

Course Learning Outcomes for Unit V

Upon completion of this unit, students should be able to:

5. Explain the various roles of court personnel.
 - 5.1 Examine the ways ethical issues impact professionals within a topic of choice.
8. Evaluate ethical issues faced by professionals working in the criminal court system.
 - 8.1 Identify the ethical issues surrounding a topic of choice.

Course/Unit Learning Outcomes	Learning Activity
5.1	Unit Lesson Chapter 6 Chapter 7 Article: <i>State Supreme Court Deadlocks on Gableman's Ethics Case</i> All Unit Videos Unit V Outline
8.1	Unit Lesson Chapter 6 Chapter 7 Article: <i>State Supreme Court Deadlocks on Gableman's Ethics Case</i> All Unit Videos Unit V Outline

Reading Assignment

Chapter 6: Prosecutors, pp. 155–182

Chapter 7: Defense Attorneys, pp. 189–220

In order to access the following resources, click the links below:

Stein, J. (2010). State Supreme Court deadlocks on Gableman's ethics case. Retrieved from <http://archive.jsonline.com/news/statepolitics/97557794.html/>

Xenos, D. (2009). *Criminal court process and procedure* (Segment 1 of 14) [Video file]. Retrieved from <https://libraryresources.columbiasouthern.edu/login?auth=CAS&url=http://fod.infobase.com/PortalPlayslists.aspx?wID=273866&xtid=115827&luid=443045>

Click [here](#) to access the transcript for the video above.

Xenos, D. (2009). *Young offenders* (Segment 6 of 14) [Video file]. Retrieved from <https://libraryresources.columbiasouthern.edu/login?auth=CAS&url=http://fod.infobase.com/PortalPlayslists.aspx?wID=273866&xtid=115827&luid=443050>

Click [here](#) to access the transcript for the video above.

Xenos, D. (2009). *Criminal trial* (Segment 9 of 14) [Video file]. Retrieved from <https://libraryresources.columbiasouthern.edu/login?auth=CAS&url=http://fod.infobase.com/PortalPlaylists.aspx?wID=273866&xtid=115827&luid=443053>

Click [here](#) to access the transcript for the video above.

Xenos, D. (2009). *Witness testimony* (Segment 10 of 14) [Video file]. Retrieved from <https://libraryresources.columbiasouthern.edu/login?auth=CAS&url=http://fod.infobase.com/PortalPlaylists.aspx?wID=273866&xtid=115827&luid=443054>

Click [here](#) to access the transcript for the video above.

Xenos, D. (2009). *Appeals* (Segment 13 of 14) [Video file]. Retrieved from <https://libraryresources.columbiasouthern.edu/login?auth=CAS&url=http://fod.infobase.com/PortalPlaylists.aspx?wID=273866&xtid=115827&luid=443057>

Click [here](#) to access the transcript for the video above.

Unit Lesson

Stare Decisis

The law is a living entity—constantly changing and, hopefully, always for the betterment of society. On the other hand, it is equally as important that the laws of a nation are stable and not being changed based on fads or the whims of temporary leaders of government entities. However, the interpretation of law must change as humans evolve, understanding of humans' psyche increases, and scientific understanding of the universe becomes common knowledge.

The adherence of a population to formal legal rules was instituted in the United Kingdom during the reign of Henry II and documented by his Chief Justice Ranulf de Glanvill (Hall, 1994). Henry II's legal changes did not have much impact until the *Magna Carta* was signed on June 15, 1215, by King John and finally confirmed as a part of England's statute law. A reading of the *Magna Carta* dispels some of the myths surrounding the document. For example, it is a political myth that it protected ancient personal liberties. Notwithstanding the myths, it served as inspiration for the formation of the U.S. Constitution (Danziger & Gillingham, 2005).

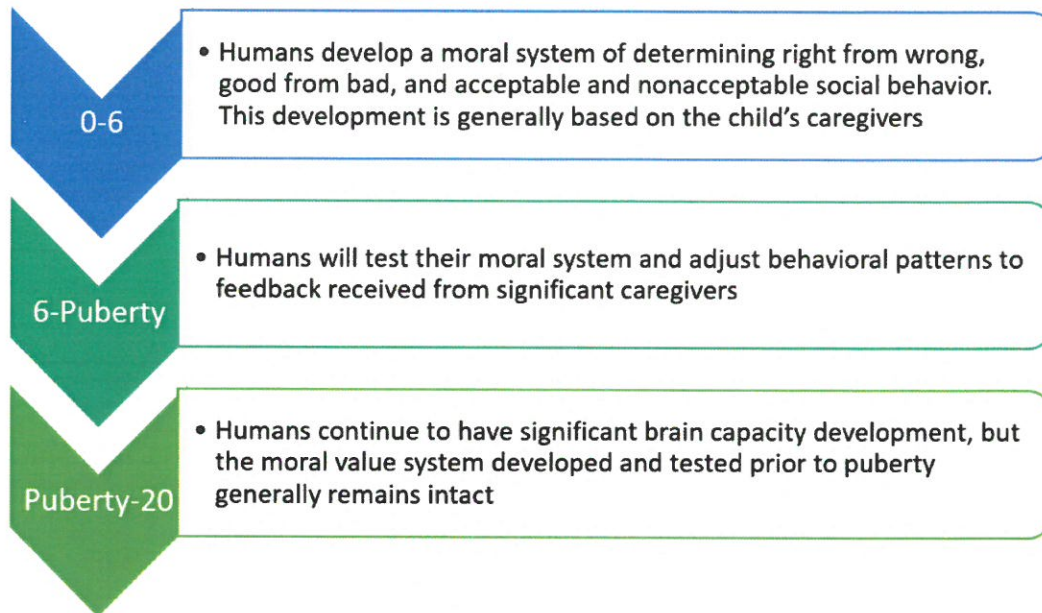
The opening paragraphs above provide the most important philosophical idea that binds the citizens of the United States, its territories, and its possessions together as a nation that best mirrors natural human development. Kant and Plato believed that natural law should be the main stay of any nation's legal system, and John Locke espoused this idea so well that the concept was used to form the U.S. Constitution and Bill of Rights.

Immanuel Kant was an 18th-century German philosopher who wrote about making decisions based on moral principles. It is difficult to follow his writings sometimes because he chose to use new terms and definitions of philosophical ideas that did not become generalized by other writers. On the other hand, he contributed two major ideas that made their way into the U.S. Constitution, the Bill of Rights, and the U.S. criminal justice system. His formula for the law of nature was expressed as a person acting like his or her actions would become the universal law of nature. He also rephrased the Golden Rule as follows: Act and treat people as if they are not a means to an end but actually the end (Kant, 1998). To understand Kant, one must accept and understand human nature and must grasp the intricacy of natural human behavior; one must also imagine human development without philosophical input during development.

Without external input, most humans would develop the following natural needs:

- survival;
- procreation;
- freedom to choose participations in future events, such as work, education, voting, participating in community life and government; and
- improvement to their surroundings (e.g., being well fed, sheltered, healthy) (Maslow, 2013).

There are as many theories on natural human development as there are people who think about the subject; therefore, no one expert's pattern will be used herein, but a composite will be provided below.



Natural Human Development Theory

Think back to when you were 12 years old, and analyze your moral value system at that time. The vast majority of adults will realize their concept of morality has not changed significantly. If only caregivers influence the development of children, and the caregivers developed the children's moral system without negative external influence, the children will generally develop the same moral systems as their caregivers, which is also known as natural development. A grouping of adults who developed naturally will form groups to improve their surroundings and to find food, better shelters, and healthier living conditions. As these groups develop, natural skills will emerge among members of the groups, and all human natural conditions will improve. Eventually, the group will need protection from outsiders who want to take the group's accumulated wealth without having to work for it. A need for protecting the group's natural needs developed in accordance with the laws of nature of which Kant was referring. The U.S. criminal system with its three branches—enforcement, adjudication, and correction—developed because the aforementioned group needed to protect their desire to be free, allowing them to improve their surroundings and living conditions and think as they please. The Constitution of the United States and the Bill of Rights reflect these needs.



Parent Disciplining a Child
(Filimonov, 2014)

Plato provided his insight on human development in his thesis, *The Republic*. He identified human nature as being driven by people's appetites; these people included farmers, craftsmen, traders, and other producers of materials. The term *producers* was used to describe this section of society. For the producers to be able to provide for society's needs, they would need to be supported by guardians and auxiliaries. Plato's guardians may be equated to U.S. government leaders of today. Plato thought these guardians should not own property or have families. He also believed guardians should study for 50 years, and only those with the highest

morals and intellectual excellence should rule (Plato, 1992). His hope was that the guardians would love wisdom so much that they would not misuse their power (Plato, 1992).

To protect and defend society from within and without, Plato felt that humans dominated by personal willpower, great spirits, and emotions were best suited to being auxiliaries, which was his term for soldiers, police, and civil servants. This is what we now equate to criminal and civil justice systems and defense of the country.

John Locke, in his *Second Treatise of Government*, provided the drafters of the U.S. Constitution with the basic premise that power to govern was obtained by and from the permission of the people. He thought that all citizens had natural rights that included life, liberty, and property, and he felt that the government should protect these natural rights. If a government did not protect the rights of its citizens, he wrote that the citizens had the right to overthrow that government; he thought this may even be necessary (Locke, 1690/2010). Locke did not specify how a government was supposed to protect the natural rights of citizens, but the framers of the U.S. Constitution, learning from the mistakes of Great Britain, provided for three branches of government in an attempt to ensure no one branch would become dictatorial. From Locke's concepts, one can imagine a straight line from protecting the natural rights of citizens to the criminal justice system that incorporated the common law concept of Great Britain.

Today, writers on the subject of the development of the U.S. criminal justice system tend to forget that the original colonies had approximately 150 years to practice managing society and protecting the natural rights of citizens. During these years, prior to revolting against Great Britain, the colonies were pretty much left to their own devices as related to governance. The mother country did not have the time or energy to devote to managing the colonies because it was engaged in the war of Spanish Succession and the Seven Years' War. In 1764, James Otis Jr. wrote that the colonists were entitled to the same, or even more, rights and liberties as the citizens of the mother country (Otis, 1764/n.d.). Also, between the Glorious Revolution of 1688 and the middle of the 18th century, Great Britain ignored colonial development. Great Britain needed to pay for its wars, but the ruling parties of Britain had different opinions on how to retrieve funds from the American colonies. One party wanted to increase productivity and economics, while the other party wanted to conquer more territories and extract resources; the debate between the two sides prevented any reform or management of the colonies (Ambuske et al., 2016). Left alone, the American colonists developed governments, including forms of criminal justice, based on the British systems. These ideas were incorporated in the U.S. Constitution and Bill of Rights.

John Stuart Mill provided a summary of what it takes to develop, manage, and sustain a representative form of government and, included in the summary, would be the U.S. criminal justice system. His basic premise is that, once established, all citizens must support the government. He did not mean that all citizens should always agree with what the government does; his premise was that citizens and news media must report the facts on what the government was doing so that all citizens could evaluate the government's performance. By support, Mill stated that citizens must vote to remove politicians from office who did not support the continuation of the representative form of government (Mill, 1991).

Therefore, by corollary, the media must report and citizens must be constantly vigilant and aware of the performance of the criminal justice system. Notice that nothing written by Mill supports a concept whereby citizens need to be given opinions; it is up to each citizen to form his or her own opinion based on the facts reported. As members of the U.S. criminal justice system, we must all be aware of how the system is functioning. Appellate and supreme courts provide this function by ensuring the criminal justice system conforms to the dictates of the U.S. Constitution and Bill of Rights. Can these courts make mistakes? Yes, they can, and they can also correct their own mistakes.

Perhaps the worst decision by the U.S. Supreme Court was *Dred Scott v. Sanford* (1857) in which the majority of justices agreed that black citizens were not protected by the U.S. Constitution and Bill of Rights. This case remained *stare decisis* until the enactment of the 14th Amendment following the Civil War overturned the decision.

Plessy v. Ferguson (1896) was also decided by the Supreme Court of the United States and was the precedent for all courts from 1896 until it was overturned by *Brown v. Board of Education* in 1954—a period of 58 years.

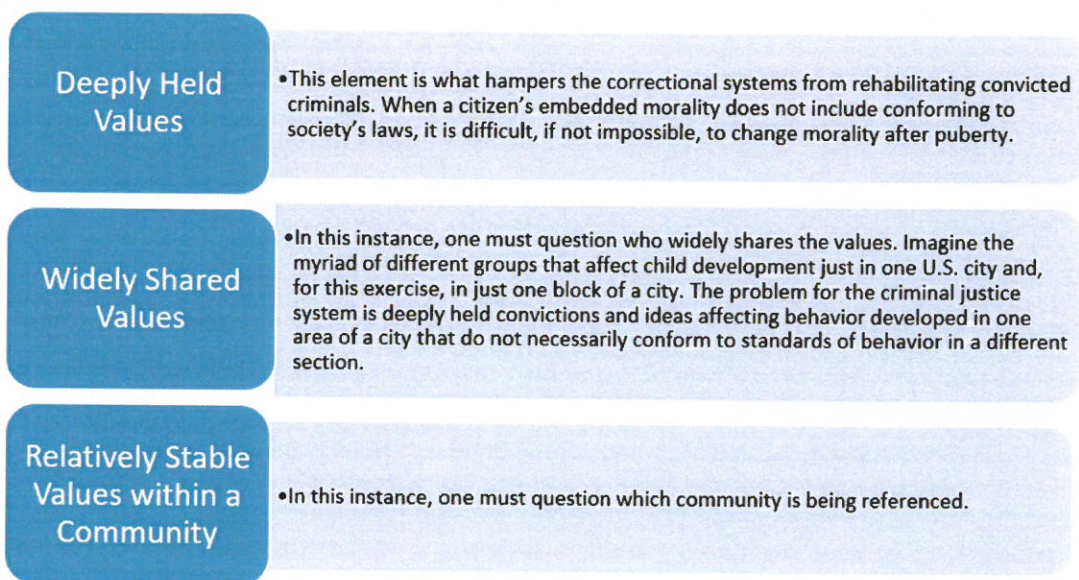
The list of errors by courts based on improper application of the U.S. Constitution and Bill of Rights could continue. The concept of precedent and *stare decisis*, however, is vital for the stability of the criminal justice system. Even though laws and their interpretation is relatively stable, lawyers and judges always check on precedent prior to making statements about the law in court or deciding legal issues from the bench.

Morals, Ethics and the Law

Understanding morality, ethics and the law is simple; applying the concepts to daily actions is sometimes difficult. The best any academic program can do is provide definitions; compliance always depends on each individual's development between birth and puberty. The following definitions are provided as starting points, although they are merely composites of others abbreviated and consolidated for this course:

Morality is defined as the beliefs and values shared by a community.

As stated previously, morality is developed between birth and puberty based on the attitudes and morality of the child's caregivers. A deeper examination is required of the elements of morality, which can be deeply held, widely shared, or relatively stable values; see below.



Natural Human Development Theory

Ethics is the study of values and the justification for right actions; applied ethics, in contrast, is the use of ethics principles in actual situations such as in professional and clinical life.

- **Right and good actions:** Again, the criminal justice system is faced with the selection of what is right and good. In a free society, perhaps "right and good" are defined by allowing each and every citizen to enjoy the four natural needs defined above: survival, procreation, freedom to participate in future events (e.g., work, education, voting, community life, government), and improvement of their surroundings by being well fed, sheltered, and healthy.
- **Beneficence and non-maleficence (to do no harm):** The core of ethics is to act for the benefit of others and to do no harm. By using these ideals as guidelines, criminal justice professionals are doing the best possible job for the citizens.

Law refers to government-established duties that are vital in maintaining social order within a community. Laws also help to resolve disputes and distribute social resources based on need. The key to the survival of representative governments is the willingness of its citizens to comply with and support the laws of their nation. Without voluntary support of the law, representative democracies cannot survive.

Criminal justice professionals need to be constantly aware of the purpose of laws, and that purpose is to protect the rights of citizens to enjoy basic human needs. The U.S. Constitution and Bill of Rights were written to provide all citizens with these freedoms, and criminal justice professionals are given power to act as enforcers, adjudicators, and instruments of correction and protection of these citizens.

The Constant Search for Truth in Criminal Courts

Several popular science fiction dramas have courtroom lie detectors that are theoretically infallible. For example, in the *Star Trek* series, the witness sits in a chair, and the main computer is instructed to determine the truthfulness of the witness's testimony. We have no such technology today, and even our modern lie detector results are not admissible evidence. On the other hand, they are in use when vetting personnel for security clearances. The alternative to science magic is the advocacy system of justice. Using advocacy, each party standing before a criminal court (the prosecution and defense) is pitted against the other and usually represented by skilled and trained advocates. The prosecutor represents the government entity, a district attorney, or attorney general, and the defense counsel represents the accused. Each has separate and distinct primary goals and one underlying common goal.

The prosecutor's goal is to protect citizens from criminal activity by either ensuring incarceration or rehabilitation of criminals. The defense attorney's goal is to ensure the client is given every possible guarantee of constitutionally, which is valid and admissible evidence and tactics used by the prosecutor. The common goal for both is to provide the government and the accused with equal lawful justice.

The courtroom dance between the prosecution and the defense is well orchestrated and based on centuries of precedent. The prosecutor presents the government's case first and always has the last word in trial. This is because the prosecutor has the burden of convincing the jury or judge, beyond a reasonable doubt, that the defendant committed the crime of which he or she is accused. The defendant does not have to do anything in defense and may remain mute during the entire trial. Each advocate must argue for facts supporting his or her case and argue against all facts detrimental to his or her client. To determine facts, evidence is presented by both sides, and each attempts to have evidence that favors the client admitted, and they oppose any that is detrimental. The judge or jury (trier of facts) determines the truthfulness of the evidence submitted. Once the trier of facts decides on which facts are true, those facts are matched to the elements of the crime charged. If all elements are supported by truthful facts, the defendant is found guilty.

To better understand the criminal courtroom proceedings, it is best to witness a trial first hand. Movie and television dramas are probably more entertaining but generally do not provide reality. Many countries have tried alternatives; none have succeeded in matching the advocacy system. Are mistakes made? Yes, but, fortunately, the criminal justice system is self-correcting. Also, advocates for fair and just trials are always with us in the form of the citizens.

References

- Ambuske, J., Burns, A., Beatty, J. Carrick, C., Consolino, C., Hattem, M.,...Sparshott, C. (2016). The American Revolution. In J. Locke, & B. Wright (Eds.), *The American yawp*. Retrieved from <http://www.americanyawp.com/text/05-the-american-revolution/>
- Danziger, D., & Gillingham, J. (2005). *1215: The year of the Magna Carta*. New York, NY: Touchstone.
- Dred Scott v. Sandford, 60 U.S. 19 (1856).
- Filimonov, I. (2014). ID 44982647 [Photograph]. Retrieved from <https://www.dreamstime.com/stock-photo-woman-scolding-child-home-young-angry-mother-crying-interior-image44982647>
- Hall, G. D. G. (Ed.). (1994). *The treatise on the laws and customs of the realm of England commonly called Glanvill*. Oxford, United Kingdom: Clarendon Press.
- Kant, I. (1998). *Critique of pure reason* (The Cambridge edition of the works of Immanuel Kant). New York, NY: Cambridge University Press.
- Locke, J. (1690/2010). *Second treatise of government* [Ebook version]. Retrieved from <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm> (Original work published 1690)
- Maslow, A. H. (2013). *A theory of human motivation*. Eastford, CT: Martino Fine Books.

Mill, J. S. (1991). *Considerations on representative government*. Buffalo, NY: Prometheus Books.

Otis, J. (1764/n.d.). *The rights of the British colonies asserted and proved*. Retrieved from <http://teachingamericanhistory.org/library/document/the-rights-of-the-british-colonies-asserted-and-proved/> (Original work published 1764)

Plato. (1992). *Republic* (G. Grube, Trans.). Indianapolis, IN: Hackett Publishing.

Learning Activities (Nongraded)

Nongraded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.

Forms of education can never replace the ability of students to self-educate. To understand the basis of the U.S. criminal justice system, it helps to read philosophy, and a basic reading list can be found below.

Ambuske, J., Burns, A., Beatty, J. Carrick, C., Consolino, C., Hattem, M.,... Sparshott, C. (2016). The American Revolution. In J. Locke, & B. Wright (Eds.), *The American yawp*. Retrieved from <http://www.americanyawp.com/text/05-the-american-revolution/>

Danziger, D., & Gillingham, J. (2005). *1215: The year of the Magna Carta*. New York, NY: Touchstone.

Hall, G. D. G. (Ed.). (1994). *The treatise on the laws and customs of the realm of England commonly called Glanvill*. Oxford, United Kingdom: Clarendon Press.

Kant, I. (1998). *Critique of pure reason* (The Cambridge edition of the works of Immanuel Kant). New York, NY: Cambridge University Press.

Mill, J. S. (1991). *Considerations on representative government*. Buffalo, NY: Prometheus Books.

Otis, J. (1764/n.d.). *The rights of the British colonies asserted and proved*. Retrieved from <http://teachingamericanhistory.org/library/document/the-rights-of-the-british-colonies-asserted-and-proved/> (Original work published 1764)

Plato. (1992). *Republic* (G. Grube, Trans.). Indianapolis, IN: Hackett Publishing.