



## The Spirit of the Law

The difference between right and wrong is not always easy to determine. People distinguish right from wrong in a variety of ways. For some, it means following rules that they have learned. For others, it means doing what their conscience says is right and avoiding what their conscience says is wrong. For still others, it means following their country's laws. Law also means different things to different people. For some, it means following time-honored legal principles. For others, it means following the rules of logic. For still others, it means developing legal principles based on the will of the majority of the people. In contrast, the sources of law are not open to debate. They are fixed by tradition and by the structure of the government.

### Ethical and Legal Issues:

1. What is the source of morality and ethics?
2. Should ethical decisions be based only on a person's feelings or opinions?
3. Do ethical and legal principles ever conflict?
4. Is the U.S. Constitution the only source of law in the United States?
5. Is a country's legislature the source of that country's ethical principles or the source of its law or both?

---

## How Ethical Decisions Are Made

People have struggled with the concepts of right and wrong since time began. Our study of history tells us how the ancient Egyptians, Greeks, and others tried to determine how members of society should behave. Systems of religion and philosophy such as Judaism, Christianity, Islam, Hinduism, and Buddhism developed to guide individual behavior. Along with these developments, governments set up their own systems of rules to guide society's behavior. These systems may come into conflict with each other when their standards of conduct differ.

Defining the words ethics and morality can be difficult. **Morality** involves the values that govern a society's attitude toward right and wrong. Thus, a person who lives by certain social values is said to be moral, one who does not is immoral, and one who doesn't care is amoral. **Ethics**, in contrast, attempts to develop the means for determining what those values should be. Ethics also tries to create rules in keeping with those values. In this text the two words, ethics and morality, will be used interchangeably to encompass both ideas.

### *Feelings and Opinions*

In the opening vignette, Liz said she knows she is doing something wrong when she gets a queasy feeling in her stomach. Nathan offered the view that ethics may be a matter of opinion. Both of these students see ethics as opinions and feelings that may change from person to person and from situation to situation.

Many people share the view that ethics are based on changing feelings and opinions. It is a very popular position in the United States because this nation was founded on a tradition of tolerance. This country encourages a free exchange of ideas, feelings, and opinions on all subjects, including ethics. In addition, the United States is a country of immigrants from a variety of cultures, many of which have different ethical values. Since we want to respect these different cultures, we often conclude that each culture is right within its own world, even when the values of that culture clash with another.

**Example 1.** A group of Laotian immigrants to the United States moved into an apartment building near a city park. Believing that the city park was a common area for them to use, they cut down some of the trees and planted gardens. City officials stopped their illegal use of city property and demanded damages. To the Laotians, the land was *common property* to be used as a resource as was the custom in their country. To the city officials, the land was city property to be enjoyed by all the citizens.

Some people see a problem with basing ethical decisions on feelings and opinions. They argue that if ethics are just a matter of opinion or feelings, then no one can ever do anything wrong.

**Example 2.** Nathan comes from a poor family, while Erin's family is wealthy. Nathan believes that Erin has more money than she needs. When she leaves her purse unattended in the school cafeteria, Nathan steals her billfold. Nathan defends the theft by saying that he feels he deserves the money more than Erin, who can always get more from her father.

Most people would say Nathan's theft is wrong despite his opinion that he is right. In fact, many people would say Nathan is wrong even if there were no law against theft. How can people figure out that theft is wrong even without a law telling them it is wrong? One answer is to look at how an action helps or hurts the people affected by it. As we shall see later in this chapter, Nathan's theft is wrong not only because it hurt Erin, but also because it sets a bad example for others to follow.

### ***The Greatest Good***

Most people are not hermits; they live and work in society. This means their actions affect others. If someone does something that hurts a lot of innocent people, many others would feel that action is wrong. These people would say they make their ethical decisions based on the greatest good for the greatest number of people affected by an action. The more good that results, the more ethical the action. The more bad that results, the less ethical the action.

Some people use the greatest good principle because they see it as a natural way to make ethical decisions. Others question the principle because it often results in decisions that seem unfair and because it can often be misapplied.

**Example 3.** Elaine knows that 10 of her 20 classmates cheated on their last law exam. The teacher mistakenly identifies an innocent student

## **R**educing Legal Risks

*The United States legal system resolves only a fraction of the problems that disrupt business and personal life. Know what local, state, or federal laws have been passed or revised. Watch for new rules or regulations that administrative agencies have added. Decide which ones might affect you.*

as the only one who cheated. Elaine decides that the greatest good for the greatest number would be for her to keep silent and not identify the 10 students. She thus sacrifices the one student for the many.

Elaine has misapplied the greatest good principle. Her refusal to identify the 10 guilty students does not really help the greatest number of students. It does not help the students in all of the school's law classes who did not cheat on the exam. Elaine has forgotten about the unethical example this will set for the whole school. She has also not considered the bad effects this will have on the school's academic standards. In addition, her decision to keep quiet is not fair to the innocent student, who must take the blame for the guilty parties. Some people resolve these problems with the greatest good principle by using the golden rule as their ethical guide.



▲ You know and meet all kinds of people every day. What influences how you treat them?

### *The Golden Rule*

As commonly expressed, the golden rule holds that you should "Do unto others as you would have them do unto you." Because of its consistency and its universal appeal, many people prefer this rule over the other two. Some people identify the golden rule with Christianity. However, many of the world's religions embrace this rule. Buddhism, for example, states the rule as "Hurt not others with that which pains thyself." The heart of the golden rule is empathy. Empathy means putting yourself in the other person's position. One way of testing the morality of an action under the golden rule is to ask yourself, "Would I want to be treated like this?" If the answer is "no," then the action probably violates the golden rule. The principle of good sportsmanship you learn in athletics is an outgrowth of the golden rule.

*Example 4.* Steve is the star pitcher on Franklin High School's varsity baseball team. However, he is having a bad outing against the Vikings of St. Joseph High. Frustrated, Steve throws two pitches at St. Joseph's best batter. When the umpire ejects Steve from the game, Franklin's coach does not argue. Instead, he tells Steve, "You were wrong to throw those pitches at that kid. If it's right for you to throw at their batters, then it would be right for their pitchers to throw at our batters." Steve agrees that he would not want to be a pitcher's target either.

Although the golden rule appears easy to follow, it can be difficult to fully understand. The rule also can be abused by people who place their own self-interest above the interests of other people.

*Example 5.* When law tests are handed out in Mrs. Martin's class, Max accidentally receives two copies of the exam. He fills out one and returns it, but keeps the other. After class, he gives the copy to his friend, Lew, who will have a chance to look at it before his afternoon law test. Max justifies his conduct by saying he would want Lew to give him the test if Lew had been the one to receive the extra copy.

Max has violated the spirit of the golden rule. To more completely understand the golden rule, we can look into the logic behind it. The golden rule has been adopted by many of the world's religions for two reasons. First, it respects the dignity and worth of individuals. People feel their own self-worth and want to be treated with respect. The golden rule teaches that those who wish to be treated with respect must first be respectful of others.

*Example 6.* Bill resents the fact that his parents keep very close watch on all his activities. He feels that they think he is a child, although he believes he is an adult. One day, after his parents have grounded him for coming home late, Bill declares rather angrily, "You treat me like a child. You're always making decisions for me. I'm grown up enough to be responsible for myself."

Whether or not Bill is correct about his ability to be responsible, he is, nevertheless, expressing what some people consider the first basis for the golden rule. People want to be treated with respect. The second reason the golden rule has been widely adopted is that, if followed properly, it can be applied in all situations. A rule that cannot be consistently applied may be misapplied by those who wish to justify immoral behavior.

*Example 7.* Haley and her boyfriend, Tom, have just had a serious argument. To make Tom jealous, she promises Eddie that she will go to the junior prom with him, even though she has no intention of doing so. When Tom finds out about Haley's promise to Eddie, Tom and Haley make up. Haley then breaks her date with Eddie.

Haley has adopted a rule in her life that says, "I will make false promises to people if those false promises will get me what I want." For her, this rule justifies her dishonest behavior. Haley may be satisfied with her rule, but some people might not wish to follow it. They might wonder if anyone trusts another's promises. In such a situation, no one could make a promise, and no one would accept a promise, even if it were made. A world without promises would be a world without commerce, credit, or social engagements. Haley's rule violates the spirit of the golden rule. Consider the opposite case.

*Example 8.* Inez has a crush on Carlos, who is Maria's steady boyfriend. Although Inez would rather go to the homecoming dance with Carlos, she promises to go with Julio. When Maria and Carlos break up, he asks Inez to go to the homecoming dance. Despite her desire to go with Carlos, she tells him "no" because she has already promised to go with Julio.

Inez has adopted a principle that is in keeping with the golden rule. For Inez, this principle, "Once you've made a promise, keep it," can be applied consistently. If everyone in a society would follow this rule, then that society would be based on trust. In such a society, people would feel free to make promises and the people to whom those promises were made would readily accept them. For people like Inez, a world based on promises is a world in which commerce, credit, and social engagements flourish. Inez has adopted a rule that she can apply in all situations; she finds it to be a consistent, moral guide.



▲Some people believe there should be laws against the broadcast and/or sale of songs with lyrics that they consider immoral. What factors might you consider in judging a song's lyrics?

## The Relationship Between Ethics and Law

Thus far we have considered three ways to make ethical decisions: (1) by relying on opinions and feelings, (2) by gauging the greatest good for the greatest number of people, and (3) by following the golden rule. If all these techniques always reached the same ethical result and if everyone always acted by those results, there would be no need for law. In the real world, however, even when most everyone agrees that a particular type of conduct is immoral or wrong, that doesn't stop some people from engaging in that conduct. For instance, most everyone agrees cheating is immoral. Yet, you may have witnessed a classmate cheating sometime this week. Similarly, most people agree that drug use is wrong, but that has not eliminated the drug problem from our society.

### *Why Law Is Necessary*

Ethics tells us what we ought to do. The law is needed because people do not always do what they ought to do. Law consists of rules of conduct established by the government of a society to maintain stability and justice in that society. It does this by defining the legal rights and duties of the people. It also provides a means of enforcing these rights and duties through law enforcement agencies, courts, legislatures, and regulatory agencies.

The law cannot always make people do what is right. However, it does have the power to punish them for doing things that are wrong.

*Example 9.* Amalfi sees a blind man standing on the corner of a busy intersection. Even though it is clear that the man needs help crossing the street, Amalfi ignores him and continues on his way. Jake, who belongs to a street gang, happens by. To impress the other gang members, he pushes the blind man into the street.

The law cannot make Amalfi help the blind man across the street, although ethically he ought to stop and offer assistance. In sharp contrast, the law can and will punish Jake for his actions. The law must draw the line between permissible and impermissible conduct so that, at the very least, people do not hurt one another.

### Ethical and Legal Conflicts

Since the law is made by people, it is imperfect. Legislators and judges bring their own personal opinions and their own views on ethics and morality to the lawmaking process. This means that, at times, ethics and the law will conflict.

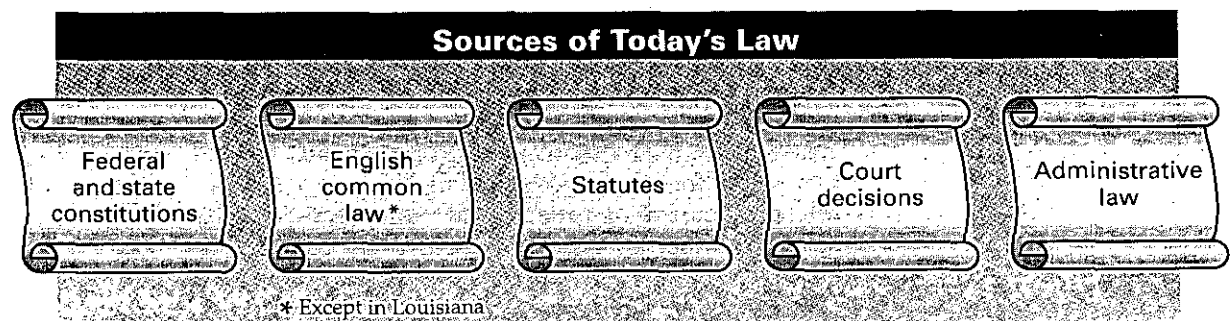
*Example 10.* Clark is the editor of the Franklin High Herald. Rita tells Clark that another student is selling drugs on campus. She asks Clark not to reveal her identity in his news article or to the police. Clark agrees. When the article appears and the student is arrested, Clark has to testify at the trial. Clark refuses to identify Rita even though the judge orders him to do so. Clark is held in contempt of court and is fined.

Clark has obeyed the ethics of journalism by refusing to identify the source of his story. However, he has refused to obey the legal order of a judge.

Such conflicts between ethics and law are not uncommon. In fact, most of us face them at one time or another in our lives. In a perfect world, ethics and the law would always be the same. Unfortunately, our world is not perfect and is not likely to become perfect in our lifetimes. Therefore, having law is better than letting individuals set up their own rules or handle their own disputes in a haphazard or even violent manner.

## Laws Come From Different Sources

In general, law in the United States today comes from five main sources. Figure 1-1 below summarizes these sources.



*Figure 1-1* American law develops from five main sources. Which of these sources is the most familiar to you?

### LAW & Ethics

While shopping for a new CD, you find a boxed set of three CDs with a price sticker of \$35. The cashier rings up the sale for \$15 (the price of a single CD). What is the difference between what the law requires and what ethics suggest?

## Federal and State Constitutions

We have already defined law as rules of conduct established by the government of a society to maintain stability and justice in that society. In the opening vignette, Ben offered the opinion that right and wrong come from the U.S. Constitution. In answer to Ethical and Legal Issue 5, from one point of view he was partially correct. Laws come from the government and a country's **constitution** spells out the principles by which that country's government operates. That is why we say that a constitution is the most fundamental law of a country. In our country, the most fundamental law is the U.S. Constitution.

### U.S. Constitution

The Constitution of the United States is the broad, basic foundation for the laws of the country. It sets forth the fundamental rights of citizens. It also defines the limits within which the federal and the state governments may pass laws. In addition, it describes the functions of the various branches and divisions of our national government. See Figure 1-2 on page 13 for an overview of the federal Constitution.

Articles I, II, and III of the Constitution set forth the structure and the powers of the three branches of the federal government. Article IV requires each state to give "full faith and credit" to the laws of all other states. That is, it requires each state to accept the laws of another state. Article V tells how the Constitution may be amended or changed.

Article VI contains the supremacy clause. It states that the U.S. Constitution and the laws of the United States and treaties shall be the supreme law of the land. Article VII, the last article, provided for ratification of the Constitution. This took place in 1787.

The first 10 amendments, ratified in 1791, are called the Bill of Rights. They limit the powers of the government. Their basic purpose is to protect two kinds of rights—rights of individual liberty and rights of persons accused of crimes.

Today there's a total of 26 amendments. Let's take a look at two of them. The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws." This is known as the equal protection clause. A major principle of justice, then, requires equal treatment of all people under the law. The Fourteenth Amendment requires state governments to give to their citizens the same rights that the federal government must give to U.S. citizens under the Fifth Amendment.

**Example 11.** Joe Hogan was denied admission to the Mississippi University for Womens' School of Nursing solely because of his sex. The university is supported by funds provided by the state government. In 1982, the U.S. Supreme Court held that the single-sex admissions policy of the state school violated the equal protection clause of the Fourteenth Amendment. The court said that the policy continued the stereotype of nursing as a woman's job. Hogan was admitted to the school of nursing.

### FYI

The last time that an amendment was almost added to the Constitution was in 1982. The Equal Rights Amendment was proposed as the 27th Amendment to the Constitution. First introduced in 1923, the amendment passed Congress in 1972. To become law it had to be approved by the legislatures of three-fourths of the states. It never took effect because, by the 1982 deadline, only 35 of the necessary 38 states had approved the amendment.

## United States Constitution

|  |   |
|--|---|
| <p><b>ARTICLE II: The Legislative Branch</b></p> <p>Section 1: Congress</p> <p>Section 2: House of Representatives</p> <p>Section 3: Senate</p> <p>Section 4: Elections and Meetings</p> <p>Section 5: Organization and Rules</p> <p>Section 6: Privileges and Restrictions</p> <p>Section 7: Passing Laws</p> <p>Section 8: Powers of Congress</p> <p>Section 9: Powers Denied to the Federal Government</p> <p>Section 10: Powers Denied to the States</p> | <p><b>Amendments to the Constitution</b></p> <p>1st Amendment (1791): Religious and Political Freedom</p> <p>2nd Amendment (1791): Right to Bear Arms</p> <p>3rd Amendment (1791): Quartering Troops</p> <p>4th Amendment (1791): Searches and Seizures</p> <p>5th Amendment (1791): Rights of Accused Persons</p> <p>6th Amendment (1791): Right to Speedy, Fair Trial</p> <p>7th Amendment (1791): Right to Jury Trial</p> <p>8th Amendment (1791): Bail and Punishment</p> <p>9th Amendment (1791): Rights Not Enumerated</p> <p>10th Amendment (1791): Powers Reserved to the States</p> <p>11th Amendment (1798): Suits against States</p> <p>12th Amendment (1804): Election of President and Vice-President</p> <p>13th Amendment (1865): Abolition of Slavery</p> <p>14th Amendment (1868): Limitations on State Action</p> <p>15th Amendment (1870): Right to Vote</p> <p>16th Amendment (1913): Income Tax</p> <p>17th Amendment (1913): Direct Election of Senators</p> <p>18th Amendment (1919): Prohibition</p> <p>19th Amendment (1920): Women's Suffrage</p> <p>20th Amendment (1933): "Lame Duck" Amendment</p> <p>21st Amendment (1933): Repeal of Prohibition</p> <p>22nd Amendment (1951): Limit on Presidential Terms</p> <p>23rd Amendment (1961): Voting in the District of Columbia</p> <p>24th Amendment (1964): Abolition of Poll Tax</p> <p>25th Amendment (1967): Presidential Disability and Succession</p> <p>26th Amendment (1971): Eighteen-Year-Old Vote</p> <p>27th Amendment (1992): Instant Congressional Pay Raises Abolished</p> |
| <p><b>ARTICLE III: The Executive Branch</b></p> <p>Section 1: President and Vice-President</p> <p>Section 2: Powers of the President</p> <p>Section 3: Duties of the President</p> <p>Section 4: Impeachment</p>   |   |
| <p><b>ARTICLE III: The Judicial Branch</b></p> <p>Section 1: Federal Courts</p> <p>Section 2: Jurisdiction of the Federal Courts</p> <p>Section 3: Treason</p>   |   |
| <p><b>ARTICLE IV: Relations among States</b></p> <p>Section 1: Official Acts</p> <p>Section 2: Mutual Duties of States</p> <p>Section 3: New States and Territories</p> <p>Section 4: Federal Protection for States</p>  |   |
| <p><b>ARTICLE V: The Amending Process</b></p>  |   |
| <p><b>ARTICLE VI: National Supremacy</b></p>   |   |
| <p><b>ARTICLE VII: Ratification of the Constitution</b></p>  |   |

**Figure 1-2** The government of the United States is based on six articles and 26 amendments of the Constitution. What name is given to the first 10 amendments?

The Twenty-Sixth Amendment was enacted in 1971. It gives 18-year-olds the right to vote. Section 1 of the amendment reads: "The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age." Note that the amendment does not prohibit any state from allowing citizens less than 18 years of age to vote if it so chooses.



## State Constitutions

Each state has its own constitution. Although similar, these constitutions are not identical to the federal Constitution. Sometimes, they are more protective, narrower, and more restrictive than the federal Constitution.

**Example 12.** The Massachusetts legislature wanted to have a graduated income tax like the federal income tax. A graduated tax requires people with larger incomes to pay a higher tax rate than people with smaller incomes. The legislature could not assess such a tax, however, because the Massachusetts Constitution requires all people to be taxed at an equal percentage rate.

## Common Law

The legal system of the United States, except for Louisiana, is rooted in the English common law. The early American colonists came from England. It was only natural for them to adopt the law of England as the law of their new land.

In the early days of English history, the kings tried to centralize the English government and establish a court system. Judges, called justices or magistrates, traveled in circuits around the countryside, deciding cases. Since there was no written law, they often made decisions based on the customs and traditions of the people. Judges shared their decisions with other judges. Every effort was made to share the same law "in common" with everyone else throughout the country—thus the term **common law** arose. Eventually, court decisions were written down. A body of cases developed allowing judges to refer to past cases in making their decisions. This led to the doctrine of **precedent**. Under this doctrine, a judge is required to follow an earlier court decision when deciding a case with similar circumstances. It is also sometimes called the doctrine of *stare decisis*, which means "let the decision stand."

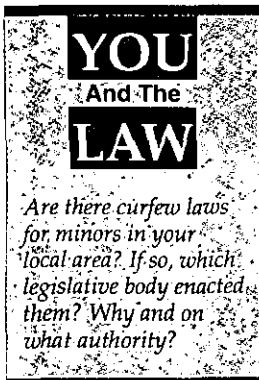
Over time, in the United States, the English common law has become eroded by the passing of state statutes and court decisions. Nevertheless, parts of the common law exactly as it was practiced in England still exist in the laws of many states today.

## Statutory Law

**Statutes** are laws specifically passed by a governing body created for that purpose. Thus, laws passed by the U.S. Congress, state legislatures, local city councils, or town meetings can all be called *statutory law*. Statutory law is found in state and federal statutes, city *ordinances* and town *bylaws*. The differences in terms tell us at which level of government a law was passed.

### State Statutes

Each state has its own **legislature**, or body of lawmakers, which has the job of creating or passing statutory law. Most state legislatures are set up just like Congress. Ohio, for instance, divides its state legislature, called the General Assembly, into a senate and a house of representatives. While the names of the state legislatures may differ, their basic function is the same. That function is to make statutory law.



### China

Although the Chinese Communist Party set up China's government in 1949, a constitution for China was not adopted until 1978. China's leaders wanted to modernize China by setting up a rule of law. In 1982, the constitution was revised. The revised constitution calls for the people to modernize agriculture, industry, the military, and science and technology.

Ever since the 1949 Communist Revolution, the rules and regulations that governed Chinese society were based on the policies of the Communist Party. The constitution was a step in modernizing the country by replacing this "rule of men" with the "rule of law." The constitution of 1982 continued China's campaign to replace the policies of party committees with a system of laws to govern its citizens.

The 1982 constitution grants Chinese citizens many civil rights and freedoms. But, in general, few laws exist to guarantee these rights. In addition, any rights that are not recognized by the constitution can be restricted as the government chooses. For instance, the government can, if it chooses, restrict where Chinese citizens may live and work.

No procedure allows Chinese citizens to challenge the constitutionality of a law. A special committee interprets the constitution and laws but has yet to challenge them. In fact, all laws passed by the National Peoples' Congress are considered constitutional. All administrative laws and regulations are also considered to be in line with the constitution.

1. Why did China adopt a constitution?
2. What are some elements of the 1982 constitution?

A statute may order people to do something. For example, a statute may require the citizens of a state to pay taxes, wear seat belts, or stay in school until they reach their eighteenth birthday. Some statutes forbid people from performing certain acts. A statute that prevents individuals from purchasing or consuming alcoholic beverages until they are 21 years old is such a statute.

As noted previously, the U.S. Constitution is the supreme law of the land. This means that a statute passed by a state legislature must not conflict with the U.S. Constitution. A state statute that conflicts with the U.S. Constitution may be declared unconstitutional.

### Federal Statutes

Federal statutes are laws passed by the U.S. Congress and signed by the president. They are based on the powers given to the federal government by Article I of the U.S. Constitution. They include such things as the power to spend, tax, regulate commerce, declare war, borrow money, and set up federal courts. Statutes passed by Congress generally regulate matters that concern the nation as a whole. Like state statutes, federal statutes must also be in line with the U.S. Constitution.

### Court Decisions

Most people are surprised to learn that courts make law. Court-made law is also often called case law, court decisions, and judge-made law. Courts make law through the common law tradition, by interpreting statutes, and by judicial review.

