

In Margaret Coady and Sidney Block, eds., *Codes of Ethics and the Professions*
(Melbourne: Melbourne University Press, 1996).

WHAT ARE CODES OF ETHICS FOR?

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The idea of a code of ethics can seem puzzling. What is it, exactly, and how can it bind us? Or can it? Its status, normative if not ontological, seems mysterious. Either its pronouncements are obvious (read: platitudinous), in which case it invites ridicule. Or its pronouncements are not obvious (read: controversial) in which case it arouses suspicion. A third possibility is that its pronouncements are vague. In that case they are useless unless interpreted. When interpreted, they are either obvious, thus platitudinous; or else not obvious, thus controversial.

The first concern is probably most common. We suspect that codes of ethics merely state obvious truths or prescriptions that everybody knows. The point, we surmise, is public relations, on the order of the "consumer's bill of rights" posted in the supermarket: we are "ethical," we care about you. From this perspective, codes of ethics are pointless: decent people follow their prescriptions as a matter of course, and thus have no need of codes; the unethical ignore them, snickering all the while, we suspect, at the guilelessness of supposing a code could make a difference.

On the other hand, the pronouncements of a detailed and specific code will almost certainly be controversial, requiring behavior about whose merits reasonable people can disagree. *Who says I ought to do that?* Does a code of ethics infringe the autonomy of those

within its purported sphere of influence? Since those subject to codes are typically what we call professionals¹ -- people who jealously guard their independence and not generally lacking in the conviction of their intellectual and moral powers -- a specific and demanding code may seem to threaten individual autonomy.

Why would anyone want a code of ethics? What purposes can a code serve? Is its point simply to get people to behave in certain ways? To acquire certain traits of character? Both, or something else as well? Is the purpose of a code less to improve conduct than to promote good public relations and provide reassurance to potential clients? In what follows I want to suggest some answers¹ to these questions -- to ask what purposes a code of ethics can serve and to make some headway in determining the value of these purposes.

It is difficult to begin answering these questions without distinguishing two aspects of a code of ethics. There are, first, its particular *prescriptions* concerning what a professional ought to do or not do, how she ought to comport herself, what she, or the profession as a whole, ought to aim at. Distinct from its prescriptions and aspirations are its *sanctions*: the consequences, if any, that follow upon noncompliance. A code of ethics need not include sanctions. Now one may wonder what functions a code could serve if no penalties attached to noncompliance; a sanctionless code certainly arouses the suspicion of a vehicle for tame pieties. Below I shall explore the idea that a code of ethics can serve important functions even without or apart from sanctions.

1. The connection of codes of ethics with what we ordinarily think of as professions is discussed further below.

On the other hand, the objections to codes from the other side -- that they are too authoritarian and invasive of autonomy -- are more serious when codes have sanctions. And most codes of ethics include sanctions of some kind, however minimal. For most of this essay I assume that some sanctions attach to noncompliance, and that for most people these provide at least part of the motivation (although not necessarily all or even most of it) to comply with the code.

I

John Ladd has argued that the imposition of principles on other people "in the guise of ethics contradicts the notion of ethics itself, which presumes that persons are autonomous moral agents."² A code of "ethics," Ladd believes, by its nature converts ethical issues into something else: matters of legal or other authoritative rules, perhaps, but certainly not ethics. Ethics cannot be imposed from without.

Whatever appeal Ladd's view possesses derives from an exaggerated emphasis on the word "ethics." If one insists that to act ethically is necessarily or by definition to act autonomously, and not therefore to obey rules externally imposed, then a code of ethics is an oxymoron, precluded from the start. Ladd apparently believes that the mere articulation of a code of ethics, irrespective of the attachment of sanctions, is incompatible with ethics in its true meaning.

2. John Ladd, "The Quest for a Code of Professional Ethics: An Intellectual and Moral Confusion," in Deborah Rhode and David Luban, *Legal Ethics* (St. Paul: Foundation Press, 1992), pp. 121-27.

For some purposes, it is clear, the identification of the ethical with autonomous, freely chosen action is appropriate. Ethics is centrally concerned with the cultivation of moral character. We care about people's motives, desires, wills. We want people to do the right things for the right reasons. We may care about character intrinsically, because, say, as Kantians or Christians we think that a good will or a pure heart is supremely important. We may also care about it instrumentally, because we think the most efficient way to produce good outcomes is to produce agents with good dispositions. I believe that we care about character, and that it is right to care about it, for both kinds of reasons: both because a human being with certain kinds of motives and desires is intrinsically valuable, and because that sort of person tends to produce better consequences in the world.

Let us leave aside for the moment the question whether a code of ethics could play some role in influencing people's dispositions or characters. It seems clear that one primary purpose of a code is the simple and straightforward one of increasing the probability that people will behave in some ways rather than others. If this is so, then a code of ethics may be both possible and effective, just as a system of law is. A code of ethics can give a person a reason, perhaps a decisive reason, to act in one way rather than another. Her motives might lack moral purity: she might comply with the code for fear of the sanctions of disobedience. And that would be regrettable in the sense that we would prefer people to act virtuously for virtue's sake. But it doesn't follow that a code of ethics is either impossible or undesirable. If what Ladd objects to is simply the word "ethics," nothing significant is lost by speaking of a code of conduct instead.

So, in other words, sometimes we care about people's autonomy and sometimes we don't; sometimes we care more and sometimes less. It infringes autonomy to prohibit and punish murder, but that does not figure as a plausible objection to laws against murder. The question comes down to the relative importance to us -- to "society" -- of outward behavior compared to the reason or motive for it or the character of the agent. Insofar as we are concerned to produce the behavior, we care less about people's autonomy; insofar as we care about people's reasons or their character, their freely-chosen decision to act -- their autonomy -- is essential. This need not be a matter of either/or; we can desire both. Yet there may be an inherent conflict in achieving both simultaneously, or at least in knowing whether both are achieved, because external pressures to comply render the autonomy of the act more doubtful. My own view is that for most purposes -- although by no means all -- we are interested primarily in securing outward compliance.

There are, of course, many reasons why it is better for people not simply to act rightly, but to do so for the right reasons -- not the least of which is that (to put it crudely) self-regulation is generally more cost-effective than reliance on external sanctions. Train people's habits and dispositions and you don't need to monitor their behavior so closely. But this is not an argument against codes of ethics, unless it is also an argument against law. If the anarchist objection to the obligation to obey the law can be answered, so can the analogous objection to codes of ethics. Although I cannot fully answer the anarchist objection here, I take it up in more detail in section III.

Ladd's view might be summed up in the slogan "You ought not legislate morality." This is different from the usual understanding of "You can't legislate morality," which means not that doing so is undesirable but that it is ineffective. The point is related to Ladd's, however: for the idea is that the moral life is an *inner* life not accessible to the manipulation of outward behavior. As a claim about how people's attitudes develop and change, however, this is simply false. Examples such as the civil rights movement demonstrate that changes in the law can over time significantly change people's attitudes; one era's conventional wisdom is an embarrassment to the next. Even if our ultimate aim is to change people's characters, desires, and reasons for acting, then, we could do a lot worse than to begin by manipulating their incentives to act by requiring certain behavior and attaching penalties to noncompliance.

II

On Ladd's view, the truly ethical person could in the nature of things pay no heed to a code of ethics, because an autonomous cannot be guided by externally given rules. A different objection to codes of ethics is that they are either unnecessary or useless. They are unnecessary because good people don't need them. Good people know how to act and are motivated accordingly. They need codes neither for instructional purposes nor as external incentives. Bad people will not be moved to comply with codes, except by implausibly harsh and certain sanctions. So codes are either unnecessary or useless.

Now this view makes at least two implausible assumptions. One is that determining what is right is always easy for a person of good character. I shall return to this issue below. The

other is that the world divides neatly into the virtuous and the vicious, or that it divides neatly into the virtuous and the nonvirtuous. Most people, it seems clear, fall short of our ideal of a good person (it is hard not to be disappointed morally in many if not most of the people some of the time), but they fall short in varying degrees. And most can be moved by a variety of methods short of formal sanctions. Fear of the disapproval of our peers is the most obvious.

It is not necessary to assume that evil is rampant or that human nature is nasty and brutish to see that many people who would not do anything grossly immoral easily stray from the virtuous path where certain conditions are met. When the temptations are significant, when the price of adherence (in terms, for example, of the sacrifice involved to our interests) is high, when the social consequences of violation (harms to others) are relatively slight, when the costs of violation are low -- under such circumstances it is easy to be led from doing just what you ought to do (assuming now that what you ought to do is clear). With or without sanctions, a code of ethics can give a person "within the normal ethical range," as we might say, a reason to do what she might not be sufficiently moved to do on her own.

How can it do this? In this and the following sections I explore several ways.

The first way causes a person to redescribe the nature of the situation confronting him. For the problem is often *not* a matter of knowing, or not knowing, what to do; and therefore also not a matter of being sufficiently motivated to do what you know you ought to do. Sometimes, instead, the reason a person is not adequately motivated to do the right thing is that he has not brought to explicit consciousness the character of what he is doing (or not doing). It would be a mistake to say he doesn't *know* that what he is doing is wrong, for the problem is not one of

simple ignorance. It is rather that he has not thought about just what it is he is doing; he has not described it to himself properly, if at all.

Sexual behavior, with its nearly limitless potential for self-deception and other forms of psychological cover, provides the most obvious source of examples. The professor who regularly makes passes at his students may not see what he is doing as a violation of his professional responsibility.³ It is not that he has formulated a description of what he is doing that he actively justifies. Rather, he has not had the occasion -- and he has not had the occasion forced upon him -- to describe to himself what he is doing. Were he to do so he would probably come to feel some discomfort, for the description itself is almost inevitably laden with moral overtones. It would be odd to describe such a person as suffering from ignorance -- "He doesn't know that getting into these relationships is wrong." It's more plausible to say "He's never thought about it, or never thought about it like that; if he did he would see a problem." This is not ignorance in the usual sense, for ignorance would survive the coming to consciousness: if I am ignorant that what I am doing is wrong, then even if I describe what I am doing to myself, I feel no discomfort. What we have here is not ignorance but rather a failure to think about what one is doing. A code of ethics can increase the probability that one will think about it -- can make it more difficult to engage in self-deceptive practices -- by describing explicitly behavior that is undesirable or unacceptable.

3. In using this example we do not need to settle the question whether sexual relations between superiors and subordinates in the workplace are always wrong or a violation of professional conduct. I have explored this question in "When Is the Personal Political?: The Case of Sexual Harassment," unpublished manuscript.

Two objections to this view might be raised. First, it might seem naive to think that the professor's problem is that he doesn't see what he is doing in the proper way, or that simply by having the behavior described he would come to see it differently and so change his behavior. Why wouldn't he instead reject the description offered?

The answer is that the processes at work here are subtle and complicated. Changes occur slowly and by degrees, and sometimes they do not occur at all. But people do change not only their behavior but how they view it. A revolution has occurred in the way we think about sexual harassment, and it has come about partly through this kind of description and redescription. Sexual harassment hasn't disappeared, but it has probably declined, and many men think about the way they interact with women differently than they used to. (Much the same could be said about racial interaction.) There are things they would have done or remarks they would have made ten or twenty years ago that they no longer would, and this is not always simply because they see that others do not find such things acceptable but because they themselves no longer do either.⁴

One might object to this view -- that a code of ethics can make a person see what she is doing in a new light -- in a slightly different way. These descriptions seem to be morally loaded. Of course, one might say, if you agree to the description of a piece of behavior then you will agree that it is wrong; the controversy comes in deciding on an accurate description. So a man who engages in behavior that others think of as sexual harassment and therefore wrong is unlikely to come to an easy agreement with them about how to describe what he is doing. They

⁴ It is compatible with what I am saying here that some of what has come to be called sexual harassment isn't, and that the term is overused or sometimes misapplied.

all agree that sexual harassment is wrong; but they disagree about whether this is an instance of it.⁵

Clearly, some of the controversy comes here. Nevertheless, in part people come to view their behavior in a different light by encountering new descriptions of it, and such descriptions need not be morally loaded in the way that those who distinguish sharply between factual and evaluative descriptions seem to suggest. It's not, that is, that descriptions fall neatly into two categories: flat, neutral ones on the one hand and starkly condemnatory or laudatory ones on the other. Our language is much richer than that, allowing for a wide range of subtle differences in tone and value.

By making certain standards of behavior explicit, a code of ethics can make it more difficult to avoid confronting discomforting descriptions of what one is doing, and so make it more difficult to continue along certain paths. Codes of ethics do not always do this, of course. For example, the American Medical Association's Principles of Medical Ethics used to state that "Sexual misconduct in the practice of medicine violates the trust the patient reposes in the physician and is unethical." Without even a hint of what counts as sexual misconduct, the precept is all but useless, for each person can pass over the term comfortable in the belief that what he is doing doesn't count as *misconduct*. The more recent version of the code leaves less room for interpretation: "Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct."⁶

⁵ I have benefitted in thinking about this knot of issues from Peter Levine's unpublished manuscript, "Ethics Without Theory."

⁶ For the earlier version, see AMA Principles of Medical Ethics and Current Opinions of the Council on Ethical and Judicial Affairs--1989, in *Codes of Professional Responsibility*, 2d ed., ed. by Rena A. Gorlin (Washington: Bureau

III

A code of ethics, then, can force to consciousness descriptions of what a person is doing that will render at least those of typical sensibilities uncomfortable. In such cases, it would be a mistake to describe the problem (for which a code can be a partial solution) as ignorance of the moral truth or of the appropriate moral standards. Rather, the person has not thought about what he is doing in a particular way. In other cases, however, it might be accurate to describe the problem as one of ignorance. We don't always know what behavior is called for in the roles that we choose or that are thrust upon us. Sometimes the fault is ours: we haven't thought sufficiently about what's at stake. Sometimes it's simply that the issue is complicated and defies easy solutions. A code of ethics can embody the accumulated experience and wisdom of many people over time. To the extent that a code fulfills this function, an answer to one of our initial questions is suggested: a useful code will be detailed and specific. For, from this point of view, we need a code precisely for those situations that are not clear and do not fall out platitudinously.

But this argument for a code might be thought to raise Ladd's objection in pointed form. If resolution of a problem requires extended and deep reflection, isn't the issue sufficiently complex to evoke controversy, and so permit reasonable people to disagree? How, then, can one encode a right answer without infringing individual autonomy?

To answer these questions, consider the alternatives confronting a professional with respect to a detailed code provision. First, she might on reflection come to agree with it. In that

of National Affairs, 1990), p. 217. The more recent (1994) version is published in the *Encyclopedia of Bioethics* (New York: Macmillan, 1994), Volume 5, Appendix, p. 2665.

case, there is no conflict between the code's dictates and that of conscience. It's worth noting my assumption that one to whom a code applies must reflect on its provisions, rather than comply automatically. The belief that a code of ethics can serve legitimate purposes does not constitute an endorsement of blind obedience. (Ladd's concerns suggest that he mistakes the hold a code has over a person for unthinking compulsion.) A code of ethics, like a legal system, can create a presumption of compliance, but that presumption can be overridden.⁷ No external command ever constitutes an absolute and conclusive reason to act. Second, a person might disagree with the code's provision. That leaves two alternatives: simple disobedience and what we might call conscientious noncompliance -- involving public acknowledgment of one's disagreement along with noncompliance. It seems plausible that the more important a code's provision, the stronger the argument that noncompliance should be conscientious. Noncompliance with relatively insignificant provisions raises the same puzzles that noncompliance with lesser laws does. How does one justify speeding? By insisting that one disagrees with the speed limit? And that one is willing to universalize one's disobedience? Or does one say that speeding is a moral failing, albeit a small one? However one answers these questions, similar answers can be given in the case of code noncompliance.

IV

⁷ My thinking about the issues raised in these paragraphs has been influenced by David Luban, *Lawyers and Justice* (Princeton: Princeton University Press, 1988), chapter 3, "The Moral Authority of Law."

There are other affinities between codes of ethics and legal systems. Like a legal system, a code of ethics can resolve coordination problems.⁸ A code requiring certain behavior can not only give people a reason to do what they might not be sufficiently moved to do on their own -- thus overcoming the problem of inadequate virtue mentioned earlier -- it can also change the nature, implications, or consequences of the behavior required. In part, this can be a matter of reducing the degree of sacrifice required of any given individual. A code that prohibits certain advertising practices, for example, disadvantages everybody equally -- and therefore disadvantages no one -- whereas a person who adopts the rule in isolation may suffer disproportionately. Compliance is never complete, but compliance above a certain threshold probably suffices in most cases. And in cases like advertising, where noncompliance is fully public, those who defy the code may suffer disapproval by the profession, incurring other losses as a result.

In addition, whereas the contribution to the general welfare of an isolated individual's adherence to the rule would be minimal, when everybody acts in the same way we see significant results. The difference can affect a person's motivation to act, because it now seems that one's adherence to the rule, when conjoined with the adherence of others, really makes a difference and is thus worth doing. But it's not simply a matter of changing a person's dispositions. The dispositions are changed precisely because the act itself or its consequences are changed.

We can express these ideas more clearly in terms of four principles. The first two concern a person's motivation to act in general:

⁸ For discussion of some of these issues see Michael Davis, "Thinking Like an Engineer: The Place of a Code of Ethics in the Practice of a Profession," *Philosophy & Public Affairs* 20 (1991).

Contribution Principle. Other things being equal, one's motivation to act in a given way increases as the contribution of that act to some good end increases, and decreases as its contribution decreases. (In other words, the greater the difference I think my acting in a certain way will make, the more inclined I will be to act in that way.)

Sacrifice Principle. Other things being equal, one's motivation to act in a given way increases as the personal sacrifice involved in the act decreases, and decreases as sacrifice increases. (In other words, the less sacrifice on my part I think my acting in a certain way requires, the more inclined I will be to act in that way.)

The way in which codes of ethics and other coordination schemes can affect outcomes suggests two additional principles:

Impact of Coordination on Sacrifice Principle. For some classes of acts, the sacrifice required by the act of any given individual decreases when many others act in the same way. (Examples include foregoing advertising, where one's competitive edge is not sacrificed if others do likewise; foregoing luxuries, where

some of the satisfaction gained from them derives from status interests and concerns about relative well-being.)

Impact of Coordination on Contribution Principle. For some classes of acts, the contribution of the act to a given end -- and so, in a crucial sense, the nature of the act itself -- increases when others act in the same way. (Examples: an individual's foregoing meat will not save the lives of any animals; but if many people become vegetarians each contribution becomes more significant. An individual's giving money to panhandlers makes less of a difference to welfare than a coordinated effort to aid the homeless.)

Codes of ethics, then, by encouraging or even requiring standards of behavior among a group of people sharing needs and interests, can affect both their motivation to act and the nature of their acts. When the encouragement provided by codes is reinforced by sanctions for noncompliance, their effect on these principles will be even greater.

V

The arguments so far suggest material reasons for thinking a code of ethics can get people to behave differently than they might in the absence of the code. But there are other reasons for wanting a code of ethics. If the reasons discussed so far are "material," these others are by contrast "symbolic" or "expressive": they concern the value of the *public* expression of

ideals, values, or rules, apart from their material effects. They flow from the realization that it's one thing for people to act privately on a rule and another thing to express adherence to it publicly. The symbolic, expressive value is possessed not only by codes of ethics but by laws and other public regulations as well. A law prohibiting segregation in public accommodations, for example, has value not only because it forbids something immoral, and therefore helps to purge evil from the world directly, but also because it loudly announces a society's commitment to a certain moral standard. It not only prohibits certain conduct but also publicly avows our rejection of it -- a distinct and stronger commitment.

A code of ethics can have a similar expressive function. The difference between the expressive function of a code and of a law is in the "we" who do the expressing -- the scope of the community that makes the statement and over which it applies. Law is the public expression of the whole community or society (although we will always find individuals who do not assent to the message). A code of ethics is the expression of that group whose code it is. This, of course, doesn't tell us very much. But it compels us to consider the constitution and self-definition of the group in question.

We think of codes of ethics as existing most typically among those groups and organizations we call professions. What is a profession? There is a large sociological literature on this subject. What we call professions in our society have a certain class status, which affects and is affected by how their members view themselves. But must codes of ethics be limited to professions? Or, to ask a slightly different question, can any occupational (or other) group join

together and adopt a code of ethics? In so doing does it thereby become a profession? Could there be a code of ethics of the association of auto mechanics?⁹

Why not? Certainly no one can stop an organization from creating or adopting a code of ethics for itself, and it's hard to imagine why anyone would want to. According to sociologists of the professions, professions come into existence and get organized for well-defined reasons having to do at least partly with the self-interest of members of the group. There are no doubt reasons why some groups are organized as professions with codes and others are not. I shall not inquire into these reasons here. But in any case a group's adoption of a code of ethics, whatever its reasons, means it has explicitly avowed certain obligations. Perhaps it would have had these obligations whether it avowed them or not; nevertheless the explicit recognition that it has them adds another layer of responsibility on members of the group. At the very least, they cannot plead ignorance.

VI

A code of ethics contains two distinct aspects, each of which itself allows for a great deal of variation. There are, first, its *prescriptions* concerning what a professional (psychiatrist, nurse, attorney, professor) ought to do or not do, or more generally how she ought to comport herself, or what she, or the profession as a whole, ought to aspire to. Distinct from its prescriptions are a code's *sanctions*. What, if anything, follows upon noncompliance with the

⁹ See the discussion of the National Association of Realtors' code of ethics in Robert Fullinwider, "Professional Codes and Moral Understanding," in this volume. Fullinwider's criteria for a profession -- that it involve "performance for public good," that it require special knowledge and training, and that other people are rendered especially vulnerable to the professional's practice -- seem to apply to auto mechanics as well as physicians and lawyers.

code? Some objections to codes of ethics -- that they are trivial exercises in public relations -- depend on the assumption that they lack the power of enforcement. Other objections to codes, as we saw earlier, rest on the opposite concern: that they are too authoritarian.

Consider first the question of prescriptions. The prescriptions in a code of ethics can be either requirements, or aspirations (ideals), or both; and either can be stated with varying degrees of precision. Requirements must be requirements of conduct: you can command someone to do (or not do) something, not to be (or not be) something or to have certain feelings. Ideals or aspirations are not necessarily restricted to action; a code of ethics can recommend that a professional aspire to be a certain sort of person with certain sorts of attitudes or traits of character. It may be that even aspirations always contain a behavioral component: you tell that someone is a certain sort of person by how they act. But the behavior in question may be subtle and not confined to what we think of as discrete acts.

The Code of Ethics and Professional Conduct of the American Institute of Architects divides its prescriptions into three classes: Canons, which are "broad principles of conduct"; Ethical Standards, which are "more specific goals towards which members should aspire in professional performance and behavior"; and Rules of Conduct, mandatory rules whose violation "is grounds for disciplinary action by the Institute."¹⁰ It is obvious that insofar as a code of ethics prescribes ideals, it can be vague and general; insofar as it mandates behavior, it must be -- or at least it ought to be -- specific.¹¹

¹⁰ See *Codes of Professional Responsibility*, 2d ed., edited by Rena A. Gorlin (Washington: Bureau of National Affairs, 1990), p. 31.

¹¹ For an extremely detailed discussion see Fred Zacharias, "Specificity in Professional Codes: Theory, Practice, and the Paradigm of Prosecutorial Ethics," *Notre Dame Law Review* 69 (1993).

Only the violation of mandatory rules can trigger sanctions, but mandatory rules do not necessitate sanctions. In theory, a code of ethics could require certain conduct but lack an enforcement mechanism.

The sanctions a code of ethics provides can be of various sorts. There can be fines or other similar penalties, censure and reprimands. The maximum penalty for violation of the American Medical Association's Principles of Medical Ethics is expulsion from the AMA; the Judicial Council of the AMA has "jurisdiction over all controversies arising under the Principles."¹² Expulsion from the AMA does not, however, prevent a doctor from practicing medicine, a privilege that can be revoked in the United States only by a state licensing board. But in deciding whether to revoke a license, such boards may treat a code of ethics as evidence of a standard of practice by which to judge conduct.

As one might expect, the relevance of codes of ethics in the legal profession is more complex. The American Bar Association adopted the Model Code of Professional Responsibility in 1969, and replaced it with the Model Rules of Professional Conduct in 1983. The Model Rules have been amended frequently since then. "The rules are designed to serve as model legislation for the state and federal bars in creating their own rules of professional responsibility, applicable to the attorneys who practice within their jurisdictions."¹³ Every state except California has adopted a version of one of the ABA's model codes of ethics; California has adopted its own code. In all states, the relevant code is adopted as a legally binding court rule by the state's supreme court. A state bar-operated grievance committee, under the authority

¹² See *Codes of Professional Responsibility*, 2d ed., p. 98.

¹³ *Codes of Professional Responsibility*, 2d ed., pp. 332-3.

of the state's supreme court, decides disciplinary matters and is empowered to impose sanctions ranging from private reprimands to public reprimands to temporary suspension from practice to disbarment. The ABA Model Rules specifically caution that they are not meant to provide standards for malpractice liability.

So there is tremendous variation in the nature of the prescriptions and the degree of their bindingness from code to code. Some prescriptions are merely the statement of ideals; compliance with some is voluntary, with others mandatory. Even where compliance is mandatory, sanctions and enforcements vary greatly, from none to reprimand to expulsion from the professional organization to expulsion from the profession itself.

VII

We can summarize our conclusions as follows.

1. Codes of ethics can increase the likelihood that a person will behave in certain ways, in part by bringing to consciousness the character of her actions, in part by attaching sanctions to noncompliance, in part by increasing the value of, and decreasing the sacrifice involved in, the person's lone, individual act.

2. An "external" code of ethics might be thought to conflict with the nature of ethics if we conceive of ethics as essentially concerned with voluntary, autonomous action -- more generally, with the character of inner life. But ethics is only partly concerned with acting for the right reasons or from the right motives; it is also concerned with getting people to behave in ways that have been determined (by whatever means) to be morally desirable or required. Even

insofar as ethics is concerned with acting with the right reasons or motives, this cannot be thought to rule out ways of getting people to have the right reasons or motives.

3. Furthermore, the existence or validity of a code of ethics never constitutes a decisive, nonrebuttable reason to act; as in the case of law, it provides at most a strong prima facie reason to act, rebuttable by conscientious objection.

4. Codes of ethics, like laws, can also fulfill the function of publicly expressing a group's commitment to some moral standard.

5. The effectiveness of a code of ethics or of particular provisions within it depends on -- in addition to the sense of duty of those to whom it applies -- whether the provisions are framed as requirements or aspirations (or something in between), and on whether and what sanctions are attached to noncompliance.

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July 1995

