

Criminal Justice Ethics

Theory and Practice

Cyndi Banks



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Cyndi Banks
Northern Arizona University



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Preface

The subject of ethics in criminal justice has gained prominence over the last decade as concerns about accountability by public authorities and individuals, particularly in law enforcement, have prompted ethical questions and recognized the need to set standards and provide guidance to those who exercise power and authority over citizens. The underlying purpose of this book is to examine the criminal justice system through an ethical lens, to identify ethical issues in practice and in theory, to explore ethical dilemmas, and to suggest how ethical issues and dilemmas faced by criminal justice professionals might be resolved.

The approach taken is a critical one in the sense that each element within the criminal justice system is scrutinized within a framework where questions are raised about proper conduct or standards. Drawing on the by now substantial literature associated with ethics in criminal justice, this book tries to provide a context for the resolution of ethical issues. In each case, historical and social events and currents have set the context for the ethical discussions, and ethical issues have been analyzed in a way that attempts to take full account of the impact of historical, social, and cultural factors on ethical development.

There are a number of other texts dealing with ethics and criminal justice. This book draws on a wide range of authoritative discussions of ethical issues in criminal justice, many of recent publication, as well as classical

studies and monographs. An attempt has been made to ensure that the material presented is both comprehensive and recent so that current debates, for example, in corrections and law enforcement, are fully represented. The theoretical chapters draw upon a much wider range of philosophical literature than is usually the case in books of this nature, and certain ethical theories such as virtue ethics and the ethic of care have been presented in greater depth than is usual. The rationale for this approach is to recognize the importance of gender in ethics, and also to reflect the topicality of virtue ethics with its emphasis on character and community.

The format of the book is unusual in the sense that instead of beginning with theoretical chapters, the book first presents the practical material on the interaction between ethics and criminal justice, and then presents philosophical and ethical discourses. This inversion of the usual textual presentation is deliberate, and is aimed at ensuring that students are grounded in the practical issues before they are called upon to grapple with theory. In my experience of teaching criminal justice ethics, I have found that students are perplexed and baffled if ethical theory is presented before practice because they are not philosophers, nor have most of them studied philosophy. Acquainting them with practical issues to which they can apply theory and philosophy at a later stage seems to allow them to make closer linkages between theory and practice.

Those who do not favor this approach to teaching ethics can of course reverse the order of the book in their classes.

Following an introduction to the study of ethics generally, Part I of the book engages with ethical issues in the criminal justice system as they affect specific institutions and the system overall. The subject areas in Part I are policing, racial discrimination, legal ethics, punishment, corrections, and criminal justice policy making. Part II focuses on ethical theories presenting deontology, consequentialism, virtue theory, egoism, Stoicism and hedonism, social justice, and the ethic of care.

The writing and publication of this text owes much to James Baker, whose acuity, rigorous analysis, and overall support have been unstinting as always. Thanks are also due to Robert Haines, who devoted many hours to tracing texts and articles, sometimes obscure, that have enabled me to engage with a wide range of debates and views about ethical issues in criminal justice. My editor, Jerry Westby, was instrumental in initiating the

book and gave unfailing support to its creation. I am also appreciative of the kind assistance and support given to me by Vonessa Vondera. The students who have studied ethics under my tuition have been a valuable resource and have taught me how to present ethics in an accessible but nevertheless sophisticated manner.

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PART I

The Interaction Between Ethics and the Criminal Justice System

The Importance of Ethics in Criminal Justice

To live ethically is to think about things beyond one's own interests. When I think ethically I become just one being, with needs and desires of my own, certainly, but living among others who also have needs and desires.

—Peter Singer 1995: 174

THE MEANING OF ETHICS

- * Ethics, also known as moral philosophy, is a branch of philosophy concerned with the study of questions of right and wrong and how we ought to live. Ethics involves making moral judgments about what is right or wrong, good or bad. Right and wrong are qualities or moral judgments we assign to actions and conduct. Within the study of ethics, there are three branches: *metaethics*, concerned with methods, language, logical structure, and the reasoning used in the interpretation of ethical terms, for example, what

exactly does the term “good” mean; *normative ethics*, concerned with ways of behaving and standards of conduct; and *applied ethics*, concerned with solving practical moral problems as they arise, particularly in the professions, such as medicine and law.

Ethics provides us with a way to make moral choices when we are uncertain about what to do in a situation involving moral issues. In the process of everyday life, moral rules are desirable, not because they express absolute truth, but because they are generally reliable guides for normal circumstances (Singer 1995: 175). The focus of this book is on normative and applied ethics, particularly the exploration and analysis of ethical dilemmas and conflict situations that arise within the criminal justice system.

THE VALUE OF ETHICS

Do we need to study ethics? One view is that if we need to make a decision about a dilemma

that confronts us, we can do so without any knowledge of ethics. From this perspective, ethics is too abstract and theoretical and is not related to the practical world. Another view is that we need a system of rules and principles to help guide us in making difficult decisions when moral issues arise. If we cannot draw upon an ethical framework, we have to rely on emotion, instinct, and personal values, and these cannot supply an adequate answer to moral dilemmas. Among the reasons commonly given for studying ethics are the following:

- Ethical considerations are central to decisions involving discretion, force, and due process that require people to make enlightened moral judgments.
- Knowledge of ethics enables a person to question and analyze assumptions that are typically not questioned in areas of activity like business and politics. Questioning the criminal justice system should also be encouraged. This includes raising issues regarding such topics as the relationship between crime and justice, the role of law enforcement, the place of punishment, the limits of punishment, the authority of the state, the proper function of prisons, fairness in the workplace through creating a safe working environment, and equal opportunity.
- The study of ethics increases sensitivity to issues of right and wrong and the right way to conduct oneself, and aids in identifying acts that have a moral content.
- Only through studying ethics is it possible to define unethical behavior. A full understanding of ethical behavior demonstrates that it includes not only "bad" or "evil" acts, but also inaction that allows "bad" or "evil" to occur.
- It is important to have the capacity to point to moral reasoning in justifying behavior, and the study of ethics develops that capacity.
- It is crucial that ethical decisions are made, and the study of ethics enables the development of tools that enhance ethical decision making.
- Training in critical ethics helps to develop analytical skills and reasoning abilities needed to understand the practical as well as the theoretical aspects of the criminal justice system (Felkenes 1987).
- Understanding ethics enables an appreciation of the complexities of acts that involve ethical issues and dilemmas.
- Without knowledge of ethics, criminal justice professionals may be naïve about moral issues occurring within the criminal justice system.
- The study of ethics helps criminal justice professionals quickly recognize the ethical consequences of various actions and the moral principles involved.
- Within the criminal justice system, ethics is germane to most management and policy decisions relating to punishment and is the rationale used in making these decisions, such as whether to rehabilitate, deter, or impose just deserts. Examples of such management and policy issues include whether it is ethical to force someone to attend a treatment program against his or her will, and, given that the system of punishment is based on rehabilitation, whether it is ethical to send an offender to jail and not offer treatment programs to help him or her change behavior in order to regain freedom (Felkenes 1987).
- The criminal justice system comprises professionals who exercise power and authority over others, and who in some cases are authorized to use force and physical coercion against them. The law, or accepted standards of behavior, impose ethical rules and responsibilities on these professionals. It follows that professionals in the criminal justice system must be aware of ethical standards in carrying out their functions. Ethics is crucial in decisions involving discretion, force, and due process, because criminal justice professionals can be tempted to abuse their powers (Felkenes 1987).

In this book, the value of the study of ethics by criminal justice professionals will become apparent as the criminal justice system is analyzed to reveal how decision makers sometimes fail to make the "right" choices, or

deliberately act unethically in carrying out their functions. It will become clear that studying and applying ethics is a prerequisite for any competent criminal justice professional.

As an introduction to the kinds of ethical issues that can arise in criminal justice, two reports of criminal cases are presented in the following sections.

CASE STUDY 1.1 POLICE BRUTALITY IN NEW ORLEANS

In March 1990 Adolph Archie, an African American, was injured in an incident in which police claimed he shot and killed a white police officer during a downtown shootout. Archie later died under circumstances that are still far from clear. Transporting Archie to the hospital after the shooting took police 12 minutes, but the distance was only 7 blocks. When he arrived about 100 officers were present, having heard about the death of their fellow officer. While Archie was being taken to the hospital, police radios were used to utter death threats against him, and those accompanying him to the hospital believed there might be a lynching if he were taken there. According to their account, they decided not to take him to that hospital, and instead of taking him to a different hospital, they took him to the police station where the deceased officer had worked. Here, officers reported there was a scuffle involving Archie and he fell, causing blood stains on the floor. However, the sergeant at the police station denied seeing either Archie or the officers and did not ask about the blood stains, but simply ordered that they be cleaned up.

When Archie finally got medical treatment it was clear that he had been severely beaten, but no officers were held responsible. At the hospital, X rays of Archie's injuries disappeared, and staff were unable to record details of Archie's name and background. He was injected with iodine, to which he was alleged to be allergic, for a medical test, and some concluded that this was the cause of his death. However, other accounts by pathologists reported that he had been beaten to death. Ultimately his death was reported as a "homicide by police intervention" by the coroner. Within hours of his death, police Superintendent Warren Woodfork cleared all officers involved in the incident of any violations of conduct. Reportedly, the rookie officer who arrested Archie was pilloried by fellow officers for not killing Archie on the spot.

Subsequently, in May 1993, a report by the advisory committee on human relations found that some officers had brutalized Archie, and that the department had failed to hold them accountable. The committee noted the existence of a police code of silence that was supported at the highest levels within the department.

Source: Human Rights Watch, www.hrw.org/reports98/police/uspo93.htm.

It was not until three years after Archie was beaten to death that reports concluded that some officers had behaved brutally. Despite the extreme circumstances of this

case, no police officers were prosecuted or sanctioned administratively, largely due to the police "code of silence," a part of the institutional culture of the police (see Chapter 2).

However, it is significant that the officers transporting Archie did not enter the hospital but instead took him to the police station. Archie is supposed to have slipped and fallen at the police station, and by the time he did receive medical treatment, he had been severely beaten to such an extent that he died as a result of what was termed “a homicide by

police intervention.” Furthermore, Archie’s family was compensated by the city in an out-of-court settlement. Ethical questions concerning police use of force, possible police perjury, and a police cover-up of illegal acts ultimately surfaced. These and other ethical issues in policing will be addressed in Chapter 2.

CASE STUDY 1.2 DEATH ROW INMATE SET FREE

On December 28, 2000, Michael Ray Graham Jr., 37, was freed from death row at Louisiana State Penitentiary at Angola after 14 years of incarceration. The state had dismissed all charges against him because it did not have any credible evidence linking him to the crime for which he had been incarcerated. As compensation he received only a check for \$10 from the prison to cover his transportation out of Angola.

In another trial, Albert Ronnie Burrell, 45, had been convicted of the same crime as Mr. Graham, the murder of an elderly couple in Louisiana, and he, too, had spent almost 14 years at Angola on death row. He, too, had all charges against him dismissed by the state. Mr. Burrell, who is mentally challenged and illiterate, came very close to being executed, missing by only 17 days.

The release of the men brought to 8 the number of wrongfully imprisoned death row inmates exonerated in the year 2000; altogether 92 such inmates on death row have been cleared of all crimes and released since the reintroduction of the death penalty in 1973.

According to their lawyers, prosecutorial misconduct was the cause of the incarceration of these two men. No physical evidence linked them to the crime, and their convictions rested largely on the evidence of a jailhouse snitch, who, according to law enforcement officials, was known to them as a habitual liar. The snitch claimed that both men had confessed to the murders while in jail, but he admitted at his own trial that he had spent time in several mental hospitals and had written countless bad checks. The fact that the prosecution had made a plea agreement with the snitch had not been revealed at Mr. Graham’s trial nor had the fact that the snitch had previously been found to be mentally incompetent. As well, demonstrating the weak case against Mr. Graham and Mr. Burrell, even the prosecutor had admitted to the court that the case should never have been taken to the grand jury.

Source: Truth in Justice, www.truthinjustice.org/no92.htm.

In this report of a death row inmate released from prison after 14 years’ incarceration, the state admitted there was a total lack of credible evidence linking him to the crime for which

he was convicted. His lawyers alleged prosecutorial misconduct, pointing out that he and another man convicted for the same crime in separate trials were convicted largely on the