

Learning How Professionalism Evolves: Lessons From the Law

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As a pot is slowly brought to boil, the frog within, failing to notice the change, never jumps out. Likewise, radiologists may fail to perceive deleterious changes in the character of their profession because they unfold over such a long time. In radiology, one aspect that has changed slowly but dramatically over the years is professional ethics. Having no experience with how professional standards were advocated and taught just a few decades ago, many younger radiologists stand little chance of perceiving seismic shifts in the discourse of medical professionalism.

Changes in the way we think, talk about, and embody professional ethics bear profound implications for our understanding of what it means to be a professional. To begin to appreciate the richness of shifting perspectives and their sometimes widely divergent implications for professional self-understanding and conduct in radiology, it is illuminating to look at the evolution of professional ethics in another field. Having trained our eyes to view such shifts with more dispassion because they took place elsewhere, we can peer more deeply into similar transitions taking place in our own.

Here, we focus on the law and its lessons for radiology. The history of legal ethics in the United States can be divided into three eras, which correspond to three sets of standards that the American Bar Association (ABA) adopted to guide the conduct of lawyers in the United States. The first era is reflected in the Canons of Professional Ethics, the second in the Code of Professional Responsibility, and the third in the Rules of Professional Conduct. Each of these standards rests on different assumptions about the context and purpose of professionalism, including what it means to be a lawyer.

CANONS OF PROFESSIONAL CONDUCT

Although the Canons of Professional Conduct were adopted in 1908, their roots can be traced back to the mid-19th century, when most lawyers were educated by self-study, supplemented by apprenticeship with practicing attorneys. One of the better-known guides for an aspiring lawyer's self-study was David Hoffman's *A Course of Legal Study*, a 7-year program of study that included a prayer before the study of law by Samuel Johnson and a list of student resolutions that included "To live temperately," "To oppose indolence," and "To note my daily deficiencies and endeavor to correct them" (1).

Hoffman's course was founded on the view that the law is a coherent, well-ordered system that originated in the law of nature, and that the study of law led naturally to human flourishing. By studying the law, in other words, lawyers-in-training would become better human beings. As a result of this assumption, the original edition of *A Course of Legal Study* did not include specific ethical guidance for lawyers (2). Yet, as more men with more diverse backgrounds were attracted to the law, Hoffman concluded that some practical guidance for practicing lawyers would be helpful. As a result, he developed a set of "Resolutions in Regard to Professional Department." Almost the entire substance of the Canons adopted by the ABA can be traced back to these 50 resolutions (3).

Perhaps even more importantly, the Canons reflected the purpose of Hoffman's resolutions, for neither was intended to serve as rules or regulations. Instead, they were exhortations to enrich lawyers' characters and make them better lawyers. They did not restrain lawyers so much as empower them to become improve. To study law was not merely to acquire particular kinds of knowledge and skills but to adopt a way of life and become a certain kind of person.

In becoming lawyers, students were expected to adopt the calling of the legal profession and its shared vision of what a lawyer is, what should motivate a lawyer, and what purposes a lawyer should serve in the community and in American society. Studying the law was expected to inculcate virtues

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such as courage, magnanimity, and a love of the common good, and the development of these virtues was expected to deepen and improve the lawyer's study of the law in a virtuous circle that produced better lawyers and better people.

Medical professionalism once had a similar character. For example, the American Medical Association's 1847 Code of Ethics declared that "There is no profession from the members of which greater purity of character and a higher standard of moral excellence are required" (4). Rather than promulgate a set of rules for conduct, professionalism education once focused primarily on the character of the physician. Becoming a medical professional meant developing aspirations toward moral virtue and an ethic of service.

CODE OF PROFESSIONAL RESPONSIBILITY

The second stage in the evolution of American legal ethics is marked by the ABA's 1969 adoption of the Code of Professional Responsibility. The context of the Code is best understood through the thought of Lon Fuller, a professor of jurisprudence at Harvard Law School during the mid-20th century. Fuller was viewed as an expert on ethics codes, and the committee of the ABA that developed the Code relied extensively on his thinking (5). According to Fuller, every code of professional ethics needed to meet two requirements (6). It should embody what he called the dual moralities of duty and aspiration and include a clear statement of the profession's function in society.

According to Fuller, a morality of aspiration is oriented toward the highest reaches of human achievement. It is the morality of the good life, excellence, and the fullest realization of human powers. Those who fail to achieve this are said to miss the mark or exhibit shortcomings. A morality of duty, on the contrary, lays down the basic rules without which an ordered community directed toward certain specific goals cannot succeed. It does not criticize us for failing to embrace opportunities for the fullest realization of our powers but criticizes us for failing to respect the basic requirements of the community (7).

The morality of duty could be likened to the rules of syntax and grammar in writing (8). If a person did not know and abide by them, it is impossible to write well. Yet, the rules tell us little about how to craft a beautiful sentence or a compelling story.

The Code of Professional Conduct was structured to address both types of morality. For the morality of aspiration, it presented "ethical considerations" that were aspirational in character and intended to represent the objectives toward which every member of the profession should strive. The morality of duty was reflected in disciplinary rules that were mandatory and stated the minimum conduct below which no lawyer could fall without being subject to disciplinary action.

The Code met Fuller's second requirement for a code through footnotes that referred lawyers to other texts that articulated the functions of lawyers in American society. Of particular importance was a report on professional responsibility

that was largely the result of Fuller's work (9). This report was intended to state as clearly as possible the special functions that lawyers perform in American society.

For example, the report explained the way in which lawyers furthered justice by representing their client's interests in the adversarial system, as well as the contributions they made to the American way of life by enabling citizens to come together in voluntary organizations, such as partnerships and labor unions, to accomplish their goals and to improve their communities. Through reading this report and other texts, lawyers were expected to gain a clear understanding of their special role.

Less clear at this juncture in the evolution of legal ethics were a lawyer's motivations. No longer was the law assumed to consist of a well-ordered system derived from natural principles whose study would promote the lawyer's flourishing. Without this view of the law, lawyers looked elsewhere for the motivation to uphold the ideals and obligations of their profession. When it came to the morality of duty, the disciplinary rules of the Code supplied an important motivation. If lawyers failed to comply with them, they could, for the first time, be the subject of a disciplinary proceeding.

The remedy was less clear for the morality of aspiration. It was unclear why lawyers would want to devote their lives—or even just their working lives—to their achievement. It was Fuller's hope that lawyers would look for motivation somewhere outside the law, in a commitment to religious faith, a wish to emulate especially admirable members of the profession, or perhaps a general dedication to the benefit of humankind. However, if these aspirations were lacking, little about the law itself or its ethical standards would bring out the best—both professionally and personally—in lawyers.

A similar shift occurred in medical ethics education. The 1957 Principles of Medical Ethics largely omitted any reference to the character of the physician, instead focusing on the sorts of pursuits to which physicians should devote themselves, such as improving medical knowledge and skill, practicing on a scientific basis, and observing all laws (10). Except to say that the profession exists to "render service to humanity," the principles provide little insight into why physicians should adopt them or continue to adhere to them.

RULES OF PERSONAL CONDUCT

The adoption of the Rules of Professional Conduct in 1983 signaled the third era in American legal ethics (11). For those who drafted them, the Rules meant the end of American legal ethics, for the Rules were not intended to be ethical (12). Ethics was viewed as "primitive" (13). Its authors regarded the Canons as a "collection of pious homilies," and the "ethical considerations" of the Code were seen as vague, complex, and contradictory (14). It was time, the drafters of the Code contended, to move away from an aspirational view of professionalism. Instead, what was needed were clear rules and laws.

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