

THE NON-CONSCIOUS ASPECTS OF ETHICAL BEHAVIOR: NOT EVERYTHING IN THE “GOOD” ORGANIZATION IS DELIBERATE AND INTENTIONAL

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ABSTRACT

With regard to the ethical organization, it is generally understood that “good” organizations 1) establish ethical standards; 2) regularly make those standards salient; 3) monitor behavior; and 4) reward and punish accordingly. While it is typical to think of these processes as occurring at conscious levels, I will discuss research that suggests that each process can, and does, occur at non-conscious levels—that an ethical culture exists and influences employees in ways that neither management nor employees likely recognize. Then I will discuss the expectations that should circumscribe a “good” organization.

I. INTRODUCTION

When organizational leaders and policy makers seek to improve the ethical behavior of individuals within an organization, they tend to focus on the organization’s formal structures. The underlying belief that fosters such efforts is that formal organizational structures (e.g., codes of conduct, ethics hotlines, ethics training programs) have the most direct impact on individual day-to-day behavior and thus have the most influence in shaping the ethical decisions that individuals make. The Federal Sentencing Guidelines¹ exemplify and reinforce this mentality by specifying internal mechanisms believed to be the most effective at encouraging ethical conduct.² Within the guidelines, each proposed mechanism is a formal structure designed to directly impact individual behavior.³

In recent years, many have acknowledged that informal elements can be just as important to creating an ethical culture as formal structures. Whether we are considering daily rituals, such as water cooler conversations, or more subtle norms, such as a collective muteness about ethical issues in the workplace,⁴ ample evidence indicates that the informal aspects of a culture can powerfully shape individual behavior. Most notably, Treviño, Weaver, Gibson and Toffler conducted

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1. U.S. SENTENCING GUIDELINES MANUAL §§ 8A1.1–8F1.1 (2012).

2. See O. C. Ferrell et al., *The Federal Sentencing Guidelines for Organizations: A Framework for Ethical Compliance*, 17 J. BUS. ETHICS 353, 358 (1998).

3. See *id.* at 359.

4. See Frederick B. Bird & James A. Waters, *The Moral Muteness of Managers*, 32 CAL. MGMT. REV. 73, 73–74 (1989) (discussing the problem of managers’ reluctance “to use moral expressions publicly to identify and guide their decision making even when they are acting morally”).

a large study of organizations exploring the effectiveness of the mechanisms discussed in the Federal Sentencing Guidelines.⁵ They sampled more than 10,000 employees selected randomly from six American companies, and questioned them about the details of their companies' ethics/compliance programs (e.g., code of conduct, reporting systems) as well as their attitudes toward the programs and ethics, more generally.⁶ While Treviño et al.'s results indicated that the formal mechanisms effectively reduced unethical behavior and promoted ethical conduct, the data also indicated that the informal aspects of these cultures were also critically important to the attitudes and conduct of the individual employees.⁷ Specifically, Treviño et al. noted the importance of leadership, fair treatment, ethics in discussions, reward systems, accountability, and organizational focus to the overall success of an ethics/compliance program.⁸ Since Treviño's 1999 study, our general understanding of what constitutes an effective organizational ethics effort has broadened, and most acknowledge that the informal features of an ethical culture are critically important to the success of an ethics initiative.

Just as our focus has expanded beyond formal structures to include more informal aspects of an organizational culture, a wave of research in psychology suggests that we must also be willing to expand our view of how individuals respond to the culture in which they work. In psychology, more and more research suggests that individual decision-making involves two systems: an intentionally deliberate system (typically regarded as conscious thought) and an automatic and reflexive system (commonly understood as non-conscious processing). Though the deliberate system has been the primary focus of scholars for more than 100 years, research on the non-conscious system is growing, and it clearly suggests that non-conscious processes play a critical if not dominant role in individual decision-making. In this light, I suggest that those interested in improving an organization's influence on individual ethical behavior might consider this research and its implications for how we assess the ethical organization.

In this Article, I will review research on the non-conscious processes that underlie individual decision-making. In particular, I will draw attention to research that focuses on the non-conscious aspects of individual ethical decision-making and non-conscious processes that impact both ethical and unethical conduct. With that foundation, I will then discuss the expectations that should define a "good" organization.

5. Linda Klebe Treviño et al., *Managing Ethics and Legal Compliance: What Works and What Hurts*, 41 CAL. MGMT. REV. 131 (1999).

6. *Id.* at 132.

7. *Id.* at 131–32.

8. *Id.* at 141–44.

