

JUSTICE, CRIME, *and* ETHICS

Michael C. Braswell

Belinda R. McCarthy

Bernard J. McCarthy



seventh edition

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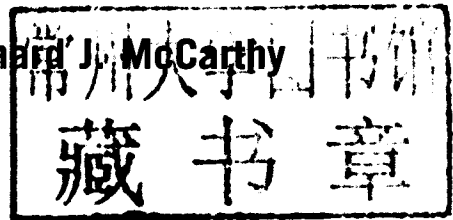
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A Note on the Seventh Edition

In the seventh edition, we have attempted to continue making changes that maintain the flow and integrity of past editions while revising some chapters and adding several new ones. In addition, we have updated and added several new exercises and case studies that reflect emerging issues in criminal justice ethics. In most chapters, we have also included links to websites that offer students access to additional information on topics covered in the text.

In Section II, an essentially new chapter is added on ethics in police training as well as a new chapter on deception in police interrogation. In Section III, the chapter on ethical issues in criminal sentencing (Chapter 10) is revised and updated. Chapters on probation, parole, and community corrections (Chapter 13) and on ethics and prison issues (Chapters 15 and 16) are updated in Section IV. In Section V, the chapter on ethics and criminal justice research has been significantly revised and updated as well. In addition, a new chapter is included on terrorism and justice.

We continue to include a variety of case studies, exercises, links to interesting websites, and other features to stimulate critical and creative thinking and discussion of ethics, crime, and justice. Of course, all persons and names in case studies and exercises are fictional.

We continue to be grateful to our colleagues, students, and others who teach ethics for their e-mails, phone calls, and comments at conferences concerning how to make our book better. Since we teach ethics, we understand the importance of such conversations. Many of the improvements in each edition are the result of these people's input and suggestions.

We want to thank Bradley Edwards and Mical Carter for their work on the ancillary materials. We also want to thank Susan Braswell for her assistance with the revision. We also offer a special thank-you to Ellen Boyne, our editor, who continues to make each edition better. Her help and support are much appreciated.

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Table of Contents

A Note on the Seventh Edition.....	xi
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SECTION I INTRODUCTION

CHAPTER 1	Ethics, crime, and justice: An introductory note to students	3
	Michael C. Braswell	
CHAPTER 2	Utilitarian and deontological approaches to criminal justice ethics.....	11
	Jeffrey Gold	
	Case study 2-1: Room at the end of the hall	23
CHAPTER 3	Peacemaking, justice, and ethics	25
	Michael C. Braswell and Jeffrey Gold	
	Case study 3-1: To help or not to help?.....	40
	Exercise I-1: Your personal philosophy	41
	Exercise I-2: The ethics of drug control policy	41

SECTION II ETHICAL ISSUES IN POLICING

CHAPTER 4	How police officers learn ethics	45
	Steven J. Ellwanger	
	Case study 4-1: Liberty and justice for all.....	68
CHAPTER 5	Deception in police interrogation.....	71
	Steven J. Ellwanger	
CHAPTER 6	Using ethical dilemmas in training police	91
	Joycelyn M. Pollock and Howard E. Williams	
CHAPTER 7	Police ethics, legal proselytism, and the social order: Paving the path to misconduct.....	111
	Victor E. Kappeler, Gary W. Potter, and Edward Green	
	Case study 7-1: Homegrown terrorism.....	126
	Exercise II-1: Different choices, equal protection?	127

SECTION III ETHICS AND THE COURTS

CHAPTER 8	Whatever happened to atticus finch? Lawyers as legal advocates and moral agents	131
	Joycelyn M. Pollock	
	Case study 8–1: Child rapist.....	145
CHAPTER 9	Prosecutor misconduct.....	147
	Richard R.E. Kania and Ardie Dial	
	Case study 9–1: It’s a rat race, and the best rat wins	162
CHAPTER 10	Criminal sentencing: Goals, practices, and ethics.....	165
	Lawrence F. Travis III	
CHAPTER 11	Crime and punishment: Punishment philosophies and ethical dilemmas.....	181
	Laurie A. Gould and Alicia H. Sitren	
CHAPTER 12	To die or not to die: Morality, ethics, and the death penalty.....	195
	John T. Whitehead and Michael C. Braswell	
	Case study 12–1: Politics or ethics?	
	A governor’s prerogative	214

SECTION IV ETHICAL ISSUES IN CORRECTIONS

CHAPTER 13	Ethical issues in probation, parole, and community corrections	217
	John T. Whitehead	
	Case study 13–1: Sexual harassment.....	234
CHAPTER 14	Restorative justice and the peacemaking ethic.....	237
	Lana McDowell, Michael C. Braswell, and John T. Whitehead	
	Case study 14–1: The limits of responsibility	262
	Exercise IV-1: Restorative justice: Ethical scenarios	263
CHAPTER 15	Keeping an eye on the keeper: Prison corruption and its control	265
	Bernard J. McCarthy	
	Case study 15–1: Legacy of corruption	283
CHAPTER 16	Ethics and prison: Selected issues	285
	John T. Whitehead and Bradley Edwards	
	Case study 16-1: Who’s running the prison?.....	302

SECTION V ETHICAL ISSUES IN CRIME CONTROL POLICY AND RESEARCH

CHAPTER 17	Crime and justice myths	309
	Egan Green	
CHAPTER 18	The ford pinto case and beyond: Assessing blame	331
	Francis T. Cullen, William J. Maakestad, Gray Cavender, and Michael L. Benson	
CHAPTER 19	Ethics and criminal justice research	351
	Belinda R. McCarthy, Robin K. Davis, and Michael Bush	
	Case study 19-1: Research issues	376
CHAPTER 20	Terrorism and justice	377
	Bernard J. McCarthy	

SECTION VI ETHICS AND THE FUTURE

CHAPTER 21	Criminal justice: An ethic for the future	399
	Michael C. Braswell and Robert C. England	
Index.....		411

SECTION

Introduction

I

Vision brings a new appreciation of what there is. It makes a person see things differently rather than see different things.

—Herbert Guenther

Our personal and social values shape and color the way we perceive the world in which we live. While we are concerned with achieving personal goals and ambitions, we also come to realize at a rather early age that the needs and desires of others are also forces to be reckoned with. The question for us then becomes one of reconciling the pursuit of our individual dreams within the context of the larger community. Maintaining our individual integrity, our personal sense of right and wrong, and, at the same time, conforming to what is best for the majority of persons in our society can often become a perplexing challenge. Yet we are all connected to each other in one way or another—parents and children, inmates with correctional staff. We are even connected to our physical environment, as evidenced in the quality of air we

breathe and water we drink. As potential criminal justice practitioners, our professional choices and policies will emanate from our personal beliefs and values—from our personal philosophies. How much do we care about trying to honestly and effectively address the pressing justice issues of the day? Are we truly mindful of the ways we are connected to our problems? Do we have a long-term as well as short-term sense of what the costs of our proposed solutions will be?

Cultivating a greater understanding of our own philosophical perspectives can provide us with a foundation for making more informed decisions about the diverse social issues we face and the way our system of justice responds to such issues.

Ethics, crime, and justice:

An introductory note to students

1

Michael C. Braswell

KEY CONCEPTS

ethics
morals
wholesight

As you approach the study of ethics, crime, and justice, it is important that you view your study as a search, journey, or exploration. This search in many ways will yield more questions than answers. It is a creative endeavor in which a number of your beliefs and assumptions will be challenged. Questions such as “Can moral or ethical behavior be illegal and legal actions be immoral?” and “Can we have a more equitable criminal justice system without addressing social problems such as poverty and discrimination?” will test the limits of your personal values and beliefs (Braswell & LaFollette, 1988). This study will also encompass a variety of disciplines that contribute to criminal justice, including law, economics, psychology, sociology, philosophy, and theology. For the purposes of our exploration we will use the terms *ethical* and *moral* interchangeably.

What is ethics? In a general sense, ethics is the study of right and wrong, good and evil. Who decides what is right and wrong? What one person may believe is right, another person may feel is wrong. Our beliefs and values regarding right and wrong and good and evil are shaped by our parents and friends, by the communities we are a part of, and by our own perceptions. Codes of conduct are also influenced by the law and our religious beliefs. Professional organizations involving such areas as law, medicine, and criminal justice also offer professional codes of ethics as a benchmark for people who fulfill those professional roles. This study involves all aspects of who we are—our minds, hearts, relationships with each other, and the intentions and motives for our actions regarding both our inner and outer environment. We are inclined to believe that ethical persons act in good or right ways, whereas unethical people commit evil acts and other forms of wrongdoing. Then again, it is not only a matter of a person acting “unethically”; also at issue are people who could choose to do good but instead do nothing, allowing others to do evil. So it is not simply a matter of my committing an evil or

wrongful act, it is also a matter of my being an indirect accomplice to evil by silently standing by, letting evil occur when I could stand for what is right. As a result, unethical acts can occur by the commission of wrongdoing or by omission—by allowing wrongdoing to occur. Thomas Merton (as quoted in Woods, 1966), in examining a fundamental problem of omission, wrote that “moral paralysis leaves us immobile, inert, passive, tongue-tied, ready and even willing to succumb.”

The study of justice and ethics, of the good and evil we do to each other, also involves a sense of community. We often hear that problems of crime and violence are the result of a breakdown in family and community values. What does our community consist of? Our community includes our family, our neighbors—even the land on which we grow food to eat and the air we breathe. Is it important that we act in ethical ways regarding our physical environment as well as with regard to people with whom we come in contact? Within our community of interdependent parts exist three contexts, or perspectives, that can help us approach a better understanding of justice, crime, and ethics.

THREE CONTEXTS FOR UNDERSTANDING JUSTICE, CRIME, AND ETHICS

A way of understanding the idea of justice in human experience is to think of it as a process that moves within three contexts or concentric circles (see Figure 1.1). The first context or innermost circle is the *personal*, which represents our individual sense of justice. This context examines right and wrong, good and evil—life experienced and lived, for better or worse, from the inside out. My life experiences come to form a set of perceptions, some easily changed and others being very resistant to change, that form my personal sense of justice—my way of looking out into the world as a safe or dangerous place, with hope or with despair.

The second circle represents the social context of *justice*. This circle includes all that is the world without—the physical environment I live in, whether rural, urban, or suburban, and the people with whom I interact through choice or necessity. I may live in a relatively just or unjust community. I may live as an oppressed member of my community, or I may act as the oppressor. During our lifetimes, perhaps on one occasion or another, and in one way or another, we will taste the experience of both.

People do not commit crimes in isolation. Crimes also require circumstances and victims. Crimes are related to social circumstances and conditions as well as being subject to the law and criminal justice system. Why did the abused wife kill her husband? In the broader social context, we might look at the abuse she suffered before she made her husband a victim of a homicide. What was her relationship to her parents and other family members? What about her neighbors? Did she have access to adequate social and support services? Could something have been done to prevent her own victimization and thus her subsequent crime?

The social context of ethics suggests that we cannot be concerned with criminals only after they have committed crimes but must also better understand the conditions and environments that encourage people to become criminals, whether such offenders physically rape their victims or economically violate them through such means as stock market fraud. We also need to remember that offenders who are incarcerated in prisons typically return to the communities from whence they came, whether they become rehabilitated or more criminalized.

The social context is not concerned merely with how we judge others as being good or evil but also how we judge ourselves in relationship to others. Frederick Buechner (1973) writes, "We are judged by the face that looks back at us from the bathroom mirror. We are judged by the faces of the people we love and by the faces and lives of our children and by our dreams. Each day finds us at the junction of many roads, and we are judged as much by the roads we have not taken as by the roads we have."

The third context we can use in our efforts to better understand justice, crime, and ethics is perhaps the most specific one; it centers around the *criminal justice* process. Too often, the criminal justice process is the only context or perspective we consider. It is important that we include both the personal and social contexts of ethics in exploring the criminal justice process. Due process, police corruption, and punishment are examples of important issues that require us to consider personal beliefs, social factors, and criminal justice consequences simultaneously. For example, I explore any new law being proposed regarding the punishment of offenders in terms of my personal beliefs. How does this proposed law square with my own value system? How do I feel about it? The proposed law also should be examined on the basis of how it will affect the social community. Is it just and fair

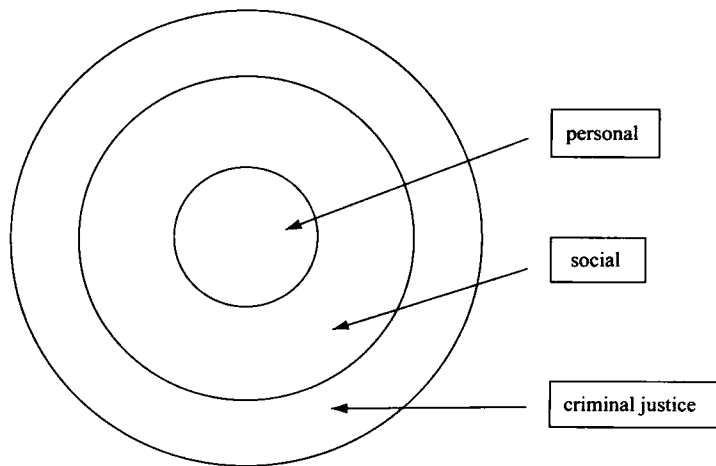


FIGURE 1.1

Three Contexts for Understanding Justice, Crime, and Ethics.

to all parts and groups within the community? Will it contribute to the community's sense of safety and security, or is it perhaps more of a public relations or election-year gimmick? Can the criminal justice process and system effectively implement the law? Are there adequate resources to finance and manage the changes that will occur in the system as the result of the proposed law?

The criminal justice context also sets legal limits for what we can do to each other. Those of us who inflict harm on others may experience legal consequences ranging from fines to imprisonment or even having to forfeit our lives. Sometimes what is legal is also what is right or good, but that is not the primary function of criminal justice. We need to remember that our justice system, due to existing laws and community attitudes, may also support tyrants or various forms of injustice and corruption on occasion, leading to suffering and oppression in our communities. Our personal and communal sense of morality (what is right and wrong) may often stand outside the limits of the law. In fact, some politicians often seem to confuse what is moral with what is legal. For example, although gambling may be illegal, a given community may consider it desirable and ignore the law, even demonstrating a sense of collective pride in such activities. In addition, during one period of our history, it was considered illegal for women or minorities to vote or to help people who were enslaved escape to freedom. In such cases, what was legal was immoral and what was moral was illegal. Some of us did what was right and good at great peril and personal cost during such times, even though we broke the law. Others of us remained responsible, law-abiding citizens and, by omitting to do the good we could have done, allowed others to experience unimaginable suffering and injustice.

It is important to note that each of the circles are more like membranes than concrete lines of demarcation. Like ocean tides, they bend and flow with each other, remaining distinct but always connected and interacting. Finally, the area beyond the third context represents the *unknown*. From our personal beliefs and values to our social relations and interaction within and outside the rule of law—all are subject to the effects of the unknown. We may call it coincidence, luck, fate, destiny, or the will of God. Whatever we call it, the outcome of our individual lives as well as the fate of our larger community includes an air of mystery, of the unexpected—sometimes welcomed and other times feared. What we can count on is that if we act as ethical people of integrity we will increase the odds that we will work and live in responsible and caring communities where the chance for justice will be greater for all who live there.

In addition to examining our study of ethics from a personal, social, and criminal justice context, it is also useful to identify several specific goals as we begin to explore issues regarding justice, crime, and ethics.

FIVE GOALS FOR EXPLORING ETHICS

The initial goal for exploring ethics is to become more aware and open to moral and ethical issues.

As we try to become more aware of ethical issues, we will discover a number of contradictions in our moral beliefs and values. We will find that there is often a difference between appearances and reality, that things are often not what they seem. What we are taught as children may be challenged by our adult experiences. As a result, some choices seem clearly to be right or wrong, whereas other events seem more ambiguous and less certain.

A part of our becoming more open includes our learning to be more aware of the full range and nature of moral and ethical issues—from telling a small lie to committing perjury, from cheating on one's income taxes to engaging in major bank fraud. This broad range of moral issues reminds us that where justice is concerned, personal values, social consequences, and criminal justice outcomes are often intertwined.

As we become more open to moral and ethical issues, it is important that we approach our second goal, which is *to begin developing critical thinking and analytical skills*.

As young children, we were often creative, as evidenced by our active imaginations. As we grew older, we learned to stand in line, follow instructions, and be seen more than heard when it came to the process of learning. In a word, we learned to become obedient. Over time, we began to lose confidence in our point of view as being anything of value. In such a context, as students, we are inclined to become more interested in asking *how* rather than *why*, in becoming more like technicians rather than philosophers. However, Albert Einstein (as quoted in Castle, 1988), in discussing science and creativity, suggested that “[t]o raise new questions, new possibilities, to regard old problems from a new angle, requires creative imagination and marks real advances in science.” In other words, if we do not first ask the right questions, our solutions, no matter how well-intended and efficient, simply add to our difficulties. Asking *why*, then, is an important aspect of developing critical thinking and analytical skills.

Asking meaningful questions requires clarity in our thinking and a sense of mindfulness as we explore moral and ethical issues. Critical thinking and analytical skills help us distinguish concepts such as justice and liberty from principles such as “the ends do not justify the means.” For example, we might discuss capital punishment both as a concept and in principle. However, our critical thinking and analytical skills will allow us to go even further as we search for the truth regarding capital punishment. What are the short-term and long-term costs of such a sanction? How does it affect our criminal justice system and our society in general? What will future generations think about our decisions, laws, and policies regarding capital punishment? Although we may never be able to arrive at a perfect position on capital punishment, critical thinking and analytical skills can aid us in exploring more openly and with more integrity the various issues surrounding it. These skills encourage openness and perseverance rather than blind acceptance and obedience based on ignorance.

There will always be disagreement on such issues as capital punishment. As with any moral issue, there is a cost for the attitudes we hold and the choices we

make; there is inevitably an upside and a downside, a pro and a con. As we explore such issues, critical thinking and analytical skills can help us see more clearly what the costs will be.

Becoming more open to moral and ethical issues and developing critical thinking and analytical skills will help us more fully realize our third goal: *becoming more personally responsible*. Before we can become more responsible, we must increase our ability to respond. The first two goals aid us in this endeavor. As we persevere in an open exploration and search for the truth regarding moral and ethical issues, we will feel more empowered and have more hope for the future.

A fourth goal of our ethics education is that we *understand how criminal justice is engaged in a process of coercion*. Giving tickets to drivers who exceed the speed limit and sentencing serious offenders to prison are examples of this process. In exploring the morality of coercion, we come to realize that, in large part, criminal justice is about forcing people to do things they do not want to do. Having the authority to be coercive, combined with the discretionary nature of such authority, together create the potential for corruption and abuse. Can you think of any examples where the coercive role of police, courts, or corrections could be corrupted? On a more personal level, how might parental or peer influences exercise coercion in an unethical way (Sherman, 1981)?

The fifth goal of our exploration concerns what Parker Palmer (1983) refers to as *developing wholesight*. It is important that we become more open to moral and ethical issues, that we develop critical thinking and analytical skills, that we increase our sense of personal responsibility, and that we understand the morality of coercion. Yet all of these abilities and skills need to be tempered by our intuitive nature. We need to explore these issues not only with our minds but also with our hearts. Our mind or intellect can often become more preoccupied with immediate problems and how to solve them. The heart asks why and looks not only to the immediate dilemma but also to the deeper level of difficulty, and it asks what the costs might be in the long run. Wholesight creates a vision in which our minds and hearts, our thinking and feeling, work together for the common good as we explore the ethical and moral issues that we as individuals and as members of a community face.

The following sections of this book will introduce you to some of the philosophical theories that can provide a framework for you to study and analyze ethical and moral issues in crime and justice. The police, courts, and corrections, which

BOX 1.1 FIVE GOALS FOR EXPLORING ETHICS

1. Develop greater awareness of moral/ethical issues.
2. Develop critical thinking/analytical skills.
3. Become personally responsible.
4. Understand coercion in criminal justice.
5. Develop wholesight.

comprise the criminal justice system, will be explored in the light of ethical concerns. Criminal justice research and crime control policy will also be examined. Finally, a justice ethic for the future is offered for your consideration. What kind of future do you want to be a part of? What price are you willing to pay?

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DISCUSSION QUESTIONS

1. Define and discuss the term *ethics* from your own perspective.
2. Explain what ethics is using the three contexts presented in this chapter for understanding justice, crime, and ethics.
3. Explain the five goals of exploring ethics and the impact that each has on the other.

