in police supervision, the exercise of police discretion, and loyalty to one's peers. According to Heffernan, the best strategy for stimulating reflection on hard choices in professional life is to foster the development of an appropriate literature of applied ethics. In making the hard choices, we generally do not question one's disposition to do the right thing but seek to answer the question: what is the right thing to do?

Teaching of Morality

Morality is concerned with what is "right" and what is "wrong." In Plato's dialogues, which are discussed in Chapter 2, Socrates is credited as the first philosopher to ask the question as to whether morality can be taught. This question is still relevant today in our world, which is filled with all sorts of confusions, misunderstandings, physical conflicts, and disasters after disasters. According to Delattre (1990, p. 1), "morality is the achievement of good character and of the aspiration to be the best person you can be. But what is good character and what kind of person should one aspire to become?" Delattre explained that since achieving integrity or character excellence is a matter of forming habits, and since both good and bad habits can be formed only by repeating actions over and over again, morality cannot be taught. But because people can become habituated by repeated behavior under responsible and loving training and supervision, the habits of morality can be learned.

Delattre (1990) noted that it is possible to train and habituate the young with respect, generosity of spirit, and intellectual honesty. Accordingly, he contended that it is possible to help the young learn habits of integrity without imposition, and it is possible to teach them and help them learn to think with real acumen and rigor. Delattre concluded his argument that morality can be taught with the following statement:

If their teachers, who are supposed to care about them, and their parents, who are supposed to love them, do not take life that seriously, then the young will learn their habits from the streets, from demagogues, and from entertainment and commercial media that neither care about them nor love them. That is a consequence no adult of integrity can be willing to tolerate. (Delattre, 1990, pp. 11–12)

Morality Theories

When discussing or formulating ethical opinions, individuals generally take certain viewpoints. Four of the most common viewpoints or theories are utilitarianism, deontological, virtue, and religious. In some cases, the study of ethics is approached from one or more than one of these viewpoints. We

discuss these viewpoints in greater detail in Chapter 4 in our discussion of ethical schools.

Most of our concepts involving utilitarianism are based on John Stuart Mill's essay *Utilitarianism*. According to utilitarianism, the moral worth of an action is judged by its contribution to overall utility or its contribution to happiness or pleasure as summed among all persons. Under this concept, the moral worth of an action is determined by its outcome, or the ends justify the means. Utilitarianism can be contrasted with deontological ethics. When determining the moral worth of an act, deontological ethics disregards the consequences of performing the act (Capaldi, 2004, p. 31).

Deontology as a word is derived from the Greek words for duty (*deon*) and science (or study of; *logos*). Deontology is a normative theory that considers which choices are morally required, forbidden, or permitted. Deontology is one of the moral theories that guide and assess our choices of what we ought to do (deontic theories), in contrast to aretaic (virtue) theories that guide us and assess what kind of person (in terms of character traits) we are and should be (Gert, 1970).

Immanuel Kant (1724–1804) emphasized the necessity of virtue or moral character. *Virtue* is a general term that was translated from the Greek word *arete*. *Arete* is also translated as excellence. Virtue refers to what guides us, and it assesses what kind of person we are in terms of character traits (Foot, 1985).

The religious viewpoint refers to the practice of making ethical determinations and choices based on one's religious viewpoint or using one's religious beliefs and doctrines as the foundation for making ethical decisions (Geach, 1969).

Branches of Ethics

Often, ethics is divided into three branches:

- Metaethics which is concerned with methods, language, logical structure, and the reasoning used in the interpretation of ethical terms; for example, what does “good” mean?
- Normative ethics which is concerned with ways of behaving and standards of conduct.
- Applied ethics, which is concerned with solving practical ethical issues as they arise. A good example of applied ethics is the case discussed later in this chapter regarding attorney Staples Hughes.

Metaethics

Metaethics, also referred to as “analytic ethics,” is the branch of ethics that seeks to understand the nature of ethical properties and ethical statements, attitudes,

and judgments. Metaethics addresses the question “What is goodness?” It seeks to understand the nature of ethical properties and evaluations. Some of the issues examined under metaethics include the following (Ackerman, 1980):

- Is morality more a matter of taste than truth?
- Are moral standards culturally relative?
- Are there moral facts?
- If there are moral facts, what is their origin? How is it that they set an appropriate standard for our behavior?

Metaethics examines the issues and connection between values, reasons for action, and human motivation. It seeks to understand how it is that moral standards might provide us with reasons to do or refrain from doing as it demands (Ackerman, 1980).

Normative Ethics

Normative ethics is concerned with what people should believe to be right and wrong, as distinct from descriptive ethics, which deals with what people do believe to be right and wrong. Normative ethics is sometimes said to be prescriptive, rather than descriptive. The central notion in normative ethics is that a person’s conduct must consider moral issues and that one should act morally by using reason to decide the proper way of conducting oneself.

A key assumption in normative ethics is that there is only one ultimate criterion of moral conduct, whether it is a single rule or a set of principles. Normative ethics is a search for an ideal test of proper behavior. The Golden Rule to do unto others as you would have them do unto you is an example of a normative principle: we should do to others what we would want others to do to us. Since I do not want my neighbor to steal my property, then it is wrong for me to steal his property. Using this reasoning, one can theoretically determine whether any possible action is right or wrong. The Golden Rule is an example of a normative theory that establishes a single principle against which we judge all actions (Rand, 2006).

Relativism

Do the standards of conduct and the moral ways of doing things differ from society to society? Can there be one standard of conduct for all people everywhere? *Ethical relativism* refers to the approach used by those who feel that standards of conduct and ways of doing things differ from society to society and that there can never be one single standard. *Ethical absolutism* refers to the

approach used by those who advocate that one set of standards applies across all societies and that we have an obligation to do what is “known to be right.”

According to the relativism approach, what is morally right or wrong may vary from person to person or from culture to culture. Arrington (1983) contended that we cannot state that a certain moral judgment is true for all purposes, persons, and cultures and that we can only assert what is moral for a particular person or social group.

Cultural relativism refers to the relativism concept that moral beliefs and practices vary from culture to culture. Those who follow cultural relativism contend that we cannot make judgments as to whether certain choices are right or wrong for another culture but can only note that there are differences. Supporters of cultural relativism argue that every society has a different moral code that determines which acts are moral and which are not. They contend that we cannot consider one moral code as superior to another because of the lack of an objective standard to make a comparison. Cultural relativism is considered by many as an anthropological theory.

Absolutism

Ethical absolutism is the belief that there are absolute standards against which moral questions can be judged and that certain actions are right or wrong, devoid of the context of the act. Absolutism is considered valid regardless of thought and feeling (Banks, 2004, p. 8). Consider the issue of abortion; a person who argues that abortion is never morally justified would hold this to be an ethical absolutism. A similar situation exists for those individuals who contend that the death penalty is never morally justified. The absolutism concept regarding whether lying is ever justified is discussed in Chapter 7.

Pluralism

Under the concept of ethical pluralism, there are many different things in life that can be considered as intrinsically good. Are there many truths rather than one single truth? A basic concept of pluralism is that there is a plurality of moral norms that cannot be reduced to one basic norm. Postow (2007) advocated that ethical pluralism is a metaethical view that accepts competing moral views as valid. Joshua Cherniss described ethical pluralism as follows:

Ethical pluralism (also referred to as value pluralism) is a theory about the nature of the values or goods that human beings pursue, and the pursuit of which make up the substance of their moral lives. Most simply ethical pluralism holds that the values or goods legitimately pursued by human beings are plural, incompatible, and incommensurable. (Cherniss, 2008)

Standards

There are two fundamental problems in identifying the ethical standards we are to follow:

1. On what do we base our ethical standards?
2. How should those standards be applied to the specific situations we face?

Five Sources of Ethical Standards

Velasquez et al. (1988) listed five approaches that are used to determine the sources from which we obtain our ethical standards:

- **Utilitarian approach:** The utilitarian approach is based on the concept that the ethical action is the action that provides the most good or does the least harm. The approach examines the course of action that produces the greatest balance of good over harm. Ethical warfare balances the good achieved in ending terrorism with the harm done to all parties through death, injuries, and destruction. The utilitarian approach is concerned with consequences and tries to increase the good done and to reduce the harm done.
- **Rights approach:** The rights approach suggests that the ethical action is the one that best protects and respects the moral rights of those affected. The approach starts with the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives. The rights approach holds that with rights there are implied duties and, in particular, the duty to respect others' rights.
- **Fairness or justice approach:** The fairness or justice approach is based on Aristotle's and other Greek philosophers' concept that all equals should be treated equally. Ethical actions are determined by the duty to treat all human beings equally. If human beings are treated unequally, then the ethical actions are fairly based on some standard that is defensible.
- **Common good approach:** The common good approach is based on the Greek philosophers' notion that life in a community is a good in itself, and our actions should contribute to that life. The approach suggests that the interlocking relationships of society are the basis of ethical reasoning and that respect and compassion for all others, especially the vulnerable, are requirements of such reasoning. This approach also calls attention to the common conditions that are important to the welfare of everyone.