

ETHICAL DILEMMAS AND DECISIONS IN

Criminal Justice



tenth EDITION

JOYCELYN M. POLLOCK



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Criminal Justice

tenth EDITION

JOYCELYN M. POLLOCK
TEXAS STATE UNIVERSITY—SAN MARCOS



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

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Criminal Justice, Tenth Edition**

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To Greg and Eric, as always



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 published over 15 separate books, many with multiple editions, including *Crime and Criminal Justice in America, 3rd Ed.* (2016); *Morality Stories, 3rd Ed.* (with Michael Braswell and Scott Braswell, 2016); *Criminal Law, 11th Ed.* (2016); *Women's Crimes, Criminology and Corrections* (2015); and *Prisons and Prison Life: Costs and Consequences, 2nd Ed.* (2014).

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 10th edition marks over 30 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" movement, increasing attention to wrongful convictions, and presidential commutations of drug offenders sentenced under mandatory minimums. This edition has had major news to cover as well. Our recent presidential election has led to changes within the Department of Justice, "sanctuary city" resolutions, and the federal turnabout on the use of private prisons, among other major events or policy changes that affect criminal justice organizations. As with prior years, it is difficult not to devote more space to law enforcement than courts or corrections, since the troubles there seem to receive greater coverage by both the academic and popular press. In some areas, a discussion in the last edition has been expanded and updated, such as prosecutorial misconduct, the Rikers Island jail scandal, and halfway house scandals in New York City and Philadelphia. Systemic issues such as use-of-force training, mandatory minimums, the lack of indigent defense, and mass imprisonment continue to be covered in this book as ethical issues, although legal and policy factors are covered as well.

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, removing some to make way for individuals involved in recent events. 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, replacing a summary of current events with a more personal approach as to why we study ethics. A list of ethical issues and ethical dilemmas has been added as examples. The discussion about Governor Ryan was shortened and current news on a Florida prosecutor refusing to use the death penalty was inserted as another example of a person who had discretion to make a decision regarding what is only an ethical issue for the rest of us. A current controversy over the emoluments clause of the Constitution is included as an example of conflict of interests. The In the News box was updated to the current TRANSPARENCY INTERNATIONAL corruption index. The Ethical Issue box was changed, dropping the discussion of the “fast and furious program” to one dealing with the current issue of whether the Department of Justice should abandon the use of consent decrees to force change in law enforcement agencies. One of the Ethical Dilemmas at the end of the chapter was changed to the current issue regarding city council choices to declare sanctuary city status.
- **Chapter 2: Determining Moral Behavior**—The introductory news story about the “crookedest cop” in Florida was removed, as was the Ethical Issue box in this chapter, allowing the discussion of ethical systems to begin much earlier and reducing the length of the chapter. A short application of each ethical system was added to help readers learn how to apply the systems. The Walking the Walk box was replaced with one about Ana Mari Cauce, the president of the University of Washington, and her decision regarding the First Amendment. The In the News box was expanded with the recent attempted elimination of office of congressional ethics.
- **Chapter 3: Justice and Law**—This chapter updated the CEO salary box to 2016 figures. The In the News box on a CEO increasing workers’ wages to \$70,000 was updated with new information. The discussion on minimum wage has been updated with current news and studies. The discussion about Obamacare has been updated to include legal challenges as well as the current attempts by Congress to repeal it. The section on procedural justice has been updated with new research. Updated numbers on the NATIONAL REGISTRY OF EXONERATIONS and INNOCENCE PROJECT information has been added. Two older In the News boxes were removed, leaving three in the chapter. The Gallup poll on race has been updated. There is an expanded and updated section on race with new news stories and academic studies. New academic sources have been used for the discussion on restorative justice. Two of the end-of-chapter Ethical Dilemmas have been changed to more current topics.
- **Chapter 4: Becoming an Ethical Professional**—The section on biological influences on behavior has been rearranged and rewritten for greater clarity, with the discussion of oxytocin enlarged with new sources. The In the News box on Hidalgo County was replaced with one on the Wells Fargo scandal in the organizational influences subsection. The In the News box on Jon Burge has been expanded with new articles. The Ethical Issue box was replaced with one about sanctuary cities. In the leadership discussion, information on transformational leadership and applications to ethical employees has been added. Also added is new research on procedural justice and correctional leadership. The Walking the Walk box was replaced with one focusing on former Chief David Brown of Dallas. A new study question was added on organizational justice.

- **Chapter 5: The Police Role in Society**—The Learning Objectives were changed to include one that specifies knowledge about police history eras and the Ferguson effect. Then, the section “Future of Policing” was retitled as “Future of Policing and the Ferguson Effect,” and now includes an expansive discussion of the concept and research about the Ferguson effect. The In the News box about good acts by police officers has been expanded with a new item. The discussion about military veterans in policing has been expanded in the “warrior–guardian” section. The number of police officers killed over the years has been added. There is now an expanded discussion of Crisis Intervention Team (CIT) training and dealing with mentally ill. The section on research on procedural justice in policing has been expanded, and includes new research that ties into the concepts of legitimacy of policing and the social contract. In the section on earlier police research, two of three police typologies (Muir & Brown) were deleted and one study question was changed as a result. Current events were added to make the revised discussion of duty/discretion topical. Dated references to McAnany and Davis were deleted as they are no longer necessary to the discussion of discretion. The references to Gallup polls and perceptions of police were moved out of the conclusion and into the discussion of public perceptions and procedural justice. The intelligence-led policing section was reduced and some information was moved to Chapter 14. The Baltimore police officer scandal was updated to include the acquittals of the officers and dropping drug cases associated with them. 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 reduced with old sources consolidated. A new In the News box on San Francisco police was added.
- **Chapter 6: Police Discretion and Dilemmas**—There is an updated and expanded discussion of public perceptions of law enforcement racism and disproportional shootings of blacks. Old research has been condensed throughout the chapter. The Walking the Walk box has been changed to one focusing on a former officer who helps other officers deal with shootings. There is a greatly expanded discussion of asset forfeiture. New data have been added to the discussion of stop and frisk. The discussion of officers dying in the line of duty was removed to avoid repetition from Chapter 5. The In the News box about the Boyd shooting was replaced with one about the Reid interrogation method. The In the News box on the stashhouse stings has been updated.
- **Chapter 7: Police Corruption and Responses**—A dated In the News box was replaced with one about a Portland officer whistleblower. Other In the News boxes were changed to more current events or updated with new information, for example, Baltimore acquittals of charged officers. There are expanded sections on body cameras, early warnings, consent decrees, and civilian review. The sections describing individual cases of misconduct in various cities have been reduced. There is an expanded discussion in the Ethical Issue box dealing with disciplinary action secrecy, and the Ethical Issue box was moved to immediately after police misconduct databanks for better flow. The section on consent decrees was moved to the societal responses section and there is a new discussion of recent societal changes under that subsection. There is an added section describing new legislation and the President’s Task Force recommendations. One end-of-chapter Ethical Dilemma and one study review question were changed.

- **Chapter 8: Law and Legal Professionals**—The Walking the Walk box was removed and replaced with one about former Attorney General Comey. The asset forfeiture In the News box was removed since the topic was covered in Chapter 6. The discussion on indigent defense was moved from Chapter 9 to this chapter. New In the News boxes include one on laws criminalizing homelessness, and one on lawsuits against states because of underfunding indigent defense programs. There is a new, full discussion of the “criminalization of poverty” (bail, fines, fees, etc.). The discussion on marijuana legalization has been updated. There is a new section on courtroom workgroups.
- **Chapter 9: Discretion and Dilemmas in the Legal Profession**—The section on asset forfeiture was substantially reduced with much of the discussion, including the key term and margin definition, moving to Chapter 6 where there is a fuller discussion. The Ethical Dilemma box was removed to reduce chapter length. Several dated In the News boxes were replaced with current news items, for example, the ACLU defending an alt-right group, the Oakland jailhouse informant scandal, and the Brock Turner sentencing. Other current news was included in relevant discussions, including an ethical complaint against the attorney for Jody Arias, updated salary figures for prosecutors, and Justice Ginsburg’s comment about President Trump as a potential conflict of interest issue. A section on jailhouse informants was moved from Chapter 10 and consolidated with the existing discussion in this chapter.
- **Chapter 10: Ethical Misconduct in the Courts and Responses**—The chapter introduction was changed by reducing the Clarence Brandley section and adding several additional summaries of wrongfully convicted individuals. New In the News boxes were added, including one of a defense attorney accused of witness tampering, and the District Attorney Seth Williams’ indictment (Philadelphia). There was a new study of prosecutorial misconduct added. The In the News box on prosecutorial misconduct was changed, shortening the old story and adding a new one. New In the News boxes were added on judicial misconduct including sexual exploitation of defendants, and one on a California law making Brady violations a felon. Updated court cases on prosecutorial immunity were added. The Walking the Walk box was replaced with one on Kenneth Thompson, the late District Attorney from Brooklyn.
- **Chapter 11: The Ethics of Punishment and Corrections**—The chapter introduction on the philosophy of punishment has been shortened. All statistics concerning imprisonment and other correctional supervision have been updated. The information on supermax prisons is no longer in its own section; the discussion has been shortened to focus on supermax prisons as an example of a type of punishment. The discussion of private corrections has been expanded and updated. The discussion of capital punishment has been slightly shortened but new Supreme Court cases were added. The In the News box on Riker’s Island jail has been updated. The In the News box on President Obama’s commutations of drug offenders was updated with the final numbers. New In the News boxes were added on raising the age of responsibility in New York, adding monitors to review private prisons in Michigan, and the conviction of the former head of corrections, Chris Epps, in Mississippi.

- **Chapter 12: Discretion and Dilemmas in Corrections**—The discussion of the scandal in New Jersey and New York City surrounding halfway (sober) houses was enlarged with a new investigation in Philadelphia. There is an updated discussion of California’s response to *Brown v. Plata*. The PREA survey has been updated. New In the News boxes are included on a New York same-sex prison sexual abuse case, and violence in North Carolina prisons. The In the News box on the Denver jail has been updated. There are several new academic sources added to the section on correctional treatment professionals’ ethics. The Walking the Walk box was removed and replaced with one on Dr. Eric Reininga, a whistleblower in California.
- **Chapter 13: Correctional Professionals: Misconduct and Responses**—There are several new In the News boxes, including one on an investigation of correctional officers in Georgia. The sections on California prisons and the Los Angeles jail have been updated with current news. The sections in the last edition on misconduct in corrections departments in Texas and Mississippi were deleted. The section on misconduct in the New York corrections system has been expanded with new information, as was the section on the Florida corrections system. New news on scandals in the parole systems in Utah and Missouri were added. There is a new discussion of procedural justice research in corrections as a response and solution to misconduct.
- **Chapter 14: Making Ethical Choices**—There is an updated discussion and listing of terrorist events in the last several years. The missiles fired at the Syrian airbase in retaliation for the chemical weapon attack was used as an example of a natural law justification. Some of the sections on the aftermath of 9/11 have been shortened. The numbers held at Guantanamo have been updated. There is a new In the News box regarding the Senate report on torture that has been suppressed by the current administration. The discussion of Mitchell and Jessen, the two psychologists who have been described as the architects of waterboarding, has been updated with a current link to a video deposition where they defend their actions. Academic articles on law enforcement working with Muslim communities as counterterrorism efforts are referenced. A new In the News box on new surveillance technology was added, along with an expanded discussion of surveillance technology.

Features

There are several boxed features found in *Ethical Dilemmas and Decisions in Criminal Justice, 10th Ed.*, which 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, some of the news stories are kept, but most are cycled out to make room for current events. Examples in this edition include:

Jon Burge and his “midnight crew”

Commutations of drug offenders by President Obama

Chris Epps’ conviction (former head of corrections for Mississippi)

Brock Turner sentencing

QUOTE AND QUERY Another longtime feature of the book, these boxes offer some 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, followed by an extended analysis of the dilemma under law, policy, and ethics. The feature makes explicit the focus of the book, illustrated by its title, *Ethical Dilemmas and Decisions*.

ETHICAL ISSUE Introduced in the ninth edition, these boxes present a current issue or policy in policing, courts, or corrections, and like the Ethical Dilemma boxes, provide an extended analysis of the issue under law, policy, and ethics. The addition of these issues boxes in some chapters shows how issues can be analyzed in a similar way to personal dilemmas.

Pedagogical Aids

In addition to the boxed features, *Ethical Dilemmas and Decisions in Criminal Justice, 10th 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, but there is also a short summary of content. These reviews summarize the key content of the chapter for the reader.

Ancillaries

A number of supplements are provided by Cengage Learning to help instructors use *Ethical Dilemmas and Decisions in Criminal Justice* in their courses and to aid students in preparing for exams. Supplements are available to qualified adopters. Please consult your local sales representative for details.

For the Instructor

ONLINE INSTRUCTOR'S MANUAL The manual includes learning objectives, a detailed chapter outline (correlated to PowerPoint slides), lecture notes, assignments, media tools, ethical dilemmas, and classroom discussions/activities. The learning objectives are correlated with the discussion topics, student activities, and media tools.

ONLINE TEST BANK Each chapter of the test bank contains multiple-choice, true/false, completion, 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.

CENGAGE LEARNING TESTING, POWERED BY COGNERO The Test Bank is also available through Cognero, a flexible online system that allows you to author, edit, and manage test bank content as well as create multiple test versions in an instant. You can deliver tests from your school's learning management system, your classroom, or wherever you want.

ONLINE LECTURES Helping you make your lectures more engaging while effectively reaching your visually oriented students, these handy Microsoft PowerPoint® slides outline the chapters of the main text in a classroom-ready presentation. The PowerPoint 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.

For the Student

Mindtap Criminal Justice

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 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.

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Morality, Ethics, and Human Behavior

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mediaphotos/Getty Images

Ethics is the study of right and wrong. Cheating may be efficient for the individual but it is judged as wrong and unethical.

Ethical judgments permeate our lives. You employ ethical analysis when you decide to utter a white lie to get out of doing something you don't want to do or when you call in sick on a beautiful, sunny day. Being honest in your interactions with others is a generally recognized duty; therefore, these decisions can be judged as wrong. Small decisions about behavior are often made without thinking of the ethical implications of these choices, but they form our character.

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 pick up a newspaper or read news from other media outlets that present ethical issues or describe individuals who have made choices that are subject to ethical judgments. Some decisions affect very few people—as our decision to call in sick when we don't want to go to work. However, depending on the person and the decision, thousands or even millions of people might be affected. The decisions of criminal justice professionals almost always affect others.

Learning Objectives

1. Explain the difference between ethical issues and ethical dilemmas.
2. 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*.
5. Describe what behaviors might be subject to moral/ethical judgments.

ethical issues

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

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.

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 since 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:

- 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)
- Cities adopting “Sanctuary City” resolutions
- Instituting conviction review task forces in prosecutors’ offices
- Requiring mandatory DNA collection for all misdemeanor 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.

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.

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 choice is unclear or the right choice will be difficult because of the costs involved. Every one of us has faced ethical dilemmas. Our dilemmas involve our jobs and our interactions with others. 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 or not
- A police officer’s decision to tell a supervisor that her partner has an alcohol problem
- A sheriff’s decision how to advise a mayor and city council regarding budgetary priorities
- A defense attorney’s decision to take a case or not
- 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 at least 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, Governor Ryan's position meant he could do something about his belief regarding the death penalty.

A more current example is Orange County, Florida, State Attorney Aramis Ayala who refused to pursue the death penalty against a cop killer. In fact, she reportedly has 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. There are some who want her removed from her position as state attorney because of her refusal; however, others argue that the governor has no legal authority to interfere. Ayala has contested the action and the case is before the Florida Supreme Court (Evans, 2017; Rohrer, Stutzman, and Lotan, 2017). This case can be analyzed legally: it is unclear whether her position gives her the lawful authority to unilaterally reject the death penalty for all cases. It is also a legal question whether the governor has the legal authority to remove her from a case in her jurisdiction because she is an elected official and does not meet any legal definition of impeachment. 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? These cases clearly show how law and ethics are intertwined, but resolving the legal questions doesn't always resolve the ethical dilemma.

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, there will be at least one ethical issue or ethical dilemma that will be presented and analyzed. You will see that tools of ethical reasoning are necessary for a good analysis. It is for this reason that 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. If decisions were totally bounded by legal rules or policy regulations, then, perhaps, there would be less reason for ethical analysis; however, 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 amount of punishment. Public safety is

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

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 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. There is sometimes no consensus on laws, especially those that concern private behavior. For instance, several years ago, some states had laws recognizing same-sex marriages and other states had laws that prohibited them. In *Obergefell v. Hodges*, 576 U.S. ___, 2015, the Supreme Court held that all states must license and recognize same-sex marriages, eliminating any contradiction between states. 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 held to very high esteem 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 dealings with legislators. Our current political discussions often focus on inappropriate influences on legislative decision making, and conflict-of-interest laws are designed to prevent or at least minimize the ability of special interest groups to purchase legislative favor.

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 lethal force is warranted. In the United States, we enjoy constitutional protections against untrammelled police power, and police act as the guardians of the law, not merely enforcers for those in power. In Chapters 5–7, 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. 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 similar to prosecutors in some ways; however, they also have unique duties to their client. 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 deny or accept plea bargains, decisions regarding rules of evidence, and decisions about sentencing. 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 face different dilemmas, they also share the following common elements:

- *They each have discretion—that is, the power to make a decision.* 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.” What this means is 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. Although a fair amount of evidence indicates that different treatment does exist, the ideal of equal protection is an essential element of our legal system and should be an operating principle for everyone working in this system.
- *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 is heavily involved in 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

IN 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 have usually been Scandinavian. In 2016, Denmark was ranked as the least corrupt with a score of 90, followed by New Zealand, Finland, Sweden, Switzerland, and Norway.

Source: Transparency International, 2017.

Canada was ranked in the ninth place with a score of 82, and the United Kingdom came in twelfth with a score of 81. The United States appears as the eighteenth least corrupt country with a score of only 74. Not surprisingly, the most corrupt countries, according to this perception index, include Somalia, South Sudan, and North Korea.

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 our public servants represent these qualities.

Currently, there is a raging controversy over President Trump's business interests, as well as those of his advisors and family members, because of the possibility that personal business interests will be promoted over the public interest. This is new territory for public concern because there hasn't been a president in recent memory whose business interests have been so potentially subject to such conflict. The Emoluments Clause refers to a paragraph in Article I of the Constitution, which 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." The definition of emolument includes a salary, fee, or any type of profit from employment or office. Some have argued that this clause prohibits the president from profiting in any way from foreign investors or customers, which means the prohibition of any business deal with foreign investors, or any profit from foreign states who pay Trump enterprises such as golf courses or hotels. For example, potentially problematic business would be foreign governments that rent office space in Trump buildings or foreign representatives who rent rooms at Trump hotels. A small government watchdog agency, Citizens for Responsibility and Ethics in Washington, has filed a lawsuit, arguing that the Emolument Clause is being violated. Critics argue that it was designed to prohibit gifts, not business dealings, and, furthermore, the watchdog agency has no "standing," meaning they are not the appropriate party to file the lawsuit because they cannot show injury (Fahrenthold and O'Connell, 2017). It is unclear how this issue will be resolved at this point; however, it represents what has always been a concern with local, state, and national politicians. Public servants at any level may serve their personal self-interest through their public office rather than promote the public good. There are continuing efforts taken to guard against self-dealing by public officials.

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?

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, rule-breaking, and low work ethic
Peers/Coworkers	Sexual or racial harassment, cover-ups, retaliation, gossip, and taking undue credit

Ethical issues for professionals in the justice system include relationships with citizens, with their agency, and with each other. Box 1.1 illustrates the different areas of ethical concern.

Felkenes (1987: 26) explained why the study of ethics is important for criminal justice professionals:

1. Professionals are recognized as such in part because [a] “profession” normally includes a set of ethical requirements as part of its meaning Professionalism among all actors at all levels of the criminal justice system depends upon their ability to administer policy effectively in a morally and ethically responsible manner.
2. Training in ethics helps develop critical thinking and analytical skills and reasoning abilities needed to understand the pragmatic and theoretical aspects of the criminal justice system.
3. Criminal justice professionals should be able to recognize quickly the ethical consequences of various actions and the moral principles involved.
4. Ethical considerations are central to decisions involving discretion, force, and due process that require people to make enlightened moral judgments.
5. Ethics is germane to most management and policy decisions concerning such penal issues as rehabilitation, deterrence, and just deserts.
6. Ethical considerations are essential aspects of criminal justice research.

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 these 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.

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 are universal and are self-constructed or are 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 restricts attention to areas of behavior relevant to the profession, these can be fairly inclusive and enter into what we might consider the private life of the individual. For instance, psychiatrists are judged harshly if they engage in romantic relationships with their patients. These rules usually are included

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. Self-actualization, to borrow Abraham Maslow's term, might be similar to the Greek concept of *eudaimonia*, the idea that one's happiness involved the pursuit of excellence and virtue.

Plato (423–347 BCE)

Plato was a student of Socrates. In fact, it is his writings that 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 since they pursue lowly pleasures). Justice is the idea that each person is in the place they should be and performs to their best ability. Plato also discussed the concept of *eudaimonia*, mentioned above, which can be considered self-completion or self-actualization. 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 was choosing actions that were moderate and between two extremes. For instance, courage was the virtue, whereas the deficiency of courage was cowardice and the excess of courage was 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