

AGAINST “RULES” OF PROFESSIONAL ETHICS

I. Prologue

This is a conceptual argument against the use of rules or codes of professional conduct as a means to enforce professional ethics or morality because such rules are unavoidably conceptually arbitrary, random, and indeterminate and contradict the foundational concepts of our rule of law such as Due Process and Equal Protection and thus are immoral; are unnecessary given the availability of criminal and civil law to enforce whatever rules or codes of professional ethics are intended to enforce; and their teleological and pragmatic rule following works against the diversity of cultural and individual identity the rhetoric of United States rule of law culture states it wants in its culture of law.

The relationship between law and morality is fertile and omnipresent ground for analysis and argument in law in particular in philosophy of law. This is true of both analytic philosophy and of post-modern social justice continental versions of philosophy that used to be called in my law school days critical legal studies but now seem to be calling themselves critical legal realism among many other names. Many would argue all law regardless of whether it is a civil, criminal, administrative, or whatever form serves only to enforce dominant cultural and social power structures of the social group Powers-that-be creating and enforcing the rule of law. However, even if true, such structural evil would not be a sound basis nor a practical basis to argue for elimination of all rules that are called laws — at most it would be a basis for modification or elimination of some, many, or most; inevitably, modern civilization would not and perhaps cannot accept anarchy and “the greater evil of private retribution”¹ instead of some form of law.

Similarly, except for outcaste nihilists, no one disputes ethics is a good and all assume inferentially that having rules of ethics is a good. There is a universally assumed inference from “ethics is good” to “rules of ethics are good”. Thus, what once were aspirational, exemplary, or at best custom and etiquette paradigms of professional conduct, often expressed informally and enforced informally, have become omnipresent rules or codes of professional conduct formally expressed and multiplying constantly so as to govern the conduct of every law student, lawyer, and judge in every known Bar of which I am aware and in every activity in every legal forum varying from the lowest clerk-magistrate conducting a traffic hearing or complaint application and on up to the Supremes of the United States and of each state. All assume rules of ethics are as necessary as are rules of law. Even though the Wittgensteinian Rule Following Paradox both as initially argued by Wittgenstein and as developed in its Kripkenstein versions provides fertile ground for challenging this assumption, legal culture ignores this Paradox and its implications when it comes to procreating rules and codes of rules of professional conduct.

The assumption that rules of ethics are as necessary as the rule of law is conceptually unsound and as argument is invalid. The Rule Following Paradox undermines not only the validity of the conclusion that rules of ethics are a necessary good but also the soundness of this

¹ Holmes Jr., Oliver Wendell. The Common Law. Holmes Press: Middleton, Delaware (2012) pp. 25-26.

inference when contemplated in the state of affairs in which and by which rules of ethics are enforced. Ultimately, conceptually through contemplation of the Rule Following Paradox, the conclusion must be that formal rules of ethics which by necessity must be enforced by some form of violence (such as by denying one the ability to earn a living as an attorney) serve only to enforce dominant cultural and social power structures of the social group creating and enforcing the rules of ethics. Given the rhetoric of present legal culture in the United States worshiping diversity of culture and individual egalitarianism as to meaning and understanding and even happiness in life, formal codified rules of ethics are not a good but an arbitrary and random structural enforcement of power dominance whose limited practical value for promoting and marketing a desired image of the legal profession is unnecessary while doing more harm than good. Codes of Ethics are unnecessary both conceptually and practically because the universal presence and acceptance of the rule of law in present society in and through criminal and civil law with its centuries of substantive and procedural Due Process guidance serves whatever purposes — including aesthetic purposes of image promoting and marketing the business of law as a profession — those in power desire to promulgate through codes of rules of ethics.

For purposes of this essay, I assume foundationalism in ethics: morally good principles are objective or natural kinds in reality existing either in the mind of God; as entities somewhere in the physical or some other universe; or wherever you want the Good to be. If the Good is actually some kind of social construct, my arguments here would only be stronger not weaker. Thus, we can avoid meta-ethics problems with rules of ethics. This essay is a conceptual analysis, though it could just as easily be a practical one. I keep it conceptual because my argument is a radical one disliked by all aspects and practitioners of the profession of law; as I have argued elsewhere, the practice of law has become a religion for many lawyers and in particular for those who make a living pontificating on the law as a reflection of natural law; as an embodiment of Rawlsian ethics; or as an exemplification of any variety of a vast quantity of other available conceptualizations equating ethics with some kind of either universal cosmic justice social construct good or with a universal morality — even social construct relativist theories of ethics assume a morality of universal application though they go through great distortions to avoid saying so². Regardless of my assuming there are objectively sound moral principles or entities of the Good, or whatever, it does not follow there can be objective understanding, interpretation, or even meaning for rule following called codes of ethics. Thus, my goal here is to create conceptual doubt for the omnipresent assumption that rules of ethics are necessary; once the doubt begins, practical and empirical support will be easy to find.

Personally, I admit to being a dupe in the random and arbitrary structural evil made up of professional rules of ethics. Personally, I also admit to having experienced the pain of watching many other good and honest attorneys become dupes of this random and arbitrary evil called “codes of ethics” as a result of their honest cultural and social inability to understand the dominant cultural language, etiquette, or customs of the wordgame rules or codes of professional ethics. This experience is my motivation for finally writing in essay form my conclusions reached during twenty-five years of trial practice. I say dupes instead of victims because we all come into

² See generally, Neiman, Susan. EVIL IN MODERN THOUGHT, an alternative history of philosophy. Princeton University Press: Princeton, N.J. (2002).

the practice of law intentionally and knowingly and fully aware there exist professional rules of ethics we must follow or they will bite us if we do not. However, many of us because of a lack of sophistication and cultural indoctrination into the dominant culture of those writing and enforcing such codes of rules were duped into the naive belief indoctrinated into us by law school and the profession that these rules can be knowingly and intentionally followed and even understood and interpreted by anyone with a sense of fairness guided by rationality and that they are so enforced in a rational manner and with a sense of fairness (which they are not). It is this dangerous delusion protecting the emperor from admitting the nakedness of their clothing I am attacking. There is no problem with having a wordgame of ethics to promote standards of conduct and conversations about acceptable conduct; it is quite another form of life to have rules enforced by violence in such a wordgame and giving it a final necessary attribute of violence — the violence consisting of financial ruin and denial of an attorney’s ability to practice law.

Though much of my rule following analysis could erroneously be applied to law following, this is not my intention nor would it be rationally sound to do so. To paraphrase Voltaire, even if law following were ultimately to be shown to be a meaningless concept no better than a leap in the dark, if the rule of law did not exist, it would be necessary to invent it. It does not follow from the fact the United States was founded upon a rebellion in which its founders were considered by the rule of law to be criminals and traitors who would be hanged if caught that we should be an anarchy. However, if rule following in the wordgame of professional ethics is conceptual nonsense, it does follow we should be an anarchy as to professional rules of ethics because demanding logically impossible rule following from individuals is itself an immoral demand especially when the rules are enforced by violence; *i.e.*, to demand the blind to see or to demand one both be and not be at the same time to avoid punishment are different in degree but not in substance to demanding one follow a teleological or even pragmatic rule whose meaning and rule following is inherently conceptually unknown or non-existent.

II. Realism Not Idealism Is Assumed

While assuming moral realism and not advocating nihilism, I am also not advocating nor admitting to ethical idealism by my assumption of a moral reality. In my lifetime, I have seen both ethics and law become secular religions. Though some dispute whether the latter is entitled to such worship, almost no one presently disputes ethics and morality and any rule following called ethical and moral rule following as entitled to such worship. This idealism toward ethics and its rule following has no basis in the reality of professional codes of ethics especially in the law. The first code of ethics for any Bar in the United States was adopted by the State of Alabama on 14 December 1887 and it served as the foundation for the canons of ethics of the American Bar Association which then spread to almost all states³. The supposed motive was:

... to advance the science of jurisprudence, to promote the administration of justice throughout the State, uphold the honor of the profession of the profession of the law, and

³ Jones, Walter Burgwyn. “First Legal Code of Ethics Adopted in the United States”. American Bar Association Journal. Vol. 8, No.2 (Feb. 1922) pp. 111-113.

establish cordial intercourse among the members of the Bar of Alabama.

...

The object of the Code of Ethics is to condemn practices which have prevailed, and which should be avoided, and to set the seal of condemnation of the association upon certain conduct which has been practiced to the detriment of the profession.⁴

Beautiful sounding words but the reality of the goals and purposes of these words was to create rules to use and to be useful against “carpetbagger” lawyers and judges⁵ whom the esteemed lawyers and jurists of Alabama detested while being more than willing to accept in 1887 and for another seventy five years an Alabama in which racism and classism⁶ were not only considered morally good but this supposed Good was enforced by supposed ethical law following and rule following requiring courses of action varying from Jim Crow laws and social serfdom to mob lynching and forced *de jure* and *de facto* segregation of white from black and poor from rich⁷. Just as the Alabama legal code of ethics did nothing to make Alabama attorneys take courses of action now universally assumed to be correct and required by ethics and morality (in fact, given its true motive to control so-called carpet baggers who were trying to change Alabama culture to what is now socially considered to be a better society, this Code probably did more harm than good), there is no factual or rational reason for assuming any present legal code of ethics is making the law any more moral or an aspect of the Good with it than without it — even if I assume there is a moral reality the “science of jurisprudence” can know just as the eminent lawyers and jurists of 1887 Alabama assumed. For those who worship the rule of law and moral reality, present professional rules of ethics may be as much a mockery of their worship of the law and morality as was the 1887 Alabama code of ethics. Regardless of how real morality may be, especially given the conceptual problem presented by the Rule Following Paradox, academic scholarship and the law should not assume rules of ethics are moral.

III. The Rule Following Paradox

The presently called Rule Following Paradox (RFP) is shorthand for various contemplations of problems in the philosophy of language and of mathematics by the analytic philosopher Ludwig Wittgenstein in his Philosophical Investigations (PI); the most direct expression of the Paradox in the PI is: “[t]his was our paradox: no course of action could be

⁴ Id. pp. 111-112.

⁵ Id. p. 112;

⁶ *See generally*. Isenberg, Nancy. WHITE TRASH: The 400-Year Untold History of Class in America. Viking Press: NY, NY (2016).

⁷ Id.

determined by a rule, because any course of action can be made out to accord with the rule"⁸. This Paradox was highlighted; made more explicit; brought into the mainstream limelight; and studied in analytic detail instead of the dialectical Socratic method of the PI by the philosopher Saul Kripke in his Wittgenstein on Rules and Private Language in which he writes this Paradox is: "the most radical and original skeptical problem that philosophy has seen to date"⁹ because it undermines the possibility of ever following rules in our use of language and thus the possibility of ever having objectivity in the meaning of words. Because many dispute Kripke's treatment of the RFP, it is often treated as a distinct RFP and referenced as Kripkenstein.

It is not my purpose here to get into a rigorous all-encompassing contemplation of RFP. Given my realist assumption that moral principles or the Good make up an objective reality we can come to know and understand as we do sense experience, there is no need to do so. A basic understanding of the essence of the RFP and of how it occurs in natural language is sufficient.

Both Wittgenstein and Kripke and most philosophers contemplating RFP begin by analyzing mathematical language as an expression of RFP because mathematical language is the clearest example of what is almost universally assumed to be clear and precise rule following expressed in unambiguous words applicable to an infinite number of cases that share with natural language the potential for an infinite number of meanings for words, sentences, and rules derived from a finite set of experiences — in the case of mathematical language unlike natural languages however, the infinite possibilities are clear and precise and the rules determinate. If RFP is a real problem in the language of mathematics, it is a real problem in any natural language. Therefore, I will also begin with an analysis of RFP in mathematical language before natural language.

Since I have assumed realism for moral principles and their Good, for consistency, I will assume realism for numbers and numeric entities in my reasoning. Again, as with morality and ethics, if numbers are really just social constructs, my argument here only becomes stronger.

We must begin by a holistic understanding of the transition from the finite nature of our empirical experiences including the experience of speaking a language to the infinite conceptual possibilities of reason and language. Not only is this transition the source of the RFP problem, it also marks a conceptual wordgame distinction between descriptive and normative rule following:

... although an intelligence tester may suppose that there is only one possible continuation to the sequence 2, 4, 6, 8, . . ., mathematical and philosophical sophisticates know that an indefinite number of rules (even rules stated in terms of mathematical functions as conventional as ordinary polynomials) are compatible with any finite initial segment. So, if the tester urges me to respond, after 2, 4, 6, 8, . . ., with *the* unique appropriate next number, the proper response is that no such unique number exists, nor is there any unique

⁸ Wittgenstein, Ludwig. Philosophical Investigations. Hacker, P.M.S.; Anscombe, G.E.M.; Schulte, Joachim; trans. Blackwell Publishing: West Sussex, United Kingdom (2009) at ¶201.

⁹ Kripke, Saul. Wittgenstein on Rules and Private Language. Harvard University Press: Cambridge, MA (1982) p. 60.

(rule determined) infinite sequence that continues the given one.¹⁰

An intelligence tester asking me to predict the next number in the sequence 2, 4, 6, 8, . . . is on the surface testing my understanding of rule following having descriptive meaning — in this case the descriptive meaning is also predictive. The obvious course of action for anyone with the necessary grammar school experience and understanding is to predict the correct answer to be 10; the rule to be followed is the function $add(x + 2)$. However, this answer is not obvious because of any descriptive rule following that is an experienced fact of this state of affairs in the same way the numbers are experienced facts: we experience no addition or other function in the facts. There are an infinite number of possible rules I can experience and follow and resulting courses of action that will predict the next number in this series and go on to predict any number at any point in a following infinite series of courses of action and of their numbers.

Though at first glance there appears to be only one course of action for correct rule following, the empirical reality really has an infinite number of possible courses of action with their correct answers. The possibilities fall into the following general descriptive categories:

- 1) If I lack the necessary experience or understanding with numbers to take any course of action, I can take a random and arbitrarily leap in the dark to guess any number. With luck, I would guess the correct answer sought of 10 and be deemed intelligent despite having followed no rule. If I guess wrong, I will be deemed not intelligent. In the latter facts, if I am sufficiently ambitious, after the test I can research the question, discover there really is no unique next number, find a mathematical function whose answer is the answer I guessed, and then file a protest arguing I did give the correct answer but the test was culturally biased (*see infra* at Pirahã and n. 7) so as to get my answer accepted or at least get the question stricken from the determination of my intelligence. This action of a leap in the dark would not be called rule following — neither correct nor incorrect. Any latter activity of any appeal done intentionally to hide my ignorance of any correct answer could definitely be called a form of intelligence which most ethics and morality would consider to be unethical and immoral. Of course, one could also question the ethics and morality of the tester asking such a question.
- 2) If I know the correct answer sought but understand there really is no unique correct answer, I have a problem and my options are varied. If I am not risk averse, I could show off my mathematical creativity by giving a different answer while planning to file a protest after the test complaining the test question is culturally biased (*see infra* at Pirahã and n. 7) and risk an averse decision; after all, the tester may be testing my ability to understand the answer they want and my willingness to tell them what they want to hear as a form of intelligence. If I am risk averse and have no desire to show off my mathematical creativity, I simply give the answer sought of 10 and then perhaps file a protest, or not? These options and other combinations of my understanding of the correct answer sought and the

¹⁰ *Id.* at p. 18.

lack of any unique correct answer all present normative issues of what I ought to do including moral issues. If I know the question truly and factually to have no unique correct answer, I can still pretend to rule follow to a correct answer but ought a moral person act upon this knowledge and risk an adverse result by protesting — either deemed unintelligent or a trouble maker by the tester?

- 3) Finally and probably the rule following tested for by the tester is for one truly to believe there is only one unique rule following at issue with only one unique correct action and then to follow this rule following to the correct answer of 10. This is correct rule following to a correct answer, but are there moral problems with having a false belief be a correct answer on an intelligence test?

As brought out by the above example of the unambiguous and determinate predictive rule following of mathematics, once I know enough about language, very often descriptive so-called rule following as a thread in our Quinean fabric of understanding quickly and smoothly becomes (more accurately, simultaneously is) also normative rule following: *e.g.*, I want to score high on intelligence, so what rule do I follow to score high? Once I have a sufficient experience and understanding of the wordgame language of mathematics as it is presently played, the rule I know I ought to follow to get a correct answer on the intelligence test *supra* is the function $add(x + 2)$ but not before. Absent such experience and its understanding giving me a goal or purpose for rule following, all rule following is a Situation #1 leap in the dark. This is a straightforward pragmatic reality similar to the normative rules of any game (thus Wittgenstein's use of the term "wordgame" to describe language): just as in chess where a King normatively "ought" only move one square in any direction in order to play the game correctly, when taking intelligence tests the intelligent normatively ought tell the tester the answer the tester wants to hear. In the normative language called rule following of games and wordgames, the descriptive reasoning is actually reversed: we are not going from a rule with predictive meaning to an answer but from our teleological or pragmatic goal — such as of scoring high on an intelligence test — to creating and accepting the rule we need to follow to achieve that goal¹¹. The answer precedes the rule.

Further in the holistic reasoning of the state of affairs called rule following, except for the completely ignorant of *supra* Situation #1 and of Situation #3 — though for #3, socially, the ignorant would be deemed nominally and most likely pragmatically intelligent — the simple thread of normative rule following in our Quinean fabric of understanding rule following quickly becomes (perhaps simultaneously is) a normative problem including in the sense of ultimate value: *e.g.*, is it ethical or moral for the tester to expect a unique answer where there is none; is it ethical or moral for the answerer to provide a unique answer where there is none? If desired by those in control of the test, the answers to these last questions could lead to ethical and moral rule following marking the tester as well as the answerer with a scarlet letter of unethical and immoral behavior if not followed. Only the ignorant of Situations #1 & #3 would be immune to the sting

¹¹ Modern epistemology has only recently begun to rigorously differentiate between types of reasoning as distinct from types of logic. *See generally*, Harman, Gilbert. Change in View: Principles of Reasoning. MIT Press: Cambridge, MA (1986). My shortened contemplations here are hopefully sufficient for the limited conceptual purpose of this essay.

of ethics and morality — unless one considers ignorance to be unethical or immoral.

Intuitively, for the ignorant of Situation #1, there appears to be no rule following just a leap in the dark. For the ignorant of Situation #3, intuitively, there also appears to be no rule following but it appears to be different from the rule following of Situation #1; there is no leap in the dark to a random and arbitrary answer but there also does not seem to be any rule following to a unique correct answer just an arbitrarily and randomly created “correct” answer. So as not to get too far ahead of myself, to bring out the different conceptual nature of the rule following described in Situations ##1 - 3, I first consider the RFP in the descriptive predictive language of mathematics with its lack of vagueness and indeterminacy to bring out its conceptual nature.

For almost every educated person, the word “addition” as seen *supra* means a simple rule to follow and appears determinate and not vague but as clear and precise as any rule could be: $1 + 1 = 2$; $2 + 4 = 6$; $60 + 50 = 110$; and so onto countless addition functions we have experienced and calculated. As we go about discovery of the universe, however, we eventually come across particular additions we have not before calculated and our natural intuition is to calculate these additions by the same rule $add(x)$ or $+$ function as we have before. So, for example, if I have never seen nor calculated the addition of numbers greater than 200 before and I come across $250 + 300$ as a calculation never experienced before, my natural inclination is to say the right answer is 550. However, assume I give this correct answer to a linguist who has lived with the Pirahã of Amazonas, Brazil whose language this linguist has concluded only has two numbers which are translated into English as: few and many¹². Given the Pirahã have survived miserable conditions living in the Amazon for perhaps thousands of years with only these two numbers, this linguist is skeptical of our universal worship of mathematics as the language of God and thus asks, “how is it I know this to be the correct answer”? This skeptic argues there is no fact about my past usage of addition that determines or justifies 550 as the right answer rather than another among an infinite amount of logically possible functions with different right answers. For example, the actual real factual function giving meaning to “addition” at work in my life experience may have been the function $x @ y = x + y$ if $y < 200$ but otherwise if $y > 200$ then $x @ y = 800$. For this function $@$, the correct answer for $250 + 300$ is $= 800$. Since I have never seen nor added numbers greater than 200 before, this answer of 800 is consistent with all of my previous experience and use of “addition”; it may be all of this time the real rule operating in factual reality for these calculations described by the word addition was not the $+$ function but was actually the $@$ function. Thus the correct answer to $250 + 300$ is not 550 but 800. (Or, an infinitely variety of other possible rules and correct answers consistent with my experience of the facts of “addition”.)

It may be I have lived my whole life in Situation #3: I believe the word addition has only one interpretation and this interpretation means one rule I must follow to one unique correct answer but in fact thanks to the skeptic I now see there may be more than one meaning that can be interpreted for the word “addition”. What fact of my empirical experience with numbers < 200

¹² See generally, Everett, Daniel. "Piraha". *Handbook of Amazonian Languages*, Vol I. Desmond C. Derbyshire and Geoffrey K. Pullum (eds). De Gruyter Mouton: Berlin, Germany (1986); Everett, Daniel. “Cultural Constraints on Grammar and Cognition in Pirahã: Another Look at the Design Features of Human Language.” *Current Anthropology* 46:621–646 (2005).

requires the correct answer be 550 and not 800 as I know the correct answer to be?

When using the word addition, one does not ostensibly think about or actually follow any particular rule such as the + function. Even now as the linguist skeptic challenges me to explain why the right answer is 550 instead of 800, since I am not a mathematician, I cannot explain the rule by which I concluded 550 to be the right answer. I simply understand this to be the right answer and can ostensibly show the skeptic my calculations. However, ostensive definitions of rule following beg the question of whether there is any fact to rule following beyond particular acts. I can point to prior calculations in which I interpreted my use of “addition” to mean the + function but in none of those did I calculate with a number > 200; so, it may be my interpretation of the meaning of the word addition (or any of its synonyms such as plus, add, and so forth) to be the + function and it being applicable to the infinite possibilities for the use and usefulness of the word addition including with numbers > 200 was incorrect.

So, ostensive definitions fail to explain rule following. The next objection and response to the skepticism of the linguist would be conceptual: the function + as with any function is not defined by finite calculation examples but by an algorithm or a recursive definition made applicable by the meaning of the word addition to an infinite set of calculations. Since I do not know what that algorithm or recursive definition may be, I then go to a mathematician or mathematics textbook or, more likely these days, to the internet and find an algorithm or recursive rule for the addition function to show the linguist skeptic what I am doing and how rule following works.¹³ I first give him a grammar school level addition algorithm:

Rule 1: Line up the numbers vertically by matching the place values starting with the ones place.

Rule 2: Count together the numbers that share the same place value starting with the ones place.

¹³ We must not fall into the scientism homunculus fallacy trap of looking for neurological explanation in my brain for rule following. Though I doubt it, it may be that some day scientists will be able to correlate in my brain a calculation of addition; neurologically correlate and differentiate between the statement of the + and @ function; and know neurologically that in all previous calculations of addition, the + function correlated in the brain. However, this would not answer the question of what rule if any “I” was following to get my answers. A brain just as a computer does not except in a metaphorical sense follow or violate any rules; rule following if it exists is an attribute of consciousness and its use of human language describing and dealing with intentional acts not of anything described by that language. Just as neuroscience may some day be able to correlate in my brain my present decision to raise my right arm but such neurological event is neither my conscious decision to raise my arm nor is it the raising of my arm; it is the Self and the Other not their brains who may intend to raise and then raise an arm. Similarly, my holistic Self or a holistic individual Other can be described as rule following but what do we mean by “rule following” is the question. Some would say it is the mind that can be described as rule following but this is a metaphysical side issue not necessary to this present contemplation of the meta-linguistic concept of rule following. *See generally*, Hacker, P.M.S; Bennett, M.R. Philosophical Foundations of Neuroscience. Blackwell Publishing: Malden, MA. (2003).

Rule 3: Regroup to make one number.

Obviously, this is of no help, as the skeptic will instantly jump on the fact that my algorithm depends on an interpretation of “count” that ignores my lack of experience counting any number > 200 ; as with addition, it might well be that the meaning of “count” does not mean the equivalent of the $+$ function but actually a $\text{count}@$ function with a different meaning when the amount being counted is > 200 . I can only get around this circularity by doing what grammar school math teachers must do: give specific finite examples of counting and calculating the addition function until the students understand what they are supposed to do; I am right back to where I started. Without these ostensive examples, I am analogously in Situation #1: taking a leap in the dark to guess an answer and later find out from the tester or from someone or somewhere else as to whether my answer is correct and then backtrack to the correct rule. Again, it is the correct answer that creates the rule following not the rule.

So, continuing with my theory, I scabble through on-line mathematics books, blogs, and whatever I can find on the internet to give a more rigorous recursive definition of addition. This leads me to first define a function $F(x)$ that takes a number x to its successor $x + 1$ giving me the nonnegative integers $\mathbb{N}_0 = \{0, 1, 2, \dots\}$. I then define “addition” recursively in terms of an addition function: $\text{add}(x, 0) = x$; $\text{add}(x, F(y)) = F(\text{add}(x, y))$. At this point, the skeptic is outright laughing at me. Again, there is no fact in this state of affairs requiring “addition” mean the $\text{add}(x, 0)$ function instead of an $\text{@}(x, 0)$ function when $\mathbb{N} > 200$.

My objection arguing addition means not just a collection of calculations but an algorithmic or recursive rule applicable to an infinite number of calculations simply moves the RFP back to a higher meta-linguistic level. Whatever algorithm or recursive definition one uses for the $+$ function meaning of addition, it will depend on the use of symbols whose use in infinite examples is dependent on their use in finite examples. I can continue to rise up in meta-linguistic levels but at some point I will have to stop and the skeptic will still be laughing at me.

Forget the skeptic. Especially given my assumption that numbers are as real as any empirical fact, I have no doubt as to the correct answer to $250 + 300$ and it is not simply a lucky random and arbitrary leap in the dark:

“How am I able to obey a rule?”—if this is not a question about causes, then it is about the justification for my following the rule in the way I do.

If I have exhausted the justifications I have reached bedrock, and my spade is turned.

Then I am inclined to say: “This is simply what I do.”

(Remember that we sometimes demand definitions for the sake not of their content, but of their form. Our requirement is an architectural one).¹⁴

I know and understand the correct answer to $250 + 300$ to be 550. Unfortunately or fortunately depending on your ontology, the only factual explanation as to why this is the correct answer puts me back in Situations #2 of telling the tester what they want to hear: it is no longer a question of descriptive or predictive rule following but of normative rule following in the

¹⁴ Wittgenstein, Ludwig. Philosophical Investigations. At ¶

wordgame in which I am playing. What ought I say the correct answer is to $250 + 300$ when I have never added numbers greater than 200 before? Without doubt, in the “form of life”¹⁵ of this world that is my world regardless of what may be the case in any other possible world including the world of the Amazonas, the correct answer ought to be 550 in the same way a King in Chess ought to move one space at a time in my form of life. This 550 ought to be the correct answer not only pragmatically because it is necessary to solve all the problems with which I deal using the word addition but also — since I have assumed a realist nature for numbers — teleologically. Pragmatically, until proven wrong by the universe, I will never make it to the Moon, Mars, or anywhere else beyond my room and my use of its word processing software if I go around doubting that the addition of $250 + 300 = 550$; it is the correct answer on any mathematics test and on any other testing of my reality by this calculation. Teleologically, if my mathematical realism and its Platonic numbers are to continue to be the language of the physical universe, “addition” means $250 + 300$ must = 550 and ought to be so on any test.

As with Situations ##1 - 3, the reasoning of this normative rule following does not proceed from rule to answer but from the answer or from teleological purpose to the creation of the reasoning we call rule following. The purpose for our rules, rule following, and associated reasoning precedes the reasoning and makes all rule following normative.

Conceptually, these mathematical language examples for RFP show our ordinary beliefs concerning the meaning of natural language words to be in Situation #3 because it shows RFP not to be a problem of vagueness or indeterminacy in words, expressions, or sentences because numbers and mathematical functions are none of these things but of the concept of rule following itself. Even if a rule is not vague or indeterminate but instead expressed in the most precise and determine language available — that of mathematics — it is still descriptively unclear what if anything we are doing when we say we are following a rule. Not facts but normative beliefs justify our saying “we are following a rule”; the purpose or goals of any wordgame give meaning to the rules and rule following of the wordgame. When natural language with its vagueness in all words and its indeterminacy in all rules is analyzed for the RFP, the situation gets much worse because it appears there is no such thing as the meaning of a word, sentence, or expression and rule distinct from the actual use or usefulness to our purpose or goal for that use in a particular state of affairs of the word, sentence, expression, or rule. Especially as lawyers, we are prejudiced to think of meaning in contractual terms: meanings require us to use words in a certain way. If there is factually no requirement governing the uses of words beyond their usefulness to the goal or purpose of their use, as the RFP shows, this conceptualization of meaning is destroyed.

Just as this is true for the simplest of mathematical expressions such as addition, this is the case even for the simplest of words in natural language. For example, if you know the meaning of the word "mammal" as an educated lawyer, you know and follow the rule to use mammal to refer to whales but not fish. However, if you are an educated lawyer, you also know

¹⁵ See generally, Hunter, J.F.M. “Forms of Life” in *Wittgenstein’s Philosophical Investigations*. American Philosophical Quarterly, Vol. 5, Number 4, October 1968.

that from the Bible¹⁶ to Melville's *Moby Dick*¹⁷ and to the famous case of Maurice v. Judd, 3 American State Trials 603 (New York 1818)¹⁸ in which a jury concluded a whale was a fish that there really never was nor is there any such descriptive rule. As with Situation #3, if you believe in Carolus Linnaeus' 18th-century classification of animals or with the most recent taxonomy or methods for classifying animals then you will and ought to use mammal to refer to whales but not to fish. However, if your goal or purpose is to promote a classification or scheme of classification of animals based on their habitats — aerial, terrestrial, or aquatic — as past taxonomy has argued and may again in the future, you will and ought to use fish to refer both to fish and whales since their habitats are aquatic. There is no fact of reality requiring you to do either; whatever rule you are following in using the word “mammal” as with any use of any natural language word, phrase, or sentence, the rule of meaning is a normative one in a wordgame or form of life in which the purpose or goal decides the rule to be followed. The meaning of a word is its use and the rule for determining its use is its usefulness to that use¹⁹.

Western rule following including the rule of law and its rule following is initially in Situations #2 with the goal of making it to #3: the freedom to go around creating correct answers and the rules to achieve those correct answers as necessary to achieve whatever goals and purposes individuals and groups of individuals may have either while fully aware they are making rules up solely to achieve goals and purposes for their lives or actually believing their goals and purposes are the correct answers. That is, rule following is the means by which a language interprets the pragmatic goals of its speakers into correct and incorrect answers and interprets the teleology of its speakers so as to convert a wordgame into a form of life with goals and purposes they want to spend their lives playing. This rule following is initially pragmatic even for the law following of the rule of law but eventually the meaning of the words or sentences called rule following in law may be decided not by pragmatic goals or purposes but by the teleological goal or purpose of their form of life: all creators of rules want their meaning or the use and usefulness of a rule eventually to achieve a correct answer by being in Situation #3 in which even an incorrect answer is deemed correct. To achieve Situation #3 and to hide its reality, when faced with the skeptic challenging their rule following, the preachers of the rule of law as part of Situation #2 run to higher levels of meta-linguistic rule following to create aesthetically pleasing algorithms and recursive definitions such as divine and natural law; rules of recognition, rules of change, and rules of adjudication; the common law and rules of jurisprudence; whatever

¹⁶ Compare, Book of Jonah, 1:17 to Matthew 12:39-41.

¹⁷ “Be it known that, waiving all argument, I take the good old fashioned ground that the whale is a fish, and call upon holy Jonah to back me.” — Ishmael. Melville, Herman. Moby Dick. <https://www.planetebook.com/free-ebooks/moby-dick.pdf> at p. 216.

¹⁸ See, Burnett, Graham D. Trying Leviathan. Princeton University Press: Princeton, NJ (2010).

¹⁹ For a historic perspective, see Hacker, P.M.S.; Baker, G.P. Language, Sense, and Nonsense. Backwell Publishing: Oxford, England (1984).

dogma Ronald Dworkin and his worshipers pontificate about at any given moment; and other meta-linguistic wordgames to hide the circularity of their rule following and its lack of any facts to distinguish it from Situation #1 whenever they have run up against never before experienced new problems or challenges including skeptic ones to the states of affairs of their rule and law following. No lawyer ever seems to admit being in Situation #1 regardless of how true it may be.

In all Situations, ethics and morality and their rules will eventually come into play because all Situations involve normative behavior and language. Where there is normative behavior and language, in human consciousness at least, there eventually will occur language questioning the ultimate value of normative behavior not as pragmatic rule following but as teleological rule following having goals of ultimate and universal value for converting a pragmatic wordgame into a form of life; in this rule following, the RFP plays out differently.

IV. The Immorality of Rules of Ethics

As seen playing out in the courses of action of Situations ##1 - 3, the concept and descriptive language of rule following as an explanation for a course of action is used and is useful to explain how within a wordgame we convert or interpret a normative goal or purpose into a descriptively correct or incorrect course of action. Conceptually, from the perspective of rule following, all wordgames and whatever rule following they instrumentally create to achieve their goals are descriptively equal as purposeful forms of life by which to live because initially the concept of rule following does not involve caring about the pragmatic goals or purposes for which the rules are created in the language of ultimate value known as the wordgame of morality. Just as there are no facts of the matter making any of the games or rules of football, baseball, croquet, chess, checkers, or any other game better in terms of morality than any other game, there are no facts of the matter in the various rule following called law following or even in the rule following of the universal wordgame of law itself (*i.e.*, rules of recognition, rules of change, the rules of adjudication, and so forth) — assuming there is such a wordgame — making any one of them of any greater moral value than any other law following or wordgame of law:

Let me explain this: Suppose one of you were an omniscient person and therefore knew all the movements of all the bodies in the world dead or alive and that he also knew all the states of mind of all human beings that ever lived, and suppose this man wrote all he knew in a big book, then this book would contain the whole description of the world; and what I want to say is, that this book would contain nothing that we would call an ethical judgment or anything that would logically imply such a judgment. It would of course contain all relative judgments of value and all true scientific propositions and in fact all true propositions that can be made. But all the facts described would, as it were, stand on the same level and in the same way all propositions stand on the same level. There are no propositions which, in any absolute sense, are sublime, important, or trivial.²⁰

²⁰ Wittgenstein, Ludwig. *Lecture on Ethics*. Delivered in November 1929 to the Heretics Society, Cambridge University. <http://sackett.net/WittgensteinEthics.pdf>.

Just as the game of baseball ought or ought not have an infield fly rule or a designated hitter rule to determine correct or incorrect playing of baseball depending solely on how we want to play the game and not on any descriptive fact of the matter, the wordgame that is the rule of law can have or cannot have any given rule following in its state of affairs. Descriptively, the law following of the rule of law of Communist Russia, Fascist Spain, the United States, the Mafia, a local street gang, or any wordgame calling itself law and its rule following that is law have no fact distinguishing one as rule following different from the rule following of any other law following — except perhaps for time and location; eventually, with time and a suitable location, as with Situation #1, with the intelligent use of language and the usefulness of language a Mob Island ignorantly governed by Mob Law and its rule following becomes a Sovereign governed by the rule of law and its rule following if it survives long enough but this attribute of time and space is immaterial or beyond the contemplation of this essay.

This equality of rule following is the case until the wordgame of ultimate value called morality come into our Situations or into any other states of affairs as they always eventually do just as they do in Situations ##1 - 3. At that point, wordgames now become either good or evil forms of life and we get into the wordgames of ethics and morality and their rule following.

I have stipulated for purposes of this essay that ethics has a moral reality of Good objectively experienced by all thus avoiding arguments based on Hume's Guillotine or Moore's Open Question Argument arguing it is logically unsound and invalid to go from "what is" or descriptive language to "what ought to be" or normative language — the absence of such a reality would only serve to support my argument. I say "moral" good to differentiate the Good of ultimate value in life from the countless other uses of the word "good" useful for describing realities or states of affairs of experience varying from adrenaline to sex and much more.

Such a stipulation is not really necessary because all wordgames calling themselves professional ethics and their associated codes of rules of ethics by necessity already assume an objective moral reality even if the proponents of the rules say otherwise for aesthetic purposes. Though a distinction can be made between ethics and morality, this distinction can only be made on a meta-ethics level and not within an ethics or any associated rules of professional conduct. There are no professional ethics or codes of rules of professional ethics which state or imply in anyway that an attorney may violate any of its rules on a moral basis: that is, admit individual acts violate the rules of professional ethics yet the acts are moral and thus must be ethical or at least not unethical thus avoiding punishment. Further, no codes of ethics admit they are simply pragmatically good for business so as to allow for wrong action simply on a pragmatic basis: allow for violation of the codes of ethics because rule following them is bad for business or bad for some other practical goal or purpose. Within any wordgame of professional ethics, anyone who violates the required ethics and associated rule following derived from whatever the purpose or goal the proponents of a professional code of ethics consider morally good or the Good are by definition also immoral within the rules because violating ethics and associated rules of ethics is by necessity immoral. Otherwise, an ethics, its codes of rules of ethics, and their ethicists would be admitting to punishing moral actions committed by moral persons and by such admission would make themselves immoral — being immoral by the definition of any ethics would be unethical, and we of course all know the ethicists of professional ethics and their codes of professional conduct are not unethical. Even a code of ethics claiming to be founded upon and

enforcing some type of moral relativism would not allow for ethical relativism as to what is good, acceptable, and ethical behavior: its moral teleology of good or the Good is taken as objectively true for all within its power. Descriptively, the teleological purposes and goals of morality and with it in any wordgame of ethics created by a morality by the necessity of its definitions create and contain a normative teleological purpose in the rule following of ethics not necessarily present in any other rule following including law following. This necessary presence of an objective reality of morality converts ethics from just another wordgame to a form of life and converts its rule following from being a creation of pragmatic goals or purposes to being a creation of teleological goals and purposes for reality.

A strange perhaps funny attribute of any rules of ethics is that the reverse is not necessarily true: though anyone who violates rules of ethics is immoral under the rules of ethics, anyone rule following rules of ethics is not necessarily a moral person. A psychopath attorney complying with rules of ethics solely because it is good for business would be ethical and even a paradigm of ethical virtue according to any rules of ethics but I doubt the proponents of the rules if forced to face this question would consider the attorney to be a moral person — though many most likely would. Like the secular religious worshipers of law and the rule of law, the secular religious worshipers of ethics and the rules of ethics see them as an end in itself.

Regardless, I have made the assumption that ethics experiences an objective reality of moral good and the Good. Now, let us compare rule following in this objective reality of ethics to the rule following in the objective reality of numbers.

As *supra*, the numbers in the sequence 2, 4, 6, 8, . . . are real by my assumption; they are as real as any rock I trip over or any pain I have. However, despite this reality, descriptively there is no unique course of action necessarily determining the correct next number nor any necessarily correct rule following by which to describe this infinite sequence as a course of action. If I have never experienced this type of sequence before or am just ignorant of the possibilities, I am in Situation #1 forced to make a leap in the dark. Otherwise, the correct answer and rule following is determined by pragmatic goals interpreted into normative language called rule following: any pragmatic goal and its associated rule following are descriptively equal and even morally equal at this point. For Situation #2, there is no rule following nor a correct answer to the rule following until we decide what our goal or purpose will be for the rule following. For Situation #3, the goal or purpose is already decided for us so the course of action determined by rule following is to tell the tester what they want to hear which by definition is the correct answer — as what the tester wants to hear changes, the correct course of action and rule following will also change.

By my assumption of a realist nature for ethics, the moral principles of Kant's categorical imperative, of ethical rationalism, of ethical utilitarianism, situational ethics of love, and of any other first principle of good or of the Good or even of secondary principles such as "[a] lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law"²¹ are

²¹ [ABA Model Rules of Professional Conduct: Preamble and Scope.](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/)
https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/

also as real as any rock I trip over or any pain I have. However, unlike numbers which simply are, these real entities of ethics and morality do not just exist and my language is descriptive of them but are normative entities: my description of them by necessity also describes what ought to exist or to be and what course of action one ought to take or what one ought to be. Kant's categorical imperative "act only according to that maxim by which you can at the same time will that it should become a universal law" or "so act as to treat humanity, whether in your own person or in another, always as an end, and never as only a means" is descriptive of reality but only nominally and aesthetically unless it also has the bite not only of normative power but of normative power of the course of action of ultimate value. Without a normative aspect to their reality, these principles would serve only an aesthetic purpose at best and more likely just a nominal one no better than "Pegasus acts according to the maxim it must fly" or "The present King of France ought to be a constitutional monarch" or the simple normative rules of a game. For example, in Chess, the definition of a King as a piece that only moves one step requires the rule it only move one step; in moral reality, the discovery of a moral entity entails the discovery of a course of action or it would not be a moral entity. If one is ignorant or mistaken about the reality of numbers, one is ignorant and uneducated and will be pragmatically wrong when acting upon reality. If one is ignorant or mistaken about the reality of ethics and morality, one is unethical and immoral and when acting upon reality one will be unethical, immoral, and evil.

There is thus a substantive conceptual difference between rule following with numbers as real entities and rule following with moral principles as real entities. To know a number or their properties as real entities, it is not necessary to know a unique course of action required as a matter of fact in any state of affairs. To know a moral principle as a real entity, it is necessary to know a unique course of action required as a matter of fact in any state of affairs. For mathematical reality, language called rule following is used and useful to interpret a goal or purpose into a normative language for achieving that goal or purpose in a given state of affairs. In moral reality, its language for any given state of affairs normatively requires a unique course of action of ultimate value — there is nothing to interpret because the normative nature of a moral principle has a unique course of ultimate value so no other interpretation is allowed.

So, then, what is the correct next step in the following example of a state of affairs represented by the same real numbers as my prior sequence: 2) I am an attorney governed by the above ABA ethical principle; 4) for the first time in my life, Gestapo come to my door; 6) they have a final court order affirmed by the highest court with jurisdiction ordering me to tell them where my Jewish clients are hiding; 8) I do in fact know where my Jewish clients are hiding presently; Descriptively, the options are countless and most likely infinite if time and space are ignored for conceptual purposes. Like the reality of numbers, descriptively there is no unique correct next step or unique rule by which to predict the next course of action or sequence of a course of action: lie and be in contempt of the court order (because of a moral belief the clients will be exterminated or simply practical beliefs in this regard); obeying the court order while having no belief as to what will happen to the clients or not caring; obeying the court order but believing the clients will be treated humanely; giving up the adult clients but saving the children; and so on and so forth to countless possible courses of actions and countless goals and purposes and their associated practical and moral beliefs. However, the reality of ethics is not descriptive: its language does not state what I am doing but states what I ought to be doing in the sense of

ultimate value. Unlike the reality of numbers, in the reality of ethics, any associated rules and rule following must have a unique next course of action in the above sequence of events which if I fail to take makes me unethical and immoral and subject to punishment as such. A lawyer who knows the next step and takes the required course of action solely because it is good for business may not necessarily be a moral lawyer however they would be an ethical lawyer and avoid punishment. However, a lawyer who does not know the next step or knows it but intentionally takes the wrong step will be unethical and immoral by the rule following of ethics in lawyering and will be subject to punishment.

The Situations ##1 - 3 now fall into the following general categories:

- 1E) If you do not know the correct course of action, you take a random and arbitrarily leap in the dark to guess what is the required course of action. With luck, one will guess the correct action and be deemed ethical (though not necessarily moral) and your problems are over. If you guess wrong, your problems are only beginning: you are both unethical and immoral. Ignorance of ethics and by definition its correct rule following is no excuse and you will be punished. The lawyer who does not know the required course of action is unethical and immoral by being so ignorant of the moral principles at issue and of their inherent rule following required by their inherent normative power.
- 2E) If you know the correct answer sought but morally disagree with the ethically required correct answer, you still have a problem and you have only one option: accept the required correct course of action and follow the rule created by this course of action or you will be deemed unethical and immoral and punished — honestly held moral beliefs as to other courses of action and their rules are immaterial to ethical rule following.
- 3E) You know the correct answer. Good for you; you are an ethical and moral person; however, you are not following any rule by knowing the correct answer because descriptively there is nothing in the sequence requiring one answer over any other. As with numbers, the sequence of events does not have any correct answer unless you already know the correct answer but, unlike numbers, ethics has an answer of ultimate moral value that is the only answer that is correct. Because the moral principles of ethics include a required course of action of ultimate value, knowing the correct course of action to the above sequence of events consisting of what we ought to do is as real as knowing a number or as any sense experience. No need for rule following to know the correct answer, one experiences it in moral reality; just as one who knows a Chess King is a piece that only ones one space does not need to know a separate rule that a Chess King can only move one space.

Thus, rule following in professional codes of ethics based upon real moral principles consists either of: 1E) a course of action that is an arbitrary and random leap in the dark hoping for the best with luck; 2E) a course of action rejecting morality to achieve a pragmatic result; 3E) a course of action that would be done irrespectively of any rule following. Here the concept of rule following is either unnecessary; promotes immorality; or reduces immorality to pragmatics.

As shown by Situations ##1E - 3E, even assuming an objective moral reality as real as any reality we can experience, as with the reality of numbers, the rule following language of ethics in language appears to interpret the descriptive reality of moral principles into normative language used and useful for a teleological moral purpose. However, unlike the reality of numbers, the normative language of ethics does not allow for pragmatic goals nor for varying teleological purposes to interpret its reality of moral principles into rule following. Ethics requires the normative knowledge of the one unique correct answer and course of action of ultimate value in its moral principles and does so not because it can but because this knowledge of unique moral principles and their unique required correct courses of action are as real as the principles. A lawyer must know the correct answer and take the correct course of action or they are unethical and immoral and must be punished regardless of whether there are or are not any rules or rule following associated with those principles. Regardless of how real moral principles are, the nature of language does not allow for the reality of the principles to be interpreted into the normative language of rule following unless the required course of action is already known:

Kant's ethics is a famous example. His aim was to formulate a first principle of ethics that would be adequate for governing the decision making of all rational agents, by which he meant all creatures with a faculty of reason, regardless of when and where they live and what their cultural circumstances might be. As such, it would govern even the decisions of rational creatures whose other faculties might be quite unlike humans and who live in circumstances quite different from humans, if there be such creatures. The principle Kant defended was a "categorical imperative" that requires everyone act in accordance with maxims that can be universal laws.

The utilitarian philosophers such as Bentham and Mill had only slightly less ambitious objectives. They, too, sought to articulate a fundamental principle of ethics with extremely wide scope. Their proposed principle was to maximize the overall balance of pleasures over pains, and they maintained that it should govern every decision, regardless of time, place, and circumstances, with the capacity to affect the prospects of pleasure or pain of sentient creatures.

Neither Kant's categorical imperative nor any of the other first principles proposed over the long history of philosophical ethics have generated anything remotely like consensus, but even if agreement on a first principle had somehow been achieved, there would remain the limitation alluded to earlier. If one tries to derive specific recommendations about what to do in concrete situations from a preferred first principle, one is immediately confronted with the immense gap between the generality of the principle and the specificity of the situations in which decisions have to be made. If the principle is to be at all plausible, it must be of an extremely general form, such as "maximize utility" or "act in accordance with maxims that can be universal laws." But principles of this generality are not capable of generating definitive solutions to concrete predicament.

...

... In ethics, political philosophy, and aesthetics, the concepts are ones such as goodness, justice, beauty, fairness, freedom, and moral responsibility, whereas in the fields

of epistemology, metaphysics, philosophy of mind, and philosophy of sciences, they are ones such as truth, rationality, justification, knowledge, time, and explanation, time, space, and necessity.

Philosophers have had their differences about how best to go about explicating such concepts, but whatever the approach, efforts of this sort have an indexical cast to them. The aim is to get clear about the commitments and applicability conditions of concepts that have a history and hence are rooted in particularities time and place. These particularities, in turn, are the course of the problem that so bothered Wittgenstein. His worry was that the value philosophy places on simple, general principles, results in distortion at best and paradoxes at worst. This is so because our concepts evolved in specific contexts for specific purposes. As a result, they are complex, variable, and sometimes even in tension with one another, and it is a misplaced impulse to try to simplify them. Doing so invites error.

Wittgenstein further maintained that this misdirected impulse has its source in the view that philosophy is an extension of science. His proposed "therapy" was to give up on positive agendas in philosophy. Its sole function ought to be the therapeutic one of protecting oneself from an unhealthy yearning for simplicity – this longing for the smooth, flat, and undifferentiated. "Back to the rough ground" was his aphorism. Here is a characteristically blunt passage from his *Blue Book*:

Our craving for generality has [as one] source ... our preoccupation with the method science. I mean the method of reducing the explanation of natural phenomena to the smallest possible number of primitive natural law; and, in mathematics, of unifying the treatment of different topics by using a generalization. Philosophers constantly see the method of science before their eyes, and are irresistibly tempted to ask and answer in the way science does. This tendency is the real source of metaphysics, and leads the philosopher into complete darkness.²²

It is by this conceptually reality that we get the factually absurd reality in which 1887 Alabama with its *de facto* and *de jure* caste system separating the poor from the rich and the black from the white with the intent to define a form of life in which such segregation was legally and culturally morally acceptable is the foundation culture of professional codes of ethics in law. No doubt, the present legal culture worshipping codes of ethics would indignantly deny they have anything in common with 1887 Alabama but this indignation is delusional at best and outright immoral at worse. As Technological Society progresses and gains a better understanding of the real moral principles that everyone who is anyone believes is real and is the language of God just as are numbers and mathematics in the wordgame of the biblical Word, in 150 years our descendants — if there are any — will look back at present codes of rules of professional ethics with the same disdain and indignity as the present worshipers of such rule following look back at 1887 Alabama.

Again, I am not advocating nihilism or anarchy here. The law may be a social construct and its rules of law a random and arbitrary pragmatic creation starting out as Situation #1 with a goal of

²² Foley, Richard. The Geography of Insight. Oxford University Press: NY, NY (2018) pp. 95 - 98.

becoming Situation #3 but it is worshiped even by those who advocate its being a social construct also as a Good that must be so worshiped to achieve whatever pragmatic or teleological purposes or goals are creating its rule following; law without rule following seeking a monopoly on violence as a goal would not be law by any definition. From the genius of the jurist Pontius Pilate and his legal principle of “*Quid est veritas?*” and its subsequent required rule following enforced by violence to the genius of the Supreme jurist Charles Fried with his doctrine of finality in Commonwealth v. Gerald Amirault, 424 Mass. 618 (1997) and its subsequent required rule following enforced by violence, all lawyers and law students as acolytes of the rule of law and as moral followers of the rule of law know as all jurists and the Supremes know just as God knows that often the innocent must be necessarily sacrificed to maintain the integrity and divinity of the Word and its law. Both Self and the Other even if innocent — assuming there are such innocents — are expendable but the rule of law and its law following as rule following are forever.

But, is this true of ethics or morality and their rule following? Is not the loss of even one innocent soul to the course of action of having codes of rule following ethics enforced by violence that are really all no more than a disguised leap in the dark an immoral loss?

V. Conclusion: Required Empirical Observations

Because of the arbitrary and random nature of the language of rule following in which any course of action can be determined to be in accordance with or in violation of any rules dependent only on the pragmatic goal or teleological purpose of the rules, codes of rules professional ethics reduce morality to a leap in the dark course of action; a choice of a pragmatic course of action over a choice of a moral course of action; or a course of action that would have been done regardless of any rule following. Given availability and the universal presence and acceptance of the rule of law in present society in and through criminal and civil law with its centuries of substantive and procedural Due Process guidance to discipline attorneys and to serve whatever purposes — including aesthetic purposes of image promoting and marketing the business of law as a profession — those in power desire to promulgate through codes of rules of ethics, codes of ethics are as unnecessary conceptually now as they were in 1887 Alabama. Whether there is a practical need for them is a different question and an empirical one.

The opposition to this conceptual reality is always marketing, promotional, and aesthetic: we must have codes of rules of ethics “to advance the science of jurisprudence, to promote the administration of justice throughout the State, uphold the honor of the profession of the profession of the law, and establish cordial intercourse among the members of the Bar”. Just as empirical reality has shown the “science of jurisprudence” to be aesthetic verbiage, I submit it would also show the remainder of these reasons for having rules of ethics are no more than religious dogma. Just as the original Canon of Ethics of Alabama did nothing to promote morality among the Alabama Bar in 1887, I submit that if anyone were actually to try to support this dogma by empirical evidence they would find Alabama’s present ethics rules and the rules of any other Bar do nothing to promote morality — neither now nor in the future. They promote now just as they were intended to promote and as they did in 1887: the goals and purposes of those in power either pragmatic or teleological.

Among lawyers, code of ethics should especially be seen as hypocritical and inconsistent with all of the rule of law principles we supposedly hold dear as a democracy. The disciplinary process

for enforcing rules of ethics have a power of violence that exceeds that of all the civil law and even of much of the criminal law: the committees of unelected officials unknown to most attorneys draft and then enforce codes of ethics giving them the power to take any attorney's livelihood away and cause personal and financial ruin without any of the due process available in either of the civil or criminal law. It is an administrative proceeding in which the power of the prosecutory bar counsel is limited solely by themselves and in which factual findings are made by at best a panel of unelected volunteer attorneys with no qualifications in ethics or morality nor any level of competence other than having interviewed well for a Bar of Overseers interview. These are "moral busybody" volunteers: part of the small percentage of attorneys who actually want to pass judgment on the lives of other attorneys and punish them in addition to anything the criminal or civil law would do to them. The appeal from the kangaroo court of bar disciplinary proceedings is an administrative appeal in which the standard of review is at best a substantial evidence standard — as any experienced appellate attorney knows, a court can find substantial evidence of the earth being flat if it looks hard enough for it. In the words of C.S. Lewis:

Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It would be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience.²³

²³ Lewis, C. S. "The Humanitarian Theory of Punishment." *Issues in Religion and Psychotherapy*: Vol. 13 : No. 1 , Article 11 (1987) p. 151. Available at: <https://scholarsarchive.byu.edu/irp/vol13/iss1/11>.