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**Scout's Honor: What the Boy Scout Law Teaches Us  
About Legal Ethics**

**Hon. Jeff Brown**

# ARTICLE

Justice Jeff Brown

## “A Scout Is Trustworthy”: Applying Virtue Ethics to Lawyer Professionalism

**Abstract.** This Article advocates the employment of the twelve-point Scout Law of the Boy Scouts of America as a professional ethics guide for lawyers. The Article begins by briefly relating the history of virtue ethics as a philosophical field of study and comparing and contrasting it with rule-based ethics. The Article continues with a brief history of the Scout Law. Finally, the Article explores how each of the twelve points of the Scout Law identifies a virtue relevant to the practice of law and how seeking to adhere to these virtues is crucial for attorneys hoping to lead a life of professional excellence.

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## I. INTRODUCTION

In 1958, an article called *Modern Moral Philosophy* by Elisabeth Anscombe appeared in *Philosophy*, the scholarly journal of the Royal Institute of Philosophy.<sup>1</sup> In this influential article, Anscombe criticized both the utilitarianism of John Stuart Mill and Immanuel Kant's categorical imperative and called instead for a return to Aristotelian ethics. In so doing, she ushered in a movement in modern philosophical theory that became known as "virtue ethics."<sup>2</sup>

The reemergence of virtue ethics in the last century sparked a debate in philosophical circles concerning whether virtue ethics or rule ethics provides a more effective system for addressing moral dilemmas.<sup>3</sup> This Article explores the plausibility of applying a virtue-ethics approach to lawyer professionalism,<sup>4</sup> as opposed to focusing exclusively on the rules-

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1. See generally G.E.M. Anscombe, *Modern Moral Philosophy*, 33 *PHILOSOPHY* 1 (1958) (arguing for a departure from moral philosophy, asserting that we should reject the categorization of obligations and duties as moral obligations and duties, and criticizing contemporary notions of oral philosophy developed by English philosophers).

2. NAFSIKA ATHANASSOULIS, *VIRTUE ETHICS* 13–14 (2013) (noting Anscombe's work rejects the value of consequentialism and deontology because the theories do not account for the force of morality and encourages a revival of elements of Aristotelian theory). Deontology and consequentialism completely ignored key topics that should be included in philosophical discussion. ROSALIND HURSTHOUSE, *ON VIRTUE ETHICS* 2–3 (1999). Other examples of neglected ethical concerns are the following: "moral education, moral wisdom or discernment, friendship and family relationships, a deep concept of happiness, the role of the emotions in our moral life, and the questions of what sort of person I should be, and of how we should live." *Id.* at 3.

3. See Robert C. Roberts, *Virtues and Rules*, 51 *PHIL. AND PHENOMENOLOGICAL RES.* 325, 325 & n.1 (1991) ("[W]hile virtues are compatible with rules[,] . . . philosophical reflection on the virtues leads to a richer conception of moral rules than ethics has enjoyed in modern philosophy."); see also P. Gardiner, *A Virtue Ethics Approach to Moral Dilemmas in Medicine*, 29 *J. MED. ETHICS* 297, 301 (2003) (stating "virtue ethics has a number of advantages over" the guiding rules followed by general practitioners).

4. This is not the first attempt to apply virtue ethics to the practice of law. See, e.g., Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 *N.D. L. REV.* 19, 30 (2011) (discussing how "one form[s] the good character necessary to become a virtuous lawyer" and how a "lawyer remain[s] virtuous in the practice of law"); Robert F. Blomquist, *The Pragmatically Virtuous Lawyer?*, 15 *WIDENER L. REV.* 93, 94 (2009) ("[I]t is time for lawyers to return to the ancient philosophical pursuit of Plato and Aristotle, and tradition of other authors . . . who have had an ongoing conversation about the nature and dimensions of worldly virtue."); R. Michael Cassidy, *Character and Context: What Virtue Theory Can Teach Us About a Prosecutor's Ethical Duty to "Seek Justice,"* 82 *NOTRE DAME L. REV.* 635, 636 (2006) (focusing on the applicability of virtue ethics to the work of public prosecutors); Marianne M. Jennings, *The Disconnect Between and Among Legal Ethics, Business Ethics, Law, and Virtue: Learning Not to Make Ethics So Complex*, 1 *U. ST. THOMAS L.J.* 995, 996 (2004) (arguing for the return to virtue ethics to create a simple guide for lawyers and business executives in their roles and duties).

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based approach that predominates over legal ethics.<sup>5</sup> Specifically, this Article suggests that in practicing their profession, lawyers should strive to live by the twelve virtues listed in the Boy Scouts of America’s “Scout Law.”<sup>6</sup> Ultimately, this Article demonstrates how the Scout Law provides lawyers with a simple and useful guide for accomplishing the very goal for which ethical rules are written—“maintain[ing] the highest standards of ethical conduct.”<sup>7</sup>

## II. VIRTUE ETHICS: UNDERSTANDING ITS ORIGINS, HOW IT COMPARES TO RULE ETHICS, AND EXAMINING ITS APPLICABILITY TO LEGAL ETHICS

### A. *From Aristotle to Anscombe: A Brief History of Virtue Ethics*

Virtue ethics<sup>8</sup> has its beginnings as a field of philosophy in ancient Greece arising from the teachings of Plato and Aristotle.<sup>9</sup> From that origin,<sup>10</sup> virtue ethics “persisted as the dominant approach in Western

5. See Maria Castilla, Note, *Client Confidentiality and the External Regulation of the Legal Profession: Reporting Requirements in the United States and United Kingdom*, 10 CARDOZO PUB. L. POL’Y & ETHICS J. 321, 331 & n.66 (2012) (“As of September 14, 2011, forty-five states and Washington, D.C. have adopted the revised ABA Model Rules of Professional Conduct.”).

6. The following are the twelve points of the Scout Law, as learned by any new Boy Scout: “*A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent.*” THE BOY SCOUT HANDBOOK: A GUIDE TO ADVENTURE, A GUIDEBOOK FOR LIFE 24 (12th ed. 2009) (emphasis added). The Girl Scout Law is very similar: “I will do my best to be honest and fair, friendly and helpful, considerate and caring, courageous and strong, and responsible for what I say and do, and to respect myself and others, respect authority, use resources wisely, make the world a better place, and be a sister to every Girl Scout.” *Girl Scout Promise and Law*, GIRL SCOUTS OF THE U.S., [http://www.girlscouts.org/program/basics/promise\\_law/](http://www.girlscouts.org/program/basics/promise_law/) (last visited Mar. 27, 2013).

7. TEX. DISCIPLINARY RULES PROF’L CONDUCT Preamble ¶ 1, *reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G, app. A (West 2005) (Tex. State Bar R. art. X, § 9).

8. Virtue ethics is an umbrella term “for theories that emphasize the role of character and virtue in moral philosophy rather than either doing one’s duty [deontology] or acting in order to bring about good consequences [consequentialism].” See Nafsika Athanassoulis, *Virtue Ethics*, INTERNET ENCYCLOPEDIA OF PHIL., at para. 1 (July 7, 2010), <http://www.iep.utm.edu/virtue/>.

9. See ROSALIND HURSTHOUSE, ON VIRTUE ETHICS 1–2 (1999) (discussing the evolution of virtue ethics); see also David W. Opderbeck, *A Virtue-Centered Approach to the Biotechnology Commons (or, the Virtuous Penguin)*, 59 ME. L. REV. 315, 321–22 (2007) (separating the distinct roles that Plato and Aristotle had in forming the basis of virtue ethics). For example, it was Plato who “enumerated the four ‘cardinal’ virtues of ‘fortitude, temperance, justice[,] and wisdom.’” *Id.* at 321. On the other hand, Aristotle is credited with “develop[ing] the virtues into a practical ethical system.” *Id.*

10. Natural law theorists would dispute that virtue ethics originated with the Greeks. They would instead acknowledge that while Plato and Aristotle may have first identified virtue in philosophical terms, the notion that people should live virtuous lives is timeless. *Cf.* Louis W. Hensler III, *A Modest Reading of St. Thomas Aquinas on the Connection Between Natural Law and Human Law*, 43 CREIGHTON L. REV. 153, 154 (2009) (discussing the “most influential natural law

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