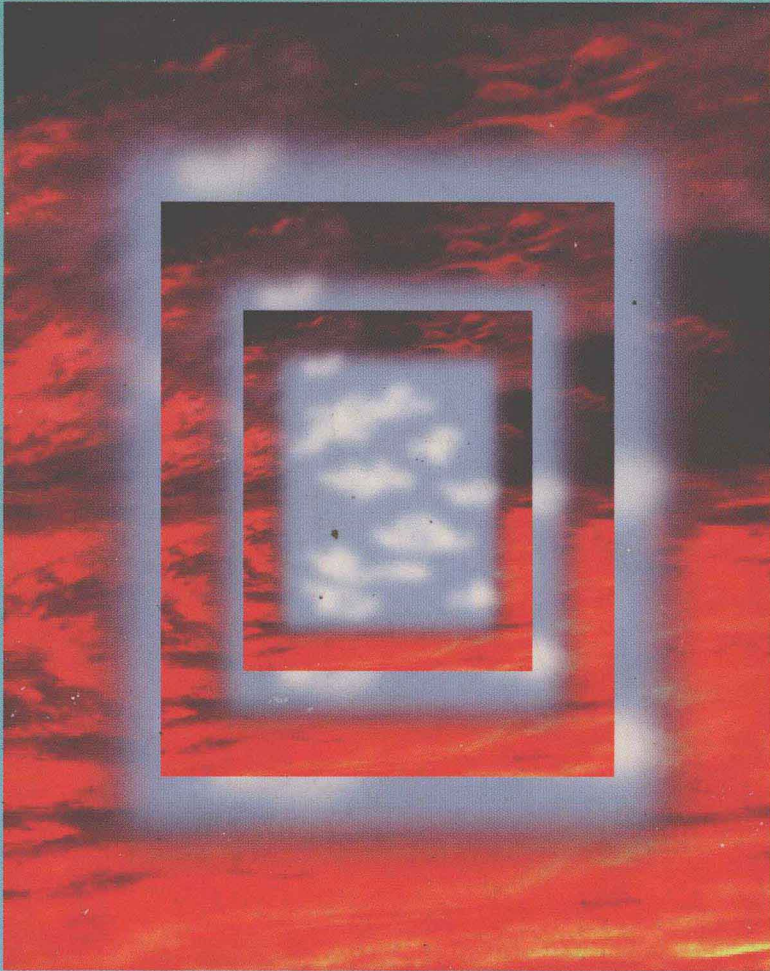


Justice, Crime and Ethics

SECOND EDITION



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Preface

We hope that you will find the second edition of *Justice, Crime and Ethics* useful and stimulating.

The Introductory section has been expanded to include three papers. The first one encourages the reader to approach the rest of the book from personal, social and criminal justice contexts in order to gain a more complete sense of how justice, crime and ethics relate to one another. The second paper focuses on a utilitarian and deontological framework for addressing criminal justice issues, while the third selection examines how a philosophy of connectedness and care can contribute to a peacemaking emphasis. The three papers together try to provide a broad philosophical framework for the purpose of exploring a wide range of social and criminal justice issues.

Section II includes two new selections. One is an experimental piece on teaching police officers about ethical dilemmas. The second asks the question: Do police officers really need a code of ethics? The author examines this question in the aftermath of the Rodney King incident.

A paper on reforming plea bargaining has been added to the section on Ethics and the Courts, and a selection on shame, forgiveness and juvenile justice has been included in the Correctional Issues section. The section on Crime Control Policy has incorporated an additional paper on the general topic of double standards and ethics in public service.

An additional resource has been developed in the form of a Student Study Guide/Workbook, and is available from the publisher. The study guide/workbook includes learning objectives, chapter summaries, objective practice questions, case scenarios and quiz questions as well as several discussion questions keyed to each chapter for purposes of stimulating class discussion.

There are also several other excellent books available which complement this text in addressing issues concerning ethics and justice, particularly *Ethics in Crime and Justice* by Joycelyn Pollock and *Ethics in Criminal Justice* by Sam Souryal, which is also available from Anderson Publishing Co. and offers a unique classical and thematic approach to the subject.

Finally, we would like to thank Sharon Elliot for her typing assistance and Robert England for preparing the Instructor's Guide.

MCB
BRM
BJM

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I. INTRODUCTION

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, such as with parents and children, and inmates and 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

As you approach the study of ethics, crime, and justice, it seems 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 where 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 larger social problems like 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 persons 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, while 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 persons 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 have to do both with the commission of wrongdoing and, by omission, allowing wrongdoing to occur. Thomas Merton, in examining a fundamental problem of omission, writes “. . . moral paralysis . . . leaves us immobile, inert, passive, tongue-tied, ready and even willing to succumb.”¹

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, neighbors, even the land we grow food on to eat, and the air we breathe. Is it important that we act in ethical ways regarding our physical environment as well as the people we come in contact with? Within our community of interdependent parts exist three contexts, or perspectives, that can help us to approach a better understanding of justice, crime and ethics.

THREE CONTEXTS FOR UNDERSTANDING JUSTICE, CRIME, AND ETHICS

The first context or perspective is the *personal* one. When we explore the study of right and wrong, good and evil, we find ourselves questioning and testing our own personal sense of values and ethics—our own ideas about what is good and evil and ethical and unethical. It is important that we do not approach the study of justice, crime, and ethics with a cold, analytical eye. While our examination of the issues should be objective, it should also be personal. We need to take into account what we believe in and stand for personally. As we search for the truth and begin to more fully understand various ethical concerns, we may choose to revise and refine our value system. Still, the starting and ending point of the consequences of our journey will come back to the person we are and could possibly become. What do we personally believe about right and wrong, good and evil, justice and injustice? Do we even know what we believe? How will our personal values or lack of them affect the decisions we make and the direction our life takes?

Another broader context is the *social* one through which we relate to others in our community, both directly and indirectly. Persons do not commit crimes in isolation. Crimes 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 making her husband a victim of 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 subsequent crime?

The social context of ethics suggests that we cannot be concerned only with criminals after they have committed crimes, but need to 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 stockmarket fraud.

The social context is not only concerned with how we judge others as being good or evil, but also how we judge ourselves in relationship to others. Frederick Buechner 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."²

The third context we can use in our efforts to better understand justice, crime, and ethics is perhaps the most specific one and 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 context of ethics when 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 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?

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 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, while 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. And 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, in discussing science and creativity, suggests that "To raise new questions, new possibilities, to regard old problems from a new angle, requires creative imagination and marks real advances in science."³ 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 to 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- and long-term costs of such a sanction? How does it affect our criminal justice system and our soci-

ety in general? What will future generations think about our decisions, laws, and policies regarding capital punishment? While we may never be able to arrive at an absolutely 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 capital punishment. These skills encourage openness and perseverance rather than blind acceptance and obedience based upon ignorance.

There will be disagreement on such issues as capital punishment. As with any moral issue, there is always a cost for the attitudes we hold and the choices we make; there is always an upside and downside, a pro and 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 to 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 in the future.

A fourth goal of our ethics education is that we *understand how criminal justice is engaged in a process of coercion*.⁴ Giving tickets to drivers who exceed the speed limit and sentencing 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, and the discretionary nature of such authority, creates 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 refers to as *developing wholesight*.⁵

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 asks what the costs might be in the long run. Wholesight creates a vision where our minds and hearts, our thinking and feeling, work together for the com-

mon good as we explore the ethical and moral issues 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 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?

NOTES

1. Ralph Woods (ed.), *The World Treasury of Religious Quotations* (New York: Garland Books, 1966), p. 647.
2. Frederick Buechner, *Wishful Thinking* (New York: Harper & Row, 1973), p. 48.
3. Tony Castle (ed.), *The New Book of Christian Quotations* (New York: Crossroad, 1988), p. 52.
4. Lawrence Sherman, *The Teaching of Ethics in Criminology & Criminal Justice*, Chicago: Joint Commission on Criminology & Criminal Justice Education & Standards, 1981.
5. Parker Palmer, *To Know As We Are Known* (San Francisco: Harper & Row, 1983).

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UTILITARIAN AND DEONTOLOGICAL APPROACHES TO CRIMINAL JUSTICE ETHICS 2

Jeffrey Gold

Over the past 10 to 15 years, interest in professional ethics has grown steadily. Business ethics, medical ethics, and environmental ethics are all flourishing as components in most college and university curricula. Despite this fact, until recently, "higher education programs in criminology and criminal justice have largely neglected the systematic study of ethics."¹ This is unfortunate because the ethical issues that arise in the area of criminal justice are significant and complex. And, even though many of the ethical issues that arise in criminal justice are common to other professions, there are other issues that are specifically tailored to criminology and criminal justice. The most significant example, as mentioned in Chapter 1, involves the use of force and physical coercion. Sherman points out: "Force is the essence of criminal justice . . . The decisions of whether to use force, how much to use, and under what conditions are confronted by police officers, juries, judges, prison officials, probation and parole officers and others. All of them face the paradox, noted earlier, of using harm to prevent harm."² Because the use of force is central to criminal justice, this distinguishes criminal justice from other professions.

In addition to the issue concerning the use of force, there are other factors that seem to distinguish the moral decisions of criminal justice agents from other professionals. Sherman discusses two of them:

First, criminal justice decisions are made on behalf of society as a whole, a collective moral judgement made in trust by a single person. That would entail a far greater responsibility than what other vocations are assigned. Second, the decisions criminal justice agents make are not just incidentally, but are primarily, moral decisions. An engineer designs a building that

may or may not kill people, but the decision is primarily a physical one and only incidentally a moral one. When a police officer decides to arrest someone . . . when a judge decides to let that person out on a suspended sentence, the decisions are primarily moral ones.³

As we can see, the moral issues that arise in the field of criminal justice are both distinctive and significant.

It is sometimes helpful, when trying to solve certain specific ethical issues, to begin with more general, more theoretical questions. When we get a handle on the more theoretical issue, we can apply that to a specific moral problem. So, with respect to criminal justice, we might begin by raising more general questions about the nature of justice. Theories of justice address broad social issues including human rights, equality, and distribution of wealth. We might even go up one more level of generality: justice is itself a branch of an even wider sphere, that of ethics. It seems important that we view issues in criminal justice from the larger framework of ethics and morality. It would be a mistake to assume that issues in criminal justice could emerge outside of the larger social and ethical context of our culture. Therefore, this essay will explore the field of ethics with the hope that such a study will provide us with a set of concepts that will shed some light on specific moral issues in the field of criminal justice. That shall be done by presenting a study of two of the major philosophical theories in the field of normative ethics.

NORMATIVE ETHICS

Normative ethics is the study of right and wrong. A normative ethical theorist tries to discover whether or not there are any basic, fundamental principles of right and wrong. If such principles are discovered, they are held to be the ground or foundation of all of our ethical judgments. For example, we ordinarily say lying, cheating, stealing, raping, and killing are wrong. The ethical theorist asks: Do these very different activities of lying, stealing, and killing all have something in common which makes them all wrong? If so, what is that common characteristic?

One of the most important figures in the history of Western philosophy, Socrates, was famous for seeking the universal in ethical matters.⁴ In other words, when Socrates asked "What is Justice?" or "What is Virtue?", he was not asking for a list of actions which are just or list of examples of virtue, rather, he was seeking the universal characteristic that all just or virtuous actions had in common.⁵ Just as all squares, no matter how large they are or what color they are, have something in common (four equal sides and four right angles), the ethical theorist

wants to know if all morally right actions (whether they are cases of honesty, charity, or benevolence) also have something in common. If such a common characteristic is found, it is held to be the ground or foundation or fundamental principle of ethics. We shall now turn to our study of two standard ethical theories in an effort to locate such a foundation for ethics.

UTILITARIANISM

The most famous version of utilitarianism was developed in Great Britain in the eighteenth and nineteenth centuries by Jeremy Bentham and John Stuart Mill.⁶ Utilitarianism is classified as a consequentialist ethical theory. In other words, the utilitarian holds that we judge the morality of an action in terms of the consequences or results of that action. Mill states: "All action is for the sake of some end, and rules of action, it seems natural to suppose, must take their whole character and color from the end to which they are subservient."⁷ The insight that motivates consequentialism is this: a moral action produces something good; an immoral action produces a bad or harmful result. Put in the simplest possible way, cheating, stealing, and murder are all wrong because they produce bad or harmful consequences, and charity and benevolence are good because they produce something beneficial. To summarize, the consequentialist holds that the morality of an action is determined by the consequences of that action—actions which are moral produce good consequences, actions which are immoral produce bad consequences.

At this point, two questions come up: (1) What do we mean by good consequences (and bad consequences)? (2) Consequences for whom? Actions have consequences for many different people. Which people should we consider when contemplating the consequences of our actions? By giving concrete answers to these two questions, the utilitarian carves out a unique and specific version or type of consequentialist moral theory.

In order to explain utilitarianism, we shall begin with the first question. How does the utilitarian define or characterize good and bad consequences? The most famous version of utilitarianism (the one advocated by Bentham and Mill) is called hedonistic utilitarianism. According to Mill, the fundamental good that all humans seek is happiness. Aristotle agrees with that point even though he is not a utilitarian. In his discussion of the highest good, Aristotle says: "As far as its name is concerned, most people would agree: for both the common run of people and cultivated men call it happiness."⁸ Mill holds that "there is in reality nothing desired except happiness."⁹ Mill's view is that all people desire happiness