

SHEPHERDIZING THE RULES OF ETHICS

Or To Be More Accurate -

Shepherdizing

How We Live Out

The Rules of Ethics

Shepardizing

Shepardize is a legal research method of locating reports of appeals decisions based on prior precedents from Shepard's Citations, books which list the volume and page number of published reports of every appeals court decision which cites a previously decided case or a statute.

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Shepherdizing

Shepherdizing is a discipleship method of evaluating secular rules of ethics in the context of standards of Christian discipleship.

Shepherdizing helps us know how to apply the rules of ethics. Our conduct can then be Shepardized as evidence of what a Christian lawyer does in light of the rules and Christian standards.

Shepherdizing

The same symbols can apply in ethical situations we encounter in our practices:



The Roots of the ABA Code

The current ABA Rules of Professional Conduct and the concept of a formalized and comprehensive code of legal ethics can be traced back to the **ABA Code of 1908**. That code is said to have derived from the **Alabama Code**, the first official state code, that was adopted in 1887. M.H. Hoeflich, *On The Christian Origins Of American Legal Ethics*, Journal of the Kansas Bar Association (May 2017).

The Roots of the ABA Code

Hoelich states that both the ABA Code of 1908 and the Alabama Code of 1887 "were decisively influenced and shaped in large part by the writings of two earlier nineteenth century jurists: David Hoffman's *Course of Study and Fifty Rules on Professional Development* [1836] ... and Judge George Sharswood's *Essays on Professional Ethics* [1856]...." *Id.*

The Roots of the ABA Code

Hoelich makes the point that lawyers, like everyone else, are a part of society. Lawyers, like everyone else, go to church and attempt to live a faithful life. Thus, he argues that **Christian writers of all kinds have influenced what ultimately became rules of ethics and codes of professional responsibility.**

The Roots of the ABA Code

One of those influences was Jonathan Dymond, an English Quaker, whose *Essays on the Principles of Morality and on the Private and Political Rights and Obligations of Mankind* [1834] contained a section on the ethics of legal practice.

The Roots of the ABA Code

Dymond makes this point about lawyers who use the overly technical rules of law to the detriment of what is just and equitable:

Lawyers familiarize to their minds the notion that whatever is legally right is right; and when they have once habituated themselves to sacrifice the manifest dictates of equity to law, **where shall they stop?**

Dymond, *Essays*, p. 156.

The Roots of the ABA Code

He continues:

The practice of disregarding rectitude in courts of justice will become **habitual**. They will go onward from insisting on legal technicalities to an endeavor to **pervert the law**, then to giving **false colouring of facts**, and then onward and still onward until witnesses are abashed and confounded, until juries are misled by impassioned appeals to their feelings, until **deliberate untruths are solemnly averred**, until, in a word, all the pitiable and degrading spectacles are exhibited which are now exhibited in law practice.

Id.

ARE WE THERE YET?

The Roots of the ABA Code

Dymond continued:

... a lawyer is obliged to **hold morality as paramount** in his own practice. If one may not urge an unjust legal pretension, another may not assist him in urging it. No man may say it is the lawyer's only business to apply the law. **Men cannot so cheaply exempt themselves from the obligations of morality.**

Id., p. 157.

HMMM

The Roots of the ABA Code

Another influence was Thomas Gisborne's *An Enquiry Into the Duties of Men in the Higher and Middle Classes of Society* [1794]. Gisborne was an Anglican clergyman, whose book included a chapter entitled "On The Duties Of The Legal Profession."

He tied such duties to the Christian faith. In answering a question he posed about the use of the law:

But does not this answer, it may be said, **give the Advocate a liberty which Christianity denies him?**

The Roots of the ABA Code

Does it not teach him, that immoral means may be used to accomplish a beneficial end; that individual acts of fraud and injustice may be vindicated and abetted, for the sake of upholding a system, by which fraud and injustice are on the whole restrained?

By no means: it **gives no countenance to a doctrine so clearly condemned in the Gospel.**

Let it be remembered, that the standard to which the Advocate refers the cause of his client is not the law of reason, nor the law of God, but the law of the land; and that he appeals no farther to the two former than as they are incorporated into the latter; ...

The Roots of the ABA Code

... that his peculiar and proper object is not to prove the side of the question which he maintains morally right, but legally right; ...

... that the law offers its protection only on certain preliminary conditions; that it refuses to take cognizance of injuries, or to enforce redress, unless the one be proved in the specific manner, and the other claimed in the precise form, which it prescribes; ...

... and consequently that, whatever be the pleader's opinion of his cause, he is guilty of no breach of truth and justice in defeating the pretensions of the persons whom he opposes, by evincing that they have not made good the terms on which alone they could be legally entitled, on which alone they could suppose themselves entitled, to success.

Enquiry (Seventh Ed. 1824), pp. 312-313.

The Roots of the ABA Code

Gisborne has other gems:

It is scarcely necessary to observe, that uncorrupt integrity is a virtue so naturally allied to the character of a man, whose avowed office is to procure the establishment of rights and the redress of injuries, that the possession of it affords little claim to praise; the want of it ensures indelible infamy.

... And he whose conscience is alive to the dictates of Christianity will recoil at the bare mention of sin, which he knows would not be unseen by his Almighty Judge, and must ere long be blazoned before men and angels, though obscured at present by every possible precaution, and committed in the deepest recesses of solitude.

Id., pp. 327-328.

The Roots of the ABA Code

He will fortify himself by Christian principles against the contagion of profligate examples. He will beware of being betrayed into a neglect of the public or private duties of religion; ...

Id., p. 330.

He is not less obnoxious to the temptation of gradually permitting himself to conclude, that whatever is right in law is also morally and politically right.

Id., p. 333

Shepardizing & Shepherdizing Today

Today, we live in a pluralistic society in which the Christian faith is often marginalized from the practice of the law as an ethical standard.

But Christian standards are not marginalized from our lives, and as Reverend Michael P. Orsi says:

“Regardless of what profession one might practice, too often religious belief is reduced to merely an *aspect* of life. Yet, for the Christian, being a Christian *is* life, and one’s profession is only one way in which we serve out our call.”

Micah 6:8 A Lawyer's Guide for Creating a Just World (The Christian Lawyer, Christian Legal Society, Winter 2010), p. 6,

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Therefore, we are called to integrate our Christian faith into our vocation as lawyers.

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Here are some resources to help us:

Julius B. Pogginga, *Christian Character and Good Lawyering: Integrating Faith and Practice* (The Christian Lawyer, Christian Legal Society, Spring 2018), p. 22

Glenn R. Winters, *The Concept of the Christian Lawyer* (The Christian Lawyer, Christian Legal Society, Spring 2018), p. 25

Bruce M. DiCicco, *Christian Lawyers of Lawyers who call Themselves Christian?* (The Christian Lawyer, Christian Legal Society, Fall 2011), p. 20

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Timothy G. Bost & L. Timothy Perrin, *Practicing Law as a Christian: Restoration Movement Perspectives*, 32 Pepp. L. Rev. 2 (2005)

Leslie C. Griffin, *The Relevance of Religion to a Lawyer's Work: Legal Ethics*, 66 Fordham L. Rev. 1253 (1998)

Monroe H. Freedman, *Religion Is Not Totally Irrelevant To Legal Ethics*, 66 Fordham L. Rev. 1299 (1998)

Russell G. Pearce, *Forward, Symposium, The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 Fordham L. Rev. 1075 (1998)

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Scripture has a lot to say about ethical Christian behavior.

And the **Preamble to our Arkansas Rules of Professional Conduct** allows for consideration of such Christian standards.

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[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, **a lawyer is also guided by personal conscience and the approbation of professional peers. ...**

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[9] In the nature of law practice, however, conflicting responsibilities are encountered. ... Within the framework of these Rules, however, **many difficult issues of professional discretion** can arise. Such issues must be resolved through the **exercise of sensitive professional and moral judgment** guided by the basic principles underlying the Rules. ...

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[16] ... The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. ...

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So what are some of the moral and ethical considerations that a Christian lawyer should observe?

Here are some familiar ones:

Psalm 24:3-4

Who shall ascend in the hill of the Lord? Or who shall stand in his holy place? He who hath **clean hands**, and a **pure heart**, who hath **not lifted his soul unto vanity**, nor **sworn deceitfully**.

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Micah 6:8

He hath shown thee, O man, what is good; and what doth the Lord require of thee, but to **do justly**, and to **love mercy**, and to **walk humbly with thy God**?

Matthew 6:33

But seek ye **first** the kingdom of God, and his righteousness, and all these things shall be added unto you.

Philippians 4:8

Finally, brethren, whatever things are **true**, whatever things are **honest**, whatever things are **just**, whatever things are **pure**, whatever things are **lovely**, whatever things are of **good report**; if there be any virtue, and if there be any praise, think on these things.

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Are there other standards that you live by as a Christian lawyer?

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There is a series of verses in 1 Corinthians that we might consider to Shepherdize our practice law. The outcome of our decisions is not only an outcome of the rules of professional conduct but evidence of our faith walk.

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1 Corinthians 6:12

All things are lawful unto me, but all things are not expedient; all things are lawful for me, but I will not be brought under the power of any.

Do my actions allow my life to be controlled by forces that do not advance my Christian values?

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1 Corinthians 8:9

But take heed lest by any means this liberty of yours become a stumbling block to them that are weak.

Do my actions become a stumbling block to others who may succumb to temptation?

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1 Corinthians 9:12

Nevertheless, we have not used this right, but bear all things, lest we should hinder the gospel of Christ.

Do my actions benefit me personally to the detriment of the Gospel?

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1 Corinthians 10:12, 14

Wherefore, let him that thinketh he standeth take heed lest he fall. ... Wherefore, my dearly beloved, flee from idolatry.

Do I place undue confidence in myself and my own abilities, such that my pride and ego become a counterfeit God?

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1 Corinthians 10:23, 31

All things are lawful for me, but all things are not expedient; all things are lawful for me, but all things edify not. ... Whether, therefore, ye eat, or drink, or whatever ye do, do all to the glory of God.

Do my actions glorify God and edify my witness as a person of faith?