
The Dilemma of Ethics?

A. What are “Ethics”

In his *Jacobellis v. Ohio*, 378 U.S. 184 (1964) opinion, U.S. Supreme Court Justice Potter Stewart wrote:

“I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description [“hard-core pornography”]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.”

Ever since, Justice Stewart’s opinion has been famously paraphrased as “I can’t define pornography, but I know it when I see it.”

Ethics is similar, not to pornography itself but to its definition and recognition. We may each struggle with quantifying it in words, but we’re pretty sure we know when someone engages in unethical behavior. At least we think so...

Merriam-Websters online dictionary defines Ethics as:

1. *plural but sing or plural in constr* : the discipline dealing with what is good and bad and with moral duty and obligation
- 2 a : a set of moral principles : a theory or system of moral values <the present-day materialistic *ethic*> <an old-fashioned work *ethic*> - often used in plural but singular or plural in construction <an elaborate ethics> <Christian ethics>
- b *plural but sing or plural in constr* : the principles of conduct governing an individual or a group <professional ethics>
- c : a guiding philosophy
- d : a consciousness of moral importance <forge a conservation ethic>
- 3 *plural* : a set of moral issues or aspects (as rightness) <debated the ethics of human cloning>

Well, *that* certainly clears it up, right?

What is *good*, *bad*? What are *moral principles*? To what does a *guiding philosophy* guide?

B. Values, Morals, Laws, and Ethics

Values are personal beliefs in which we have an emotional investment. Values include such things as hard work, punctuality, self-reliance, stick-to-it-iveness, and so on. We feel good when we achieve our values - “A job well done it its own reward.” We do it to satisfy ourselves, not someone else.

Morals are rules which guide our decisions about right or wrong, good or bad, thoroughness or efficiency, should I or shouldn’t I, etc. Morals are how we go about, and the degree to which we enjoy, achieving our values. For instance, we feel good by finishing our first marathon, but if we take a short cut instead of running the entire race, do we have full satisfaction?

Morals can change based on the intensity of a value. For example, a Timex and Rolex do basically the same thing but the potential watch owner may be more willing to “bend the rules” a bit to acquire the latter. We can refer to a “tipping point,” the point at which we’re willing modify our moral framework in relation to value intensity. A public agent responsible for granting contracts accepting a pen with a company logo from a vendor is innocuous, but what if a the vendor instead offers a new pickup truck? Where between the pen and truck is it

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considered wrong to accept a gift? Congress, interestingly enough, has decided that \$50 is one tipping point¹: an unsolicited gift valued less than that is acceptable.

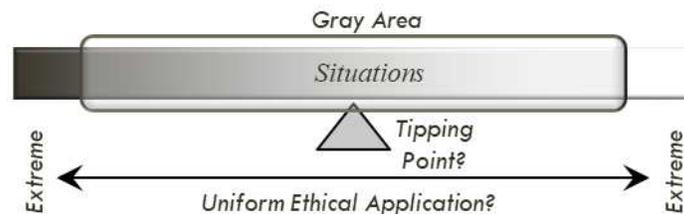
Laws are binding rules of conduct formally adopted and enforced by a group. The group may be Society in which case the rules are statutes, ordinances, or the like, or it may be a company which has its own policies (which must not be contrary to Society's laws). Laws generally reflect the values and morals of the group. For example, Society has decided it is illegal to intentionally harm another. If an individual violates the law, he/she must answer to Society and its police power.

We can consider *Ethics* to be a systematized framework of moral principles for making decisions where values conflict. Those values may be internal, external, or a combination, but under the conditions at hand some are in conflict. If an individual violates ethics, he/she must answer to him/herself.



In general, we can all pretty much agree that Ethics is a standard of right or wrong that proscribes how we should behave in regard to others. This behavior considers and weighs rights, obligations, benefits, responsibilities, values, etc, resulting from the interaction. The first social group external to our family in which most of us participate is school. There, in addition to the three R's we learn that we should (1) not hurt anyone, (2) tell the truth, and (3) obey or respect our parents and teachers. This, then, is our first formal ethical code as individuals interacting with others.

A "perfect" ethical code would be one which is impartial and universal: uniform application regardless of situation. Can we go through life ensuring that our actions never (1) hurt anyone, (2) result in a lie to another, and (3) disrespect others? Ethical code perfection is not achievable since it must be applied in less than ideal situations. We often encounter "gray areas" which exist between the extremes. At the extremes (where the situation is black or white) appropriate ethical behavior is much easier to determine. In between in those gray areas, though, it's harder to figure out sometimes what's "the right thing to do" especially since it can depend on your perspective (e.g, are you the one lying or the one lied to?, do we tell a "white lie" to preserve harmony?, etc).



Somewhere along that spectrum is the tipping point, or maybe more appropriately, a tipping area.

C. Laws and Ethics

Can we use Laws to define Ethics? Laws are pretty structured and they're written down so everyone has access to them. "Ignorance of the law is no excuse" refers to the fact that because these laws are readily accessible, we have a responsibility to be aware of them. However, if ethics is how we should behave in regard to others, we may find that ethics and laws aren't always harmonious.

¹See <https://www.citizen.org/documents/Gift-Rules-for-Congress.pdf> for Congress' gift rules. It's an interesting read.

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For example, while camping my wife has a heart attack. I put her into the car and drive as fast as I can to get her to the emergency room at the nearest hospital, 15 miles away. In the process, I break the speed limit by considerable amounts. A police cruiser picks me up on its radar and begins pursuit. Its lights flashing signaling me to stop, I ignore it and keep speeding for the hospital.

What I did was ethical (in my mind) but in the course of that action I broke the law. Society may consider waiving (or minimizing) its penalty based on why I broke their law: to save my wife's life. Given the facts at the time, I chose my wife's life over any speeding ticket I would get - the choice was simple.

Any act is either legal or illegal, based on Society's or a company's rules. Legal and illegal actions aren't necessarily equally divided based on the rules they operate within: what may be legal under Society's rules may not under a company's rules (which is why you don't see many people wearing pajama pants at an engineering firm).



Similarly, an act can be either ethical or unethical. This distinction, as we've seen, can be highly personalized and limited to a single perspective.

Combined, that means for each action there are four possible consequences. An action may be:

- Unethical but legal
- Ethical and legal
- Ethical but illegal
- Unethical and illegal



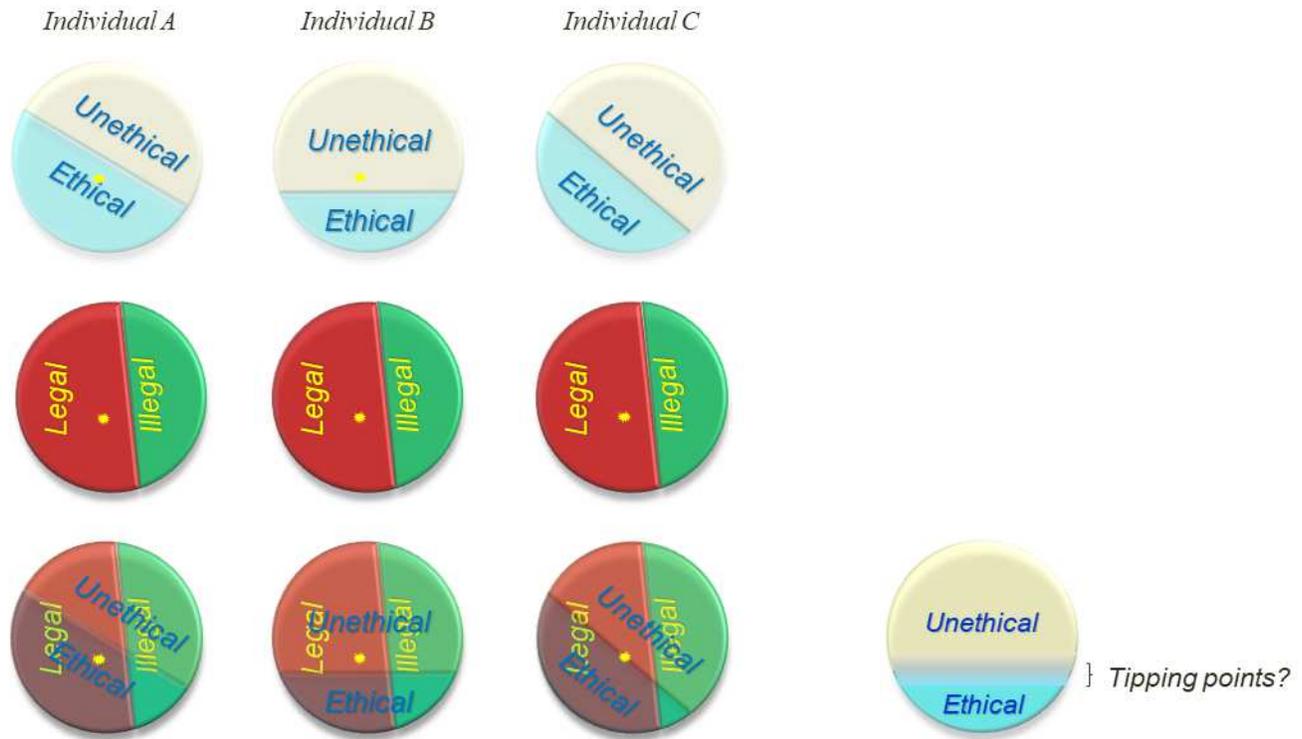
Just because there are four consequences doesn't mean there's an equal chance of any act meeting only one of them. Legal/illegal *should* be easy to determine since the rules defining them are codified. Ethical/unethical is more difficult as is its relationship to legal/illegal. Because ethics are personalized they differ among individuals. If ethical/unethical schemes change so do the magnitudes of the four consequences.

Considering that the distinction between ethical and unethical may be fuzzy, some acts can fall on the edge of more than a single consequence.

Laws and Ethics have a symbiotic relationship similar to that of accuracy and precision: they're related and concern the same actions, but mean different things in terms of those actions. As laws are modified and individuals mature, the proportions and relationships of legal/illegal and ethical/unethical change.

An important distinction is that laws involve *compliance* while ethics involve *choice*. This can lead to a dilemma. Of course, if we mandate (or strongly *guide*) ethics, then choice is removed and the dilemma can be avoided.

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D. Professional Ethics?

But what about *professional* ethics?

1. Profession

A *profession* consist of individuals who share areas of specialized skill and knowledge based on advanced education and experience. A profession has sets of values which help maintain its integrity and provide a favorable impression of itself to others.

Although individuals, we operate within a profession with defined and shared responsibilities. Does that mean that professional ethics are more socially driven than personally? That is, they are consistent within the profession for all as opposed to individually defined. If that's the case, does it make ethics easier to define (and enforce) because they then take on the nature of laws?

The only authority over a profession is generally a licensing entity which is usually government derived (with some notable exceptions). Because of this, rules are generally in the form of laws and code so maybe conduct can be mandated...

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2. Professional Organizations

Professional organizations are collections of like-minded yet diverse individuals and over often large geographic areas. The organizations are formed to help the respective profession evolve and provide members opportunity to grow.

As part of its structure, an organization may identify and codify ethics that concern its membership. This allows for a uniform standards throughout the extent of the organization. These Codes of Ethics tend to identify values areas and are written in general guideline form providing an ethical decision making framework.

Some Codes are overly detailed which begins to take on the nature of laws and leave little, if any, room for the individual to make decisions. A Code of Ethics should not be so general as to be useless nor so detailed as to dictate the action in every situation. Detailed rules cannot predict every type of situation which will ever be encountered. Nor does everything remain constant over time: technology has created and enabled a global perspective affected by our actions and decision. Above all, it is a professional's responsibility is to exercise his or her judgment in difficult or confusing situations.

An organization's Code of Ethics affects only its members. An intentional violation of an organization's code by one of its members is policed by that organization. Although not empowered to imprison its members, an organization does have the authority to revoke membership. An organization which provides certifications can nullify the certification of a member who violates that organization's code of ethics¹. Many have something along the lines of an Ethics and Standards of Practice Committee where issues can be brought forth and worked out. The function of such committees is not limited to policing compliance but also to provide education and a discussion forum.

3. Land Surveying

Land surveying is highly dependent on law, both written (statutes, codes, ordinances, etc) and unwritten (common). As has been the case for centuries, boundary surveying decisions and actions are made based on a legal framework. The primary evolutionary changes in the surveying profession have been technological allowing faster and more accurate measurements. But the fundamental decision framework remains legal. Corners established by compass and chain belong in their original location regardless of the technology used to re-establish them today.

a. Statutory regulation

Many states have statutes and/or code which address boundary creation (eg, subdivisions). These may spell out minimum parcel dimensions, specific monumentation, survey accuracy, mapping criteria, etc. Boundary re-establishment is based on common law requiring evidence collection and evaluation which is not easily codified into statutes.

States have a licensing agency given authority to establish rules for granting a license and defining conditions under which a license may be suspended or revoked. These may include rules for:

- Minimum survey standards for surveys not otherwise covered by law.
- Professional conduct

¹ Example: The National Society of Professional Surveyors (NSPS) and its Certified Survey Technician (CST) certification program. NSPS issues CST certifications based on qualifications and may revoke an individual's certification based on unethical or illegal behavior

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These must be sufficiently general to allow professional judgment in resurvey situations but not so general that a violation cannot be identified.

Wisconsin Example

Wisconsin Administrative Code A-E 7 *Wisconsin's Minimum Standards for Property Surveys* provides guidance for resurveys and serves as a safety net for surveys not otherwise covered by law. For example, in Wis Admin Code A-E 7.03 *Boundary location*:

Every property survey shall be made in accordance with the records of the register of deeds as nearly as practicable. The professional land surveyor shall acquire data necessary to retrace record title boundaries such as U.S. Public Land Survey Monument Records, deeds, surveys, maps, certificates of title, highway, and center line or right-of-way lines, and other boundary line locations. The professional land surveyor shall make field measurements necessary for the location of the parcel and shall analyze the data and make a careful determination of the position of the boundaries of the parcel being surveyed. The professional land surveyor shall set monuments marking the corners of the parcel unless monuments already exist at the corners.

Note how much latitude is provided the surveyor to exercise professional judgment.

Professional conduct (ie, ethics) is addressed in Wis Admin Code A-E 8 whose structure is:

- A-E 8.01 Authority.
- A-E 8.02 Intent.
- A-E 8.03 Definitions.
- A-E 8.04 Offers to perform services shall be truthful.
- A-E 8.05 Conflicts of interest.
- A-E 8.06 Professional obligations
- A-E 8.07 Unauthorized practice.
- A-E 8.08 Maintenance of professional standards.
- A-E 8.09 Adherence to statutes and rules.
- A-E 8.10 Plan stamping.
- A-E 8.11 Suspension of registration; effect.

Let's take a exploratory statutory journey. Wis Admin Code A-E 8.02 *Intent* includes:

A violation of any standard specified in this chapter may result in disciplinary action under ss. 443.11 to 443.13, Stats.

The last paragraph of Wis Stat Sec 443.12 *Disciplinary proceedings against professional land surveyors* includes:

This subsection does not apply to a license that is revoked under s. 440.12.

In Wis Stat Sec. 440.12:

Credential denial, nonrenewal and revocation based on tax or unemployment insurance contribution delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if any of the following applies:

- (1) The department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes.
- (2) The department of workforce development certifies under s. 108.227 that the applicant or credential holder is liable for delinquent unemployment insurance contributions.

License issuance or renewal may be denied due to delinquent support payments?

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While delinquent tax, insurance, and support payments may have little to do with land surveying, they do fall within the sphere of expected ethical behavior. If a professional fails to meet financial obligations, how does that reflect on their professional ethics? On the other hand, while well intended, ss 443.12 and 443.13 potentially open a can of worms for credential holders. Where is the line drawn - should we include speeding, discrimination, or watching internet pornography as justification to bar or revoke professional licensure? Should poor personal choices (legal or not) legally affect licensure?

Consider also: Wis Admin Codes A-E 7 and A-E 8 affect only *licensed* land surveyors. The licensing agency has no authority over non-licensed personnel. Since land surveying as defined by statutes can only be performed by a licensed land surveyor or under the direction of one, this shouldn't be an issue, should it? Well, there is a statutory license exemption for state or federal personnel performing surveys on behalf of their agency. Although they may perform land surveys, they are not subject to Wis Admin Code A-E 7 and A-E 8.

Trying to codify ethics and professional conduct can get complicated and messy pretty quick, huh?

b. Professional Organization

(1) National level

The organization at the national level is the National Society of Professional Surveyors (NSPS). It has a *Surveyor's Creed and Canons*:

As a Professional Surveyor, I dedicate my professional knowledge and skills to the advancement and betterment of human welfare.

I pledge:

To give the utmost of performance;

To participated in none but honest enterprise;

To live and work according to the laws of humankind and the highest standards of professional conduct;

To place service before profit, honor and standing of the profession before personal advantage, and the public welfare above all other considerations;

In humility and with need for Divine Guidance, I make this pledge

- Canon 1. A Professional Surveyor should refrain from conduct that is detrimental to the public.
- Canon 2. A Professional Surveyor should abide by the rules and regulations pertaining to the practice of surveying within the licensing jurisdiction.
- Canon 3. A Professional Surveyor should accept assignments only in one's area of professional competence and expertise.
- Canon 4. A Professional Surveyor should develop and communicate a professional analysis and opinion without bias or personal interest.
- Canon 5. A Professional Surveyor should maintain the confidential nature of the surveyor-client relationship.
- Canon 6. A Professional Surveyor should use care to avoid advertising or solicitation that is misleading otherwise contrary to the public interest.
- Canon 7. A Professional Surveyor should maintain professional integrity when dealing with members of other professions.

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Sounds a lot like what we learned in kindergarten: Play by the rules (statue and code) and never (1) hurt anyone, (2) lie to another, or (3) disrespect others and you're set. How hard can that be?

(2) State Level

Societies at the state level may or may not have their own code of ethics. The Wisconsin Society of Land Surveyors (WSLS) had a code until it entered into a membership agreement with NSPS. At that point, WSLS adopted the *Surveyor's Creed and Canons*.

Six state society websites were visited to see if they had a ethics code for their members. There was no indication at any whether they had one or adopted the *Surveyor's Creed and Canons*. Each was contacted - only one responded and said its code was in the members-only area of the site. That could be the case with the other five state societies. If that's the case, why hide it from the public?

Does your state society have an ethics code? If so, is it accessible for anyone to see?

E. Case Studies

Many formal ethical models and theories exist, some dating back to ancient Greece. A few which make for good philosophical debate include:

- Aristotelian – Virtue Ethics
- Utilitarianism - Consequences
- Kantianism – Principles-based
- Rawlsian - Fairness
- Communitarianism – Community Values

Rather than dissect a model (such a dry, dry discussion), it's often more instructive to examine a situation specifically involving a surveying aspect. This section describes four different case studies.

When I do this as a face-to-face presentation, the audience is divided into small groups and each assigned a case study to discuss then present. Since the *Mentoring Mondays (MM)* format doesn't lend itself to this approach, we'll instead discuss one or two after my brief presentation. I won't say which, so you should examine each one.

Consider:

- Is there an ethical dilemma? Does it depend on a particular party's perspective?
- Does the *Surveyor's Creed and Canons* and/or your state society's ethical code provide sufficient guidance?
- If in your opinion there is...
 1. ...no ethical dilemma, is there a tipping point which would make it one? What additional events could transition the scenario to an unethical situation?
 2. ...an ethical dilemma, can something be changed and still allow the objective to be achieved? What else may cause it to tip to the ethical side?
- Is there a legal element which affects your decision on the ethics of the situation? Would removing any legal impediment change your opinion?
- If ethics are involved, is it a case of personal or professional ethics? By/for whom?

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- What other parties, besides those directly identified, might be affected and how? Are they identifiable before taking action? Does a responsibility to them change the situational ethics?
- Are there other factors which could change your ethical stance, eg, geographic, financial (“if I do, I won’t get paid”), presence of witnesses, etc?
- What happens if ethical perspectives clash?

Case Study 1

A land owner calls UW-Platteville and asks to speak with the surveying instructor. He eventually gets forwarded to me and asks if I would like a project for a surveying class which involves locating his property boundaries. I inform the person that a property survey in Wis may only be performed by, or under the direction of, a licensed land surveyor. None of my students are licensed. He asks if I’m licensed; I reply that I am. He says as a teacher I could supervise the students who would have the opportunity to work on an actual problem. Being licensed, I could then stamp and sign their results.

Students would get real experience, I would oversee all aspects of the work, and the client would get a property survey (cheaply, eg, zip, as he figures it’s a class project).

Case Study 2

Surveyor Brown is hired by Anderson to survey his property in preparation for its sale. In the process of retracing the boundaries, Brown finds an encroachment along one side of Anderson’s property and evidence of an unrecorded easement along another. Although Brown completed the fieldwork and drafted his plat of survey, he did not file his map since he did not consider the survey complete until he got paid for it. In the meantime, Anderson found a buyer, Clarke, for his property. Clarke’s attorney, who is familiar with property law, did a title search on the property and checked at the County Surveyor’s Office for resurveys which might affect the property. He found nothing in the records to indicate any boundary problems. Acting on that information, Clarke offered to purchase the property from Anderson. In order to avoid any obstacles to the sale, Anderson pays Brown and tells him to wait 45 days before filing his map. Brown agrees.

Case Study 3

Smith hired Surveyor Jones to resurvey his property. Jones retraced the lines as per Smith’s deed description, compared them to the adjoining’s, and found no conflicts. Although Smith’s description includes a reference to a recorded document concerning an easement for Badgerland Power, Jones did not perform a title search for easements. Instead, he included in his certificate the statement “...and subject to all easements of record.”

Two months after the survey, Smith built a detached garage for his recreational equipment. He used Surveyor Jones’ map to locate the garage based on local side yard requirements.

Today, a little more than a year later, Badgerland Power notifies Smith that it will erect a power line across his property within the easement it holds. Because the garage is in the easement area and is an obstruction, Badgerland tells Smith he must remove it or Badgerland will do so and bill Smith for the cost. Smith consults an attorney who, after examining title records, tells him that Badgerland does have a legal easement and can have the building removed since it interferes with the easement.

Upset because he paid for a survey which did not show the easement, Smith threatens to sue Jones for the cost of the garage and its removal. Jones replies that he is without fault as he indicated on the map that the property is subject to any existing easements.

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Case Study 4

You're in the process of re-establishing a corner common to three parcels. It appears its location is a fence corner, point A on the diagram. When interviewed individually the three landowners all said they have been using the fence corner as their common property corner.

Each has owned their respective property for at least 30 years and all are unaware of any other monument. In general the various occupation lines are well established and fit the fence corner reasonably well. Your records research does not yield any information indicating a different corner location. Considering the available evidence, you decide to use the fence corner as the common corner.

Just as you're completing witness ties for the fence corner, an older gentleman out for a walk sees you and stops by to chat. Unsolicited, he mentions that as a child back in the 1960's he saw a surveyor place a wooden post and pile some stones somewhere near the fence corner location. The only stone pile is located approximately 15 feet to the northeast. Having grown up on a farm and picked your share of rocks, you'd assumed the pile was from clearing the cultivated field. It's a pretty substantial pile, having been added to over the decades.

Because all three owners used the fence corner as their shared corner, you decide to accept its location by the doctrine of common report: It's in a reasonable location, the owners accepted it, and the real corner location was unknown to them. Additionally, by accepting the corner you will not be "disrupting the harmony of the neighborhood" - the owners are happy with the current corner so leave the situation alone.

