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Ethics, Legal

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The ethics of legal professions are concerned with issues of what work lawyers should do, how they should perform their work, and, particularly, how they should treat clients and others. The promise of ethical conduct is one reason why governments grant a monopoly over legal services to legal professions. Ethical rules and practices often have deep historical roots, but the issue of ethics has strong contemporary relevance because of ongoing debates about whether the professions serve the public interest. Scholars define professionalism in various ways. Some see it as a system of controlling an occupation or the control an occupation has over the market for its services. Professionalism is also associated with a person's adherence to a set of standards, codified or accepted as characterizing accepted practice in an occupation. Structurally, this is supported by collegiality in the professional group.

Professions are associated with norms of behavior that exceed or are different from the ordinary norms of society. This is partly because they are concerned with the profession's work, the way it is conducted, the etiquette surrounding it, and standards of performance. These norms are usually codified in codes of conduct. The precise details of the ethical regimes of different legal professions vary considerably. Similar concepts are often used, but detailed implementation depends on the scope of the profession's work, its history, traditions, and culture, the role of other professions in the same field, and relationships with the state. Professional norms change slowly, reflecting the changing circumstances in which professions operate.

Virtues

Professionals are expected to possess virtues that enable them to deliver the social good that justifies their role. For lawyers, this good is justice, and doing justice is considered an important virtue for professionals to aspire to. Another goal of professionalism is a spirit of public service, a willingness to place others' interests first. The goals of justice and public service are supported by traditional virtues including honesty, integrity, wisdom, and independence. There has been a shift in the literature concerning the interpretation of the ethical ends that lawyers might pursue. Some suggest that professionals should promote the autonomy of the individual, particularly that of their clients, and have more regard for third-party interests.

Legal Roles and Duties

Distinctive legal ethics emerge from the way lawyers construct their work and the way they conceive of their role in delivering justice. Historically, this was defined by the relationship between lawyers, clients, and courts because appearing as advocates in court was the rationale for the existence of lawyers in the early medieval period. Legal work today is much more diverse than court work alone, but traditional ethics based on court work, such as the duty of confidentiality, apply equally to other areas.

The foundation of professional ethics is the relationship with clients. This special relationship imposes strict obligations on professionals, including duties to be diligent in handling clients' affairs, to [p. 504 ↓] avoid conflicts of interest, and to respect confidences. These duties are so fundamental that they are recognized, protected, and enforced by courts as well as by the professions. Professionals are expected to balance their duties to clients with wider interests. Advocates often owe a duty to the court, often most clearly manifest as a duty not to mislead the court. Such a duty might include an obligation to draw to the court's attention authorities not referred to by the opposing advocate, which are material to the case, even when such authorities are harmful to their own case.

Third-party interests are often less well protected by lawyers' ethics, although where lawyers discover from a client a risk of serious physical harm to a third party, they may be under a duty to warn the third party. Where such a duty exists, it is an exception to the duty to keep client communications confidential. Legislation has imposed other exceptions, for example, obligations to report the suspected criminal activity of clients, such as money laundering. Most professions require lawyers to protect the reputation of the profession and not to bring it into disrepute. However, the traditional manifestations of this, bans or restrictions on advertising professional services, have been abandoned in many jurisdictions.

There is some lack of clarity about whether lawyers' commitment to public service implies that they have a wider social role and, if so, the extent of this. Perhaps the strongest manifestation of such a role is the lawyers' tradition of providing legal services *pro bono publico*, generally defined as providing legal assistance to those in need who

cannot afford it. One might argue that an obligation to provide such services arises because of the importance of lawyers in adversary systems of justice and because of the high cost of legal services in such systems. It might also arise because of the position of wealth and power enjoyed by lawyers in many elite law firms.

Role Morality

Lawyers' professional ethics sometimes require a lawyer to act in a way that others would consider wrong, were they not performing such a role, for example, arguing the cases of reprehensible people and protecting their confidences. The justification of a distinctive normative system is the unique role played by a profession in delivering a social good. In an adversarial court system, the good of justice is often equated with fair systems and procedures. The distinguishing feature of adversarial systems, in which judges play a largely passive role, is the power and control that lawyers have. They interview witnesses and present a version of the facts that puts their client's position in the best light. The judge, or in serious criminal cases, a jury, chooses between these versions when giving a verdict. This gives rise to two principles, thought by some to represent the twin pillars of lawyers' ethics in an adversarial system: partisanship and neutrality.

Partisanship is inferred from the bundle of obligations owed to clients. In general, it is an obligation to pursue a client's preferences, provided they are not illegal. In the United States, where partisanship formerly was strongly expressed in an obligation of "zealous advocacy," it has been tempered in the American Bar Association's Model Rules. The ethical limits on the extent of the duty to clients are unknown, and the lawyer's pursuit of clients' immoral preferences is usually implicitly permitted. This is one of the contentious areas of professional ethics.

Neutrality has numerous dimensions. The first element is a duty not to reject a potential client on political, racial, or moral grounds. The ethical rationale for this is that the fairness of adversarial justice depends on equality of arms. If unpopular clients were unable to obtain representation, the legitimacy of the legal system and the state would suffer. It is notable that this dimension of the principle of neutrality is not universal. The group to which it usually applies is to advocates, and some say that this offers

them protection from identification with clients in criminal cases. There is often similar pressure on lawyers to use neutral client selection in communities where lawyers are scarce.

Another aspect of neutrality is the obligation to remain morally neutral about the purposes of representation. Only through detachment from clients and causes can one realize other ethical duties, such as the duty to the court. Emotional detachment also facilitates the giving of sound, balanced advice. The combination of duties to take clients irrespective of their goals and to pursue these goals in a partisan fashion are the basis for [p. 505 ↓] saying that lawyers have a role morality that runs counter to ordinary morality. Some argue that this neutrality is potentially harmful to both lawyers and clients and that the relationship would be healthier if lawyers could openly choose who they work for.

Rules and Codes of Conduct

The state, high court, or bar association often presents professional ethics as rules or principles and publishes them as codes of conduct or guides. Ethics codes of conduct often include different kinds of rules; some are mandatory and others are aspirations. Rules governing the handling of client money tend to be mandatory whereas rules governing *pro bono publico* are likely to be an aspiration rather than a requirement. Many legal professions have powers of self-regulation delegated by the state. Their rules of conduct, published as codes, have disciplinary force, and those found guilty can have sanctions such as suspension or exclusion from the profession imposed. The number of cases prosecuted is often low. Enforcement depends on reporting mechanisms, and disciplinary proceedings are often reserved for cases of dishonesty.

Researchers do not know how effective professional ethics systems are in detecting and discouraging unethical behavior. Future lawyers are sometimes acquainted with ethics systems during education and training. Some academic commentators are skeptical about the capacity of these processes to change behavior. Some argue that the pressures of the workplace and the attitudes of fellow workers sometimes undermine the intention of entrants to the profession to be ethical practitioners.

Jurists often argue that ethics codes are not definitive expressions of a profession's ethics. Rules cannot be exhaustive and sometimes conflict. Some important areas of activity—lawyer on lawyer negotiations, for example—are difficult to devise rules for or to regulate effectively. Practitioners are often uncertain what the right course of action to take is when rules are unclear. Reformers frequently make proposals for new approaches to structuring ethical commitments or training law students in ethical commitments. These have included more education and training in moral philosophy, less reliance on coercive rules, and higher levels of professional monitoring and supervision.

Prospects

Legal professions have received considerable attention from academics in recent years, and the literature has grown considerably, including that part related to professional ethics. This, together with criticisms from governments and consumer groups, has led many legal professions to reflect on the commitments implicit in professional ethics through enquiries, reviews, and redrafting of ethics codes.

Economic analysts have suggested that the aim of professionalism is controlling markets rather than high ideals. This style of analysis suggests that codes of conduct are not an expression of ethical commitment but a communication strategy designed to support professional ideology and engender trust. In some countries, governments have deregulated legal services and treated demarcations of work boundaries between professions, and some professional customs and traditions, as restrictive trade practices. Some predict that the gradual loss of market privileges will lead to a diminishing commitment by legal professionals to ethics.

Legal professions are under increasing pressure to justify and realize their ethical aspirations, often leading to much self-examination. One area of concern has been the conception of justice promoted by lawyers, which tends to be procedural and legalistic. This is usually at odds with the concept of justice held by laypeople, who see lawyers' commitment to legalism as self-interested, and with the desire of governments for cheaper and more effective dispute resolution and wider access to justice. There has been a change in the rhetoric of professions in many jurisdictions to embrace

these agendas and criticisms of traditional ethics regimes. There has also been some action on the ground, notably a resurgence of interest in *pro bono publico* in common law jurisdictions, particularly among young lawyers. Nevertheless, the future for self-regulating professions, and legal ethics, is unclear.

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