

Ethics in the Criminal Justice System

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Abstract

Our keepers of the peace and enforcers of the law are surrounded by crime and criminals, but something separates them from criminality. The criminal justice system is complex, but one thing grounds its practitioners: a foundation of ethics. According to Peak (2012), “ethics involves doing what is right or correct and is generally used to refer to how people should behave in a professional capacity” (p. 278). This paper will explore the role that ethics plays in the three facets of justice: law enforcement, the courts, and corrections. Additionally, this paper will look at the results that ethical criminal justice practitioners have on the criminal justice system, as well as examine what results when ethics are replaced by selfishness and corruption. Ethics are foundational to the criminal justice system and to the achievement of its overarching goals: preservation of peace and fulfillment of justice. Without ethics, peace and justice are improbabilities and corruption is a foregone conclusion.

Keywords : morals, deontological, absolute, relative, noble cause, corruption

Ethics in the Criminal Justice System

A thin line separates order from chaos. Criminal justice professionals walk that line, and hold it. The criminal justice system is the complex interworking of law enforcement, courts, and corrections. The common denominator among honest and productive criminal justice professionals is a foundation of ethics on which they build everything that they do. Ethics are far from simple, however; they are as complex as the criminal justice system itself, and the lack of ethics are detrimental to the pursuit of justice. Ethical rules of conduct are infinitely important to the successful operation of a criminal justice organization and the successful achievement of the criminal justice system’s overarching goals.

Ethics

Ethics are defined by Merriam-Webster (n.d.) as “the discipline dealing with what is good and bad and with moral duty and obligation.” Ethics are far from simple, however; the main concern being *whose* ethics or *which* ethics we’re talking about. Any discussion of ethics demands further definitions. There are two subcategories of ethics, absolute ethics and relative ethics.

Absolute ethics refer to issues where there is either good or bad, right or wrong. These kinds of ethics seem to be sewn into the fabric of our very being, and are nearly universally accepted within a specific society. Examples of absolute ethics include: murder is wrong, extortion is wrong, honesty is good, loyalty is good.

Relative ethics, on the other hand, are much more complicated and would be best described as issues that have several shades of grey, rather than being black-and-white. As Khan (2006) wisely says, “ethics can be taught” and continues by saying that ethics must be examined critically in order to fully understand (para.

2). Additionally, Eastvedt (2008) shares, “Without a doubt, there are some philosophical problems when considering ethical concepts . . . [S]ome people may charge that what may be ethical to one person, may not be considered ethical to others.” Some examples of relative ethical decisions include: the best way to handle homelessness issues within a community and how we can limit the number of drug overdoses. The right or good answer to these questions is mind-dependant.

Deontological ethics must also be examined, as it is commonplace within the criminal justice system. Peak (2012) describes deontological ethics as the kind of decision “which does not consider consequences, but instead examines one’s duty to act” (p. 278). Rather than the outcomes motivating the action, it is a sense of duty that drives the action. Criminal justice practitioners are often driven to make ethical decisions out of a sense of duty rather than out of an internal sense of right or wrong. In this case, duty determines right and wrong.

Ethics in Law Enforcement

Ethics is foundational to law enforcement and its importance is highlighted in the intense search for honest, moral, and ethical law enforcement candidates. The average law enforcement hiring process takes between six and eight months and includes a highly invasive background check, a lengthy interview, followed by a polygraph to check for accuracy. Law enforcement organizations expect complete honesty throughout all parts of the application process and demand that honesty to continue through all aspects of the job. Honesty, integrity, and ethical officers are the backbone of any law enforcement organization. Several topics within law enforcement fall into what could be called relative ethical topics and should be explored. Additionally, there are several solutions that will ensure ethicality within criminal justice organizations.

Deception, or lying, is in some ways an essential part of the policing process but can also be taken too far into criminality. Accepted lying refers to deception that is generally considered part of the job and can include all kinds of trickery used to apprehend or entrap suspects (Peak, 2012). Deviant lying, however, is described by Peak (2012) as “officers committing perjury to convict suspects or being deceptive about some activity that is illegal or unacceptable” (p. 281). Eastvedt (2008) lists “lying or dishonesty” as “ways for people in the criminal justice community to seriously damage and destroy their integrity” (p. 66). Deception is a curious topic when discussing ethics, but it is clear that the often-debated line must not be crossed.

Gratuities is another grey area of ethics. Like deception, minor gratuities are a normal part of a law enforcement officer’s day, but gratuities in excess is synonymous with corruption. Peak (2012) cites the Knapp Commission’s terminology of “grass-eaters” or “meat-eaters” to describe police officers’ relationship to gratuities. A grass-eater is described as an officer who accepts gratuities that are given voluntarily and will sometimes solicit minor gratuities. Meat-eaters, on the other hand, are officers who regularly, and even aggressively, solicit gratuities and search out situations where they can exploit people for person gain. Gratuities are surely a slippery slope that can result in officers sliding into all types of corruption (Peak, 2012).

Gratuities have the potential to be the start of a slippery slope to greed, of which there is temptation abound in the criminal justice field. Law enforcement officers are in a seemingly endless cycle of temptation and they are surrounded by crimes and criminality. The temptation to greed can motivate officers to a myriad of types of corruption including crimes relating to drugs, bribes, prostitution, and other abuses of power.

Several solutions, or partial solutions, exist for law enforcement organizations when it comes to hiring and maintaining an ethical workforce. As previously mentioned, strict expectations on hiring the right people cannot be overstated. Additionally, proper ongoing ethics training, including regular training on policy and procedure, is necessary. Chilton (1998) asserts that standardization is necessary in ethics training in order to avoid what he calls “the ‘Pinocchio Theory’ problem of personal, idiosyncratic moral judgments in the administration of criminal justice” (p. 40). Law enforcement organizations would also be wise to set strong organizational values in an attempt to “shape the standards of professional behavior” (Peak, 2012, 285). An organization’s culture is often perpetrated by its public organizational values.

Ethics in the Courts

The Delaware Judiciary (n.d.) describes one of their core visions as to “insure equal application of the judicial process to all cases, which are fairly decided based upon legally relevant factors.” This equal application and fair decision must be rooted in an ethical foundation. “Because an understanding of judicial ethics is part and parcel of a true appreciation for the core values of the judiciary-judicial independence, integrity, and impartiality-this cannot be an optional project” (Rosenblum, 2007, p. 403). Several standards of conduct exist that relates to ethics in the courtroom, including the Model Code of Judicial Conduct, the Code of Conduct for Federal Judges, and the Ethics Reform Act of 1989. Judges, who preside over a court, and attorneys, who battle each other in court, are both held to high ethical standards.

Judges are sworn to administer justice within their courtroom. Judges swear to do this without respect to the people involved but with respect to the Constitution and the laws of the United States (Legal Information Institute, n.d.). This would imply that a judge should not import their emotions, opinions, convictions, or biases into their courtroom decisions. However, this is not the case as judges are human like the rest of us. Ethical behavior by a judge would eliminate favoritism, bias, and impropriety, and carry over into their personal conduct. Appleby & Blackham (2018) assert that there is a current trend toward the “transparent ethical regulation for serving judges” which is said to “promote public confidence in the judicial institution” (p. 506). These ethical codes are independent and do not - can not - eliminate a judge’s personality or emotions to bleed over into their decision making. This is another case of relative ethics, in which there is no specific line between ethical and unethical actions.

Attorneys, both on the prosecution and defense side of the courtroom, are also faced with challenges of ethics. Attorneys “must be legally and morally bound to ethical principles as agents of the courts” (Peak, 2012, p. 288). Attorneys are ethically bound to put justice over winning, which unfortunately is rarely the case in today’s court proceedings. Ethical principles also prohibit misconduct such as deception or lying, bribery, concealment of evidence, among other things.

Ethics in Corrections

On a large scale, there are several ethical issues spanning the correctional system. Albanese (as cited in Khan, 2006) “scrutinizes the moral and ethical ramifications of correctional philosophies, such as retribution, incapacitation, deterrence, and rehabilitation and sentencing methods” (p. 49). These large scale issues are one of the most heavily debated topics in current politics ad media.

On a more personal level, correctional officers are subject to most of the same ethical standards as law enforcement officers. Deception plays a very similar role in the day-to-day functioning of a correctional officer. Additionally, several norms exist for correctional officers that function as a sort of code of conduct. These norms include: “always go to the aid of an officer in distress, do not ‘rat,’ never make another officer look back in front of inmates” (Peak, 2012, p. 289), among others. While these norms are important and necessary, it is important for correctional officers to not elevate their code of conduct over absolute ethics.

Contraband is a significant facet of how correctional facilities operate, and poses similarly significant ethical issues for correctional officers. Everything from drugs to weapons to cell phones are smuggled into prisons, sometimes at the knowledge of officers or even by officers themselves. This creates numerous opportunities for corruption, greed, and other unethical behavior.

Eastvedt (2008) declares that unethical behavior by correctional officers can have significant effects on the organization as a whole:

Granted, it may be true that unethical behaviors occurring behind the walls of correctional facilities rarely hit the 6 o’clock news or the front page of the newspaper. However, when it does happen, everyone within the organization is seriously affected. Administrators are held account-

able, and staff may be discredited. Morale among the troops can plummet dramatically. Inmates may use the incident to question and challenge line officer authority, making it increasingly difficult for correctional staff to do their jobs. Maintaining security within the jail or prison becomes, at least for a time, a more challenging and daunting task and increases risk to staff and inmates alike. (p. 62)

Unethical behavior has a significant negative effect on the entire organization, but that correlation is not limited to just corrections, but extends into all facets of the criminal justice system. Unethical behavior does not just impact the individual, but it sheds negative light on the system as a whole. A single unethical person can be the proverbial bad apple that spoils the whole bunch.

Conclusion

It is clear that ethical criminal justice practitioners have an infinitely positive impact on the criminal justice system and that justice crumbles when ethics are replaced by selfishness and corruption. The lack of ethics creates an untrustworthy system, which is not supported by the public. Upholding ethics within the criminal justice system will not only result in justice, but it will also ensure cooperation with the public. Ethics are foundational to the criminal justice system and to the achievement of its overarching goals: preservation of peace and fulfillment of justice. Without ethics, peace and justice are improbabilities and corruption is a foregone conclusion.

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