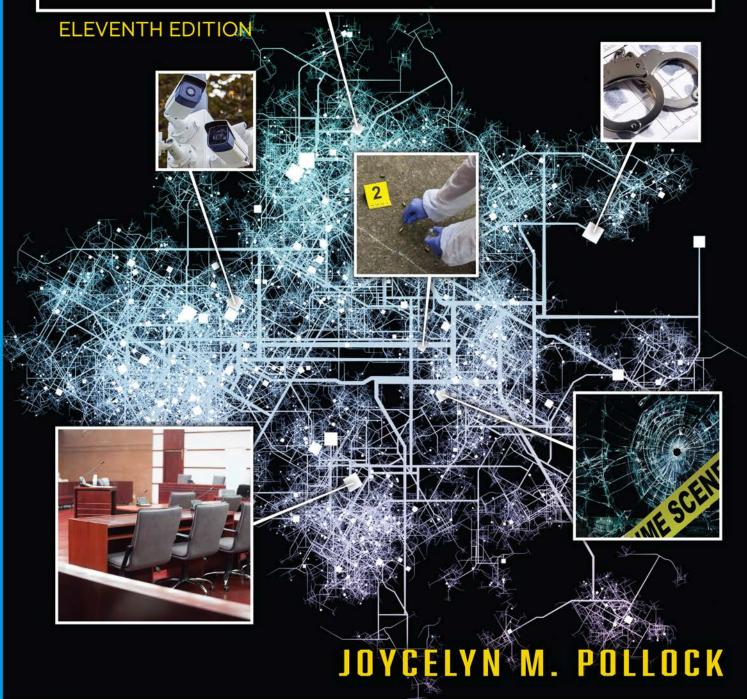
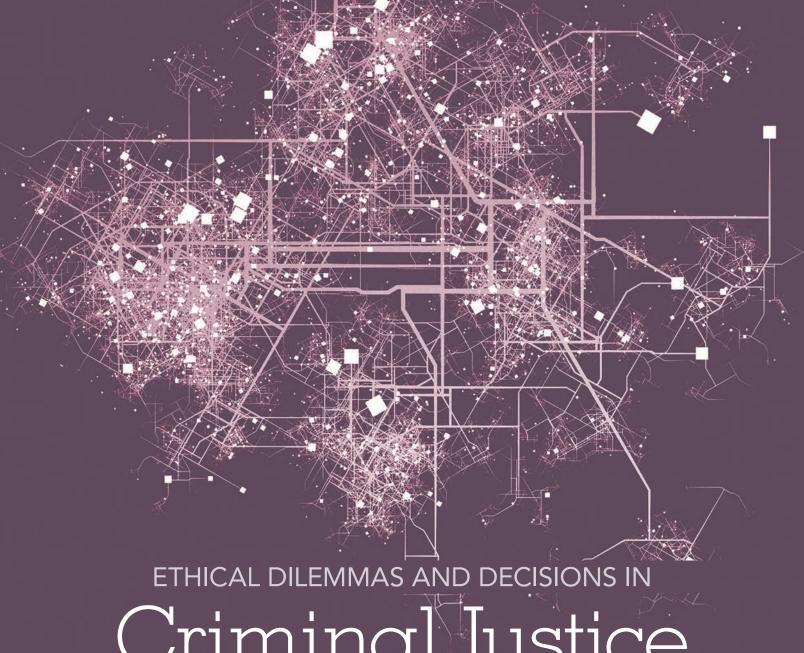


Ethical Dilemmas and Decisions in

## CRIMINAL JUSTICE





## Criminal Justice

eleventh EDITION

JOYCELYN M. POLLOCK TEXAS STATE UNIVERSITY—SAN MARCOS



Australia • Brazil • Canada • Mexico • Singapore • United Kingdom • United States

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## **About the Author**



Joycelyn M. Pollock received her Ph.D. in Criminal Justice from the State University of New York, Albany. She also obtained a J.D. from the University of Houston and passed the Texas Bar in 1991. She has retired from university teaching and is a University Distinguished Professor, Emeritus from Texas State University. She continues to be involved in training and consulting in criminal justice.

The first edition of Ethics in Crime and Justice: Dilemmas and Decisions was published in 1986 and continues to be one of the leading texts in the field. Dr. Pollock has also published Crime and Criminal Justice in America, 3rd Ed. (2016); Morality Stories, 3rd Ed. (with Michael Braswell and Scott Braswell, 2016); and, Criminal Law, 12th Ed. (2020), among many others. She has delivered training to police officers, probation officers, parole officers, constables, correctional administrators, and other groups in the areas of sexual harassment, ethics, criminology, ethical leadership, and other subjects. She has taught at the Houston Police Academy, the Bill Blackwood Law Enforcement Management Institute, and the California Department of Corrections and Rehabilitation Leadership Institute and has been a guest speaker for the International Association of Policewomen, the Texas Juvenile Justice Association, and the Southwest Legal Institute, among other groups. In 1998, she was awarded a Fulbright Teaching Fellowship to Turku School of Law in Turku, Finland. She was also a recipient of a Senior Scholar Justice award from the Open Society Institute. The Academy of Criminal Justice Sciences has honored her with the Bruce Smith Award for outstanding contributions to the field of criminology and the ACJS Fellows Award for contributions to criminal justice research.



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## **Preface**

The first edition of this book was published in 1986; thus, this 11th edition marks over 35 years the book has been used in criminal justice and training classrooms. When I first wrote the book, there were very few textbooks for a course covering criminal justice ethics. Now there are probably a dozen, so I appreciate that readers continue to find value in this one. Over the years, the book has been shaped by current events, reviewers' comments, and the many individuals who have provided feedback. I want to thank every person who has contacted me through e-mail, letters, or personally at conferences. I welcome and appreciate all feedback. Please continue to let me know what you think and help me make the book better and more accurate.

Since the first edition, this text has provided the basic philosophical principles necessary to analyze ethical dilemmas, and it has also included current news events to show that these are not simply "ivory tower" discussions. Each edition has incorporated recent news, sometimes requiring updates even as the book goes to press. The book also identifies themes that run through the entire system, such as discretion and due process. In each edition, I have tried to improve the coverage and structure of the book without changing the elements that work for instructors.

The last edition captured the rise of the "Black Lives Matter" (BLM) movement, the Trump administration's changes within the Department of Justice, "sanctuary city" resolutions, and the federal turnabout on the use of private prisons, among other major events. In this edition, the nationwide BLM protests spurred by the George Floyd killing, the pandemic, and the 2020 election join systemic issues such as use-of-force, sentencing, the lack of indigent defense, and mass imprisonment.

This edition retains the basic structure of devoting three chapters each to police, courts, and corrections, with four introductory chapters. Instructors will find only minor changes in the chapter learning objectives and study questions, making for an easy transition in terms of adapting course material to the new edition. Several of the Walking the Walk boxes have been changed, as have several of the In the News boxes. The focus of revisions has been, as always, on covering new academic work and current news that is relevant to ethics. The changes are described in more detail below.

## **New to This Edition**

- Chapter 1: Morality, Ethics, and Human Behavior—The chapter introduction has been rewritten to focus on the George Floyd-BLM protests as a central issue to any discussion of criminal justice ethics. A few of the news items from the last edition were updated; the Florida prosecutor refusing to use the death penalty, and Jack Abramoff. The In the News box was updated to the current Transparency International corruption index. One of the Ethical Dilemmas at the end of the chapter was changed to a dilemma for a BLM protester. An ethical issue was added about gubernatorial decisions to close businesses due to the pandemic.
- Chapter 2: Determining Moral Behavior—Some redundant discussion was removed to streamline the chapter. The Walking the Walk box was replaced with one about Cpt Crozier, the captain of the navy carrier that was fired for his attempts to get his sailors off the ship due to COVID. An In the News box was added showing companies doing good deeds in the pandemic, and a news box about New York ethics committee was deleted. An ethical dilemma about ventilators was added in the writing exercises, and one of the ethical dilemmas at the back of the chapter was changed to a police commander deciding whether to use tear gas on protesters.

- Chapter 3: Justice and Law—This chapter updated the CEO salaries in the text and in Box 3.1. Minimum wage figures were also updated. The In the News box on Gravity CEO increasing workers' wages to \$70,000 was updated. The discussion on distributive justice was reduced, deleting the EEOC discussion as well as the discussion on Obamacare. A news box on Lori Loughlin's sentencing was added. The section on procedural justice has been updated with new research. Updated numbers from the National Registry of Exonerations and Gallup poll figures on race/trust in police were added. There is an updated section on race with new news stories and academic studies. William Barr's quote on COVID closures as a civil liberty issue was added. Two of the end-of-chapter Ethical Dilemmas were changed to more current topics.
- Chapter 4: Becoming an Ethical Professional—The section on biological influences on behavior has been shortened and some research reviews were consolidated. An In the News box on the Wells Fargo scandal was replaced with an eBay scandal. Vocabulary terms of perverse incentive and organizational citizenship were added. The In the News box on Jon Burge was updated. New research on morality and deterrence was added. An In the News box on unethical sheriffs was added.
- Chapter 5: The Police Role in Society—The discussion on Ferguson riots was updated to describe the BLM protests of 2020 and new research on the Ferguson "effect." Gallup poll data on respect and belief in integrity of police was updated. Vocabulary terms of guardian model, warrior model, noble cause corruption, and testilying were added. A subheading of warriors versus guardians was added. The number of police officers killed was updated. Some discussion was rearranged, and there is now a subheading and discussion of police whistleblowers. I changed the Walking the Walk box to one on Shannon Spaulding, a former Chicago police officer. New information on the 1033 program and consent decrees by Department of Justice was included in the appropriate sections. The discussion of police subculture was further reduced from last edition in favor of more current news.
- Chapter 6: Police Discretion and Dilemmas—The discussion of older research on use
  of force was reduced. Gallup poll numbers on attitudes toward police, as well as statistics on racial differences in shootings and other uses of force, were updated. Added
  discussion of departmental factors in uses of force. The headings under proactive
  investigations were rearranged to be clearer. A new asset forfeiture news item was
  added, along with new research findings.
- Chapter 7: Police Corruption and Responses—New subheadings of excessive force and testilying were added under the abuse of authority heading. Other In the News boxes were changed to more current events or updated with new information; for example, the Baltimore scandal was updated. Redundant discussions, e.g., Serpico and procedural justice, were deleted. Research findings covering factors in misconduct were consolidated and reduced. The issue of discipline records being open to public was updated with coverage of state or local changes across the country. Under the organization explanations, new subheadings were added. A new news box on LA sheriff deputy gangs was added. A new Walking the Walk box covering a retired detective who was instrumental in getting a wrongfully convicted man released replaced the older one.
- Chapter 8: Law and Legal Professionals—A new learning objective was added on indigent defense. The discussion on homelessness was updated with the new Supreme Court ruling. The same-sex marriage news box is now included as part of chapter discussion. New pandemic rules/laws restricting behaviors was included in the discussion of paternalistic laws. The Comey Walking the Walk box was updated. The discussion of the "criminalization of poverty" (bail, fines, fees, etc.) was updated. The discussion on marijuana legalization has been updated. The subheadings and content were reworked to be clearer, with a new heading, "The Criminal Justice System," with discussions of the courtroom work group and other general information about lawyers as subheadings. An ethical issue box on the ACLU defending unpopular groups was updated and a new news box on William Barr possibly facing bar association complaints was added.
- Chapter 9: Discretion and Dilemmas in the Legal Profession—Several dated In the News boxes were replaced with current news items or updated. A discussion of

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attorneys remaining quiet when they knew their clients committed a crime for which someone else was wrongfully convicted was added. New information on hair analysis and other information relevant to forensic science section was added. A new news box was added regarding DNA testing in New York. New information on racial bias in plea bargaining was added.

- Chapter 10: Ethical Misconduct in the Courts and Responses—The introductory section on wrongful convictions was reduced and information moved to a later fuller discussion. New or updated In the News boxes cover former NYPD detective Scarcella and prosecutor Vencchio, lab analysts Doohan and Farek in Boston with a prosecutor cover-up. A new Walking the Walk box was added on a pathologist who questioned the "shaken baby" theory. New examples of prosecutorial and judicial misconduct were added. Current news was added about progressive prosecutors across the country. New state legislation and other attempts to address prosecutorial misconduct was added. A news box on Sixth Amendment violations by taping lawyer-client meetings in a jail was added.
- Chapter 11: The Ethics of Punishment and Corrections—The chapter introduction was revised back to the philosophy of punishment rather than new changes in sentencing, but the introduction of punishment was reduced. All statistics concerning imprisonment and other correctional supervision have been updated. The information on supermax prisons was given back its subheading. The discussion of private corrections has been updated. The discussion of capital punishment has been slightly shortened but updated with new Gallup numbers. The In the News box on Riker's Island jail has been updated.
- Chapter 12: Discretion and Dilemmas in Corrections—The introductory section was reduced. The discussion of the scandal in New Jersey and New York City surrounding halfway (sober) houses was reduced substantially but with added new sources. The PREA survey has been updated. A new discussion on what makes a good officer was added. A new section on treating inmates with COVID was added.
- Chapter 13: Correctional Professionals: Misconduct and Responses This chapter was the most changed. Instead of sections on misconduct in several different states, that information has been rearranged to follow prior chapters so that individual types of misconduct physical abuse, smuggling, and so on are discussed instead. A new section on unethical practices in medical care has been added. Some paragraphs about why individuals commit misconduct was moved from Chapter 11 to the explanations paragraphs in this chapter. Finally, the organizational explanations section was reworked to refer back to formal and informal cultures.
- Chapter 14: Making Ethical Choices—The discussions concerning 9/11 responses have been reduced yet again from the last edition. The numbers held at Guantanamo have been updated. The In the News box regarding the Senate report on torture has been updated. A new Walking the Walk box was added to cover Alexander Vindman. New information on surveillance technology has been added. New discussion connects the clear utilitarian features of 9/11 responses with current events.

## **Features**

Several boxed features in *Ethical Dilemmas and Decisions in Criminal Justice, 11th Ed.* highlight and provide real-world examples of key concepts and issues.

In the News This feature has been present since the earliest editions of this book. Each chapter presents news items that relate to the discussion. In every edition, a few of the news stories are kept and updated, but new current events are included where appropriate. Examples in this edition include:

Policing protests
COVID in prison
Lori Loughlin's sentencing
LA sheriff deputies in gangs

QUOTE AND QUERY Another longtime feature of the book, these boxes offer classic and current quotes meant to illustrate a point or issue from the chapter's discussion. There is a query following the quote that spurs the reader to think about the quote in the context of the discussion.

WALKING THE WALK Introduced in the sixth edition, these boxes describe individuals who display ethical courage. This feature proved to be so popular that every chapter now has one and this edition has replaced some of the older ones with new descriptions of individuals faced with ethical dilemmas.

ETHICAL DILEMMA Each chapter features a dilemma or an issue, followed by an extended analysis of the dilemma under law, policy, and ethics.

## **Pedagogical Aids**

In addition to the boxed features, *Ethical Dilemmas and Decisions in Criminal Justice*, 11th Ed., has several pedagogical aids designed to enhance student learning and comprehension.

Key Terms Key terms are bolded and defined when they first appear in the text and are included at the end of the chapter for student review.

Study Questions These end-of-chapter questions identify important points and concepts in the chapter and can be used for test reviews or test questions.

Writing/Discussion Questions These end-of-chapter questions cover more abstract concepts and are designed to provide an opportunity to employ critical thinking skills in a writing or discussion exercise.

ETHICAL DILEMMAS These end-of-chapter dilemmas are designed to be representative of what criminal justice professionals might face in the field. Many of the dilemmas describe true incidents and have been provided by police officers, probation officers, lawyers, and other criminal justice professionals. Others have been gleaned from news events or the media.

**LEARNING OBJECTIVES** Chapter-opening learning objectives preview the key content in each chapter for the reader.

**CHAPTER REVIEW** At the end of each chapter, the chapter objectives are presented again along with a short summary of content. These reviews summarize the key content of the chapter for the reader.



## **Supplement**

To help you learn and teach from *Ethical Dilemmas and Decisions in Criminal Justice*, a variety of additional materials have been prepared for you.

#### **MindTap**

With MindTap™ Criminal Justice for Ethical Dilemmas and Decisions in Criminal Justice, you have the tools you need to better manage your limited time, with the ability to complete assignments whenever and wherever you are ready to learn. Course material that is specially customized for you by your instructor in a proven, easy-to-use interface keeps you engaged and active in the course. MindTap helps you achieve better grades today by cultivating a true understanding of course concepts and with a mobile app to

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keep you on track. With a wide array of course-specific tools and apps—from note taking to flashcards—you can feel confident that MindTap is a worthwhile and valuable investment in your education.

You will stay engaged with MindTap's You Decide career-based decision-making scenarios and remain motivated by information that shows where you stand at all times—both individually and compared to the highest performers in class. MindTap eliminates the guesswork, focusing on what's most important with a learning path designed specifically by your instructor and for your Ethics course. Master the most important information with built-in study tools such as visual chapter summaries and integrated learning objectives that will help you stay organized and use your time efficiently.

#### **Instructor Resources**

This complementary site includes free materials the instructor can access to minimize preparation time and maximize student engagement.

#### Instructor Manual

The Instructor Manual provides the following for each chapter: Chapter Objectives, Key Terms, What's New in the Chapter, and a Chapter Outline.

#### Cengage Learning Testing, Powered By Cognero

Cognero is a flexible, online system that allows instructors to author, edit, and mange test bank content from Cengage; create multiple test versions in an instant; and deliver tests from the instructor's LMS, classroom, or wherever the instructor desires. Each chapter of the test bank contains multiple-choice, true/false, and essay questions to challenge your students and assess their learning. It is tagged to the learning objectives that appear in the main text, references to the section in the main text where the answers can be found, and Bloom's taxonomy. Finally, each question in the test bank has been carefully reviewed by experienced criminal justice instructors for quality, accuracy, and content coverage.

#### PowerPoint® Lecture Slides

The PowerPoint slides help make your lectures more engaging while effectively reaching your visually oriented students, The slides are updated to reflect the content and organization of the new edition of the text, are tagged by chapter learning objectives, and feature some additional examples and real-world cases for application and discussion.

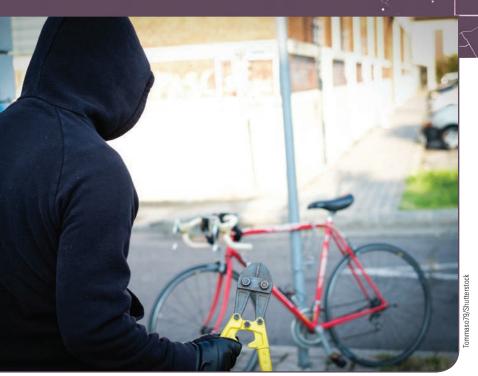
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–Joycelyn M. Pollock jpl2@txstate.edu

## **O1** | Morality, Ethics, and Human Behavior



Ethics is the study of right and wrong. Stealing may be tempting, but it is judged as wrong and unethical.

#### **Learning Objectives**

- 1. Explain the difference between ethical issues and ethical dilemmas.
- Give examples of how discretion permeates every phase of the criminal justice system and creates ethical dilemmas for criminal justice professionals.
- 3. Explain why the study of ethics is important for criminal justice professionals.
- 4. Define the terms *morals*, *ethics*, *duties*, *supererogatories*, and *values*.
- Describe what behaviors might be subject to moral/ethical judgments.

n 2020, this country experienced turmoil not seen since the 1960s. The COVID-19 pandemic killed hundreds of thousands of people, forced massive business closures, and prompted culture conflict over the wearing of masks. The killing of George Floyd in May spurred Black Lives Matter (BLM) protests across the country. Then, the shooting of Jacob Blake in August and news coverage of other killings, such as that of Breanna Taylor, increased the number and intensity of protests. Peaceful protests have occurred in small towns and large cities across the country, but there has also been arson, looting, and vandalism. Minneapolis, Rochester, Seattle, Portland, Austin, and other cities have seen their police stations vandalized and businesses destroyed. Violence between BLM protesters and counterprotesters has occurred, and killings have been perpetrated by protesters on both sides. Although the extent and severity of the protests is new, the issue of racial discrimination in the criminal justice system is not.

The last edition of this textbook was written shortly after the shooting of Michael Brown and the Ferguson riots. The BLM protests that occurred in 2014 were smaller and ended sooner than the current unrest but stemmed from the same root cause–perceived and/or real discriminatory treatment of Blacks by criminal justice professionals. Policy practices that affect blacks and whites differently, and the individual actions of criminal justice professionals, must be addressed, not only with legal analysis, but also by applying ethical principles. The criminal justice system can be examined using political, legal, organizational, or sociological approaches; however, in this book, we shift the lens somewhat and look at the system from an ethics

perspective. Asking whether something is legal, for instance, is not necessarily the same as asking whether something is right.

In this text, we will explore ethical decision making. More specifically, we explore the ethical dilemmas and issues within the criminal justice system. Every day, one can read news about ethical issues or individuals who have made choices that are subject to ethical judgments. Some decisions affect very few people; however, other decisions, such as former Officer Derek Chauvin's decision to keep his knee on George Floyd's neck despite fellow officers' and bystanders' entreaties to check his pulse, eventually affected thousands of individuals. One might say, in fact, that his decision has affected the whole country in some way. The ethical analysis presented and practiced in this text can be used to analyze decisions that spark national news coverage, but can also be applied to the smallest individual decisions as well. To be an ethical person, one must make ethical choices. This book will discuss how to do that.

Ethical discussions in criminal justice focus on issues or dilemmas. Ethical issues are broad social questions, often concerning the government's social control mechanisms and the impact on those governed. These issues can be subject to legal analysis and/or ethical analysis, as the two are related but not the same. The following is a list of a few current issues in the field of criminal justice that can be subject to ethical analysis:

- Defunding police departments and channeling savings to social service programs
- Passing legislation designed to remove qualified immunity from police officers
- · Decriminalizing recreational marijuana
- · Reversing mandatory minimum laws for drug crimes
- · Abolishing the death penalty
- · Using private prisons
- · Requiring police officers to carry their own liability insurance
- · Instituting civilian review boards to advise police departments
- Instituting deportation against "Dreamers" (Deferred Action for Childhood Arrivals Act recipients)
- Adopting "sanctuary city" resolutions
- · Instituting conviction review task forces in prosecutors' offices
- Requiring mandatory DNA collection for all misdemeanant arrestees.

The typical individual does not have much control over these issues. If one is a political or organizational leader, it is possible that it is within that person's discretion to decide some ethical issues, but generally, these choices are decided by political action or deliberation by many people.

While ethical issues are broad social questions or policy decisions, **ethical dilemmas** are situations in which one person must decide what to do. Either the right choice is not clear, or the right choice will be difficult because of the costs involved. Criminal justice professionals face dilemmas arising from the choices they are faced with during their employment. Dilemmas of criminal justice professionals include the following:

- A police officer's decision whether to ticket a traffic violator
- · A police officer's decision to tell a supervisor that her partner has an alcohol problem
- A sheriff's decision to fire a deputy who has used excessive force
- A defense attorney's decision to take a case
- A prosecutor's decision on whether and what to charge
- A probation officer's decision on whether to file a violation report on a probationer

At times, one's belief regarding an ethical issue gives rise to an ethical dilemma. In 2000, George Ryan, then governor of Illinois, declared a moratorium on use of the death penalty in his state when five individuals on death row were exonerated with DNA evidence. One of his last acts as he left office in 2003 was to commute the sentences of all 160 prisoners on death row to life without parole. Unlike most of us,

#### ethical issues

Difficult social or policy questions that include controversy over the "right" thing to do.

#### ethical dilemmas

Situations in which it is difficult for an individual to decide, either because the right course of action is not clear or because the right course of action carries some negative consequences.

Governor Ryan's position meant he could act on his belief regarding the issue of capital punishment.

Another example occurred in Orange County, Florida, where State Attorney Aramis Ayala refused to pursue the death penalty against a cop killer in 2017. In fact, she reportedly expressed her intent to *never* pursue the death penalty because of continued constitutional challenges to Florida death penalty sentences and the cost. After she refused to recuse herself, Governor Rick Scott signed an executive order that removed her from the case and appointed another prosecutor. He then took 23 other death penalty cases away from her and assigned them to prosecutors in neighboring counties. Ayala contested the action, but the Florida Supreme Court sided with the governor. In 2020, another case was taken from her by the governor. She has indicated she will not run for reelection because Florida law conflicts with her values and beliefs (Evans, 2017; The News Service of Florida, 2020).

It was a legal question whether her position gave her the lawful authority to unilaterally reject the death penalty for all cases. It was also a legal question whether the governor had the legal authority to remove her from a case in her jurisdiction, because she is an elected official. However, beyond law, it is also an *ethical* dilemma when an elected prosecutor does not believe in the death penalty. Does she have an ethical duty to reject it, or an ethical duty to pursue it because it is the law of the state? Would it make a difference if her position regarding the death penalty was clear and publicized before the election and voters elected her anyway?

In this book, ethical *issues* and ethical *dilemmas* will be analyzed. As you will see, the approach taken in both types of analysis is similar. Throughout the book, we approach decision making using the framework of applying *law*, *policy*, and then *ethics*. In each chapter, at least one ethical issue or ethical dilemma will be presented and analyzed. You will see that tools of ethical reasoning are necessary for a good analysis. For this reason, we must first explore the foundations of ethics.

## Why Study Ethics?

Although the decisions faced by professionals associated with the criminal justice system—ranging from legislators who write the laws to correctional professionals who supervise prisoners—may be different, they also have similarities, especially in that these professionals all experience varying degrees of **discretion**, authority, and power. They have awesome power that the rest of us do not. The greater role discretion plays in a profession, the more important is a strong grounding in ethics.

Legislators have the power to define certain acts as illegal and, therefore, punishable. They also have the power to set the degree of punishment. Public safety is usually the reason given for criminalizing certain forms of behavior. In other cases, legislators employ moral definitions for deciding which behaviors should be illegal. "Protection of public morality" is the rationale for some laws, including those involving drugs, gambling, and prostitution. While judges sometimes invalidate laws that run afoul of state and/or federal constitutions, legislators still have a great deal of discretion in setting the laws that we must live by.

How do legislators decide what behaviors to criminalize? How do judges determine whether such laws violate fundamental rights? We explore these questions in more detail in Chapter 3, which covers the concept of justice, and in Chapter 8, which begins our discussion of the law and legal professionals.

Part of the reason that legislators are not respected in this country is that we perceive that their discretion is unethically influenced by lobbyists and personal interests rather than the public good. The 2010 movie *Casino Jack and the U.S. of Money* is based on former lobbyist Jack Abramoff, who ended up in prison for his notorious bribing of legislators. Ironically, in 2020, he became the first person charged with violating a law that was amended specifically in response to his previous criminal offenses. After having served almost four years in prison, he had pledged to reform when he was released in 2010.

**discretion** The authority to make a decision between two or more choices.

However, recent charges allege illegal lobbying of legislators in relation to marijuana legislation and bitcoin currency (Popper, 2020).

Police officers, who enforce the laws created by legislators, also have a great deal of discretionary power. Most of us, in fact, have benefited from this discretion when we receive a warning instead of a traffic ticket. Police officers have the power to deprive people of their liberty (through arrest), and the power to decide which individuals to investigate and perhaps target for undercover operations. They also have the power to decide that force, even at times lethal force, is warranted—this power has been the subject of recent national protests incited by the belief that they use this power in a discriminatory manner. In Chapters 5 through 7, the ethical use of police discretion is discussed in more detail.

Prosecutors probably face the least public scrutiny of all criminal justice professionals—which is ironic, because they possess a great deal of discretion in deciding whom and how to prosecute. They decide which charges to pursue and which to drop, which cases to take to a grand jury, how to prosecute a case, and whether to pursue the death penalty in homicide cases. In cases of alleged police brutality or unlawful homicide, prosecutors decide whether to take the case to a Grand Jury or not, and whether to pursue charges. Although prosecutors have an ethical duty to pursue justice rather than conviction, some critics argue that at times their decision-making seems to be influenced by politics or factors other than the goal of justice.

Defense attorneys have ethical duties to their client, but also as officers of the court. After deciding whether to take a case or not, they decide whether to encourage a client to agree to a plea deal, what evidence to utilize and how to try the case, and whether to encourage a client to appeal.

Judges possess incredible power, typically employed through decisions to accept plea bargains, rule on evidence, and decide sentencing. The higher the court, the more power possessed by the judges who sit on that court. The Supreme Court is the highest court in our country, and the power of Supreme Court Justices is tremendous. They resolve questions of legality even when there is no social consensus about whether something should be legal. For instance, in *Obergefell v. Hodges*, 576 U.S. 644, 2015, the Supreme Court held that all states must license and recognize same-sex marriages, invalidating any state laws that were inconsistent to this ruling. In prior cases, Supreme Court decisions have dramatically affected social disputes, e.g., abortion, affirmative action, euthanasia, same-sex relationships, and interracial marriage. The power of Supreme Court Justices to settle public conflict over "private behavior" is why nomination and appointment to the Court incites such interest and political manipulations. Chapters 8–10 explore the ethical issues of legal professionals in the criminal justice system.

Finally, correctional officials have immense powers over the lives of some citizens. Probation officers make recommendations in presentence reports and violation reports that affect whether an individual goes to prison. Prison officials decide to award or take away "good time," and they may punish an inmate with segregation; both types of decisions affect the individual's liberty. Correctional officers make daily decisions that affect the life and health of the prisoners they supervise. Parole officials decide when to file a violation report and make other decisions that affect a parolee as well as his or her family members. In short, all correctional professionals have a great deal of discretion over the lives of those they control. The ethical issues and dilemmas of correctional professionals are discussed in Chapters 11–13.

Although the professionals discussed above face different dilemmas, they also share the following common elements:

- They each have discretion—that is, the power to decide. Although the specific decisions are different, they all involve power over others and the potential deprivation of life, liberty, or property.
- They each have the duty of enforcing the law. Although this concept is obvious with
  police, it is also clear that each of the professionals mentioned has a basic duty to
  uphold and enforce all laws; they serve the law in their professional lives. You may
  have heard the phrase "We are a nation of laws, not men." This means that no one is

supposed to be above the law, no matter how powerful; and no one is supposed to take the law into their own hands, no matter how clear the guilt.

- They must accept that their duty is to protect the constitutional safeguards that are the cornerstone of our legal system—specifically, due process and equal protection. Due process protects each of us from error in any governmental deprivation of life, liberty, or property. We recognize the right of government to control and even to punish, but we have certain protections against arbitrary or unlawful use of that power. Due process protects us against such abuses. We also expect that the power of our government will be used fairly and in an unbiased manner. Equal protection should ensure that what happens to us is not determined by the color of our skin, our gender, our nationality, or the religion we practice. Laws are for everyone, and the protection of the law extends to all of us.
- They are public servants. Their salaries come from the public purse. Public servants possess more than a job; they have taken on special duties involving the public trust. Individuals such as legislators, public officials, police officers, judges, and prosecutors are either elected or appointed guardians of the public's interests. Arguably, they must be held to higher standards than those they guard or govern. Temptations are many, and, unfortunately, we find examples of double standards, in which public servants take advantage of their positions for special favors, rather than higher standards of exemplary behavior.

The Josephson Institute (2005), which conducts ethics training for corporations and public agencies, identifies the ethical principles that should govern public servants: public service (treating the office as a public trust), objective judgment (striving to be free from conflicts of interest), accountability (upholding open decision making), democratic leadership (observing the letter and spirit of the law), and respectability (avoiding the appearance of impropriety). Unfortunately, as the In the News box indicates, we are not so sure in this country that our public servants represent these qualities.

When President Trump was elected in 2016, it was the first time in recent memory that a president's personal business interests had been criticized as creating conflicts of interest for a sitting president. The Emoluments Clause seeks to prevent the president or legislators from making decisions to benefit themselves rather than the United States as a whole. A paragraph in Article I of the Constitution reads in part, "... no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State." Potentially problematic would be foreign governments that rent office space in Trump buildings, foreign representatives who rent rooms at Trump hotels, or tax breaks from foreign governments to Trump businesses. The Citizens for Responsibility and Ethics in Washington (CREW) filed a lawsuit shortly after the 2016 election, arguing that the Emolument Clause has been violated. Although

## FIN THE NEWS | Public Corruption

Transparency International compiles a list of countries ranked by the perception of corruption by public officials. For years, the countries perceived as least corrupt with the highest scores have usually been Scandinavian. In 2019, Scandinavian countries predominated in the top again, with the five highest-ranked countries and their scores being: Denmark (87), New Zealand (86), Finland (85), Singapore (85), Sweden (85), and Switzerland (85). In 2016, Canada

was ranked in the ninth place, with a score of 82, and the United Kingdom came in twelfth, with a score of 81. In 2019, both countries were in the 12th place ranking. In 2016, the United States had a ranking of 18, with a score of only 74. In 2019, the Index placed the United States in the 23<sup>rd</sup> place, with a score of 69. Not surprisingly, the most corrupt countries, according to this perception index, include Somalia (9), South Sudan (12), and Venezuela (16) in 2019.

Source: Transparency International, 2017; Transparency International, 2020.

#### BOX 1.1 \ Areas of Ethical Concern for Criminal Justice Professionals

Relationships with Ethical concerns

Public/Clients Sexual exploitation/coercion, bribery, rudeness, racial discrimination,

and negligence

Agency/Organization Overtime fraud, theft, rulebreaking, and low work ethic

Peers/Coworkers Sexual or racial harassment, cover-ups, retaliation, gossip, and taking

undue credit

#### QUOTE & QUERY

Part of what is needed [for public servants] is a public sense of what Madison meant by wisdom and good character: balanced perception and integrity. Integrity means wholeness in public and private life consisting of habits of justice, temperance, courage, compassion, honesty, fortitude, and disdain for self-pity.

Source: Delattre, 1989b: 79.



Do you believe that this is asking too much of our public servants?

the case was dismissed for a lack of standing at the Federal District Court level, the Second Circuit Court of Appeals reinstated the case, held that CREW did have standing, and sent the case back to the lower court for trial. It is still pending. Although whether the president has violated the Emolument Clause is a new question, the danger of public servants at any level serving their personal self-interest through their public office is a perennial problem.

Ethical dilemmas for professionals in the justice system arise within relationships with citizens, with their agency, and with each other. Box 1.1 illustrates the different areas of ethical concern. We study ethics because it is important for criminal justice professionals to recognize and analyze ethical dilemmas when they are faced with them. A study of ethics is important to any professional, and training in ethics helps to develop critical thinking skills (Felkenes, 1987: 26).

We also could note that individuals who ignore ethics do so at their peril. They may find themselves sliding down a slippery slope

of behaviors that threaten their career and personal well-being. Even if their actions are not discovered, many people suffer from a moral crisis when they realize how far their actions have strayed from their moral ideals. We can summarize this discussion with three basic points:

- 1. We study ethics because criminal justice is uniquely involved in coercion, which means there are many and varied opportunities to abuse such power.
- 2. Almost all criminal justice professionals are public servants and, thus, owe special duties to the public they serve.
- 3. We study ethics to sensitize students to ethical issues and provide tools to help identify and resolve the ethical dilemmas they may face in their professional lives.

## **Defining Terms**

**morals** Principles of right and wrong.

ethics The discipline of determining good and evil and defining moral duties. The words **morals** and **ethics** are often used in daily conversation. For example, when public officials use their offices for personal profit, or when politicians accept bribes from special interest groups, 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 might describe that individual as a moral person. Often, the terms *morals* and *ethics* are used interchangeably. This makes sense because both come from similar root meanings. The Greek word *ethos* pertains to custom (behavioral practices) or character, and the term *morals* is a Latin-based word with a similar meaning. As Box 1.2 shows, the inquiry into how to determine right and wrong behavior has perplexed humans for thousands of years. Philosophers through the ages owe much to the great Greek philosophers who discussed what the "good life" meant.

#### BOX 1.2 \ Socrates, Plato, Aristotle, and the Stoics

#### **Socrates (469-399 BCE)**

Socrates associated knowledge with virtue. He believed that bad acts are performed through ignorance. The wisest man was also the most virtuous. He believed that all people acted in a way to serve their own interests, but some people, because they were ignorant, pursued short-term happiness that would, in the long run, not make them happy. True happiness could come only from being virtuous, and virtue comes from knowledge. Thus, Socrates believed his role was to strip away self-deception and incorrect assumptions; hence, the so-called Socratic method of questioning a person's beliefs. The concept of eudaimonia is translated as happiness, but it is much more than that and is sometimes translated as flourishing. Abraham Maslow's concept of self-actualization is like the Greek concept of eudaimonia, the idea that one's happiness involves the pursuit of excellence and virtue.

#### Plato (423-347 BCE)

Plato was a student of Socrates. In fact, his writings are the source for what we know about Socrates's ideas. Because his writings were largely in the form of dialogues, with Socrates as the main character in many of them, it is hard to distinguish Socrates's ideas from Plato's. Another difficulty in summarizing Plato's ideas about ethics is that he undertook a wide-ranging exploration of many topics. His writings included discussions of ethical and political concepts, as well as metaphysical and epistemological questions. In *The Republic*, he, like Socrates, associates virtues with wisdom. The four virtues he specifically mentions are wisdom, courage, moderation, and justice. Three of the virtues are associated with the three classes of people he describes as making up society: the rulers (wisdom), the soldiers (courage), and the merchants (moderation because they pursue lowly pleasures). Justice is the idea that each person is in the place they should be and performs to their best ability. A good life would be one that fit the nature of the person—that is, moderation for the merchant class, courage for the soldier, and wisdom for leaders. There is, of course, the need for all virtues in every life to some degree.

#### Aristotle (384-322 BCE)

Aristotle was a student of Plato. Aristotle did not believe, as did Socrates, that bad behavior came from ignorance. He believed some people had weak wills and did bad things knowing they were bad. The idea of *eudaimonia* is part of Aristotle's discussions of what it means to live a good life. Again, this concept, although translated as happiness, has more to do with flourishing or self-actualization. The good life is one devoted to virtue and moderation. The so-called Golden Mean is choosing actions between two extremes. For instance, courage is the virtue, whereas the deficiency of courage is cowardice, and the excess of courage is foolhardiness. Generosity is the mean between stinginess and wastefulness, and so on. Aristotle's virtue theory is discussed more fully in the next chapter.

#### Stoics (Third Century BCE, Includes Zeno, Seneca, and Epictetus)

The Stoic philosophical school is associated with the idea that man is a part of nature and the essential characteristic of man is reason. Reason leads to virtue. Virtue and morality are simply rational action. While Plato divided people into the three classes of leaders, soldiers, and everyone else, the Stoics simply saw two groups: those who were rational/virtuous and those who were irrational/evil. They perceived life as a battle against the passions. They argued that people should not seek pleasure but should seek virtue, because that is the only true happiness. Moreover, they should seek virtue out of duty, not because it will give them pleasure.

For further information, go to:

Stanford Encyclopedia of Philosophy: http://plato.stanford.edu; and the Internet Encyclopedia of Philosophy: www.iep.utm.edu

#### **Morals and Ethics**

Morals and morality refer to what is judged as good conduct. Immorality refers to bad conduct. We would judge someone who intentionally harms a child for his own enjoyment, or someone who steals from the church collection plate, as immoral. Some

of us disagree on whether other behaviors, such as abortion, capital punishment, or euthanasia, are immoral. How to resolve such questions will be the subject of the next chapter.

The term *ethics* refers to the study and analysis of what constitutes good or bad conduct (Barry, 1985: 5; Sherman, 1981: 8). There are several branches, or schools, of ethics:

- Meta-ethics is the discipline that investigates the meaning of ethical systems and whether they are relative or universal and are self-constructed or independent of human creation.
- Normative ethics determines what people ought to do and defines moral duties based on ethical systems or other means of analysis.
- Applied ethics is the application of ethical principles to specific issues.
- Professional ethics is an even more specific type of applied ethics relating to the behavior of certain professions or groups.

While these definitions of ethics refer to the *study* of right and wrong behavior, more often, in common usage, *ethics* is used as an adjective (ethical or unethical) to refer to behaviors relating to a profession, while *moral* is used as an adjective to describe a person's actions in other spheres of life. Most professions have codes of conduct that describe what is ethical behavior in that 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.

Even though professional ethics concerns decisions related to one's profession, these decisions sometimes overlap with what we might consider the private life of the individual. For instance, psychiatrists, psychologists, and lawyers are judged harshly if they engage in romantic relationships with their patients, and rules against such conduct are included in codes of ethics for these professions. Anytime private behavior affects professional decision making, it becomes an ethical issue, such as when school bus drivers abuse drugs or alcohol, or when scientists are paid to do studies by groups who have a vested interest in a particular outcome.

The private life of public servants is especially scrutinized. President Clinton's affair with intern Monica Lewinsky almost ended his presidency, and not just because he lied about it in the congressional investigation. Anthony Weiner's political career as a U.S. congressman ended after it was revealed he "sexted" (sent a sexually suggestive picture) to a woman, who reported it to the press. When he attempted a political comeback in a run for mayor of New York City in 2013, more sexting by Weiner was revealed under the pseudonym of "Carlos Danger." Such behavior, while a gift to late-night comics, is tragically inexplicable behavior for any public servant. The 2005 audio recording of President Trump's comments regarding how he could sexually accost women because he was "a star," and, later, his alleged sexual relationships with former porn star Stormy Daniels and Playboy model Karen McDougal, are considered relevant to his position as the leader of the country arguably because such behavior represents his character, and character affects professional judgments.

In professions involving the public trust, such as politics, education, and the clergy, there is a thin line between one's private life and public life. Citizens assume that if one is a liar and cheat in one's private life, then that also says something about how they would make decisions as a public servant. If one displays extremely poor judgment and disrespect for one's family in private life, arguably he or she is not a good fit for public office. What about police officers, prosecutors, and judges? They are also public servants. Should their private behavior, such as extramarital affairs, accumulating debt, or using illegal substances after work, concern us? We will explore these issues in the chapters to come.

For our purposes, it does not make a great deal of difference whether we use the formal or colloquial definitions of *morals* and *ethics*. This text is an applied ethics text, in that we will be concerned with defining behaviors as right and wrong (specifically, those of criminal justice professionals). It also is a professional ethics text because we are concerned primarily with professional ethics in criminal justice.

#### **Duties**

The term **duties** refers to those actions that an individual must perform to be considered moral. For instance, everyone might agree that one has a duty to support one's parents if able to do so, one has a duty to obey the law (unless it is an immoral law), and a police officer has a moral and ethical duty to tell the truth on a police report. Duties are what you must do to meet the responsibilities of your role.

Other actions, considered **supererogatories**, are commendable but not required. A good Samaritan who jumps into a river to save a drowning person, risking his or her own life to do so, has performed a supererogatory action. Those who stood on the bank receive no moral condemnation, because risking one's life is above and beyond anyone's moral duty. Of course, if one can help save a life with no great risk to oneself, a moral duty does exist in that situation.

Police officers have an ethical duty to get involved when others do not. Consider the 2001 attack on the World Trade Center. One of the most moving images of that tragedy was of police officers and firefighters running toward danger while others ran away. Indeed, this professional duty to put oneself in harm's way is why many of us revere and pay homage to these public servants. Many civilians also put themselves in harm's way in this and other disasters, and because they have no professional duty to do so, they can be said to be performing supererogatory actions.

There are also **imperfect duties**, general duties that one should uphold but do not have a specific application as to when or how. For instance, most ethical systems support a general duty of generosity but have no specific duty demanding a certain type or manner of generosity. Another imperfect duty might be to be honest. Generally, one should be honest, but, as we will see in Chapter 2, some ethical systems allow for exceptions to the general rule.

duties Required behaviors or actions; that is, the responsibilities that are attached to a specific role.

#### supererogatories

Actions that are commendable but not required for a person to be considered moral.

imperfect duties Moral duties that are not fully explicated or detailed.

#### **Values**

Values are defined as elements of desirability, worth, or importance. You may say that you value honesty; another way of saying it is that one of your values is honesty. Others may value physical health, friendships, material success, or family. Individual values form value systems. All people prioritize certain things that they consider important in life. Values only become clear when there is a choice to be made—for instance, when you must choose between friendship and honesty or material success and family. Behavior is generally consistent with values. For instance, an individual who is a workaholic, choosing to spend more time at work than with family and endangering their health with long hours, stress, and lack of exercise, may believe that they value family, but their actions indicate that they value financial or career success more. Others place a higher priority on religious faith, wisdom, honesty, and/or independence than financial success or status. Of course, our values are constantly being balanced. If one chooses to get an advanced degree, some family time is sacrificed for the benefit of future opportunities. The point is that we don't really know what our values are until we must choose between them. Consider the values in Box 1.3. Which, if any, do you believe are more important than others? Do you ever think about the values by which you live your life? Do you think that those professionals who are caught violating laws and/or ethical codes of conduct have a clear sense of their value system?

Values as judgments of worth are often equated with moral judgments of goodness. We see that both can be distinguished from factual judgments, which can be empirically verified. Note the difference between these factual judgments:

"He is lying."
"It is raining."

and these value judgments:

"She is a good woman."

"That was a wonderful day."

**values** Judgments of desirability, worth, or importance.

BOX 1.3 \ Values Exerc	cise					
Achievement	Altruism	Autonomy	Creativity			
Emotional well-being	Family	Health	Honesty			
Knowledge	Justice	Love	Loyalty			
Physical appearance	Pleasure	Power	Recognition			
Religious faith	Skill	Wealth	Wisdom			
Arrange these values in order of priority in your life. What life decisions have you made that have been affected by the ordering of these values? Did you think of them directly when making your decision?						

The last two judgments are more like moral judgments, such as "Lying is wrong" or "Giving to charities is good." Facts are capable of scientific proof, but values and moral judgments are not.

Some writers think that value judgments and moral judgments are indistinguishable because neither can be verified. Some also think that values and morals are relativistic and individual. In this view, there are no universal values; values are all subjective and merely opinions. Because they are only opinions, no value is more important than any other value (Mackie, 1977).

In contrast, others believe that not all values are equal and that some values, such as honesty, are always more important than other values, such as pleasure. In this view, values such as charity, altruism, integrity, knowledge, and responsibility are more important or better than the values of pleasure or wealth. You may value personal pleasure over charity or honesty, but to someone who believes in universal values, you would be wrong in this view. This question is related to a later discussion in Chapter 2 concerning whether ethics are relative or absolute.

As stated earlier, values imply a choice or a judgment. If, for instance, you were confronted with an opportunity to cheat on an exam, your values of success and honesty would be directly at odds. Values and morals are similar, although values indicate the *relative* importance of these constructs, whereas morals prescribe or proscribe behavior. The value of honesty is conceptually distinct from the moral rule against lying.

An explicit value system is part of every ethical system, as we will see in Chapter 2. The values of life, respect for the person, and survival can be found in all ethical systems. Certain values hold special relevance to the criminal justice system and those professionals who work within it. These include privacy, freedom, public order, justice, duty, and loyalty.

## **Making Moral Judgments**

We make moral or ethical judgments all the time. "Abortion is wrong." "Capital punishment is just." "It's good to give to charity." "You should put in a day's work for a day's pay." "You shouldn't take credit for someone else's work." These are all judgments of good and bad behavior. We also make choices, knowing that these actions can be judged as right or wrong. Will you give back that extra change a clerk gave you by mistake? Did you tell a friend that her husband is having an affair, even though he asked you not to tell? Have you cut and pasted sections of Wikipedia into a term paper? These actions can be judged as right or wrong and, therefore, should be subject to ethical analysis.

Current national challenges present numerous ethical dilemmas. Should you participate in a BLM protest and, if so, should you join in when others spray graffiti on buildings? Should you carry your gun (in an open carry state) to a protest? Should you attend a party even though it is against the social distancing rules of your university? Should you do anything when a maskless person is harassed and heckled by others on

the street? Should you say or do anything when a Black patron of a coffeeshop is told to leave because they are loitering without buying anything, even while White people are sitting there without purchases? Should you donate the money you have saved up for vacation to the charities that are assisting victims of fires or hurricanes?

Not all behaviors involve questions of ethics. Acts that can be judged as ethical or unethical, moral or immoral, involve four elements: (1) acts (rather than beliefs) that are (2) human and (3) of free will (4) that affect others.

- Act. First, some act must have been performed. For instance, we are concerned with
  the act of stealing or the act of contributing to charity, rather than an idle thought
  that stealing a lot of money would enable us to buy a sailboat or a vague intention to
  be more generous. We are not necessarily concerned with how people feel or what
  they think about an action unless it has some bearing on what they do.
- 2. Only human acts. Second, judgments of moral or ethical behavior are directed specifically to human behavior. A dog that bites is not considered immoral or evil, although we may criticize pet owners who allow their dogs the opportunity to bite. Nor do we consider drought, famine, floods, or other natural disasters immoral, even though they result in death, destruction, and misery. The historically devastating fires in the western states in 2020 cannot be judged as evil or immoral. On the other hand, when some fires were traced to individuals who either accidentally or intentionally started one, both legal and moral judgments are appropriate. Interestingly, social media spawned a whole host of false stories about the fires being started by either Antifa members or far-right militia members. This seems to indicate the inclination of individuals to want someone to judge even when there is no one at fault. Philosophers widely believe that only humans can be moral (or immoral) because of our capacity to reason. 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.
- 3. Free will. In addition to limiting discussions of morality to human behavior, we usually further restrict our discussion to behavior that stems from free will and free action. Moral culpability 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 traditionally exempt from responsibility in this sense are the young and the insane, similarly to what occurs when ascribing legal culpability.

Arguably, we do not judge the morality of their behavior because we do not believe that they have the capacity to reason and, therefore, have not freely chosen to be moral or immoral. Although we may chastise a two-year-old for hitting a baby, we do so to educate or to socialize, not to punish, as we would an older child or adult. We incapacitate the violent mentally ill to protect ourselves, but we consider them sick, not evil.

4. Affects others. Finally, we usually discuss moral or immoral behavior only in cases in which 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 is there, your behavior is neutral. If someone is below, however, you might endanger that person's life, so your behavior is judged as bad.

All the ethical issues and dilemmas we will discuss in this book involve at least two parties, and the decision to be made affects at least one other individual in every case. It is difficult to think of an action that does not affect others, however indirectly. Even self-destructive behavior is said to harm the people who love us and who would be hurt by such actions. We sense that these elements are important in judging morality when we hear the common rationale of those who, when judged as doing something wrong, protest "But nobody was hurt!" or "I didn't mean to."

One's actions toward nature also might be defined as immoral, so relevant actions include not only actions done to people but also those done to animals and to the environment. Judgments are made against cockfighting, dog racing, laboratory experimentation on animals, and hunting. The growing area of environmental ethics reflects

increasing concern for the future of the planet. The rationale for environmental ethics may be that any actions that harm the environment affect all humans. It also might be justified by the belief that humankind is a part of nature—not superior to it—and part of natural law should be to protect, not exploit, our world.

Thus far, we know that morality and ethics concern the judgment of behavior as right or wrong. Furthermore, such judgments are directed only at voluntary human behavior that affects other people, the earth, and living things. We can further restrict our inquiries regarding ethics to those behavioral decisions that are relevant to one's profession in the criminal justice system. Discussions regarding the ethics of police officers, for instance, would concern issues such as the following:

- · Whether to take gratuities
- · Whether to cover up the wrongdoing of a fellow officer
- · Whether to sleep on duty

Discussions regarding the ethics of defense attorneys might include the following:

- · Whether to devote more effort to private cases than appointed cases
- Whether to allow perjury
- · Whether to attack the character of a victim to defend a client

In this text, we will present some of the unique issues and dilemmas related to each area of the criminal justice system. However, it is important to first explore the means available for analyzing and evaluating the "right" course of action.

## **Analyzing Ethical Issues and Policies**

"Critical thinking skills" has become an overused and abused phrase in education, but the core idea of critical thinking is to be more cognizant of facts as opposed to concepts, assumptions, or biases and to use objective reasoning to most effectively reach a decision or understand a problem. Paul and Elder (2003) explain that all reasoning is based on assumptions, points of view, and data or evidence, but reasoning is shaped by concepts and ideas that affect our interpretations of the data, which then lead us to conclusions that give meaning to the data. To be a critical thinker, one must ask these types of questions:

- · What information am I using?
- What information do I need to settle the question?
- Is there another way to interpret the information?
- What assumption has led me to my conclusion?
- Is there another point of view I should consider?
- What implication or consequence might be the result of this conclusion?

In each discussion throughout this book that subjects issues or policies to an ethical analysis, critical thinking will be required. One of the most important elements of critical thinking is to separate facts from concepts and identify underlying assumptions. In the issue we will analyze here, we will use only general concepts concerning right and wrong, because ethical systems will not be covered until Chapter 2. In all analyses, we will begin by determining if there is any relevant law; then if there are relevant policies; and, finally, ethical principles will be applied.

### ETHICAL ISSUE

## Should governors have issued closure orders for all but essential businesses in the early spring of 2020 due to the COVID-19 pandemic?

According to some sources, between March and April 2020, 43 governors issued orders directing residents to stay at home and nonessential businesses to close. All Democratic governors (24) and 19 of the 26 Republican governors issued stay-at-home orders in their states (see https://ballotpedia.org/States\_that \_issued\_lockdown\_and\_stay-at-home\_orders\_in\_response \_to\_the\_coronavirus\_(COVID-19)\_pandemic,\_2020). These governors faced bitter opposition, and some have been sued and faced recall efforts.

#### Law

The legal authority of states to issue quarantine orders lies in the 10th Amendment, which gives states "police powers" to ensure the health and safety of residents. All powers not specifically given to the federal government in the Constitution belong to the states. This authority allows states to take public health emergency actions, such as setting quarantines and business restrictions. Whether the governor of a state has such power without a legislative act or court order is less clear and would have to be analyzed under each state's constitution. Also, whether the closure orders were an overreach of state power is a legal question. Although the Supreme Court upheld California's closure order against a First Amendment challenge by churches and businesses in June 2020, in November, the Supreme Court ruled that Governor Cuomo's restrictions on church attendance in parts of New York City violated the First Amendment and, in December, ruled against California in a First Amendment challenge to a closure order against churches in areas with high COVID-19 rates. It seems safe to say that litigation in response to state's actions in the spring of 2020 will last much longer than the closure orders themselves.

#### **Policy**

Policy, whether it be national, state, or organizational, is a road-map and guideline to what should be done in certain circumstances. Policy, ideally, should be developed carefully and with input from all interested parties. Sometimes events occur that are so unique or catastrophic that no existing policies are relevant. It is not known whether state officials were following extant policy or "winging it" when closure orders were announced.

#### **Ethics**

The ethical analysis steps are as follows:

 Identify the facts. In early spring, it was known that the virus could spread rapidly and pervasively. Italy was the first country that experienced widespread contagion, resulting in overwhelmed hospitals. While medical advice was somewhat inconsistent in how individuals could protect themselves—e.g., to wear masks or not, whether gloves were helpful, or the

- distance that aerosolized droplets could travel—it was clear that without some type of intervention, contagion would be on a catastrophic scale.
- 2. Identify values and concepts. Protesters against state or local closure orders argued that their freedom and rights were at stake. These are important concepts that come up whenever government seeks to interfere with the actions of individuals. Note, however, that they are concepts because no-one has unfettered freedom or unlimited rights vis a vis the government or other people. Safety and community are also values that are relevant to this ethical issue.
- 3. Identify dilemmas and resolve them using ethical systems. Because this is an ethical issue, not a dilemma, we will address the remaining steps more broadly, although we could easily choose one governor and evaluate his or her dilemma whether to issue a closure order or not.

The utilitarian ethical system will not be discussed until the next chapter; however, it should be familiar because discussions and arguments about closure orders were presented using a utilitarian rationale. In April 2020, when the closure orders were occurring, the virus had killed 45,000 Americans (by December 2020, the death toll was over 300,000). Closure orders had also put 22 million people out of work. Those who advocated opening businesses argued that the loss of jobs and the threat to the economy overrode the public health benefits of closures. For instance, Rep. Trey Hollingsworth of Indiana said "We are going to have to look Americans in the eye and say 'we are making the best decision for the most Americans possible, and the answer to that is to get Americans back to work." This was a clear argument that the best decision for most Americans was to open businesses, even if it resulted in death for some. In fact, some politicians were blunt in their willingness to sacrifice Americans. Texas Lt. Gov. Dan Patrick said "There are things more important than living" and suggested elderly Americans would be "willing to take a chance" on their survival for the country's economic health. The economic calculus that peoples' lives should be weighed against the economy was unpalatable to some, but the position that the interests of the majority should outweigh the minority is a traditional utilitarian argument. For instance, Peter Singer, a well-known philosopher, argued that "We can't let the cure be worse than the disease." His point was that saving lives should be weighed against the harmful effects on the economy and people's mental well-being. Another argument against the lockdowns was more of a "natural rights" position, with protesters insisting that they had the right to make decisions about their own health choices without interference from the government (Burke, 2020).

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The opposing ethical argument, however, pointed to moral responsibilities to others. Other philosophers argued that any cost/benefit analysis about the number of people that could be sacrificed for the economy ignored the fact that such sacrifice would not be distributed equally across the population. First responders, essential workers, and the poor would suffer the highest number of deaths. Studies, even at that time, showed that COVID-19 disproportionately affected minorities,

the elderly, and the poor. Opponents also argued that not enough was known at the time to make a utilitarian calculus-it was simply unknown how opening businesses would impact death rates.

With 20/20 hindsight, it seems clear that these orders did save lives, but it will never be known how many lives, or to what extent such closure orders impacted people in other ways, such as business bankruptcies.

## **Analyzing Ethical Dilemmas**

Recall that an ethical dilemma exists when an individual is faced with at least two courses of action and the decision is difficult. In applied ethics texts, various authors set out the steps to take when facing ethical dilemmas. For instance, Ruggiero (2001) advises us to (1) study the details of the case, (2) identify the relevant criteria (obligations, ideals, and consequences), (3) determine possible courses of action, and (4) decide which action is the most ethical. This approach is like the one we will use throughout the book when analyzing ethical dilemmas, detailed in the steps below:

- 1. *Identify the facts.* Make sure that one has all the facts that are known—not future predictions, not suppositions, not probabilities.
- 2. Identify relevant values and concepts. Concepts are things that cannot be proven empirically but are relevant to the issue at hand. Understand that your concepts and values may affect the way you interpret the facts. For instance, the issue of abortion not only revolves around the value of life, but it is also a concept in that there is no agreement of when life begins or ends (although there are provable facts regarding the existence of respiration, brain activity, and other body functions). Many arguments surrounding ethical issues are really arguments about concepts that cannot be proven (e.g., "life").
- 3. Identify all possible dilemmas. Identifying all dilemmas can help us see that sometimes one's own moral or ethical dilemma is caused by others' actions. For instance, a police officer's ethical dilemma when faced with the wrongdoing of a fellow officer is a direct result of that other officer making a bad choice.

## ETHICAL DILEMMA

You are a correctional officer working the late-night shift. Your sergeant and another officer from the day shift come onto the tier where you are working and ask you to open an inmate's cell. You do so, and they enter the cell. Then you hear a series of grunts, cries, and moans. They leave, muttering about how the inmate has been taught a lesson. You believe that you have been a party to an assault, but you say nothing. The next night you find out that the inmate did not report the incident, nor did any other inmate. You believe that if you come forward and report what you saw, you will be severely ostracized. You may not be believed (especially if the inmate doesn't back you up). You might even lose your job. What would you do?

#### Law

Correctional officers, like police officers, have the legal authority to use physical force to defend themselves or others, or to subdue an inmate. Legally, they can only use the reasonable force necessary to accomplish their goal (which is usually stopping a fight, removing an inmate from a cell, or moving an inmate to segregation). Obviously, if this was a case of going into a cell for the express purpose of a retaliatory beating, then it would constitute either simple or aggravated assault, and the officers involved could be prosecuted. The correctional officer has a legal duty to protect inmates and might be an accessory after the fact if he lies about the incident, or be subject to some charge

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of obstruction if there is an investigation, or malfeasance of office for not coming forward.

#### **Policy**

Every correctional facility has express policies regarding the use of force. Usually, a sergeant or lieutenant must approve the use of force; usually, a use-of-force report must be written; and, usually, there are procedures in place for a medical professional to check the inmate after the use of force to make sure there are no serious injuries. Obviously, there is no policy that would allow retaliatory use of force. Thus, what happened was a clear violation of policy.

#### **Ethics**

Understanding the law and policies related to the event does not necessarily resolve the ethical dilemma. Thus, we move to an ethical analysis as detailed above:

1. This officer must make sure that he has all the facts. Was the inmate hurt? Did his injuries occur during the time the two other officers were in his cell? Is the officer sure that no one reported it? Would the inmate come forward if he believed that someone would testify against the other two officers, or would he deny the assault (if there was one)? What other facts are important to know? Remember that facts are those things that can be proven; however, this does not necessarily mean that the individual facing the dilemma knows what the facts are.

- 2. The officer might examine the relevant values. In this situation, one can identify duty, legality, honesty, integrity, safety, protection, loyalty, self-preservation, and trust. Are any other values important to resolve the dilemma? Concepts that may affect this dilemma include things like just punishment—if one feels that prison as punishment is not enough, then that concept will affect the way this dilemma is perceived.
- 3. Several ethical dilemmas come into play here. The first is whether the other officers should have entered the prisoner's cell. There is probably an earlier issue involving whatever the prisoner did to warrant the visit. There is obviously the dilemma of whether the officer should have let off-duty officers into the cell in the first place. Finally, there is the dilemma of what the officer should do now that he believes an injustice may have taken place.
- 4. The most immediate dilemma for the officer is whether to come forward with the information.
- 5. To resolve the dilemma, it is helpful to work through Chapter 2 first, because one way to resolve ethical dilemmas is to decide on an ethical system. If the officer was a utilitarian, he would weigh the costs and benefits for all concerned in coming forward and in staying quiet. If he followed duty-based ethics (ethical formalism), he would find the answer once he determined his duty.
- 4. Identify the most immediate moral or ethical issue facing the individual. This is always a behavior choice, not an opinion. For example, the moral issue of whether abortion should be legalized is quite different from the moral dilemma of whether I should have an abortion if I find myself pregnant. Obviously, one affects the other, but they are conceptually distinct.
- 5. Resolve the ethical or moral dilemma by using an ethical system or some other means of decision making. (Ethical systems will be discussed in Chapter 2.)

It is important to note that very often the ethical thing to do is clear once you identify the relevant law and/or policy. Although there are instances where the law or policy is unethical, in most situations if something is illegal, it is also unethical. Most individuals who engage in public corruption know that they are violating the law, but they do it anyway. There is no ethical dilemma involved when a police officer decides whether to steal from a burglary site, or a prosecutor decides to hide exculpatory evidence; these acts are illegal and wrong, and the individual knows they are wrong. We use ethical analysis when the right thing to do is not clear. Why someone chooses to behave in an illegal or unethical way is the subject of Chapter 4.

Another type of dilemma is when you know the right thing to do, but doing it comes at great cost. The clearest example of this situation is the so-called blue curtain of secrecy that refers to police officers covering up the wrongdoing of peers. Those come forward and testify against a fellow officer typically face social ostracism and, sometimes, worse retaliation. It should also be noted that the same phenomenon exists in other professions to some degree. Whistleblowers may lose their job or be blacklisted from their profession. Thus, sometimes the right thing to do is clear, but extremely difficult to do because of the great costs involved.

#### WALKING THE WALK

Scott Waddle was the captain of the USS *Greenville* in 2001, a former Eagle Scout whose career in the navy saw a steady progression of successes resulting in his command of the *Greenville*. A tireless promoter of the navy and the giant submarine he captained, Waddle sent autographed pictures of the sub to schoolchildren, and he enthusiastically participated in the "distinguished visitor" program, which allowed civilians to accompany the submarine crew on cruises.

During one of these public relations cruises, on February 9, 2001, the submarine captain gave the order for an "emergency blow," a maneuver in which the submarine comes up out of the depths at great speed, breaking the surface of the water like a breaching whale before settling back onto the surface. In a tragic accident, the probabilities of which boggle the mind, the submarine came up under a Japanese trawler carrying students and their teachers as well as a crew. The submarine smashed it to bits and sent the crew and passengers who survived the initial impact into the ocean. The accident killed nine people and cost more than \$100 million in damages and compensation costs.

The ensuing investigation and testimony determined that the person in charge of the radar deferred to Waddle's visual inspection of the surface and didn't tell him of a sonar contact that was within 4,000 yards. Waddle and other officers who manned the periscope had scanned the surface too quickly and missed the small ship in the turbulent swells. Testimony

Sources: Hight, 2005; Putman, 2008; Thomas, 2001.

indicated that after the crash Waddle grimly kept the crew focused and instructed them over the intercom, "Remember what you saw, remember what happened, do not embellish. Tell the truth and maintain your dignity."

Against his lawyer's advice, Waddle gave up his right to silence in the military tribunal that would determine whether to court-martial him. He was reported to have said, "This court needs to hear from me—it's the right thing to do." In his testimony, he refused to shift responsibility to others and accepted all blame for the accident. He said, "I'm solely responsible for this truly tragic accident, and for the rest of my life I will have to live with the horrible consequences."

A father of one of the victims was sitting in the room when Waddle testified, and his anger was overcome by Waddle's tearful apology. Waddle ultimately accepted a letter of reprimand that ended his career with the navy. Then he went to Japan to apologize to the victims' families personally.

In the aftermath of his decision to testify and not fight to keep his career, Waddle reported that he considered suicide, but he moved past his shame and guilt. Today, he gives speeches on the experience and advises others of the importance of dealing with failure honestly. At a Boy Scout awards ceremony in Chattanooga, Tennessee, speaking to the 500 attendees, he said that the values of honesty and responsibility he learned in scouting helped him make the decisions he did during the aftermath of the accident.

#### **Conclusion**

In this chapter, we distinguished ethical issues and ethical dilemmas. We explained why a study of ethics is especially important to criminal justice professionals. It also was noted that not all behaviors would be subject to ethical judgments—only those that are performed by humans who are acting with free will and that affect others. We also defined the terms *morals* and *ethics* as both relate to standards of behavior. Professional ethics deals with only those behaviors relevant to one's profession. We make ethical judgments (what we consider right and wrong) using rationales derived from historical and traditional ethical systems. These ethical systems will be described in Chapter 2.

The most important thing to remember is that we all encounter situations where we must determine the ethical or moral course of action. In the Walking the Walk boxes in each chapter, we will offer real-life examples of individuals who faced ethical dilemmas. In many of these situations, the easier decision would have been to avoid responsibility, transfer blame, hide behind rationalizations, or refuse to stand up for what is right. By becoming aware of those who uphold ethics in their professional decision making, we can honor them for doing what is right.

This chapter closes with a review and study questions to answer in class or in a journal. These can be helpful to check your understanding of the issues. They are followed by writing/discussion exercises, which have no right or wrong answers and can be the basis for classroom discussions or individual writing assignments. Finally, ethical dilemmas are presented to encourage the reader to practice ethical analysis.

#### **Chapter Review**

1. Explain the difference between ethical issues and ethical dilemmas.

Ethical issues are broad social or policy questions, while ethical dilemmas are situations in which one person must make a decision that can be judged as right or wrong, and where what is right is difficult to decide or is hard to do for some other reason.

2. Give examples of how discretion permeates every phase of the criminal justice system and creates ethical dilemmas for criminal justice professionals.

Discretion can be defined as the power and authority to choose one of two or more alternative behaviors. At each stage of the criminal justice system, professionals have such discretion: legislators make decisions regarding the creation of laws, police make decisions on the street in their enforcement of those laws, prosecutors make decisions about which arrests to formally prosecute, judges make decisions about which evidence to allow, and correctional professionals make decisions that affect the lives of offenders.

3. Explain why the study of ethics is important for criminal justice professionals.

First, we study ethics because criminal justice is uniquely involved in coercion, which means there are many and varied opportunities to abuse such power. Second, almost all criminal justice professionals are public servants and, thus, owe special duties to the public they serve. Finally, we study ethics to sensitize students to ethical issues and provide tools to help identify and resolve the ethical dilemmas they may face in their professional lives.

4. Define the terms morals, ethics, duties, supererogatories, and values.

The terms *morals* and *ethics* come from Greek and Latin words referring to custom or behavioral practices. Morals refer to what is judged as good conduct. Ethics refers to the study and analysis of what constitutes good or bad conduct. Duties are obligatory acts (by law, practice, or morals). Supererogatories are those acts that go above and beyond duties. Values are statements of worth or importance.

5. Describe what behaviors might be subject to moral/ethical judgments.

Behaviors that can be adjudged under moral criteria are those that are acts (not thoughts) committed by humans (not animals) of free will (not by those judged as incompetent) and that affect others.

#### **Study Questions**

- 1. Define a public servant, and discuss why public servants should be especially sensitive to ethical issues.
- Discuss the reasons for why it is important for criminal justice professionals to study ethics.
- **3.** Define morals, ethics, values, duties, supererogatories, imperfect duties, metaethics, normative ethics, and applied ethics.
- 4. What are the four elements that specify the types of behaviors that are judged under ethical criteria? Which groups traditionally have been exempt from legal and moral culpability? Why?
- 5. What are the steps in analyzing an ethical dilemma?

#### **Writing/Discussion Exercises**

- 1. Write an essay about (or discuss) a difficult ethical dilemma that you faced. What was it? What were the options available to you? Who was affected by your decision? Were there any laws, rules, or guidelines that affected your decision? How did you make your decision?
- Write an essay about (or discuss) whether public servants should be held to higher standards than the rest of us. Touch on the following questions in your response: Should we be concerned about a politician who has extramarital affairs? Drinks to excess? Gambles? Uses drugs? Abuses his or her spouse? What if the person is a police officer? A judge? Should a female police officer be sanctioned for posing naked in a men's magazine, using items of her uniform as "props"? Should a probation officer socialize in bars that his or her probationers are likely to frequent? Should a prosecutor be extremely active in a political party and then make decisions regarding targets of "public integrity" investigations of politicians?
- 3. Write an essay about (or discuss) the issue of the medical use of marijuana. What do medical studies indicate regarding whether it is necessary or the best medical alternative for certain patients? What do critics argue in their opposition to the medical use laws? If you or a loved one were suffering and someone told you that marijuana could ease your pain, would you violate the law or not? Why?

#### **Key Terms**

discretion ethical issues morals

duties ethics supererogatories

ethical dilemmas imperfect duties values

#### **ETHICAL DILEMMAS**

#### Situation 1

A rich businessman's daughter, Patty, had the best of everything all her life. Her future would have included college, a good marriage to a successful young man, and a life of comparative luxury—except that she was kidnapped by a small band of radical extremists who sought to overthrow the government by terror, intimidation, and robbery. After being raped, beaten, and locked in a small, dark closet for many days, continually taunted and threatened, she was told that she must participate with the terrorist gang in a bank robbery; otherwise, she and her family would be killed. During the robbery, a bank guard was shot.

Was her action immoral? What if she had killed the guard? What if the terrorists had kidnapped her mother or father, too, and told her if she didn't cooperate, they would kill her parents immediately? What would you have done in her place? (Readers might recognize this dilemma as the Patty Hearst case. In 1974, the Symbionese Liberation Army, a terrorist group, kidnapped the daughter of Randolph Hearst, the tycoon of a large newspaper chain. Her subsequent capture, trial, conviction, and prison sentence, portrayed in books and movies, provide ripe material for questions of free will and legal and moral culpability.)

#### Situation 2

You are taking an essay exam in a college classroom. The test is closed book and closed notes, yet you look up and see that the person sitting next to you has hidden under his blue book a piece of paper filled with notes, which he is using to answer questions. What would you do? Would your answer change if the test was graded on a curve? What if the student were a friend? What would you do if the student was flunking the course and was going to lose the scholarship he needed to stay in school? What about a situation of plagiarism? Would you turn in a student if you knew he or she had turned in a plagiarized paper? Why or why not? If someone cheats in school, isn't it likely that he or she will be less honest as a criminal justice professional?

#### Situation 3

You are selected for a jury in a trial of a 64-year-old mother who killed her two adult sons. The two men had Huntington's disease, a degenerative brain disease, and were institutionalized. They were certain to die and would endure much pain and suffering before they expired. The defendant's husband had died from this same disease, and she had nursed him throughout his illness until his death.

The defendant took a gun into the nursing home, kissed her sons good-bye, and then shot them both through the head. She was arrested for first-degree murder. The prosecutor informs you that there is no "mercy killing" defense in the law as it is written.

As a member of the jury, how would you decide this case? What punishment does she deserve? (See "Justice Tempered with Mercy," by K. Ellington, *Houston Chronicle*, January 30, 2003, 10A. The prosecutor accepted a plea of guilty to assisting suicide.)

#### Situation 4

You strongly believe that blacks have received discriminatory treatment by police and other criminal justice professionals. You believe it is your duty as a citizen to attend a BLM protest and are elated by the large numbers and enthusiasm of the crowd. As the evening progresses there is marching, speeches, and singing; the crowd is generally peaceful, if loud. Eventually, the massive group is blocked from proceeding further by a phalanx of police officers. You see individuals throw bottles of water at the officers, and a person next to you throws a lit firecracker at the officers. This is followed by a tear gas assault and general melee where many on both sides are injured. Now police are asking people to come forward if they have any knowledge of those who assaulted the officers. You know the person you saw throw the firecracker because he is a neighbor. What should you do?

#### Situation 5

You are on a county commissioners' court, and an action committee has recommended that the county adopt a "sanctuary" status, which would prohibit the county sheriff from holding individuals who are the subject of detainers from ICE. Detainers are not warrants, and some jurisdictions have been sued for holding people on the document because it has no legal force. On the other hand, your sheriff advises you of the possibility that federal money to hire five new deputies for an enhanced "saturation patrol" designed to address downtown burglaries and robberies that are affecting businesses will be withheld. What is the ethical decision? What criteria should county commissioners use to determine the right thing to do?

# 02 | Determining Moral Behavior



Socrates was one of the earliest "ethicists," along with Plato and Aristotle.

#### Learning Objectives

- Define deontological and teleological ethical systems, and explain ethical formalism and utilitarianism.
- Describe how other ethical systems define what is moral—specifically, ethics of virtue, natural law, religion, and care.
- 3. Discuss the argument as to whether egoism is an ethical system.
- 4. Explain the controversy between relativism and absolutism (or universalism).
- Identify what is good according to each of the ethical systems discussed in the chapter.

ur principles of right and wrong form a framework for the way we live our lives. But where do these principles come from? Before you read on, answer the following question: if you believe that stealing is wrong, why do you believe this to be so? You probably said: "Because my parents taught me" or "Because my religion forbids it," or maybe "Because society cannot tolerate people harming one another." Your answer to this question is an indication of your **ethical system**. Ethical systems provide the answer to the question of why something is wrong or right.

C. E. Harris (1986: 33) used the term *moral theories or moral philosophies* instead of *ethical systems* and defined them as a systematic ordering of moral principles. To be accepted as an ethical system, the system of principles must be internally consistent, must be consistent with generally held beliefs, and must possess a type of "moral common sense." Baelz (1977: 19) further described ethical systems as having the following characteristics:

- They are prescriptive. Certain behavior is demanded or proscribed. They are not just abstract principles of good and bad but have substantial impact on what we do.
- They are authoritative. They are not ordinarily subject to debate. Once an ethical framework has been developed, it is usually beyond question.
- They are logically impartial or universal. Moral considerations arising from ethical systems are not relative. The same rule applies in all cases and for everyone.

• They are not self-serving. They are directed toward others; what is good is good for everyone, not just for the individual.

ethical system
A structured set of principles that defines what is moral.

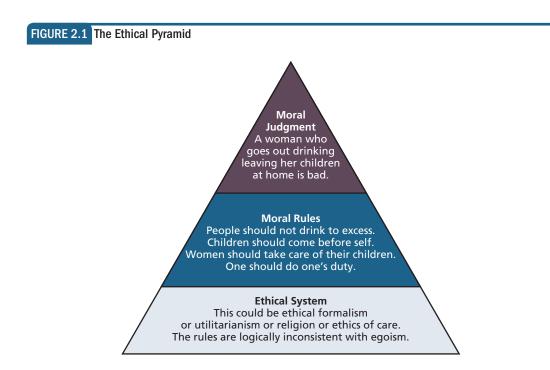
We do not consciously think of ethical systems, but we use them to make judgments. For instance, we might say that a woman who leaves her children alone to go out drinking has committed an immoral act. That would be a *moral judgment*. Consider that the moral judgment in any discussion is only the tip of a pyramid. If forced to defend our judgment, we would probably come up with some rules of behavior that underlie the judgment. Moral rules in this case might be as follows:

- "Children should be looked after."
- "One shouldn't drink to excess."
- "Mothers should be good role models for their children."

But these moral rules are not the final argument; they can be considered the body of the pyramid. How would you answer if someone forced you to defend the rules by asking "Why?" For instance, "Why should children be looked after?" In answering the "why" question, one eventually comes to some form of ethical system. For instance, we might answer, "Because society benefits if all parents watch out for their children." This would be a utilitarian ethical system. We might have answered the question, "Because every parent's duty is to take care of their children." This is ethical formalism or any duty-based ethical system. Ethical systems form the base of the pyramid. They are the foundation for the moral rules that we live by.

## **Ethical Systems**

The ethical pyramid is a visual representation of how ethical systems support ethical judgments. In Figure 2.1, the moral judgment is the tip of the pyramid, supported by moral rules on which the judgment is based. The moral rules, in turn, rest upon a base, which is one's ethical system. We will discuss the ethical systems in roughly chronological order, beginning with Aristotle and the ethics of virtue.



## The Ethics of Virtue

The question of what it means to be a good person is an ancient one. We will begin our discussion of ethical systems with Aristotle. As you read in Chapter 1, Socrates associated virtue with knowledge. Ignorance leads to bad behavior, because rational and wise people know what virtue is and behave accordingly. Socrates and Plato identified four virtues: wisdom, fortitude, temperance, and justice. Recall that Plato associated these virtues with the three classes of citizens: leaders (wisdom), soldiers (fortitude or courage), and all others (temperance). Justice was the virtue associated with one doing the duties of one's role. Aristotle disagreed with Socrates' idea that bad behavior occurred only through ignorance and argued that there were people who chose to behave in ways that were not virtuous. In *Nicomachean Ethics*, he answers the **ethics of virtue** question, "What is a good person?" Aristotle believed that to be good, one must do good. Virtues that a good person possesses include thriftiness, temperance, humility, industriousness, and honesty. Aristotle believed that **eudaimonia** was the goal of life. The word is simply translated as "happiness," but a better translation is "flourishing." The meaning of this word does not mean simply having pleasure, but also living a good life, reaching achievements, and attaining moral excellence.

Aristotle defined virtues as "excellences." He distinguished intellectual virtues (wisdom, understanding) from moral virtues (generosity, self-control). To possess the moral virtues is not sufficient for "the good life"; one must also have the intellectual virtues, primarily "practical reason." Aristotle believed that we are, by nature, neither good nor evil, but become so through training and the acquisition of habits: "[T]he virtues are implanted in us neither by nature nor contrary to nature: we are by nature equipped with the ability to receive them and habit brings this ability to completion and fulfillment." (Aristotle, quoted in Prior, 1991: 156–157).

Habits of moral virtue are developed by following the example of a moral exemplar; that is, a parent or a virtuous role model. These habits are also more easily instilled when "right" or just laws also exist. Moral virtue is a state of character in which behavior is consistent with the **principle of the Golden Mean**. This principle states that virtue is always the median between two extremes of character. For instance, proper pride is the balance between empty vanity and undue humility. Courage is the balance between cowardice and foolhardiness, and so on. The Catalog of Virtues derived from the writings of Aristotle appears in Box 2.1. It should be noted that it is difficult to understand some of Aristotle's virtues because of the passage of time and the problems of translation. Generally, however, the idea is that the right way to behave is a balance between an excess and a deficiency of any element of character.

Moral virtue comes from habit, which is why this system emphasizes character. The idea is that one does not do good because of reason; rather, one does good because

#### BOX 2.1 Selected Virtues **Deficit** Virtue **Excessive** Cowardice Foolhardiness Courage Self-indulgence Temperance Asceticism Meanness Liberality Too generous Munificence **Profligate Stinginess** Vain Magnanimity Petty Laziness Proper ambition **Excessive ambition** Good temper Quick to anger **Passivity** Unkind truthfulness Truthfulness Dishonesty Source: Nicomachean Ethics, Aristotle. Adapted from: www.cwu.edu/~warren/Unit1/aristotles virtues and vices.htm.

#### ethics of virtue

The ethical system that bases ethics largely upon character and possession of virtues.

eudaimonia The Greek term denoting perfect happiness or flourishing, related to the way to live a "good life."

#### principle of the Golden Mean

Aristotle's concept of moderation, in which one should not err toward excess or deficiency; this principle is associated with the ethics of virtue. of the patterns of a lifetime. Those with good character will do the right thing, and those with bad character usually will choose the immoral path. Every day we are confronted with numerous opportunities to lie, cheat, and steal. When a cashier looks the other way, we could probably filch a \$20 bill from the cash drawer, or when a clerk gives us a \$10 bill instead of a \$1 bill by mistake, we could keep it instead of handing it back. Generally, it does not even occur to us to steal. We do not have to go through any deep ethical analysis in most instances when we can do bad things, because our habits of a lifetime dictate our actions.

Somewhat related to the ethics-of-virtue ethical system are the Six Pillars of Character promulgated by the Josephson Institute of Ethics (2008). The Six Pillars of Character echo Aristotle's virtues. They include the following:

- 1. Trustworthiness. This concept encompasses honesty and meeting one's obligations.
- Respect. The concept admonishes us to treat each person with respect and not as a means to an end.
- 3. Responsibility. This means standing up for one's choices and being accountable.
- 4. Fairness. This concept involves issues of equality, impartiality, and due process.
- 5. Caring. This pillar encompasses the ideas of altruism and benevolence.
- 6. Citizenship. This requires us to fulfill the duties of every citizen; e.g., voting.

One difficulty with the ethics of virtue is in judging the primacy of moral virtues. For instance, in professional ethics there are often conflicts that involve honesty and loyalty. If both are virtues, how does one resolve a dilemma in which one virtue must be sacrificed? Another difficulty is that it is not a system that provides an analysis of what to do in each dilemma. When faced with a true dilemma—that is, a choice where the "right" decision is unclear—the ethics of virtue does not provide any equation or approach to find the right answer.

Aristotelian virtue ethics certainly influenced later thinkers, but as the timeline displayed in Box 2.2 shows, other ethical systems eclipsed this older system for centuries. More recently, Alasdair MacIntyre (1991, 1999), a contemporary philosopher, defines virtues as those dispositions that will sustain us in a quest to live a good life. MacIntyre also seems to endorse an ethics-of-care approach, as he sees life as an exchange of reciprocal indebtedness and emphasizes networks of relationships. This language is like that of the ethics of care, which will be discussed in a later section of this chapter.

Faced with the ethical dilemma presented in Situation 1 at the end of this chapter, how will the ethics of virtue help you decide what to do when a friend steals from the store you manage? One would determine what choice was consistent with the virtues of trustworthiness, respect, responsibility, fairness, caring, and citizenship. It seems clear that these virtues are more consistent with stopping the theft and firing the friend. One cannot be trustworthy or responsible and allow theft to occur.

## **Natural Law**

The **natural law** ethical system holds that there is a universal set of rights and wrongs, akin to many religious beliefs but without reference to a specific supernatural figure. No difference is recognized between physical laws—such as the law of gravity—and moral laws. Morality is part of the natural order of the universe. Further, this morality is the same across cultures and times. In this view, Christians simply added God as a source of law (as other religions added their own prophets and gods), but there is no intrinsic need to resort to a supernatural figure, because these universal laws exist quite apart from any religion (Buckle, 1993; Maestri, 1982).

The natural law ethical system presupposes that what is good is what is natural, and what is natural is what is good. The essence of morality is that which conforms to the natural world; thus, there are basic inclinations that form the core of moral principles. For instance, the preservation of one's own being is a natural inclination and thus a basic principle of morality. Actions consistent with this natural inclination would be those that preserve one's own life, such as acting in self-defense, but also those that

natural law The idea that principles of morals and rights are inherent in nature and not humanmade; such laws are discovered by reason, but exist apart from humankind.

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BOX 2.2 \ Timeline of Ethics
| Socrates (469-399 BCE)
| Plato (429-347 BCE)
| Aristotle (384-322 BCE)
                                                              Virtue theory
St. Augustine (354–430)
                                                               Natural law
                                                               Religion
| St. Thomas Aquinas (1225–1274)
                                                               Religion
John Locke (1632-1704)
                                                               Social contract
| Adam Smith (1723-1790)
                                                              Egoism
| Immanuel Kant (1724–1804)
                                                               Ethical formalism
| Jeremy Bentham (1748–1832)
                                                               Utilitarianism
John Stuart Mill (1806-1873)
                                                               Utilitarianism
| Ayn Rand (1905–1932)
                                                               Egoism
John Rawls (1921–2002)
                                                               Ethical formalism+ Utilitarianism
| Alasdair MacIntyre (1929-)
                                                              Neo-virtue theory
| Nel Noddings (1929-)
                                                              Ethics of care
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preserve or maintain the species, such as the prohibition against murder. Other inclinations are peculiar to one's species—for instance, humans are social animals; thus, sociability is a natural inclination that leads to altruism and generosity. These are natural and thus moral. The pursuit of knowledge or understanding of the universe might also be recognized as a natural inclination of humans; thus, actions that conform to this natural inclination are moral.

The Greek philosophers recognized natural law, but we also see it clearly in later writings, such as those of St. Augustine, who is attributed with a famous quote: "An unjust law is no law at all." This concept refers to the idea that if man's law contradicts the law of nature, then not only is it wrong, it may not even be considered law. St. Thomas Aquinas, in *Summa Theologiae*, distinguished natural law from God's law, and placed reason at the epicenter of the natural law system: "Whatever is contrary to the order of reason is contrary to the nature of human beings as such; and what is reasonable is in accordance with human nature as such" (Aquinas as cited in Buckle, 1993: 165).

Natural law theory defines good as that which is natural. The difficulty of this system is identifying what is consistent and congruent with the natural inclinations of humankind. How do we know which acts are in accordance with the natural order of things? Natural law has been employed to restrict the rights and liberties of groups of people; for instance, historically, the so-called "natural superiority" of whites was used to support and justify slavery, and the "natural" role of women as child-bearers restricted their employment opportunities. Today, natural law is sometimes employed to

oppose same-sex marriage with the argument that the only natural marriage is between heterosexuals for procreation. Proponents of same-sex marriage argue that there is a natural human need for bonding, noting that many heterosexual marriages exist for reasons other than procreation, but that does not make them unnatural. The fundamental problem with this ethical system is: how does one know whether a moral rule is based upon a true natural law or a mistaken human perception of natural law?

Applying natural law to the ethical dilemma of a friend stealing from an employer (Situation 1 at the end of this chapter), the natural need for sociability is why loyalty to friends is such a strong force, even when they do wrong. In this case, this natural law of sociability explains why we feel torn between our friend and our employer, but reason dictates that social relationships are bound by trust. Therefore, honesty and fair dealings are always prioritized over other values, even loyalty.

## Religion

St. Augustine and St. Thomas Aquinas described natural laws, but they were also Christian theologians who placed morality and ethics within the discussion of sin. Religion provides moral guidelines and directions on how to live one's life. For instance, Christians and Jews are taught the Ten Commandments, which prohibit certain behaviors defined as wrong. The authority of **religious ethics**, in particular Judeo-Christian ethics, stems from a willful and rational God. For believers, the authority of God is beyond question, and there is no need for further examination because of His perfection. The only possible controversy comes from human interpretation of God's commands. Indeed, these differences in interpretation are the source of most religious strife.

Religious ethics is, of course, much broader than simply Judeo-Christian ethics. Religions such as Buddhism, Confucianism, and Islam also provide a basis for ethics because they offer explanations of how to live a "good life." Pantheistic religions—such as those of primitive hunter-gatherer societies—promote the belief that there is a living spirit in all things and tend not to be judgmental. A religion must have a dogma that defines right and wrong to be a basis for an ethical system.

It is also true that many of the religions we might discuss have similar basic moral principles. Many have a version of the Ten Commandments. In this regard, Islam is not too different from Judaism, which is not too different from Christianity. What Christians recognize as the Golden Rule predates Christianity, and the principle can be found in all the major religions, as well as offered by ancient philosophers:

- · Christianity: "Do unto others as you would have them do unto you."
- Hinduism: "Do naught to others which, if done to thee, would cause thee pain: this is the sum of duty."
- Buddhism: "In five ways should a clansman minister to his friends and familiars . . . by treating them as he treats himself."
- Confucianism: "What you do not want done to yourself, do not do unto others."
- Judaism: "Whatsoever thou wouldst that men should not do unto thee, do not do that to them."
- Isocrates: "Do not do to others what would anger you if done to you by others."
- Diogenes Laërtius, *Lives of the Philosophers:* "The question was once put to Aristotle how we ought to behave to our friends; and his answer was, 'As we should wish them to behave to us.'"
- The Mahabharata: "This is the sum of all true righteousness, deal with others as thou wouldst thyself be dealt by. Do nothing to thy neighbor which thou wouldst not have him do to thee hereafter." (Reiman, 1990/2004: 147; Shermer, 2004: 25)

A fundamental question discussed by philosophers and Christian religious scholars is whether God commands us not to commit an act because it is inherently wrong (e.g., "Thou shalt not kill"), or whether an act acquires its "badness" or "goodness" solely from God's definition of it. Some believe that God is inviolable and that positions on

religious ethics
The ethical system
that is based on
religious beliefs of
good and evil; what is
good is that which is
God's will.

moral questions are absolute. This is a legalist position. Others believe that God's will varies by time and place—the situationalist position. In this position, situational factors are important in determining the rightness of any action. Something may be right or wrong depending on the circumstances (Borchert and Stewart, 1986: 157). For instance, lying may be wrong unless it is to protect an innocent, or stealing may be wrong unless it is to protest injustice and to help unfortunates.

Another issue in Western religious ethics is how to determine God's will. Some would say that it is impossible to have an *a priori* knowledge of God's will, because that would put us above God's law: we ourselves cannot be "all-knowing." Thus, for any decision, we look for the right course of action by understanding God's will. Human beings can "know" God's will in three ways: *individual conscience or faith, religious authorities* (priests, ministers, Rabbis, Imans), and *holy scriptures* (e.g., Bible, Quran, or Torah) (Barry, 1985: 51–54).

Strong doubts exist as to whether any of these methods are true indicators of divine command. Our consciences may be no more than the products of our psychological development, influenced by our environment. Religious authorities are, after all, only human, with human failings. Even the Bible seems to support contradictory principles. For instance, advocates of capital punishment can find passages in the Bible that support it (such as Genesis 9:6: "Whoever sheds the blood of man, by man shall his blood be shed"), but opponents of capital punishment argue that the New Testament offers little direct support for execution and has many more passages that direct one to forgive, such as Matthew 5:38–40: "Offer no resistance to injury. When a person strikes you on the right cheek, turn and offer him the other."

The question of whether people can ever know God's will has been explored through the ages. St. Thomas Aquinas (1225–1274) believed that human reason was sufficient not only to prove the existence of God but also to discover God's divine commands. Others believe that reason is not sufficient to know God, and that it comes down to unquestioning belief, so reason and knowledge must always be separate from faith. These people believe that one can know whether an action is consistent with God's will only if it contributes to general happiness, because God intends for us to be happy, or when the action is done through the Holy Spirit—that is, when someone performs the action under the influence of true faith (Borchert and Stewart, 1986: 159–171). This discussion has focused on Christianity; therefore, Box 2.3 briefly describes some of the other major world religions.

To summarize, the religious ethics system is widely used and accepted. The authority of the god figure is the root of all morality; basic conceptions of good and evil or right and wrong come from interpretations of the god figure's will. In the dilemma of whether to go along with a friend who steals, using Christianity as an ethical system, one need look no further than the Eighth Commandment to see clear direction that stealing is wrong. Letting someone do it under your supervision would make you complicit.

## **Ethical Formalism**

Ethical formalism is a deontological system. A deontological ethical system is one that is concerned solely with the inherent nature of the act being judged. If an act or intent is inherently good (coming from a good will), it is still considered a good act even if it results in adverse consequences. The philosopher Immanuel Kant (1724–1804) wrote that the only thing that is intrinsically good is a *good will*. On the one hand, if someone does an action from a good will, it can be considered a moral action even if it results in adverse consequences. On the other hand, if someone performs some activity that looks on the surface to be altruistic but does it with an ulterior motive—for instance, to curry favor or gain benefit—that act is not judged as "good" just because it results in good consequences.

Kant believed that moral worth comes from doing one's duty. Just as there is the law of the family (father's rule), the law of the state and country, and the law of international relations, there is also a universal law of right and wrong. Morality arises from the fact that humans, as rational beings, impose these laws and strictures of behavior upon themselves (Kant, trans. Beck, 1949: 76). Kant was a Christian, but he also believed that what is good could be discovered through pure reason.

## ethical formalism

The ethical system espoused by Kant that focuses on duty; holds that the only thing truly good is a good will, and that what is good is that which conforms to the categorical imperative.

deontological
ethical system The
study of duty or moral
obligation emphasizing
the intent of the actor
as the element of
morality, without regard
to the consequences
of acts.

## BOX 2.3 \ Overview of Major World Religions

#### **Judaism**

Judaism is older than Christianity or Islam, with the Torah, rather than the Bible, as its foundational text. As with Christianity and Islam, there are various movements or divisions under Judaism, but, generally, Judaism incorporates a monotheistic belief in God, with recognized prophets including Abraham and Moses. Judaism teaches that Jesus was not the Messiah or son of God (like Islam), nor a prophet (unlike Islam), because of disagreements with Jewish teachings. The definition of what is good in Judaism comes from the Torah, the Talmud, and religious authorities. Judaism's definitions of goodness lie in virtues and religious faith. Believers are exhorted to lead a righteous life that includes helping the needy. Virtues include benevolence, faith, and compassion. The Jewish version of the Golden Rule is: "What is hateful to you, do not do unto others." Falsehoods, unkind actions, stealing, and revenge are wrong. Shalom (peace), the path by which one should live one's life, could equate to pleasantness and kindness in dealings with others.

#### Islam

One of the newest, yet largest, religions is Islam. Like Christianity, this religion recognizes one god, Allah. Jesus and other religious figures are recognized as prophets, as is Muhammad, who is the last and greatest prophet. Islam is based on the Quran, which is taken much more literally as the word of Allah than the Bible is taken by most Christians. There is a great deal of fatalism in Islam: *inshallah*, meaning, "If God wills it," is a prevalent theme in Muslim societies, but there is recognition that if people choose evil, they do so freely. The five pillars of Islam are (1) repetition of the creed (*shahada*), (2) daily prayer (*salah*), (3) almsgiving (*zakat*), (4) fasting (*sawm*), and (5) pilgrimage (*hajj*).

Another feature of Islam is the idea of the holy war. In this concept, the faithful who die defending Islam against infidels will be rewarded in the afterlife (Hopfe, 1983). This is not to say that Islam provides a legitimate justification for terroristic acts. Devout Muslims protest that terrorists have subverted the teachings of Islam and do not follow its precepts, one of which is never to harm innocents.

#### **Buddhism**

Siddhartha Gautama (Buddha) attained enlightenment and preached to others how to do the same and achieve release from suffering. He taught that good behavior is that which follows the "middle path" between asceticism and hedonistic pursuit of sensual pleasure. Essentials of Buddhist teachings are ethical conduct, mental discipline, and wisdom. Ethical conduct is based on universal love and compassion for all living beings. Compassion and wisdom are needed in equal measures. Ethical conduct can be broken into right speech (refraining from lies, slander, enmity, and rude speech), right action (abstaining from destroying life, stealing, and dishonest dealings, and helping others lead peaceful, honorable lives), and right livelihood (abstaining from occupations that bring harm to others, such as arms dealing and killing animals). To follow the "middle path," one must abide by these guidelines (Kessler, 1992).

#### **Confucianism**

Confucius taught a humanistic social philosophy that included central concepts such as *ren*, which is human virtue and humanity at its best, as well as the source of moral principles; *li*, which is traditional order, ritual, or custom; *xiao*, which is familial love; and *yi*, which is rightness, both a virtue and a principle of behavior—that is, one should do what is right because it is right. The *doctrine of the mean* exemplifies one aspect of Confucianism that emphasizes a cosmic or natural order. Humans are a part of nature and are included in the scheme of life. Practicing moderation in one's life is part of this natural order and reflects a "way to Heaven" (Kessler, 1992).

#### **Hinduism**

In Hinduism, the central concept of *karma* can be understood as consequence. Specifically, what one does in one's present life will determine what happens in a future life. The goal is to escape the eternal birth/rebirth cycle by living one's life in a moral manner so that no bad karma will occur (Kessler, 1992). People start out life in the lowest caste, but if they live a good life, they will be reborn as members of a higher caste, until they reach the highest Brahman caste, and at that point, the cycle can end. An early source for Hinduism was the Code of Manu. In this code are found the ethical ideals of Hinduism, which include pleasantness, patience, control of mind, refraining from stealing, purity, control of the senses, intelligence, knowledge, truthfulness, and nonirritability (Hopfe, 1983).

# hypothetical imperatives

Statements of contingent demand known as if-then statements (if I want something, then I must work for it); usually contrasted with categorical imperatives (statements of "must" with no "ifs").

categorical **imperative** The concept that some things just must be, with no need for further justification, explanation, or rationalization for why they exist (Kant's categorical imperative refers to the imperative that you should do your duty, act in a way you want everyone else to act, and don't use people).

To understand Kant's categorical imperative, first you must understand the difference between hypothetical and categorical imperatives. **Hypothetical imperatives** are commands that designate certain actions to attain certain ends. Examples are "If I want to be a success, then I must do well in college" or "If I want people to like me, then I must be friendly." By contrast, a **categorical imperative** commands action that is necessary without any reference to intended purposes or consequences. The "imperative of morality" needs no further justification (Kant, trans. Beck, 1949: 76). The following constitute the principles of Kant's categorical imperative of morality (Bowie, 1985: 157):

- Act only on that maxim through which you can at the same time will that it should become a universal law. In other words, for any decision of behavior to be made, examine whether that behavior would be acceptable if it were a universal law to be followed by everyone. For instance, a student might decide to cheat on a test, but for this action to be moral, the student would have to agree that everyone should be able to cheat on tests.
- Act in such a way that you always treat humanity, whether in your own person or that of any other, never simply as a means but always at the same time as an end. In other words, one should not use people for one's own purposes. For instance, being friendly to someone only to obtain a favor is using that person. Even otherwise moral actions, such as giving to charity or doing charitable acts for others, would be considered immoral if done for ulterior motives such as self-aggrandizement.
- Act as if you were, through your maxims, a lawmaking member of a kingdom of ends.
  This principle directs that the individual's actions should contribute to and be consistent with universal law. However, the good act must be done freely. If one is compelled to do a good act, the compulsion removes the moral nature of the act. Only when we freely choose to abide by moral law without coercion are good acts a reflection of the higher nature of humans.

Ethical formalism is an absolutist system—if something is wrong, it is wrong all the time, such as murder or lying. To assassinate evil tyrants such as Adolf Hitler, Saddam Hussein, or Osama Bin Laden might be considered moral under a teleological system which weighs goodness by the consequences of actions, because ridding the world of dangerous, evil people is a good end. However, in the deontological view, if the act and intent of killing are wrong, then killing is always wrong; thus, assassination must be considered immoral in all cases, regardless of the good consequences that might result.

The absolutism of ethical formalism is criticized by those who argue that there are sometimes exceptions to any moral rule, such as "one should not lie." In a well-known hypothetical, Kant argued that if someone asked to be hidden from an attacker in close pursuit, and then the attacker asked where the potential victim was hiding, it would be immoral to lie about the victim's location. This seems wrong to many of us. However, Kant argued that an individual cannot control consequences, only actions; therefore, one must act in a moral fashion without regard to potential consequences. In the example, the attacker may not kill the potential victim, the victim may still get away, or the attacker may be justified. The victim may have even left the place you saw them hide and move to the very place you offer to the attacker as a lie. Also, to not say anything is always an option to lying. The point is that a person cannot control what happens in life, so the only thing that makes sense is to live by the categorical imperative, which does not justify lying.

Kant defended his position with semantics—distinguishing untruths from lies with the explanation that a lie is a lie only when the recipient is led to believe or has a right to believe that he or she is being told the truth. The attacker in the previous scenario, or an attacker who has one "by the throat," demanding one's money, has no right to expect the truth; thus, it would not be immoral not to tell this person the truth. Only if one led the attacker to believe that one was going to tell the truth and then did not would one violate the categorical imperative. To not tell the truth when the attacker doesn't deserve the truth is not a lie, but if one intentionally and deliberately sets out to deceive, then that is a lie—even if it is being told to a person who doesn't deserve the truth (Kant, ed. Infield, 1981).

Criticisms of ethical formalism include the following (Maestri, 1982: 910):

- Ethical formalism seems to be unresponsive to extreme circumstances. If something is wrong in every circumstance regardless of the good that results or good reasons for the action, good people might be judged immoral or unethical.
- Morality is limited to duty. One might argue that duty is the baseline of morality, not the highest aspiration of it. Further, it is not always clear where one's duty lies. At times one might face a dilemma where two duties conflict with each other.
- The priority of motive and intent over result is problematic in some instances. Many
  would argue that the consequences of an action and the actual result must be evaluated to determine morality.

Other writers present variations of deontological ethics that do not depend so heavily on Kant (Braswell, McCarthy, and McCarthy, 2007). The core elements of any deontological or duty-based ethical system are the importance placed on intention and the use of a predetermined set of principles to judge morality, rather than an evaluation of the consequences of an act.

We can apply ethical formalism to our dilemma of the friend who steals by determining one's duty. Your duty as a manager certainly would include stopping your friend from stealing and, perhaps, firing her because of her dishonesty. Applying the categorical imperative, the first premise states that your desired action should be acceptable as a universal law. Allowing employees to steal surely cannot be a universal law; therefore, it would be unjustifiable to allow it to happen. The second part of the categorical imperative is to not use people. In this case, it seems as if she is using you much more than you would be using her by stopping her from stealing. The third premise of the categorical imperative states that your action must be done because of its inherent morality, not some ulterior purpose. To be considered moral, you would have to stop her because it is the right thing to do, not because you are afraid of being caught.

## **Utilitarianism**

**Utilitarianism** is a teleological ethical system. A **teleological ethical system** judges the consequences of an act. Even a bad act, if it results in good consequences, can be defined as good under a teleological system. The saying "the end justifies the means" is a teleological statement. Jeremy Bentham (1748–1832), a major proponent of utilitarianism, believed that the morality of an action should be determined by how much it contributes to the good of the majority. Bentham argued that human nature seeks to maximize pleasure and avoid pain, and a moral system must be consistent with this natural fact.

The "utilitarian doctrine asserts that if one can show that an action significantly contributes to the general good, then it is good, even if it results in negative effects for individuals" (Barry, 1985: 65). This is because the utility or good derived from that action for the majority generally outweighs the small amount of harm done to the individual (because the harm is done only to one, whereas the good is multiplied by the many). For instance, if it could be shown that punishing an innocent person would be an effective deterrent to crime, the wrong done to that person by this unjust punishment would be outweighed by the good resulting for society. This example shows how the individual sometimes is sacrificed for the good of the many. However, if citizens found out about the injustice and lost respect for the authority of the legal system, that would be a negative effect for all concerned, illustrating the problem of trying to predict outcomes in utilitarianism.

Recall from the first chapter that some people argued against closure and stay-athome orders that were issued by state and local authorities to reduce the spread of the pandemic. The protesters' utilitarian argument was that the harm from closing businesses affected many more people economically than the harm from the number of people who might ultimately die or become seriously ill from the virus. However, like in the example above, a utilitarian argument that weighs costs and benefits presumes to know the future, when, in reality, in most situations, we cannot know, just as no one in March or April of 2020 would have known that there would be over 500,000 deaths by the end of February 2021, even with the closure orders in place in some states.

utilitarianism The ethical system that claims that the greatest good is that which results in the greatest happiness for the greatest number; major proponents are Bentham and Mill.

teleological ethical system An ethical system that considers the consequences or ends of an action in order to determine its goodness.

## WALKING THE WALK

Captain Brett Crozier, former commanding officer of the aircraft carrier USS Theodore Roosevelt, made a decision that cost him his 30-year naval career. Crozier began his naval career flying helicopters, then transferred to fixed-wing aircraft, was promoted to command an F/A-18 Hornet fighter squadron, and eventually rose to command an aircraft carrier.

In March 2020, the ship made a port call to Danang, Viet Nam where, evidently, the COVID-19 virus came aboard with one or more sailors who had taken shore leave. After the first case was diagnosed, Crozier began testing the entire crew and evacuated crew members who tested positive to shore hospitals. As the ship made its way to Guam, the number of afflicted increased. Crozier pressed his superiors to allow the majority of crew to leave the ship and be quarantined in hotels, but they did not want to take the carrier out of action, and the prospect of finding room to quarantine most of the 4,000 crew members in Guam was no doubt part of their decision to reject his pleas.

On March 30, he sent an unclassified, four-page email to 10 people, including three admirals in his chain of command, and seven captains who were assistants to admirals. The memo pleaded for permission to get people off the ship because "the spread of the disease is ongoing and accelerating." He argued that "We are not at war," and that "Sailors do not need to die. If we do not act now, we are failing to properly take care of our most trusted asset — our sailors." The memo was leaked to the press. One day after it was leaked, arrangements were made for crew members to be moved to quarantine on shore.

On April 2, three days after the memo was leaked to the press, Acting Secretary of the Navy Thomas Modly relieved Crozier of his command, against advice from some of his staff, including Adm. Michael Gilday, who had earlier stated he would not "fire the messenger."

When Crozier left the ship, a widely disseminated video showed the sailors giving him a standing ovation. Many parents of the sailors publicly thanked him. Arguably because of this public support, Modly, traveled to the ship and, in an expletive-laced rant over the public address system, scolded the crew for their support and said Crozier was too "stupid" or "naïve" to command a ship because he didn't know or care that his email would be leaked to the press. In short order, an audio of Modley's rant was leaked to the press and he resigned.

Then Gilday announced that he would investigate the incident. After a month-long investigation, he recommended that Crozier be given back command of the ship; however, the Secretary of Defense, Mark Esper, did not endorse the recommendation, and the new acting secretary of the Navy ordered another investigation. On June 19, Kenneth Braithwaite, the Secretary of the Navy, and Gilday announced the results of that investigation, which included the finding that Crozier did not do enough soon enough to prevent the disease from spreading on his ship. The Navy announced that Crozier would not be returned to his command. They did not say his memo was the reason for his firing.

Rear Adm. Stuart Baker, the commander of the aircraft carrier's strike group, who was also on the Roosevelt and had rebuffed Crozier's requests to evacuate most of the crew, also faced punishment by having his promotion put on hold. However, critics argued that the commander of the Indo-Pacific Command, Adm. Philip Davidson, should also be held accountable for ordering the port stop in Danang even though COVID-19 had already been detected, and for not agreeing to Crozier's requests.

Chief Petty Officer Charles Robert Thacker Jr., 41, died April 13, and 1,100 crewmembers tested positive, including Crozier himself. Family of crewmembers believe that more might have died but for Crozier's memo.

Crozier has been silent on the matter, but his friends and colleagues have explained to the media that the decision that cost him his career was not made in haste or because he was overwhelmed. Protecting his crew above all was in keeping with his character. Crozier, known as "Chopper" after his stint flying helicopters, was described by a former colleague: "Chopper is one of the best people I have ever known, both professionally and personally."

Sources: Schmitt and Ismay, 2020; Korb, 2020; Welna, 2020.

Although utilitarianism is quite prevalent in ethical reasoning, there are some serious criticisms of it:

All "pleasures" or benefits are not equal. Bentham did not judge the relative weight
of utility. He considered pleasure to be a good, whether it derived from vice such as
avarice or greed, or from virtue such as charity and kindness. Later utilitarians, primarily John Stuart Mill (1806–1873), believed that utilities (benefits) had different weights
or values. In other words, some were better than others. For instance, art offers more
utility for society than alcohol – even though both may bring utility or benefit to individuals, altruism carries more benefit than pleasure, and so on.

- The system presumes that one can predict the consequences of one's actions. In the well-known "lifeboat" dilemma, five people are in a lifeboat with enough food and water only for four. It is certain that they will survive if there are only four; it is also certain that they will all perish if one does not go overboard. What should be done? Under ethical formalism, it would be unthinkable to sacrifice an innocent, even if it means that all will die. Under utilitarian ethics, it is conceivable that the murder of one might be justified to save the others. But this hypothetical situation points out the fallacy of the utilitarian argument. In real life, it would not be known whether any would survive regardless of the decision. The fifth might be murdered and five minutes later a rescue ship appears on the horizon. The fifth might be murdered, but then the remaining four eventually perish as well. Only in unrealistic hypothetical situations does one absolutely know the consequences of one's action. In real life, one never knows if an action will result in a greater good or ultimate harm. Recall that assassinating Hitler might be considered good under utilitarianism. One presumes that killing Hitler would avoid the Holocaust; however it could be that a different leader of the Nazi party would have been more successful, and Germany might have won the war with even more deaths occurring because of Hitler's assassination. The point is that one cannot ever be sure of the effects of one's actions.
- There is little concern for individual rights in utilitarianism. Ethical formalism demands
  that everyone must be treated with respect and not be used as a means to an end.
  However, under utilitarianism, the rights of one individual may be sacrificed for the
  good of many.

Utilitarianism has two forms: act utilitarianism and rule utilitarianism. The basic difference between the two can be summarized as follows: in **act utilitarianism**, only the basic utility derived from one action is examined. We look at the consequences of an action for all involved and weigh the units of utility accordingly. In **rule utilitarianism**, one judges that action by the precedent it sets and the long-term utility of the rule set by that action.

On the one hand, act utilitarianism might support stealing food when one is hungry with no other way to eat, because the utility of survival would outweigh the loss to the victim of the theft. On the other hand, rule utilitarianism would be concerned with the effect that the action would have if made into a rule for behavior: "Any time an individual cannot afford food, he or she can steal it" would contribute to a state of lawlessness and a general disrespect for the law. Such a rule would probably not result in the greatest utility for the greatest number. With rule utilitarianism, then, we are concerned not only with the immediate utility of the action but also with the long-term utility or harm if the action were to be a rule for all similar circumstances. Note the similarity between rule utilitarianism and the first principle of the categorical imperative. In both approaches, one must judge as good only those actions that can be universalized.

In summary, utilitarianism holds that morality must be determined by the consequences of an action. Society and the survival and benefit of all are more important than any individual. An act is moral if it benefits the continuance and good health of society. Rule utilitarianism may be closer to the principles of ethical formalism, because it weighs the utility of such actions after they have been made into general laws of behavior, and this premise is very similar to "act in such a way as to will it to become a universal law," the first part of Kant's categorical imperative. The difference between ethical formalism and rule utilitarianism is that actions are judged right or wrong depending on the motives behind them under ethical formalism, whereas utilitarianism looks to the long-term consequences of the prescribed rules to determine their morality.

Returning to the dilemma of the friend who steals, you must consider every potential consequence, including your own feelings of guilt. The benefit to her by ignoring her actions would be counterweighed by the loss to your employer, and, therefore, act (and rule) utilitarianism would not support letting her take the items. Weighing the benefit of firing her or not is a bit more equivocal. Firing her would be a disutility (negative) to

#### act utilitarianism

The type of utilitarianism that determines the goodness of a particular act by measuring the utility (good) for all, but only for that specific act and without regard for future actions.

#### rule utilitarianism

The type of utilitarianism that determines the goodness of an action by measuring the utility of that action when it is made into a rule for behavior.

her, a benefit to your employer, and probably to you as well in that you wouldn't have to worry about her stealing again, but there is also the negative consequence to you in that you'll probably lose a friend. Applying rule utilitarianism would result in firing her (because the long-term rule of firing thieves is more palatable than the alternative), but act utilitarianism might support warning her and letting her continue in the job if the loss of her friendship was more negative than the positive of not having to worry about her stealing again. Act utilitarianism can sometimes justify things for this one person, this one time, that could not be justified if made into a rule for the future. Note that such concepts as duty do not play into this ethical reasoning—only the positive and negative consequences of each behavior choice.

## The Ethics of Care

ethics of care The ethical system that defines good as meeting the needs of others and preserving and enriching relationships.

The ethics of care is based on human relationships and needs. It has been described as a feminine morality, because women in all societies are the child bearers and consequently seem to have a greater sensitivity to issues of care. Noddings (1986: 1) points out that the "mother's voice" has been silent in Western, masculine analysis: "One is tempted to say that ethics has so far been guided by Logos, the masculine spirit, whereas the more natural and perhaps stronger approach would be through Eros, the feminine spirit."

The ethical systems we have discussed thus far have been rooted in reason-humans' ability to weigh the consequences of their actions and analyze them. The ethics of care is founded in emotion-the natural human response to care for a newborn child, the ill, and the hurt. There are similarities in the ethics of care's idea that morals derive from natural human impulses of compassion and Jean-Jacques Rousseau's (1712–1778) argument that morality is based in emotion rather than rationality: "What I feel is right is right, what I feel is wrong is wrong" (Rousseau, as cited by Ruggiero, 2001: 28).

Carol Gilligan's work on moral development in psychology identified a feminine approach to ethical decision making that focused on relationships and needs instead of rights and universal laws. The most interesting feature of this approach is that while a relatively small number of women emphasized needs over rights, no men did. She attributed this to Western society, in which men and women are both socialized to Western ethics, which are primarily concerned with issues of rights, laws, and universalism (Gilligan, 1982).

Applying the ethics of care does not necessarily lead to different solutions, but perhaps to different questions. In an ethical system based on care, we would be concerned with issues of needs rather than rights. Other writers point to Eastern religions such as Taoism as illustrations of the ethics of care (Braswell and Gold, 2002; Larrabee, 1993). In these religions, a rigid, formal, rule-based ethics is rejected in favor of gently leading the individual to follow a path of caring for others. In criminal justice, the ethics of care is represented to some extent by the rehabilitative ethic rather than the just-deserts model. Certainly, the "restorative justice" movement is consistent with the ethics of care because of its emphasis on the motives and needs of all concerned, rather than simply retribution.

A concept called **peacemaking justice** includes the possibility of mercy and compassion within the framework of justice. It is composed of three parts: connectedness (with each other), caring (as a natural inclination), and mindfulness (of others in all decisions) (Braswell and Gold, 2002: 25–37).

To summarize, the ethics-of-care approach identifies the needs of all individuals in any ethical situation and attempts to maximize them. It differs from utilitarianism, however, in that one person can never be sacrificed for others. Also, there is an attempt to resolve situations through human relationships, and a sense that decisions should come from compassion rather than attention to rights or duties.

The ethics of care would support not seeing the dilemma of the thieving friend as a binary choice of stopping her or not, and/or firing her or not. Caring for one's friend

peacemaking justice An ancient approach to justice that includes the concepts of compassion and care, connectedness, and mindfulness. would certainly involve not allowing her to make such a bad choice; but the ethical thing to do might involve doing more; for example, showing her why what she wanted to do is harmful and helping her learn from the experience. There would also be attention to need: does she need the clothes because of poverty? If so, the resolution would be different than if the theft were just due to greed. You still would not let her steal, but you would try to help her meet her needs in some other way.

## QUOTE & QUERY

Greed is good!

Source: Gordon Gekkco, character in the 1987 movie Wall Street.



Is this statement consistent with egoism?

Do you believe that we are, by nature,
selfish?

# **Egoism: Ethical System or Not?**

**Egoism** postulates that what is good for one's survival and personal happiness is moral. The extreme of this position is that all people should operate on the assumption that they can do whatever benefits themselves. Others become solely the means to ensure happiness; there is no recognition of the rights of others under this system. For this reason, some have rejected egoism as an ethical system entirely, arguing that it is fundamentally inconsistent with the element that an ethical system cannot be "self-serving" (Baelz, 1977).

**egoism** The ethical system that defines the pursuit of self-interest as a moral good.

Psychological egoism refers to the belief that humans are naturally egoists and that it would be unnatural for them to be any other way. All species have instincts for survival, and self-preservation and self-interest are merely part of that instinct. Therefore, it is not only moral to be egoistic – it is the only way we can be, and any other explanations of behavior are mere rationalizations. In behaviors that appear to be altruistic, such as giving to charity or volunteering, the argument goes that these acts provide psychic and emotional pleasure to the individual, and that motivates them, not altruism. Even though acts such as running into a burning building or jumping into a river to save victims seem altruistic, psychological egoists believe that these acts occur because of the personality makeup of individuals who derive greater pleasure from being considered heroes, or enjoy the adrenalin rush of the dangerous act, more than the feeling of security derived from staying on the sidelines.

psychological
egoism The concept
that humans naturally
and inherently seek
self-interest, and that
we can do nothing
else because it is our
nature.

**Enlightened egoism** is a slight revision of this basic principle, adding that each person's objective is long-term welfare. This may mean that we should treat others as we would want them to treat us to ensure cooperative relations. Even seemingly selfless and altruistic acts are consistent with egoism, because these acts benefit the individual by ensuring reciprocal assistance. For instance, if you help your friend move when he asks you to, it is only because you expect that he will help you when you need some future favor. An enlightened egoist would do favors for people, but only because of the potential for benefit. Because long-term interests often dictate meeting obligations and helping others, enlightened egoists might look like altruists.

enlightened
egoism The
concept that egoism
may appear to be
altruistic because it
is in one's long-term
best interest to help
others in order to
receive help in return.

Adam Smith (1723–1790), the "father" of free enterprise, promoted a type of practical egoism, arguing that individuals pursuing their own personal good would lead to nations prospering as well. Capitalism is based on the premise that everyone pursuing self-interest will create a healthy economy: workers will work harder to get more pay; owners will not exploit workers too badly, because they might quit; merchants will try to get the highest price for items, whereas consumers will shop for the lowest price; and so on. When government or liberal do-gooders manipulate the market, capitalism works less optimally. Nietzsche is associated with egoism, as is Ayn Rand (1905–1982), who is perhaps the best-known modern writer/philosopher associated with egoism. She promoted both psychological egoism (that humans *are* naturally selfish) and ethical egoism (that humans *should be* self-interested). Libertarians utilize Rand's writings to support their view of limited government and fierce individualism.

Most philosophers reject egoism because it violates the basic tenets of an ethical system. Universalism is inconsistent with egoism, because to approve of all people acting in their own self-interest is not a logical or feasible position. It cannot be right for both you and me to maximize our own self-interests, because it would inevitably lead to conflict. Egoism would support exploitative actions by the strong against the weak,

which seems wrong under all other ethical systems. One thing seems clear: when individuals are caught doing illegal acts, or acts that violate their professional codes of ethics, or acts that harm others, it is usually only egoism that can justify their behavior.

# **Other Methods of Ethical Decision Making**

Some modern writers present approaches to applied ethics that do not directly include the ethical systems discussed thus far. For instance, Krogstand and Robertson (1979) described three principles of ethical decision making:

- The **imperative principle** directs a decision maker to act according to a specific, unbending rule. (This is like ethical formalism.)
- The **utilitarian principle** determines the ethics of conduct by the good or bad consequences of the action. (This is clearly utilitarianism.)
- The generalization principle is based on this question: "What would happen if all similar persons acted this way under similar circumstances?" (This is the first premise of the categorical imperative and rule utilitarianism.)

Ruggiero (2001) proposes that ethical dilemmas be evaluated using three basic criteria. The first principle is to examine one's obligations and duties, and what one has promised to do by contract or by taking on a role (this is like ethical formalism's focus on duty). The second principle is to examine moral ideals, such as how one's decision squares with prudence, temperance, justice, honesty, compassion, and other ideals (this is like Aristotle's ethics of virtue). The third principle is to evaluate the act to determine if it would result in good consequences (this is utilitarianism).

Close and Meier (1995: 130) provide a set of questions more specific to criminal justice professionals and sensitive to the due-process protections that are often discarded in a decision to commit an unethical act. They propose that the individual decision maker should ask the following questions that seem to be a combination of the ethical systems we have discussed:

- 1. Does the action violate another person's constitutional rights, including the right of due process?
- 2. Does the action involve treating another person only as a means to an end?
- 3. Is the action illegal?

### imperative principle The concept that all decisions should be made according to absolute rules.

utilitarian
principle The
principle that all
decisions should be
made according to
what is best for the
greatest number.

generalization
principle The
principle that all
decisions should be
made assuming that
the decision would be
applied to everyone
else in similar
circumstances.

# IN THE NEWS | Ethical Exemplars

In the spring of 2020, in the wake of massive economic disruption and health risks due to the pandemic, many companies stepped up to model behavior that exemplified the virtues of charity, generosity, and caring. Some examples include:

- José Andrés used his restaurants as community kitchens and provided free meals to those who lost their jobs and/ or were homeless;
- Venmo and Cashapp created virtual tip jars for restaurant workers around the country who were laid off from their jobs;
- Metropolitan Opera provided a series of free opera streams;
- Uber Eats offered free delivery for a time and committed to donating 300,000 meals to healthcare workers and first responders;

- Some distilleries stopped production of bourbon or other spirits and began producing hand sanitizer and giving it away to first responders, healthcare workers, and nursing homes;
- Scholastic offered free virtual learning tools to educators;
- Intel sourced and donated over one million personal protective items like masks and gloves for those on the frontlines;
- Apple, Tesla, Nike, Gap, and other large companies used their supply chains to source PPE, ventilators and other equipment needed to fight the virus.

Many other examples exist of companies putting profits behind helping those fighting against or impacted by the COVID 19 pandemic.

Source: Compliance Week, 2020.

- 4. Do you predict that your action will produce more bad than good for all persons affected?
- 5. Does the action violate department procedure or professional duty?

The simplest test is the "front-page" test. This ethical check asks us to evaluate our decision by whether we would be comfortable if it was on the front page of the newspaper. Public disclosure is often a good litmus test for whether something is ethical or not.

## **Using Ethical Systems to Resolve Dilemmas**

As discussed in Chapter 1, if confronted with an ethical dilemma, one can follow a series of steps to come to an ethical resolution:

- 1. Identify the facts.
- 2. Identify relevant values and concepts.
- 3. Identify all possible moral dilemmas for each party involved.
- 4. Decide what is the most immediate moral or ethical issue facing the individual.
- Resolve the ethical or moral dilemma by using an ethical system or some other means of decision making.

# ETHICAL DILEMMAS

Detective Russell Poole was a Robbery–Homicide Division investigator with the Los Angeles Police Department (LAPD). In 1998, he was assigned an investigation regarding the alleged beating of Ismael Jimenez, a reputed gang member, by LAPD officers, and a suspected cover-up of the incident. In his investigation, he uncovered a pattern of complaints of violence by the antigang task force in the Ramparts Division. Gang members told Poole and his partners that several officers harassed them, assaulted them, and pressured them to provide untraceable guns. The beating occurred because Jimenez would not provide the officers with a gun. An investigation of Officer Rafael Perez, a member of the antigang task force, led to Poole concluding that several officers in the division were "vigilante cops." He requested that the investigation proceed further.

After Poole informed his superiors of what his investigation had uncovered, Bernard Parks, the LAPD chief at the time, ordered Poole to limit his investigation solely to the Jimenez beating. Poole prepared a 40-page report on the Jimenez case for the district attorney's office, detailing the pattern of complaints, alleged assaults, and other allegations of serious wrongdoing on the part of the Rampart officers. Poole's report never reached the district attorney's office because his lieutenant, enforcing the chief's orders, replaced his detailed report with a two-page report written by the lieutenant and another supervisor. Poole knew that in not providing the district attorney's office with all the information he uncovered, he could be charged with obstruction of justice, and the report provided so little information that the officer probably would not even be charged. Poole's lieutenant then asked him to put his name on the report.

#### Law

Although unlikely, Poole could be charged with obstruction of justice if he was found to have intentionally misled prosecutors as to the amount and quality of evidence against any suspect. Officers can be guilty of perjury if they testify or attest to untruths, but in this case, Poole was not being asked to lie, except by omission.

#### **Policy**

It is important in a hierarchical organization for subordinates to follow the orders of superiors. However, it is also important that any organization reward and not punish those who live up to high ideals of honesty and mission. Obviously, Poole would be following formal policies to cooperate with the district attorney's office to pursue criminal convictions when warranted. Often in organizations there are formal and informal policies. Informal policies may act to obstruct the formal goals of the organization; in this case, there was a concerted effort to suppress the Rampart Division investigative findings.

#### **Ethics**

Following the steps of analysis above, the first step is to determine the relevant facts. For instance, if his superiors were telling him to avoid exposing the other wrongdoing because of an ongoing larger federal investigation, that would be an important fact to know. Other relevant facts include the findings of his investigation–how serious were the acts of the suspected officers? The second step is to identify concepts and values—in this case, duty, loyalty, legality, and integrity. Regarding the third step of identifying all the relevant dilemmas, Poole's dilemma

(continued)

was created by the unethical/illegal acts of the police officers and the acts of his superiors. They put him in the position of his immediate dilemma whether to sign the misleading report. Now we turn to applying the ethical systems.

Poole reported that he never considered putting his name on a report he knew was wrong. His superiors, coworkers, and colleagues described him as "professional," "hardworking," "loyal, productive, thorough, and reliable," "diligent," "honest," and "extremely credible." He was known as a first-rate investigator and trusted by the district attorney's office to provide thorough and credible testimony. In other words, his habits in his professional life were directly contrary to participating in a cover-up. From all accounts, Poole represented many of Aristotle's virtues.

Natural law and religious ethics do not give us clear answers to Poole's dilemma. However, ethical formalism does, in that Kant's categorical imperative can be applied to his choice to sign or not sign the report. This dilemma illustrates that sometimes duties conflict: in this case, Poole's duty to follow the law conflicted with his duty to obey his superiors. The first part of the categorical imperative is to act in such a way that you would agree should be universal. Not exposing or pursuing evidence of corruption would not be an action that we would want universalized, so signing the doctored report fails the first part of the categorical imperative. The second part of the imperative is to not treat others as a means to an end. It seems clear that Poole's superiors were attempting to use him to further their goals. Their behavior, then, violates this part of the imperative. If Poole does mislead the prosecutor by signing, then he is violating this imperative as well. The last portion of the imperative is that to be moral, behavior must be autonomous and freely chosen. If Poole were frightened or pressured into doing something, then the action would not be moral regardless of what it was. If, for instance, he believed that the district attorney would find out and come after him for falsifying a legal document, then he might not sign it, but it would not be because of a good will and, therefore, could not be considered a moral act.

Applying the utilitarian ethical system to Poole's dilemma requires determining which choice (to sign or not to sign) results in the greatest benefit to all (society, the department, his peers, and Poole himself). Did the greatest benefit lie in exposing the corruption or trying to hide it? Poole's superiors probably thought they were doing what was best for the LAPD. They did not want a scandal, especially considering that it had not been that long since the Rodney King incident. However, the attempt to suppress the actions of the Ramparts Division officers was unsuccessful anyway. A year after Poole refused to sign the report that protected Officer Rafael Perez, Perez was prosecuted for stealing a large amount of cocaine from the evidence room. In a plea arrangement, he told investigators from the district attorney's office the whole story of the Ramparts Division officers, leading to the biggest scandal in LAPD's history. This illustrates one of the problems with utilitarianism: if people sacrifice their integrity for what they consider is a good cause, the result may be that they lose their integrity and fail to achieve their goal.

Under the ethics of care, individual needs should be considered to determine the best course of action. Unfortunately, sometimes individuals' needs are not met even when they do the right thing. Detective Poole knew what the right course of action was. He also knew that he would pay a price for doing it. In fact, after he refused to sign the report, he was transferred to a less prestigious position and denied a promotion. He was vilified and treated as a traitor by some officers when he went public with his evidence of a cover-up. Ultimately, he resigned from the LAPD.

Source: Boyer, 2001; Golab, 2000.

# **Relativism and Universalism**

Ethical relativism describes the position that what is good or bad changes depending on the individual or group, and that there are no moral absolutes. Relativists believe that what is right is determined by culture and/or individual belief and that there are no universal laws. Absolutism, as previously discussed, is the position that, if something is wrong, it is always wrong. Universalism is a similar concept in that it is the position that what is considered wrong is wrong for all people for all time and if one wants to perform a certain act, one would have to agree that anyone else should be able to do it as well.

One may look to anthropology and the rise of social science to explain the popularity of moral relativism. Over the course of studying different societies—past and present, primitive and sophisticated—anthropologists have found that there are very few universals across cultures. Even those behaviors often believed to be universally condemned, such as incest, have been institutionalized and encouraged in some societies (Kottak, 1974: 307). Basically, **cultural relativism** defines good as that which contributes to the health and survival of society. Hunting and gathering societies that must contend with harsh environments may hold beliefs allowing for the euthanasia of burdensome elderly,

cultural relativism
The idea that values and behaviors differ from culture to culture and are functional in the culture that holds them.

whereas agricultural societies that depend on knowledge passed down through generations may revere their elderly and accord them an honored place in society.

Cultural relativists recognize that cultures have very different definitions of right and wrong, and moral relativists argue that there are no fundamental or absolute definitions of right and wrong. In opposition to this position, absolutists argue that just because there may be or have been cultural norms endorsing such things as cannibalism, slavery, or having sex with six-year-olds, the norms do not make these acts moral and there are absolute rights and absolute wrongs whether or not certain societies at certain times recognized them.

Although cultural relativism holds that different societies may have different moral standards, it also dictates that individuals within a culture conform to the standards of their culture. Therein lays a fundamental flaw in the cultural relativist approach: if there are no universal norms, why should individuals be required to conform to their own societal or cultural norms? If their actions are not accepted today, it might be argued, they could be accepted tomorrow—if not by their society, perhaps by some other. But if individuals are not expected to abide by even their own cultural norms, there is no such thing as society itself.

An additional inconsistency in cultural relativism as a support for moral relativism is the prohibition against interfering in another culture's norms. The argument goes as follows: because every culture is correct in its definitions of morality, another culture should not step in to change those definitions. However, if what is right is determined by which culture one happens to belong to, why then, if that culture happens to be imperialistic, would it be wrong to force cultural norms on other cultures? Cultural relativism attempts to combine an absolute (no interference) with a relativistic "truth" (there are no absolutes). This is logically inconsistent (Foot, 1982).

Cultural relativism usually concerns behaviors that are always right in one society and always wrong in another. Of course, what is more common is behavior that is judged to be wrong most of the time, but acceptable in certain instances. As examples: torture is wrong except possibly against terrorism; lying is wrong except when one lies to protect another.

Even absolutist systems recognize exceptions. The **principle of forfeiture** associated with deontological ethical systems holds that people who treat others as means to an end or take away or inhibit their freedom and well-being forfeit the right to protection of their own freedom and well-being (Harris, 1986: 136). Therefore, people who aggress first forfeit their own right to be protected from harm. This could permit self-defense (despite the moral proscription against taking life) and possibly provide justification for lying to a person who threatens harm. Critics of an absolutist system see this exception as a rationalization and a fatal weakness to the approach; in effect, moral rules are absolute *except* for exceptions.

Relativism allows for different rules and different judgments about what is good. Proponents argue that it promotes tolerance. Critics argue it leads to egoistic (and nationalistic) rationalizations. Horrible acts like the Holocaust, slavery, the slaughter of Native American Indians, the Armenian genocide, Japanese-American internment, the Bataan Death March, and torture in Abu Ghraib and Guantanamo happen because people promoting what they consider to be a good end (security or progress) do not apply absolute rules of morality and ethics and, instead, utilize relativism: "it is okay for me to do this to you, at this time, because of what I consider to be a good reason, but it would be wrong if you did it to me."

## Toward a Resolution: Situational Ethics

**Situational ethics** is often used as a synonym for *relativism*; however, if we clarify the term to include certain fundamental, absolute elements, it might serve as a resolution to the problems inherent in both an absolutist and a relativist approach to ethics. Recall that relativism, on the one hand, is criticized because it must allow any practice to be considered "good" if it is considered good by some people; therefore, even human sacrifice and cannibalism would have to be considered moral—a thoroughly unpalatable

principle of forfeiture The idea that one gives up one's right to be treated under the principles of respect for persons to the extent that one has abrogated someone else's rights; for instance, self-defense is acceptable according to the principle of forfeiture.

## situational ethics

The philosophical position that although there are a few universal truths, different situations call for different responses; therefore, some action can be right or wrong depending on situational factors.

consequence of accepting the doctrine. Absolutism, on the other hand, is also less than satisfactory because we all can think of examples when the "rule" must be broken. Even Kant declined to be purely absolutist in his argument that lying is not really lying if told to a person who doesn't deserve the truth. What is needed, then, is an approach that resolves both problems.

Hinman (1998) resolves this debate by defining the balance between absolutism and relativism as **moral pluralism**. He stops short of an "anything goes" rationale and recognizes multicultural "truths" that affect moral perceptions.

The solution that we will offer here, whether one calls it situational ethics or some other term, is as follows:

- 1. There are basic principles of right and wrong.
- 2. These principles can be applied to ethical dilemmas and issues.
- These principles may call for different results in different situations, depending on the needs, concerns, relationships, resources, weaknesses, and strengths of the individual actors.

This conception of situational ethics differs from relativism in that absolute laws are recognized. What absolute laws can be identified as transcendent? Natural law, the Golden Rule, and the ethics of care could help us fashion a set of moral absolutes that might be general enough to ensure universal agreement. For instance, we could start with the following propositions:

- Treat each person with respect and care as you would like to be treated.
- Do one's duty or duties in such a way that one does not violate the first principle.

These principles would not have anything to say about dancing (as immoral or moral), but they would condemn human sacrifice, child molestation, slavery, and a host of other practices that have been part of human society. Practices could be good in one society and bad in another. For instance, if polygamy contributed to the survival of society, it might be acceptable; but if it served the pleasure of some by using and treating others as mere objects, it would be immoral. Selling daughters into marriage to enrich the family would never be acceptable, because that is not treating them with respect and care; however, arranged marriages might be acceptable if all parties agree and the motives are consistent with care.

This system is not too different from a flexible interpretation of Kant's categorical imperative, a strict interpretation of rule-based utilitarianism, or an inclusive application of the Golden Rule. It is also entirely consistent with the ethics of care. All ethical systems struggle with objectivity and subjectivity, along with respect for the individual and concern for society. Note that egoism does not pursue these goals, and that is why some believe it cannot be accepted as a legitimate ethical system.

#### Conclusion

Ethical systems provide the guidelines or principles to make moral decisions. Box 2.4 summarizes the key principles of these ethical systems. It can happen that moral questions are decided in different ways under the same ethical system. For instance, if facts are in dispute, two people using utilitarianism may weigh the utility of an act differently. Capital punishment is supported by some because of a belief that it is a deterrent to people who might commit murder, whereas others argue it is wrong because it does not deter (this is an argument about facts between two utilitarians). Others believe that capital punishment is wrong regardless of its ability to deter (this would be an argument by those following a religious ethics system or ethics of care). Most arguments about capital punishment get confused during the factual argument about the effectiveness of deterrence. "Is capital punishment wrong or right?" is a different question than "Does capital punishment deter?"

#### moral pluralism

The concept that there are fundamental truths that may dictate different definitions of what is moral in different situations.

## BOX 2.4 \ The Major Ethical Systems

Ethics of virtue. What is good is that which conforms to the principle of the Golden Mean.

*Natural law.* What is good is that which conforms to the natural laws of the universe.

Religion. What is good is that which conforms to God's will.

Ethical formalism. What is good is that which conforms to the categorical imperative.

Utilitarianism. What is good is that which results in the greatest utility for the greatest number.

Ethics of care. What is good is that which meets the needs of those concerned.

Egoism. What is good is that which benefits me.

Another thing to consider is that none of us is perfect; we all have committed immoral or unethical acts that we know were wrong. Ethical systems help us to understand or analyze morality, but knowing what is right is no guarantee that we will always do the right thing. Few people follow such strong moral codes that they never lie or never cause other people harm. The point is that just because some behaviors are understandable—and perhaps even excusable—does not make them moral or ethical.

Another point is that few people consistently use just one ethical system in making moral decisions. Some of us are fundamentally utilitarian and some predominantly religious, but we may make decisions using other ethical frameworks as well.

Finally, it should be noted that while philosophical discussions typically emphasize the differences between these ethical systems, in most cases where individuals face a dilemma about the right thing to do, the ethical systems agree. Recall that the ethical systems agreed for the most part regarding the dilemma about your friend stealing. Aristotle said that a friend who is a scoundrel and refuses to change his or her behavior is then more scoundrel than friend and deserves no loyalty. Under natural law, theft violates trust, which is one of the building blocks of society; therefore, it is unnatural to steal (except perhaps in life-threatening circumstances) and unnatural to condone stealing. Religion would obviously condemn the act and encourage stopping itbecause we are "our brother's keepers." Ethical formalism would look to your duty as a manager and apply universalism to determine that it was necessary to stop the stealing by reporting it. Utilitarianism would weigh the benefits and determine that it was not beneficial to anyone except your friend to allow her to get away with the theft. Ethics of care would be concerned for your friend as well, and would perhaps arrive at a solution where she might be persuaded to return the item and quit the job without undergoing public retribution. Only egoism might support keeping quiet if it meant losing a friend; however, even enlightened egoism might support reporting the friend, because she might turn around and use the incident against you later.

Ethical systems are easier to explain than to apply. For instance, utilitarianism is easy to understand, but the measurement of utility for any given act is often quite difficult. Ethical formalism instructs to "do one's duty," but it does not help us when there are conflicting duties. The ethics of care emphasizes relationships but is vague in providing the steps necessary to resolve ethical dilemmas. More applied approaches utilize steps one can take to resolve ethical dilemmas, such as the "front-page" test (exposing the decision to outside scrutiny). Whether morals are relative or absolute has been debated throughout time. The concept of situational ethics is offered to reconcile the question as to whether ethics are universal or not, and it is true that in many ethical dilemmas, these systems arrive at the same answer to the question of what is the right thing to do.