

# Legal Ethics and American Political Scandal: Pennsylvania’s Recent Supreme Court Scandal Explored Through the Lens of the Historical Development of American Legal Ethics

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### § 1.01. Introduction.

The American legal and political systems, in order to operate properly, require public trust in those who administer them. Lawyers operate both systems, if not by law, through practice. Lawyers holding public office are some of the most visible lawyers in the nation, and hence impact the public’s perception of the legal profession.

Observers have paid service to the essential role of lawyers in the proper functioning of a democratic civil society for centuries. In Shakespeare’s *Henry V*, rebellious conspirators proclaim “The first thing we do, let’s kill all the lawyers.”<sup>2</sup> In Henry’s era, lawyers were considered “the most virtuous members of society.”<sup>3</sup> Killing off the lawyers would permit tyranny and rebellion to flourish. Writing in 1945, French philosopher Alexis de Tocqueville remarked of the American system, “When the American people are intoxicated by passion or carried away by the impetuosity of their ideas, they are checked and stopped by the almost invisible influence of their legal counselors.”<sup>4</sup>

During the American Revolution, many lawyers, out of necessity, worked with the interest of establishing a stable, enduring nation. This focus engendered a public respect for the legal profession that bolstered the revolution’s success and allowed the nation to flourish. Once independence was secured and the nation well-established, a movement towards individ-

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<sup>2</sup> Charles J. Ogletree, Jr., “Personal and Professional Integrity in the Legal Profession: Lessons from President Clinton and Kenneth Starr,” 56 *Wash. & Lee L. Rev.* 851, 862 (1999).

<sup>3</sup> *Id.*

<sup>4</sup> Alexis de Tocqueville, *Democracy in America*, 278 (Alfred A. Knopf 1945); vol. 1, orig. pub. 1835.

ualism swept through American society, which shifted the primary legal ethical considerations towards serving the client interest with warm zeal within the confines of the letter of the law. While the modern principle of due process may often demand that the client's interest be a lawyer's primary focus, the public's sense of justice is often offended by their perceptions of the cold machinations of the legal and political systems. The success of the system demands that lawyers recognize the tension that exists between their duty to their client and the duty to the system that serves their society.

This chapter recounts the development of American legal ethics from the colonial bar to the present, with emphasis on the role of lawyers in the American Revolution, the influence of the emergence of an ethic of individualism along with the rise of Jacksonian democracy, the competing post-Revolutionary theories of legal ethics exhibited by Hoffman and Sharswood, and the American Bar Association's (ABA) codification of American legal ethics in the 20th Century. This chapter proceeds with an examination on the current state of American legal ethics as applied to the scandalous conduct of several contemporary Pennsylvania lawyers who have held high profile public offices in the Commonwealth over the past decade and concludes with a discussion of how to encourage the American bar to frame ethical considerations in terms of making the moral decision rather than reverting to black letter rules in an effort to merely avoid trouble.

## **§ 1.02. A Brief History of American Legal Ethics, Colonial America to 1908.**

### **[1] — Colonial America.**

The Bible provides early evidence that lawyers have long suffered a poor reputation in the public mind, when Jesus himself chastised the lawyers of his time, stating, "*Woe unto you, also, ye lawyers. For ye lade men with burdens grievous to be born, and ye yourselves touch not the burdens with one of your fingers.*"<sup>5</sup> But the poor reputation of lawyers in colonial America was born of circumstances very specific to those who chose to flee the tyranny of England and migrate to the New World. America's earliest settlers associated lawyers with the existing laws of England and the

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<sup>5</sup> Luke 11:46 (King James). Available at [www.kingjamesbibleonline.org](http://www.kingjamesbibleonline.org).