

What of a Code without such consequences? of a Code intended to govern the conduct of the practitioner, but the violation of which would involve only social punishment? or a Code intended simply as advice as to conduct?

It seems to me much like drawing up a Code of Etiquette to make a gentleman.⁴

When I used to deliver lectures to the students of the Osgoode Hall Law School on Legal Ethics, I devoted most of my time and efforts to showing that the profession of law is a liberal as well as a learned profession, that there is and can be nothing in the practice of law inconsistent with the highest type of scholar, gentleman, and Christian. With that as a text all else follows—the lawyer, a gentleman, will act as such, he will treat all, whether professional brethren or laymen, as he would be treated in like case—that, it seems to me, is the whole of the law and the prophets. I would have in every law school two or three lectures in each year on legal ethics in that sense—lectures either by the president or (preferably by) some one in active and extensive practice, devoted to inculcating in the mind of the students the all-important fact that the lawyer who is worthy of his profession is not a mere money making machine, but a gentleman respecting himself and his fellow men—he may and should make all the money he honestly and honourably can, but only so much and how as he honestly and honourably can. Is there any more need for a Code for lawyers than for members of a club? Both are expected to act as gentlemen, but no one would think of codifying the duties of club members. In that view a Code is superfluous, unnecessary.

There are, however, positive objections to a Code which states any but the most indefinite generalities. Any Code which entered into particulars would in my view do more harm than good — and for two reasons: First, when a Code of Rules has been formulated it is most natural, almost inevitable indeed, for its provisions to be considered exhaustive; whatever is forbidden is wrong, and in most minds the old logical fallacy of the “undistributed middle” is not avoided, but it is considered that what is not forbidden is not wrong. When one is charged with wrong doing, and told that he must act in a particular way, his defiance is “on what compulsion must I?” “It is not so written in the Code.”

It is the natural and inevitable consequence of any written code to divide sharply what is forbidden from what is not—and what is not forbidden too often is considered to be allowed.⁵ Anyone who is accustomed to refer to a written Code for the rule to direct his conduct will be apt to believe that it is complete, and will generally give himself the benefit of any doubt or omission.⁶

Again, unless I am quite in error, any attempts to particularize would be dangerous. Let me take two examples.