

Rumpole's Ethics

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I. INTRODUCTION

The television series *Rumpole of the Bailey* poked gentle fun at British justice and social attitudes through the cases of beloved fictional barrister Horace Rumpole. As his clients were primarily Runyon-esque thieves living on the fringe of decent society, Rumpole frequently had to resort to humorous ripostes to fend off the verbal abuse of addled judges, prosecutors, chambermates and his long-suffering wife Hilda. But Rumpole was passionate about criminal defense work, and saw nothing funny about attacks on the presumption of innocence.

This short essay focuses on the professional ethics of Horace Rumpole, John Mortimer's curmudgeonly fictional barrister from the delightful British television series *Rumpole of the Bailey*.¹ The show consisted of forty-four epi-

* Professor of Law Emeritus, UCLA. Along with Professor Michael Asimow, Professor Bergman is the author of *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (2d ed. 2006). Like Rumpole, Professor Bergman regularly has to explain his way out of ill-advised sardonic comments. Rumpole whispered many of his embarrassing witticisms to interns or solicitors in mid-trial, only to be overheard by a suddenly sharp-eared judge. For example, in an episode called *Rumpole of the Bailey: The Old, Old Story* (ITV television broadcast Jan. 19, 1987), the dotty trial judge takes over the questioning of a prosecution witness. Rumpole whispers to his client's solicitor that "the judge is suffering from a bad case of premature adjudication." The judge cups his ear and asks, "did you say something Rumpole?" Rumpole hastily explains, "I said there will be a full explanation, Your Lordship."

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sodes that initially aired in the U.S. over the course of seven different seasons, spanning the years 1978-1992.

II. SERIES OVERVIEW

Horace Rumpole was a zealous, eccentric criminal defense lawyer nearing the end of his career. As played by the wonderful actor Leo McKern, Rumpole's last name was perfectly suited to the creases in his face and (when he was not wearing a barrister's robe) his attire. He was equally adept at needling judges and his colleagues in the chambers at 3 Equity Court, cross-examining incompetent police officers, and plucking appropriate quotes from the *Oxford Book of English Verse* in mid-trial. Unlike most of his chambers colleagues, Rumpole was content to remain an ordinary barrister. He had no desire to "take silk" by becoming a QC (Queen's Counsel).² Rumpole's lack of ambition was a constant irritant to his wife Hilda, who Rumpole referred to under his breath as "She Who Must Be Obeyed." Hilda regularly criticized Rumpole for failing to meet the high standards set by her father, who had been the first head of chambers at 3 Equity Court. Rumpole did not share Hilda's admiration. He always complained that Hilda's father "knew nothing about bloodstains and fingerprints," which Rumpole felt were the core skills of a successful criminal defense lawyer. Brilliant though Rumpole might have been while inside courtrooms, Hilda always bested Rumpole during their frequent domestic quarrels.

The *Rumpole* series used Rumpole's cases as a vehicle for amusing and gentle parodies of British justice and culture. Yet Rumpole was in no way a buffoon. He was passionate about his role as a criminal defense attorney. Rumpole embodied an "ethics of caring competence." That is, for Rumpole professional responsibility was not found in abstract rules. Rumpole's ethics were rooted in his commitment to the presumption of innocence, thorough factual investigation and compassion for people charged with crimes.³ This essay briefly examines the central pillars of Rumpole's ethics of caring competence.

2. Claude Erskine-Brown was a particularly priggish chambers mate who hungered to become a QC. In one episode, Erskine-Brown complains that his chances to become a QC are being damaged by "the disreputable lot who are Rumpole's clients." He asks Rumpole, "What do you think of the sound of it, Rumpole, 'Lord Erskine-Brown?'" Rumpole replies, "It sounds very promising Erskine-Brown, if one is opposing you down at the Old Bailey."

3. An episode titled *Rumpole of the Bailey: Rumpole and the Genuine Article* (ITV television broadcast Oct. 11, 1983) provides a memorable example of Rumpole's compassion. Rumpole's client Brittling was charged with forgery of a painting by famous artist Septimus Crag. Rumpole's defense was that the supposedly forged painting was in fact a genuine Crag. Rumpole claimed that Brittling tried to pass it off as a forgery knowing that he would be convicted of a felony, because it would mean that people would think him as good a painter as Crag. Rumpole empathized with Brittling's desire for recognition, arguing that Brittling "is not guilty of the crime. He is guilty only of the savage bitterness sometimes felt by the merely talented for men of genius."

III. A GOLDEN THREAD

Rumpole's professional ethics centered on his insistence that judges behave in accordance with the presumption of innocence. Rumpole had no illusions about his clients' moral stature. They were almost always either aristocratic bounders or likeable Runyon-esque thieves. But for Rumpole, all criminal defendants enjoyed the dignity of presumed innocence. By contrast, the judges who presided over Rumpole's trials habitually made disparaging comments suggesting that Rumpole's efforts to mount a serious defense were a waste of time and taxpayer money.

For example, in *Rumpole's Last Case*, Rumpole represents one of two Timson brothers who are jointly charged with bank robbery.⁴ Rumpole knows the Timsons as small time thieves who would no more commit bank robbery than the "two ends of a pantomime horse would get together to play Hamlet." Presiding over the trial is Rumpole's frequent nemesis, Judge Bullingham (who Rumpole always refers to as The Old Bull). Rumpole requests a separate trial for his Timson so that his defense will not be undermined by evidence admissible only against the other Timson. Bullingham accuses Rumpole of asking for a separate trial only in order to maximize his fees. Rumpole stands his ground: "My only purpose Your Lordship is to see that justice is done." Bullingham turns down the separate trial request, complaining to the jurors that Rumpole is only interested in justice "so long as his fees are paid for by the unfortunate rate payers of London."

As the trial gets underway, Rumpole's plan to retire as soon as his defense of Timson concludes offers him a chance to unload a lifetime's frustration borne of confronting judges who care little for defendants or the presumption of innocence. Rumpole tells the jury:

The presumption of innocence is the golden thread that runs though British justice. But against this is the Bullingham factor: Everyone accused of a crime is guilty and defending barristers are only interested in their fees paid by the public, which are so high they can live almost as well as shorthand typists.⁵

Rumpole and the Blind Tasting provides another example of Rumpole defending the presumption of innocence in the face of a judge who has little regard for the principle.⁶ Rumpole's client (again, one of the Timson brothers) is charged with purchasing stolen goods. Timson allegedly bought cases of expensive wine for such a cheap price that he must have known they had been stolen. Cross examining the shop's owner, Rumpole asks about a previous inci-

4. *Rumpole of the Bailey: Rumpole's Last Case* (ITV television broadcast Feb. 23, 1987).

5. *Id.* Rumpole ultimately realizes that he cannot afford to retire. Luckily for Rumpole, his good friend and chambers mate Phyllida Erskine-Brown was representing the other Timson, and she uses her feminine charms to convince the entranced Bullingham not to cite Rumpole for contempt of court.

6. *Rumpole of the Bailey: Rumpole and the Blind Tasting* (ITV television broadcast Jan. 26, 1987).

dent in which the owner, then the owner of an art gallery, had filed an insurance claim for stolen art work. When Rumpole asks whether the owner had insured the stolen wine, the judge steps in and defends the owner's good judgment: "You have to maintain insurance because of the rising tide of lawlessness that threatens to engulf us all. You should know that better than anyone, Mr. Rumpole." The comment of course suggests to the jury that Rumpole's practice is devoted to sailing along on the "rising tide of lawlessness," to which Timson is a regular contributor.

While the judges in the *Rumpole* series were generally too comically daft for viewers to take seriously, the series reflected a popular attitude among defending barristers that British judges' courtroom comments tend to side with the police and prosecutors. *Rumpole's Last Case* and *Rumpole and the Blind Tasting* are two of many episodes that gave Rumpole a chance to remind viewers that defending barristers have an ethical duty not only to their clients, but also to the adversary system of justice to insist on rigorous adherence to the principle of the presumption of innocence.

IV. A LIFE OF LUXURY

British barristers traditionally follow a "cab rank" policy: barristers represent any client who (through a solicitor) hails them down. Rumpole was an exception. For Rumpole, professional ethics meant devoting his career to protecting the rights of the legally powerless. He believed that a barrister's highest calling was preventing police officers, prosecutors and judges from trampling on the rights of criminal defendants.

Rumpole and Portia includes a poignant example of Rumpole's ethical devotion to the defense of criminal cases.⁷ Rumpole's chamber colleague and friend Phyllida Erskine-Brown (who Rumpole always referred to as Portia) presides over a case in which Rumpole represents a poor single father who is accused of serving as a conduit for a shipment of illegal bomb-making materials. The father is convicted, and Portia reluctantly sentences him to prison. Later, Rumpole and Portia meet in a pub and review the trial. When Portia apologizes for having to send a single father of a young child to prison, Rumpole quietly assures her that:

You have nothing to apologize for. You were the judge and you did the right thing and you did it fairly. At least unlike most of our judges, you accept the presumption of innocence . . . Sit on the bench if you like, Portia, but I'm glad that I don't have to punish people. I can enjoy the luxury of defending.⁸

Rumpole's comment is consistent with his ethics of competence. Devoting his life to the defense side of the adversary system saved Rumpole from the burden of having to judge his clients.

7. *Rumpole of the Bailey: Rumpole and Portia* (ITV television broadcast Dec. 21, 1987).

8. *Id.*

Lawyers are sometimes reluctant to represent unpopular criminal defendants because of the risk that people will consider them as morally bankrupt as their clients.⁹ However, Rumpole's commitment to the defense of accused persons always outweighed any concerns he might have had for his personal reputation. For instance, in *Last Case*, Rumpole's long-suffering chambers colleague Claude Erskine-Brown complains that Rumpole's clients are spoiling Erskine-Brown's chances to become a QC:

Why can't you defend respectable people, Rumpole? Your name was all over the newspapers as the lawyer defending that disgusting man who was convicted of operating a chain of massage parlors that turned out to be brothels. You bring nothing but disrepute to these chambers.¹⁰

Rumpole replies, "Since when is it disrespectful to provide a client with a defense, Erskine-Brown?" Through comments such as these, the *Rumpole* series reminded viewers not to equate lawyers with their clients, and that lawyers had a moral and ethical responsibility to defend the accused.

V. FOLLOW THE RULES

Rumpole held himself to the same high standards of professional behavior that he demanded of judges and prosecutors. For example, in *Rumpole and the Old Boy Net*, Rumpole's pupil Liz Probert ("Ms. Liz" to Rumpole) revealed to a television reporter the identity of a witness who had patronized a brothel, violating the judge's order that the witness' identity not be revealed.¹¹ Rumpole had opposed the order, but he came down hard on his pupil: "You cannot break the rules even if you disagree with them. Change them if you can. But if you violate them, how can you help anyone else?"

Rumpole's high regard for ethical standards stands in marked contrast to

9. Defense lawyers have often been publicly vilified for zealously representing unpopular clients. For example, in a case that was the subject of extensive national media coverage, David Westerfield was convicted of kidnapping and killing seven-year-old Danielle Van Dam in 2002. Public opinion excoriated Westerfield's San Diego lawyer Steven Feldman for suggesting repeatedly to the news media that Danielle's parents' sexual parties might have been responsible for her death even though Westerfield had already confessed to Feldman that he had killed Danielle. See Michael Asimow & Richard Weisberg, *When the Lawyer Knows the Client is Guilty: Client Confessions in Legal Ethics, Popular Culture, and Literature*, 18 S. CAL. INTERDISC. L.J. 229, 232-34 (2009), for further analysis of the case. The popular linkage of lawyers to unpopular defendants has a long history. In 1840 British barrister Charles Phillips represented Benjamin Courvoisier, a valet who was charged with murdering his popular employer Lord Russell. At trial, Phillips effectively portrayed the police as inept bunglers. In addition, Phillips' cross-examinations ruined the reputation of a hotel owner who had testified for the prosecution and cast suspicion for the murder on other of Lord Russell's servants. Courvoisier was convicted and hanged. When it turned out that Courvoisier had confessed to Phillips well before trial that he had killed Russell, the bar and the public alike denounced Phillips for destroying the lives of innocent witnesses. See D. MELLINKOFF, *THE CONSCIENCE OF A LAWYER* (1973), for an account of the case.

10. *Rumpole of the Bailey: Rumpole's Last Case*, *supra* note 4.

11. *Rumpole of the Bailey: Rumpole and the Old Boy Net* (ITV television broadcast Oct. 25, 1983).

the pop culture lawyers who Professor William Simon described in his Channeling Justice presentation, based on his *Moral Pluck* essay.¹² Professor Simon argued that pop culture lawyers often have to violate ethical duties to achieve justice, and indeed are perceived by audiences as heroes for doing so. For example, Simon reviewed an episode of the television series *L.A. Law* in which one of the firm's lawyers blackmails the firm's own client, a water company's CEO, into agreeing to clean up the contamination that the company had caused. The lawyer acknowledges that she broke ethical rules, but the episode nevertheless portrays her as a hero who put conscience above rules.

Viewers probably would not have considered Rumpole a hero had he broken ethical rules. In the examples that Simon cites in *Moral Pluck*, the unethical lawyer heroes have to confront extremely evil foes. In addition to the CEO of a water company that has lied about poisoning its customers, another of Simon's unethical heroes is law student Darby Shaw, who stumbles onto a group of conspirators who have murdered two U.S. Supreme Court Justices.¹³ Rumpole's adversaries by contrast were not evil. Rumpole's typical rivals were comically inept police officers, priggish prosecutors who were foils for his barbs, and judges who never seemed to grasp fully what was going on in their courtrooms. Viewers may accept lawyers who ignore ethical rules as heroes, but in all likelihood only if they do so in order to counter great evil.

VI. KEEP YOUR HOUSE OF LORDS' OPINIONS

Though he always prepared for trial diligently and was a master of courtroom oratory, Rumpole was quite indifferent to his responsibility to have adequate knowledge of legal principles to provide competent representation. Rumpole was a student of human nature and skilled at forensics, but he relied on others to supply the legal framework for his creative defenses.¹⁴

In *Rumpole and the Blind Tasting*, recall that Rumpole's client Timson is accused of knowingly purchasing cases of stolen wine.¹⁵ Timson's solicitor comes to Rumpole's office and asks him about the potential effect on Timson's case of a recent House of Lords opinion on the law that applies to situations in which the crime that a defendant is charged with committing is in fact impossible to commit. Rumpole tries to turn the conversation to another topic in an ef-

12. William Simon, *Moral Pluck: Legal Ethics in Popular Culture*, 101 COLUM. L. REV. 421 (2001).

13. JOHN GRISHAM, *THE PELICAN BRIEF* (1993).

14. In *Rumpole of the Bailey: Rumpole and the Sporting Life* (ITV television broadcast Nov. 8, 1983), Rumpole represents an aristocratic wife charged with murdering her husband. The autopsy had been performed by a medical examiner who had never before been involved in a murder case. Rumpole noticed a fact that the medical examiner had missed: the husband had been shot twice, a fact that demonstrated his client's innocence. Rumpole concluded his cross-examination of the medical examiner by handing him a book on gunshots and forensic medicine, telling him that, "I recommend it to you if you're going to be doing this work in the future. It's quite an easy read for the beginner."

15. *Rumpole of the Bailey: Rumpole and the Blind Tasting*, *supra* note 6.

fort to conceal his ignorance of the opinion. Fortunately for Rumpole, his pupil Ms. Liz overheard the solicitor's question; so she quietly pulls a book off a shelf and puts it in front of Rumpole, already open to the case that the solicitor had asked about. Rumpole then demonstrates that he is not above a bit of mendacity. He assures the solicitor that of course he is familiar with the opinion, he has it right in front of him. When the solicitor presses Rumpole for an explanation of the opinion's effect on Timson's case, Rumpole shoos the solicitor out of the office with an explanation that "my written opinion will be much more helpful to you." After the solicitor leaves, Ms. Liz volunteers to write to the solicitor, because "I was first in my class and very interested in the law." Rumpole confesses to Ms. Liz that he is not: "After a lifetime at the bar I have very little interest in the law. Give me a blood stain or two and a bit of disputed hair . . . and you can keep your House of Lords opinions."

From the standpoint of legal ethics, this scene is disquieting. Rumpole is not only ignorant of relevant legal doctrine, but he is willing to lie to cover up his ignorance. Yet scenes such as this perhaps reinforced viewers' belief in Rumpole's professional competence. Devoted to clients and armed with practical wisdom, forensic knowledge and verbal dexterity, Rumpole can count on associates to make up for shortcomings in his legal knowledge. Competence does not require perfection, and most viewers could probably empathize with Rumpole's discomfort at being asked a question that he was not prepared to answer.

VII. CONCLUSION

The *Rumpole* series was a refreshing counterpart to much of the television lawyer genre. As portrayed on television, the most common qualities of lawyers include greed, deviousness, promiscuity, willingness to use clients as pawns in a struggle for power and fierce combativeness. Especially if one understands the term "professional ethics" as referring to the manner in which lawyers live their professional lives rather than as referring to sets of rules and regulations, few television lawyers qualify as ethical. Horace Rumpole is undoubtedly combative; he relishes a good argument. While Hilda may routinely get the better of him, Rumpole never backs down when challenged by a chambers colleague, prosecutor or judge. However, his combativeness emanates from a sense of fair play and his commitment to an ethics of caring competence, not from a desire for personal aggrandizement. At the same time, Rumpole is satisfied with his place in the profession. He wants what he has, rather than what other barristers have. He is always candid with colleagues, clients, adversaries and judges, even though the truth may not show him in the best light. Rumpole's life may not be glamorous, but when he engages in relaxed philosophical conversation after a hard day at the Old Bailey with a glass of what he often referred to as "Chateau Thames Embankment," Rumpole makes the life of lawyer appear to be interesting, important and achievable. In his personal and professional life, Rumpole's actions are consistent with his prin-

principles. The *Rumpole* series suggests that for lawyers, pursuing an ethics of caring competence is a personally satisfying alternative to the pursuit of power and wealth. The character of Rumpole offers an inspirational vision of how to practice law while remaining a decent person.