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Lawyers' Perceptions of Their Values: An Empirical Assessment of Monash University Graduates in Law, 1980–1998

*Adrian Evans**

Introduction

Public and professional discussion about the behaviour of lawyers is perennial to the point of cliché. Commentary about perceived inadequacies is also commonplace, but it is ordinarily based on anecdotal, though powerful, “war” stories. It seems, however, that legal educators and regulators must tackle the “ethics issue” with renewed vigour if legal institutions are to retain moral, and perhaps even spiritual, relevance.¹ Ethics awareness projects are, of course, under way in many places (for example, the American Bar Association’s “Ethics 2000” programme²); however, often they proceed with little direct information from the mass of legal practitioners as to their own perceived standards of conduct. As legal educators we can only design and teach ethics courses and help the legal profession describe the desirable attributes of the future lawyer using indirect information as to what is needed. My concern here is that legal ethics programmes, both in and after law school, may be proceeding on a comfortable, but possibly unfounded, assumption – that as legal educators or regulators we can simply appeal to the supposed better nature of our students and members in order to improve attitudes³ and,

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1 K Economides (ed), *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998) at xxxiii.

2 <http://www.abanet.org/cpr/ethics2k.html>.

3 This is not a concern about methodologies to improve attitudes, for example by engaging clinical experiences, but rather it is about the first question: what is the dimension of the need, and how is it to be proved?

hence, behaviour. While, in my opinion, there is a link between lawyers' attitudes/values and their behaviour, we first need to know about these attitudes and values.

The context for this discussion – an urgent one – is the acknowledgment that justice and human rights are under challenge in many parts of the world. Those who stand up for justice often need and receive advice and representation from courageous lawyers. Yet we do not know if courage or resilience or a willingness to take unpopular decisions in defence of these causes is the norm or is exceptional. We may suspect that it is exceptional, but we do not know. The direct relationship between the quality of justice and the values/behaviour of legal practitioners is, accordingly, of direct importance to the international concern for human rights and fair systems of justice.

In this paper I will discuss a survey of graduates in law from Monash University⁴ and comment on the implications of the results for Australian legal education. The aim of the survey was to establish what values are important to lawyers in their professional lives. I did not on this occasion attempt to look at actual behaviour because it was too large an undertaking for the time and funds available. This project is, nevertheless, important because it attempts to deal with what I consider to be implicit assumptions by legal educators that the values of their students are sufficiently uniform and "good" (enough) to enter professional practice. The understandable⁵ comfort of legal educators with the "values status quo" is now, I think, a risky educational strategy. The results of the survey that I conducted suggest that there is a convincing case for introducing and integrating a values awareness process⁶ within legal education.

An initial task in this investigation is to establish whether there is an empirical basis for the assumption that an appeal to lawyers' aspirations is based on shared personal and professional values. Tremblay's reflection on the American

4 The Faculty of Law, Monash University is located near Melbourne, Victoria, Australia.

5 The Anglo-Celt heritage of the dominant older white Australian culture has, I think, always contained a strong element of confidence in the practitioners of the legal system and in their shared "good" values. This confidence may be weakening now, but if so, this change is still relatively recent.

6 A values awareness process is not in any sense exotic. It simply arouses students' awareness of their own, often unconscious, attitudes and values. It is similar in technique to many existing educational methods (particularly in racism awareness programmes) that seek to promote self-reflection.

Association of Law Schools Clinical Section Conference on values formation, held in Portland, Oregon in 1998, suggests a commonality of values. He seems to assume that lawyers have "in place" their own sense of "moral judgment and responsibility," thus implying that this is a shared sensitivity.⁷ Tremblay further suggests that the majority of lawyers share common values and that the problems in professional behaviour stem from differing views as to what the *facts* of any ethical situation may be. In other words, the circumstances of a matter can be variously interpreted, and this variety produces different decisions. Thus, we would agree, presumably, that human life is sacred, as a value; however, we may argue for capital punishment, depending upon the circumstances of a particular offence. The difficulty here – apart from the inevitable blurring between "fact" and "value" – is that there is a considerable assumption underlying that logic. We do not really have much rigorous information⁸ to suggest that particular values – however defined – are in fact shared by the mass of lawyers. "Values" are here intended to denote the beliefs that (it is hoped) actually underlie and determine professional choices and not just those which are articulated.

In particular, we legal educators have no empirical basis on which to conclude that clinical methodologies, which are internationally growing in acceptance within law school curricula, are effective in raising the "moral tone" of the

7 P Tremblay, Coherence and Incoherence in Values-Talk (1998) 5 *Clin Law Rev* 325-332. See also A Hutchinson, Legal Ethics in a Fragmented Society: Between Professional and Personal (1998) 5 *Int'l J of the Leg Profession* 175-192, 189. While Hutchinson refers to and rejects the assumption, it is pervasive. Thus, Robert MacCrate, author of the major US statement about fundamental skills and values of lawyers, restated in September 1998 his belief that "lawyers remain 'united by their pursuit of certain values.'" (1998) 5 *Clin Law Rev* 333.

8 Such empirical studies as have occurred have focused upon ethical dilemmas – defined as such – rather than personal or professional values investigations. For example, Lamb has produced very interesting commentaries by Queensland lawyers on hypotheticals containing professional dilemmas. See D Lamb, Ethical Dilemmas: What Australian Lawyers Say About Them in S Parker & C Sampford (eds) *Legal Ethics and Legal Practice: Contemporary Issues* (Oxford: Clarendon Press, 1995) at 217-234. In one comparison, Lamb cites two respondents, one of whom considered personal "morals" irrelevant to a decision and another who took the opposite view. The context of the hypothetical made it clear that the client's *autonomy* to decide the issue was unchallenged (at 233). Where there is, however, a clear capacity for lawyers to choose a course of action, it is necessary, even axiomatic, for them to have some understanding of their own attitudes and motivation.

efforts that law schools make to increase student awareness of any justice imperative. I have a sense that law schools are also slowly regaining (or, for some, just establishing) the idea that their primary mission is to inculcate in their students a desire to do justice, as *the* goal of legal practice. If this is true, then the “moral shape” of students – that is, the presence or absence of moral health in each individual – becomes a crucial concern in that mission. Until now, only anecdotal evidence suggests that law school graduates with certain types of clinical experience – that is, those who have had personal involvement with indigent clients who have compelling legal problems⁹ – enter legal practice with attitudes that are different from those who do not choose to study this option within their law course.

A Survey of Monash University Law Graduates

A survey¹⁰ of a sub-population of Australian lawyers to discover what values play a role in their professional decisions now provides some information. This article reviews the issues raised in this survey and describes the survey process and the results obtained from a questionnaire answered by 700 respondents, all former students of the Faculty of Law at Monash University in Melbourne, Victoria, Australia. Questions designed to place the respondent in a personally challenging situation were composed around scenarios of local socio-legal significance and factual ambiguity. Respondents had to opt for a “yes/no” response to a request for a specific action on their part and were then asked to rate the significance of various specific motivating values to their choice. The questions were dispersed purposefully in the questionnaire to expose any inconsistencies in their responses. Demographic data and a comparative standard personal values survey (Rokeach) were also completed by the respondents so that correlations could emerge and contradictions could be highlighted. The Rokeach instrument – a series of questions designed to bring out respondents’ personal values – is a standard statistical device developed by Milton Rokeach.¹¹ One of its applications is to gauge, by

9 J Aiken, *Striving to Teach Justice Fairness and Morality* (1997) 4 *Clin Law Rev* 1.

10 Supported by an Australian Research Council Small Grant (1998) of \$14,000 to the author to construct, administer, and analyse the results of the survey.

11 M Rokeach, *Halgren Tests* (1973), 873 Persimmon Ave, Sunnyvale, CA, USA 94087.

comparison with the answers to the questions concerning so-called "personal" values, the accuracy of answers to other occupationally specific questions asked of the same set of respondents.

As discussed in detail below, this analysis strongly suggests that there are considerable differences in the value-base – ie the set of values actually held by an individual – of this sub-population. Thus, for example, in a question designed to require a choice by an employee solicitor between *pro bono* work and extra hours "in the firm" that were demanded by a partner with influence in the firm but not necessarily the immediate superior of the employee, a small majority (357) of those surveyed preferred their firm's interests, citing a mixture of "employer loyalty" and "employment security" as their motivating values. This apparent lack of commitment to the public interest might be justifiable in a workforce that is known to be as difficult to enter as law is in Australia. Even though one's first concern may well be to remain employed because of job insecurity, this value does not necessarily exclude other "higher" values when employment is secure. However, nearly half (324) of this large sample were just as comfortable to choose the *pro bono* priority, requiring a negative response to their employer and citing "access to justice" as their motivator.

Other questions also brought divergent answers. Taken as a whole, this study suggests, but does not confirm, that clinical experiences may make some difference to the attitudes that lawyers hold. It is probable that a comprehensive longitudinal study of lawyers' values and correlating behaviour across many different jurisdictions will expose compelling associations between values that lawyers hold and their behaviour. Efforts to address the justice priority in legal education and in the practice of law could then proceed on a firmer foundation – one that is based on actual knowledge of the values that underlie notions of legal ethics.

Values before Ethics?

In order to place this research in its international context, I refer to some of the debate about legal ethics.¹² The debate is

12 The text of this section, including footnotes, is based on the article, A Evans, *The Values Priority in Quality Legal Education* (1998) 32 *The Law Teacher* 274-286. Permission to reproduce the relevant sections has been granted by Nigel Duncan, General Editor of *The Law Teacher*.

not confined to issues of interpretation surrounding, for example, conflicts of interest or duties to the courts, though these and many others are of central importance. Increasingly, the accumulation of issues surrounding legal ethics is producing a systemic agenda. Commentators regularly decry the apparent general lack of ethical practice in lawyers today.¹³ The repetition of the assertion is likely to be demoralising and irritating to those many lawyers who, credibly, see themselves as ethical practitioners. Nevertheless, these lawyers will likely acknowledge that the problem is now chronic. One view is that a distinctive and regressive “lawyer personality” has emerged which is responsible for much of the disquiet,¹⁴ though it seems pertinent to focus equally on the causes of the lawyer “personality,” if it can be determined.

A recent issue of the *International Journal of the Legal Profession* entitled “Lawyering for a Fragmented World”¹⁵ brackets the discussion of causes succinctly. In that issue, Pue asserts that nothing less than the “death of God”¹⁶ and the consequential weakening of “lesser gods” – rationality, the rule of law, and cultural identity – have taken away from many Westerners the basis for any value choices. Reciting Margaret Thatcher’s comment that “there’s no such thing as society,”¹⁷ Pue suggests that there are no longer any agreed scripts upon which a single values base can proceed for any sector of a “post-Society society.”¹⁸ Indeed, so many

13 See, for example, Lincoln Caplan in the United States who connects the malaise to a “bottom line accountability” replacing older themes of loyalty, confidentiality, and candour. L Caplan, *The Profession – Identity Crisis* (1994) 80 *ABA J* 74. Note that Richard Abel, as usual in an arresting counter, prefers to suggest that the problem is macro-economic, affecting all occupations, and that concerned lawyers are probably unable to influence the problem for the better. Abel also projects that increasing numbers of lawyers will inevitably increase pressure for “bottom line” practices to become the norm. The implication, it seems, is simply arithmetic.

14 S Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism* (1997) 46 *Am Law Rev* 1337.

15 (1998) 5 *Int’l J of the Leg Profession* 2.

16 This may be summarised for these purposes as a “vacuum of meaning” or an absence of any basic system of commonly accepted, ultimate authority.

17 WW Pue, *Lawyering for a Fragmented World: Professionalism After God*, 125, at 126 citing M Thatcher, *The Downing Street Years* (London: Harper/Collins, 1993) at 626.

18 *Id.* at 126-129. There is of course no shortage of overarching “objectives” in life, for example, the happiness and prosperity of the largest possible number of people (see R Solomon, *Ethics and Excellence: Cooperation and Integrity in Business* (New York: Oxford University Press,

variables affect value choice that the very notion that we share the same values seems offensively patronising. This is a bleak present with a potentially bleak future.

How are lawyers to proceed? If this question suggests a refusal to sink in social and spiritual quicksand, then there is hope. Hope, however, is quite difficult when we are faced with the inconsistencies in our justice system, as they are reported almost daily on each page of the newspapers and case reports. To take a compelling example, McGillivray¹⁹ illustrates the "horror" of valueless existence with her acute retelling of the Bernado/Homolka murderers in Ontario. In this case, one of the world's most advanced justice systems was relatively content to see a husband and wife, mutually responsible for ghastly serial rapes and killings, receive very different sentences. The case demonstrated how fraying threads of law, gender, and psychiatry were badly entangled. Each murderer was as culpable as the other. The male is never to be released; the female – Karla Homolka – received just 14 years imprisonment. There was no adequate reason to discriminate between the two in the expiation of an identical guilt. Referring to the values conflicts behind this depressing result, McGillivray asks, "What is guilt when discourses collide?"²⁰ In all, the law and its lawyers were central players.

If there is definition to the issue of guilt – and, hence, responsibility – within law, it must be in the discourse, whether colliding or not. Continuing the discourse on values is at the centre of this struggle. But is this suggestion too glib? As Pue reminds us,

[l]awyers, unfortunately, are daily called upon to "judge," to decide for others, and to decide for themselves how

1993) at 92). At this level of abstraction, however, little is said about the value choices that need to be made in pursuit of this objective. Interestingly, the goal of "happiness" is experiencing a limited renaissance. In the face of nearly two centuries of Western emphasis on material success as the way to happiness, research is now suggesting that the reverse is the case and that happiness is the precursor to success. A Lagan, *Success or Happiness?* (1995) 32 *City Ethics* 2 (newsletter of the St James Ethics Centre, Sydney). This may have been understood outside the West for millennia, but it is still not the agreed approach. I speculate that income generation probably remains the primary goal for most.

19 A McGillivray, *A Moral Vacuity in Her Which is Difficult if Not Impossible to Explain: Law, Psychiatry, and the Remaking of Karla Homolka* (1998) 5 *Int'l J of the Leg Profession* 255.

20 *Id.*, at 271.

they will empower or frustrate others. Aware, perhaps . . . that the core of our professionalism rests on “just another” contested “set of narratives,” that our history provides no definitive answers for our present, we can take no joy in the “laid back pluralism” literary scholars detect in life after God.²¹

If, however, we regard our dilemma as involving a journey rather than a destination, this melancholy can be challenged, not with a solution but with a *process*. This would not be a new road, merely one less known. It would also be one of the oldest. As Solomon states,

Part of the problem is the way we tend to separate – or pretend to separate – our business from our personal lives, as if these were unrelated and independent, as if one “left one’s values at the office door.” But of course, not only do we spend an enormous amount of our waking lives “in the office;” our values are not divided up into two (or more) categories. . . . The point is to view one’s life as a whole and not separate the personal and the public or professional, or duty and pleasure.²²

A focus on the ideal lawyer as one who integrates her or his professional and personal lives could begin with lawyers’ individual initiatives. Some consciously attempt this now. They seem likely, however, to remain in the minority in the face of a jurisprudence and a system of legal education that remains reluctant to weigh up the impact of its players and their competing values as formal contributors to a distinctly impersonal concept, that of the Rule of Law.

A Crucial Objective – Identifying Values

A central foundation of lawyers’ ethics (related no doubt to the derivation of the word “ethos” from the notion of custom²³) is this basic creed of the Rule of Law – that is, the notion that fairness to all people can only be guaranteed by

21 Pue *supra* note 17 at 135.

22 Solomon *supra* note 18, at 105.

23 Custom in this sense is seen as synonymous with a consistent morality or “goodness” and “right,” as opposed to “evil” and “wrong.” See the definition of “ethics” – “relating to morals.” Concise Oxford Dictionary (London: Oxford University, 1964) at 415. See also Butterworths Concise Australian Legal Dictionary: “A valid custom must be certain, reasonable, and continuous. . . .” (North Ryde: Butterworths, 1997) at 101.

"the law" (and not by individuals,²⁴ in the strict sense). Although battered by the modern crisis of meaning,²⁵ this creed, nevertheless, remains essential for our social well-being. Social progress and good lawyering are indispensable to each other. Under attack from social apathy and community distrust, the Rule of Law is in fact acutely dependent upon lawyers who personally value justice before income. In my view, the Rule of Law will only be upheld by individual, honourable practitioners.

The obvious fact that society needs credible and honest lawyers – and that they are perceived to be in short supply²⁶ – makes it more important to be precise about the values base that underlies their actions. It is not enough to dismiss the need for investigation²⁷ and impatiently state that there is an urgent need to get on with the task of redefining the model lawyer, post haste. It will be difficult to position remedial education or values awareness programmes in the profession and in our law schools unless we have real information about values diversity.

Thus, an essential preliminary task in many jurisdictions is to identify exactly what values govern the mass of Western lawyers' behaviour. While as yet there is only limited and

24 It is, of course, useful to keep in mind that here the distinction is between the objective acceptance by society of law as rational and just (and, therefore, effective to the extent of that social acceptance) and the individual lawyer as a sometime capricious contributor to the law rather than its guarantor.

25 See notes 14-16 *supra*.

26 A particularly unkind example of wincing cross-examination, which involves comment at several levels, is reputedly from the *Massachusetts Bar Association Journal* (date unknown), reprinted in *The Sunday Age*, 16th May 1999:

"Q: Doctor, before you performed the autopsy, did you check for a pulse?

A: No

Q: Did you check for blood pressure? A: No

Q: Did you check for breathing? A: No

Q: So, then is it possible that the patient was alive when you began the autopsy? A: No

Q: How can you be so sure? A: Because his brain was sitting on my desk in a jar.

Q: But could the patient have still been alive nevertheless?

A: It is possible that he could have been alive and practising law somewhere."

27 A, not unkind, comment offered by a friend in relation to this research was that it "should take about five minutes," as if it is accepted by everyone that lawyers' values are easily determined and uniformly doubtful.

indirect²⁸ empirical research material available to provide an answer, a workable hypothesis is that “values” ought to be the focus here rather than “ethics” as such. The latter it would appear, in my experience, are now confused in the minds of many Western lawyers with proscriptive rules of conduct, and this regrettable association tends to kill off the most active exploration of the rich and diverse roots of ethics.²⁹

It is also possible, as Simon suggests, that the study of formal codes of ethics undermines “complex, creative judgment and . . . subverts the vital aspirations of professionalism.”³⁰ Hutchinson is quite definite when he states that

[r]eliance on codes atrophies the moral intelligence and leaves lawyers’ adrift without a moral compass when the professional rules run out or give conflicting advice.³¹

Although a code can tend to promote purely instrumental actions, there remain many situations where lawyers can, in fact, decide with some freedom how they will behave. It is possible, therefore, that values affect practitioner motivations and, hence, their behaviour just as keenly as, for example, the fear of sanction (or the faint promise of praise) under a law society code.

A Business or a Profession?

A popular hypothesis³² is that the “conversion” of many legal practices from a professional to a business orientation for economic reasons has cut across attempts by governments (and, ironically, the organised profession) to improve practitioner behaviour – and with it access to justice. I suggest that this situation will not change appreciably unless and until there is a reawakening of the discourse about personal and so-called “professional” values among lawyers.

28 See for example R Uphoff, *The Allocation of Decision Making Between Defense Counsel and Criminal Defendant: An Empirical Study of Attorney-Client Decision Making* (1998) 47 *Univ of Kansas Law Rev* 1.

29 Some writers go so far as to say that moral values (discussion of which may be considered to overlap the classical exploration of issues of ethics) are no longer taught in law schools because formal ethics codes have simply (but deliberately) displaced them from the syllabus. See for example G Beggs, *Reap What You Sow: Lawyer Ethics Could Benefit from an Application of Proverbs* (1996) 82 *ABA J* 116.

30 WH Simon, *The Trouble With Legal Ethics* (1991) 41 *J of Leg Educ* 65, at 67.

31 Hutchinson, *supra* note 7, at 187.

32 AT Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge: Belknap Press of Harvard University Press, 1993). Kronman’s observations focus on the American profession; however, his viewpoint is also relevant for other common law legal systems.

There is, of course, a great deal of scholarship, principally in the United States, concerning the perceived lack of values of practising lawyers. In particular, in his bleak but influential book *The Lost Lawyer*,³³ Kronman describes his understanding of the legal malaise for an audience beyond lawyers. Kirby and Dawson, judges of the High Court of Australia, have weighed in with their views; they essentially agree with Kronman that the influence of business has undermined the ethical practice of law.³⁴

Journal articles since the publication of Kronman's book in 1993 have discussed various dimensions of the problem: for example, they have considered the effect of modern legal practice on lawyers' ethics and³⁵ the importance of "nourishing" the profession;³⁶ some have attempted to rebut Kronman's thesis.³⁷ A recent article by Robert MacCrate, former American Bar Association ("ABA") President and highly influential authority on American legal education, does not dispel concern. MacCrate, who is clearly proud of the profession's achievements, suggests that the problems with ethical conduct in the American legal profession that are identified by Kronman are restricted to the impact of the culture of "elite law schools and . . . large law firms over the last 25 years."³⁸ While MacCrate argues that Kronman does not make the same specific criticism of the mass of the 800,000 American lawyers and draws some comfort from this distinction, he is

33 *Id.*

34 M Kirby, Legal Professional Ethics in Times of Change, 14 *ABR LEXIS* 13, and D Dawson, The Legal Services Market (1995) 5 *JJA* 147. These sentiments were echoed by the Chief Justice Gleeson of the High Court of Australia in a recent speech to law students which emphasised that "nobody was entitled to enter a profession simply to make money." *The Age*, 8th May 1999, 5. See also A Goldsmith, Heroes or Technicians? The Moral Capacities of Tomorrow's Lawyers (1996) 14 *J Prof L Educ* 1.

35 EW Myers, "Simple Truths" About Moral Education (1996) 45 *Am Univ L* 823. Amongst large firms, even the *pro bono* schemes of recent years are seen as evidence only that the firms practising such schemes are profitable rather than moral. Lincoln Caplan and Lloyd Carter seem to agree that *pro bono* activity has not been a big feature of firms that are struggling financially. See Caplan, *supra* note 13.

36 J Gibeaut, Nourishing the Profession (1997) 83 *ABA J* 92. Law teachers are encouraged to recover/retain their crucial function as role models to law students and to teach ethics throughout law courses. Caution is, however, necessary, in order to avoid a direct reliance on religion as the basis of these endeavours, lest perceptions of bias occur. See David Barringer, Higher Authorities (1996) 82 *ABA J* 69.

37 For example, R MacCrate, A Nation Under Lost Lawyers: The Legal Profession at the Close of the Twentieth Century: The Lost Lawyer Regained, The Abiding Values of the Legal Profession (1996) 100 *Dickinson Law Rev* 587.

38 *Id.*, at 612.

not sanguine about the situation. It is significant that in his 1992 report to the ABA on the relationship between legal education and professional development³⁹ he did, pointedly, identify a number of skills and, significantly, four “professional values”⁴⁰ (as opposed to personal values) that should be taught in law schools.

While MacCrate considers that the amount of professional and academic debate since the release of his report⁴¹ suggests that things are improving,⁴² it is clear that there is as yet no large-scale empirical evidence for this confidence. The US profession, for one, is not sanguine about the situation. In 1996 the ABA weighed in again with another report recommending extensive strategies for teaching professionalism in law schools and in a post-admission context; however, it would not (and, in my opinion, probably could not) mandate any of them.⁴³

There are signs that lawyers’ intentions to practice law honourably cannot be assumed any longer. In January 1999 the Conference of United States Chief Justices adopted “A National Lawyer Plan on Lawyer Conduct and Professionalism”⁴⁴ which brought together many credible initiatives to improve the court-based supervision of American lawyers. While the language of this report remains firmly in the land of aspiration and prescription rather than in the examination of causative issues, the plan called for the provision of

accurate information [to the Court] about the *character and fitness* of law students who apply for bar admission.⁴⁵
(emphasis added)

39 American Bar Association, *Legal Education and Professional Development: Report of the Task Force on Law Schools and the Profession* (Chicago: American Bar Association, 1992).

40 Each of these values in turn begets a “special responsibility.” Thus, the value of competent representation begets the responsibility to clients; striving to promote justice fairness and morality begets public responsibility for the legal system; striving to improve the profession begets responsibility for it; and professional responsibility produces responsibility to one’s self. See MacCrate, *supra* note 37, at 616.

41 *Id.*, at 613.

42 *Id.*, at 619.

43 American Bar Association Section on Legal Education and Admissions to the Bar, *Teaching and Learning Professionalism: Report of the Professionalism Committee* (Chicago: American Bar Association, 1996).

44 American Bar Association, *Report on a National Lawyer Plan on Lawyer Conduct and Professionalism: Regulatory Authority over the Legal Profession and the Judiciary: The Responsibility of State Supreme Courts* (Chicago: American Bar Association, 1999).

45 ABA, *supra* note 44, at 32.

One might wonder how can this be done with confidence by law schools without an in-depth investigation that identifies students' values. Even if commitment to this sort of investigation existed, there is, I believe, the risk that the investigation would result only in a great deal of academic, judicial, and professional discussion. This debate could, of course, be a good thing; it could in some diffuse way indicate that improvement is occurring in practising lawyers' values – and demonstrate that their behaviour is improving. Alternatively, the debate may only be evidence of the thought processes of those of us discussing the issues, as I suspect it is.

American concern with the professional values of lawyers is shared in the United Kingdom, where the emphasis is upon the role of law schools. Economides directly raises the values issue in his introduction to a collection of essays on the ethics challenge for law schools.⁴⁶ After acknowledging that a "gap" exists in law school curricula in the United Kingdom, he asserts that there "is no consensus as to what should fill this moral vacuum"⁴⁷ In my opinion, the vacuum is not just an irritation to practitioners but a positive disadvantage to their craft: it is patent that so much of modern professional life – in and beyond the law – positively requires the ability to reason ethically and to make ethical judgments.⁴⁸ And this goes well beyond an automatic reliance upon the methodology of technical dissection that pervades law school teaching. Traditional casebook methods on their own, while crucial for discerning substantive rules of law, can engender a delusional confidence among students that this (exciting) *process* of legal delineation also represents the peak of professional aspiration. It is no longer enough to argue that this necessary "forensic" ability is dispassionate (requiring no moral position) in either an adversarial or non- adversarial setting.

Eschete, in particular, makes clear that in a social, cultural, and professional sense, the very qualities of successful adversarial lawyering gradually produce "undesirable features . . . [of the lawyer's] character."⁴⁹ Hutchinson describes it thus:

46 Economides, *supra*, note 1, at xvii-iii.

47 Economides, *supra* note 1, at xx.

48 See generally C Gill, Law and Ethics in Classical Thought in Economides, *supra* note 1, at 3-19.

49 A Eschete, Does A Lawyer's Character Matter? in J Callahan, *Ethical Issues in Professional Life* (New York: Oxford University Press, 1988) at 394.

[O]n the basis that lawyers tend to identify more than most with their jobs, the amorality of their professional role will begin to infect their personal lives – the amorality will become its own impoverished morality by default.⁵⁰

If this is true, it is not useful to argue that typical adversarial lawyers can separate their personal and professional lives indefinitely. Eschete maintains that the justification of adversarial positions – the resolution of individual conflict without violence – does not insulate lawyers from its moral consequences:

[T]he law is not, like a sport or . . . [philosopher's] . . . skirmish, sealed off from moral life. Accordingly, lawyers cannot use the permissible skills of their trade with ruthless efficiency for the sake of the client's triumph without working wrong.⁵¹

I would assert that the lawyer knows, even if the client does not, that bigger issues and principles are at stake in every small contest and that even those practitioners who profess to see no ethical issue in certain behaviour have simply chosen not to look.

The combative, adversarial practitioner – the archetype most commonly promoted by law school curricula – will obviously remain with us. However, I ask whether this breed of “character impoverished” lawyer is too ill-suited to do anything less than fight – unless an awareness of values diversity is acquired early in law school and nurtured throughout the lawyer's professional life.⁵²

In my observation of former clinical students at Monash University, lawyers' personal satisfaction with their working lives is already adversely affected by the conflict between law as a business and law as a profession. I see apathy towards, or dislike of, commercial legal practice among lawyers with about three to five years experience. This dissatisfaction is echoed by senior jurists and others.⁵³ Professional commitment is put at real risk when, in addition, the moral “abyss” is

50 Hutchinson *supra* note 7, at 186.

51 Eschete *supra* note 49, at 396.

52 See generally, T Morawetz, Teaching Professionalism: The Issues and the Antinomies in Economides, *supra* note 1, at 215-233.

53 See for example, K Towers, Youngsters are Disenchanted (2000) 27 *Australian Fed Rev* 58. Towers notes that Sir James Gobbo, former Victorian Supreme Court Judge and then Governor of that State, and a range of other commentators have considerable misgivings about some of the attitudes that young lawyers have to legal practice.

made public by the circumstances of malpractice.⁵⁴ If this gap is to be filled and legal professionalism protected, lawyers must come to grips with what lies at the bottom of their personal, moral crevasse: with their values – good and bad.

Defining Values

There is considerable, though incomplete, discussion in the literature about values and ethics. I will make an effort to tease out these terms as I see them before I discuss the survey so that the purposes of the latter are clear. Much of the literature discussion involves overlapping definitions that are sometimes difficult to distinguish. Thus, the United Kingdom Lord Chancellor's "Advisory Committee on Legal Education and Conduct" ("ACLEC") 1996 report calls explicitly for renewed emphasis in law schools on legal values and contextual knowledge.⁵⁵ These are described generally by Halpin and Palmer⁵⁶ as addressing the "deeper significance that the discipline of law is regarded as having for society."⁵⁷

54 In my opinion, in the lawyer disciplinary process there is perhaps the best opportunity, excluding law school and continuing professional development, to address moral stagnation in lawyers' lives. Thus, when misconduct is "proven," the potential emerges to tackle the rehabilitative process radically from the baseline standpoints of regret, forgiveness, and moral insight so that potential personal growth also assists subsequent professional behaviour. A glance at the public reports of legal regulators shows that most disciplinary situations do not result in the lawyer's departure from the profession, though enforced "time out" is common. When the lawyers return to practice, much can be achieved if this process has been tackled.

55 Lord Chancellor's Advisory Committee on Legal Education and Conduct ("ACLEC"), First Report on Legal Education & Training (London: Her Majesty's Stationery Office, 1996) at 24-25.

56 A Halpin & P Palmer, *Acquiring Values* (1996) 146 *New Law J* 1357. Parts of the text of this section ("Defining Values") are taken with permission from an article by the author in *The Law Teacher*, see note 12 *supra*.

57 ACLEC, *supra* note 55, at 1358. The urgency does not seem, however, to be a priority of the government of the United Kingdom. Behind the ACLEC call is the implicit recognition that, notwithstanding that law schools are being told to "do more with less" in a quantitative sense, they are also being asked to "do better with less" – that is, to lift quality with, in relative terms, less money. Harris and Jones in their 1996 survey of UK law schools report that over the three years from 1993 to 1996, there was a 50% increase in the number of students but only a 3% improvement in the numbers of law teachers. See P Harris & M Jones, *A Survey of Law Schools in the United Kingdom* (1997).

There also is, of course, no consistency in the use of the terms “values” and “ethics.” Halpin and Palmer for example, speak of

[l]egal [v]alues [conveying] two separate categories. One covers values that are identified with the law – a commitment to the rule of law, to justice, and fairness. . . . The other covers lawyers’ *professional ethics* in the wide sense – encompassing high *ethical* standards, professional skills, responsibility to the client, equality of opportunity, and access to justice.⁵⁸ (emphasis added)

This passage describes “values” only in terms of professional life and activity – as if there is some separation between professional and personal values. It is echoed strongly by MacCrate in his description of four “professional values”⁵⁹ which he links to certain defined responsibilities: they, in turn, bear a close resemblance to Halpin and Palmer’s second category of “legal values.”⁶⁰ Nor are these hazy intersections assisted much by those who look more closely at the “values” issues.

In regard to the ACLEC’s “First Report,”⁶¹ Sheinman notes that

[w]hen it talks about ethics and values . . . [it] fails to distinguish between the morality underlying particular laws, the morality of citizens, and the morality of lawyers . . .⁶²

His point, however, does not take us very far because he is disinclined to explore these distinctions insofar as they may be useful in improving lawyers’ behaviour. Sheinman appears, however, to agree with the MacCrate emphasis upon the “professional” in ethics. Using the term “ethics” rather than “values,” Sheinman takes a very different stance to Eschete. He cites, by way of comparison with Eschete, various scenarios where lawyers could morally choose to behave differently in

31 *The Law Teacher* 38, at 99. The gap between the community expectation that lawyers will act with integrity (and a heightened social awareness) on the one hand, and, on the other, the growing restrictions on their education suggest that a coherent approach to ethics in legal education is necessary.

58 Halpin & Palmer, *supra*, note 56.

59 MacCrate, *supra* note 37.

60 Halpin & Palmer, *supra* note 56.

61 ACLEC, *supra* note 55.

62 L Sheinman, Looking for Legal Ethics (1997) 4 *Int’l J of the Leg Prof* 139-154, at 140

their personal lives from their professional lives. Leaving to one side the psychological and emotional complications for the lawyer engaging in this dual life, Sheinman recognises that there is a debate about the morality of this approach,⁶³ but he holds to his view that

if we are to produce lawyers with robust ethical standards, then it is not personal ethics, but professional ethics [that] we ought to be teaching them.⁶⁴

It is not clear to me why he makes this choice, but Sheinman does not appear to see any crucial behavioural link between the "personal" and the "professional." He does briefly suggest that a "survey" would be useful (except for the fact that experience tells us that lawyers attitudes are variable)⁶⁵ and moves on to call for more discourse and a "set of fully articulated underlying principles."⁶⁶ While Sheinman's important purpose is to call for a profound reinvestigation of the basis of legal ethics,⁶⁷ his analysis does, I believe, suffer from a reluctance to recognise the professional/personal interaction.

It is difficult to separate legal values and professional values from many definitions of professional ethics or legal ethics. As a result, for the purposes of this article I will define the latter two terms in the common proscriptive manner as the

rules which govern lawyers' behaviour *by virtue of the fact that they are lawyers*.⁶⁸ (emphasis in the original)

It is somewhat disappointing (some would also say premature) to give up the nobility of the word "ethics" to the reduced significance of a set of rules. In my opinion, however, the change is entrenched among many practitioners and, thus, may as well be acknowledged. If this were agreed, at least the confusion between ethics and values as concepts would be reduced.

The survey that I conducted places a deliberate emphasis upon values as distinct from ethics. Values are said to underlie our behaviour and are assumed, therefore, to have great

⁶³ *Id.*, at 141.

⁶⁴ *Id.*

⁶⁵ *Id.*, at 142.

⁶⁶ *Id.*

⁶⁷ "We cannot discern the ethics of the profession by looking at [the] rules of conduct." *Id.*, at 144.

⁶⁸ S Bottomley & S Parker, *Law in Context* (Sydney: Federation Press, 1997).

influence over us; they are rarely discussed with any precision, however.⁶⁹ Values have been variously defined,⁷⁰ and it is important to distinguish between different types of values. Personal values⁷¹ (for example, honesty) can be distinguished from economic, aesthetic, and even recreational values. Personal values may overlap fundamental moral values. Thus, honesty intersects with the moral values of truth and justice but is not identical with these concepts.

In this research, I have focused upon personal values because, in my opinion, survey respondents would be able to identify more closely the questions asked about values. Ethics, in my opinion, have been discussed to the point where they are now, regrettably, confused with specific rules of conduct. While ethical behaviour has been understood as a “positive,”⁷² ethics is now more often associated with a negative “do not.”⁷³ Thus, exhortations to lawyers to behave ethically might therefore fail to improve lawyers’ behaviour – in the same way, I believe, that a parent who routinely criticises a child has less impact on the child’s behaviour than the parent who praises. The parenting analogy may be trite and perhaps patronising, but my hope is, nevertheless, that a discussion about values (as a “positive”⁷⁴) will in some way lead to a deeper examination of motives.

Values, as distinct from ethics as I have defined them, are, nevertheless, also likely to lose their educational impact if they are defined narrowly in the MacCrate sense as professional

69 A recent exception was the 1998 American Association of Law Schools clinical conference in Portland, Oregon, USA, which focused on the teaching of values in law schools.

70 See for example Government of Saskatchewan, *Understanding the Common Essential Learnings: A Handbook for Teachers: Personal and Social Values and Skills*, (Saskatchewan Education, 1987) chapter 6, www.sasked.gov.sk.ca/docs/policy/cels/el5.html, and R Jowell (ed), *British Social Attitudes: The 14th Report* (Aldershot, England: Ashgate, 1997).

71 Values can, of course, be either “bad” or “good” and exist in a hierarchy, ranging from basic “survival” to “aspirational.” See A Lagan, *Managing through Values* (1995) 20 *City Ethics* 1 (newsletter of the St James Ethics Centre, Sydney).

72 See note 23 *supra*.

73 See for example, N Moore, *The Usefulness of Ethical Codes* (1989) *Annual Survey of Am Law* 7.

74 Schneyer reminds us that the reference to “values” includes the inevitable “no values” scenario or at least the possibility that “values” can only ever mean the lowest common denominator variety, representative of the whole of society (however expressed). See T Schneyer, *Moral Philosophy’s Standard Misconception of Legal Ethics* (1984) *Wis Law Rev* 1529.

values. To define the values which lawyers need in terms of the professional role alone suggests that personal values can differ or be ignored. This is dangerous because many personal values such as honesty are fundamental to lawyering.

MacCrate is not alone here at what I believe to be a dead end. The progressive Clinical Legal Education Association in the United States continues to talk only of professional values.⁷⁵ I suggest that only by *personalising* values, appreciating that they compete and operate at several levels, will they retain their potency. Thus, in this survey, I considered it desirable to, in effect, force upon respondents choices between personal and professional obligations in order to minimise (merely) "intellectual" responses and, at the same time, maximise the chances that the answers given would be predictive of actual behaviour. In my opinion, it is no good for example, emphasising to a law student (or newly admitted lawyer) that there is a professional value to promote justice and fairness in the legal system⁷⁶ if, at the same time, there is no attempt to explore what this really implies for honesty and/or⁷⁷ integrity at the personal level. Instinctively, students who become *personally* involved in a well-run (live client) experiential learning process know that this sort of discord is to be explored rather than simply swallowed.⁷⁸ As Hutchinson says,

The challenge is to integrate the demands of a professional role with the dictates of a professional morality and be able to construct important bridges between the two so that they can each support and fructify each other: one feeds off the other.⁷⁹

⁷⁵ See submission by the (US) Clinical Legal Education Association to the Standards Review Committee of the ABA Section on Legal Education and Admission to the Bar (1998) 7 *CLEA Newsletter* 10/11, 40.

⁷⁶ MacCrate's 2nd "professional value," *supra* note 37.

⁷⁷ There are situations where honesty and moral integrity may require different actions, for example, when offering (secret) sanctuary to a political refugee from an oppressive regime.

⁷⁸ In sharp contradiction is the weighty philosophical tradition that separates professional and personal *roles* and allows what is otherwise discordant to be reconciled at, it is argued, both the ethical and psychological level. See RA Wasserstrom, *Roles and Morality* in D Luban (ed) *The Good Lawyer: Lawyers' Roles and Lawyers Ethics* (Totowa, New Jersey: Rowman & Allanheld, 1984) at 25. The problem with this reconciliation is that it tends to elevate what is really only a justification for a *choice* to act "professionally" (in this instance an action that would be personally offensive) to the level of an *obligation* to so act. It is the supposed obligation that is, in my observation, indigestible to law students immersed in a good clinical programme.

⁷⁹ Hutchinson, *supra* note 7, at 187.

Thus, for example, the value of striving to support the Rule of Law⁸⁰ through the right to adequate representation (as a guarantee of impartiality in a democracy) is difficult to attain without first reinforcing the personal values of courage and perseverance.

Personal values are not one-dimensional. Differing values constantly compete for dominance; they tend to be ranked in their impact upon us and can be a mixture of both “bad” and “good.” One useful categorisation⁸¹ divides personal values into foundational values (addressing basic needs for survival), focus values (daily concerns for identity, work, and self worth), and future values (at the aspirational or noble end of behaviour). Under pressure, we tend to regress towards personal values that help us survive. If survival is assured, the potential emerges for growth towards the aspirational values.⁸² It is these higher level personal values to which law students and lawyers can often aspire, and not just because their basic needs have been met through, for example, the accidents of birth, ethnicity, or class. Students with and without privileged backgrounds are often zealous in their efforts to “do justice.” Of course, it is not easy to “allow” students (in the facilitative sense) to recognise that the *practice* of aspirational values combined with the provision of competent service is linked to the achievement of their basic and everyday needs (since quality/best practice approaches often attract respect and the referral of new clients⁸³), but the potential is there for law teachers to exploit.

Hutchinson sees the context for this opportunity:

Mindful that ethical training is primarily concerned with learning about oneself, students need to confront ethical dilemmas in concrete circumstances in order to begin to discover (or construct), question, and articulate their own moral views before they struggle with the complex demands of a professional ethic. . . . A pervasive difficulty in

80 One of Halpin and Palmer’s values identified with the law, *supra* note 56.

81 A Lagan, *Managing through Values* (1995) 20 *City Ethics* 1 (newsletter of the St James Ethics Centre, Sydney).

82 *Id.*

83 See for example, S Rosner, *Service to Clients Comes First; Lawyers Need to Make the Right Ethical Choices to Produce the Best Results* (1997) 83 *ABA J* 108. While Rosner does not argue for the view that aspirational decision-making will make more money for the lawyer, he does make the more limited observation that if lawyers place the pursuit of money before service to clients, the results will be “bad.”

achieving this is that legal ethics is more about responsibilities than rights and, therefore, does not sit easily or well with much of the legal education that lawyers receive.⁸⁴

Experiential teaching and learning methodologies – particularly those where law students assume responsibility for assisting real clients – can ignite the moral imagination of our future lawyers. They provide students with an opportunity to behave in legal practice in a morally aware manner.⁸⁵

If the need for major improvement in lawyers' values awareness can be quantitatively demonstrated, a fundamental change in legal education is more than a possibility. That demonstration is the purpose of this article. There are measurable differences in values among lawyers and law students. These differences may not all be statistically significant, or yet capable of international application. Nevertheless, the values exposed in the survey which follows come out of a carefully designed methodology.

Why Monash Law Graduates?

I decided that a useful pilot process for a large international comparative survey could be undertaken with former Monash law students. The Monash alumni lists, which are maintained by the University, provided a convenient and relatively low cost access route to the addresses of students who graduated over the past two decades. Unlike graduates

The reverse approach – where clients' interests come before lawyers' fees – means that "everything else falls into place." It is also true that some types of legal practice passively marginalise ethical behaviour, for example, routine conveyancing performed for high volume mortgage originators. I suggest, however, that the lawyer who aspires over the long term to ethical practice will reap the benefits in terms of reputation and, ultimately, remuneration.

84 Hutchinson, *supra* note 7, at 189.

85 The tentative view of the Australian Law Reform Commission ("ALRC") is that, at present, it is the workplace, rather than law schools, that determines lawyers' behaviour. See ALRC Issues Paper 21, Review of the Adversarial System of Litigation: Rethinking Legal Education and Training (Sydney: Australian Law Reform Commission, August 1997) para 8.22, 77. This view is supported by those who think that the commercial pressures of legal practice determine whether legal education in ethics is successful. See Myers, *supra* note 35, at 823. If such views could be tested – and found accurate – there would be considerably more incentive for law schools to treat their clinical programmes as "first work places" and tackle ethics education explicitly in that medium. The "good lawyer" (from Economides *supra*, note 1, xxvii-xxix and Part 3, 237-358) might then begin to replace Kronman's "lost lawyer," *supra* note 32.

from many other Australian law schools, approximately one-third of these respondents would likely have completed an undergraduate clinical experience and, thus, could help determine whether there is any significant connection between clinical experience and values awareness.

Monash University has for 21 years provided an extensive live-client clinical experience. Since 1990, it has attempted to give some of its clinical students the opportunity to work systemically on socio-legal issues⁸⁶ that arise in that programme. Anecdotal student reaction to the systemic exposure has often been very positive. Although the emphasis of the entire programme has favoured the functional clinical norm – reflecting the traditional professional emphasis upon competence in the context of practical skills – in recent years this has expanded to include an ethical sensitivity in keeping with growing community pressure for greater accountability among lawyers.⁸⁷

It has, accordingly, become important to ascertain whether there is as yet any observable effect of the clinical process on the development of law students' values. If, for instance, some connection of this sort could be demonstrated, law school deans, admitting authorities, and regulators would have available, for the first time, a *reliable* way to inculcate, via the clinical process, ethics in that part of legal education which seems to so readily excite student interest.

Methodology

This survey obliquely measures lawyers' values; its conclusions are based upon the responses from former law students to survey questions. Rather than directly ask lawyers about their values, which seems naive and may be treated dismissively by some respondents, I decided to use the psychological and educational device of the hypothetical situation, adding a personal dimension to each scenario to further reduce the level of abstraction and assist in actual values identification. Since

86 AH Evans, Client Group Activism and Student Moral Development in Clinical Legal Education (1999) 10 *Leg Educ Rev* 179-190. See also AH Evans, Developing Socially Responsible Lawyers (1990) 15 *Leg Service Bulletin* 218-9.

87 Springvale Monash Legal Service ("SMLS") in particular, where a large part of the Monash Clinical Programme is based, has published the *Lawyers Practice Manual (Vic)* (Sydney: Law Book Company, 1985) for some time and has included a substantial ethics section. Law students at SMLS have also worked over the years on systemic reforms to legal professional regulation in response to client caseload.

the scenarios were also reasonably commonplace, I reasoned that a degree of personal identification with the lawyer's dilemma that is raised in each scenario would emerge.

I considered it unlikely that respondents would reply with sufficient thought to a telephone survey. I believed that a lengthy explanation of the survey, which advised potential respondents about how their information would be used, had to precede the questionnaire if it was to be conducted ethically. I believed that respondents would not easily comprehend the approach of the questionnaire or feel like cooperating with the necessary time that a verbal explanation would require – even if survey funds permitted such contact and the inevitable telephone reminder calls. Nor did I think that focus group interview methods⁸⁸ were appropriate for a pilot process that would seek maximum quantitative information, in order to pave the way for subsequent, more extensive research.

While technically I could have selected a random sample from the entire Monash graduate population over the relevant period, this would have involved extensive and costly tracing of “missing” graduates.⁸⁹ For a pilot survey, the costs/benefits favoured a large sample size generated by simple reliance on the alumni lists. In this survey, I hoped that, in addition to preliminary findings on general values and the possible “clinical link,” I would obtain useful design information for future large-scale random sampling, if adequate funding were to become available. Within the survey as a whole, several indicators referred to below suggest that the sampling decision was reasonable.

Question Design and Delivery

At the heart of the survey instrument is the structure of the eleven individual questions. These were based on scenarios that I designed with deliberately personal implications arising

88 A focus group works by encouraging discussion amongst a small group of people who are regarded as representative of a particular population in terms of gender, ethnicity, social background, and age. Focus groups are especially useful in conjunction with questionnaire survey techniques, which (although statistically reliable) do not allow for the more subtle exploration of responses to standardised questions. Focus groups also permit a cross check of the trends (rather than the detail) in information provided by a questionnaire.

89 Alumni lists depend upon graduate information as to changes in addresses. Over time address lists can become outdated. Names must then be matched to electoral rolls and individually confirmed by telephone.

from common experience of practice. By this I mean that I believed that respondents would find it difficult to respond to the hypothetical from just a “professional” perspective. I included varied fields of practice – commercial, family, and criminal – to cater for different professional experiences. The initial drafts were trialed with a group of 30 hand-picked practitioners and academic lawyers in order to minimise obvious ambiguity. I chose this trial group because I knew them to be insightful and by nature inclined to approach the task of refining the scenarios thoughtfully. After their initial comments were used to modify and refine the questions, a consultant survey designer⁹⁰ assessed each question, the practitioners’ comments, and the overall survey approach to validate, vary, or reject the text of each question. While no scenarios were specifically rejected, the number of questions were reduced to minimise repetition as a result of the consultant’s input. In some cases, the consultant’s report recommended that the scenarios be simplified in order to make choices more straightforward; however, I decided in some instances to retain multiple issues within individual questions in order to reflect the reality encountered by practitioners, even at the cost of possible confusion of the respondents. This decision was taken in the knowledge that the target population is sophisticated and could be regarded as skilled in balancing competing loyalties and pressures. Questions were worded to ensure that the principal actor in each scenario could be male or female in order to minimise variability in response due to gender.

Approximately 38% of all respondents had completed a course in Clinical Legal Education during their degree. This percentage is similar to the participation rate of all students in the clinical programme at Monash. Since one objective of this study was the identification of values in graduates with clinical experience compared to those with none, adequate representation of clinically experienced graduates in the sample was crucial, and it was achieved. The similarity of these percentages supports the view that the sample is likely to be representative of the population for the specified period.

At the completion of spreadsheet coding, which converted text responses to pre-defined numerical codes, I determined basic frequency distributions (ie bar graphs showing the raw numbers of responses in each category of answer) using

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the pivot table and graph functions of *MS Excel*. Statistical analysis using *Statistical Package for the Social Sciences (SPSS) Software* was also performed. Although the sample, as discussed above, was not random, I believed that the characteristics of the sample were sufficiently robust for this analysis to be of use.

Statistical Methods and Tests

In this section I describe the techniques and methods that I used to generate and analyse the information that I received from the respondents. As noted above, 30 participants helped to refine the draft questionnaire. Four thousand (4000) questionnaires were dispatched to law students who graduated in the period 1980 to 1998. This number was selected on pragmatic grounds; it represented a balance between the cost of the distribution and reliability of alumni contact details. Seven-hundred-and-three (703) responses were received in the period of three months, and of these, 644 were considered valid in all respects: therefore, for this group, all questions were sufficiently completed to warrant coding in an initial spreadsheet. Fifty nine (59) respondents omitted some answers or submitted answers that could not be coded with certainty – not apparently in any pattern – to various questions. Where respondents among this second group had completed clear answers to questions, those answers were coded into the spreadsheet. These differences account for the slight variability in the number of valid responses to different questions, as is apparent below. The ratio of 59 incomplete responses to 703 total responses meant that there was a consequential 8.4% overall error in total responses. I stress, however, that the responses coded and reported in this article were assessed for completeness before coding in relation to each question analysed.

It might be speculated that those who chose to respond were sufficiently interested in the issues and that the very large group which did not respond could contain a higher proportion of individuals with “bad” or apathetic approaches to moral issues and, perhaps, ethical decision making. If this were true, the reliability of this survey would be questionable. However, I do not think this conclusion is valid as will be seen below. There is, on nearly every question, a profound variation in responses between what might be described as “good” and “bad” approaches to values choices.

In order to check for accuracy and internal consistency in responses, that is to limit the opportunity of respondents to

give answers that the respondents themselves might assume were “desirable” in some way, I asked all respondents to complete a standard Rokeach Values Survey (“RVS”).⁹¹ This instrument is well known in sociological research.⁹² It asks respondents to answer a standard set of apparently unrelated questions about personal values. I inserted it in the survey document as a “Part B” questionnaire after the “Part A” legal scenarios.⁹³ Answers to “Part B” values questions could be coded in such a way as to indicate the underlying preferences of respondents for particular contrasting values. The nominated RVS values categories are either “Instrumental” (that is, of “day-to-day” relevance) or “Terminal” (that is, of “ultimate” or long-term significance). The distinction between the two categories is made to cover both the immediate and long-term preferences of respondents.

As can be seen in the footnote below, the layout of the list of RVS values is not apparently subdivided in any way and gives no immediate clue to respondents as to any so-called “desirable” set of choices, in order that the recorded choices actually

⁹¹ Rokeach *supra*, note 11.

⁹² The consultant survey commentator, Josephine Palermo, recommended the Rokeach Values Survey as a check for validity and internal consistency in responses.

⁹³ The text of the instructions to respondents answering Part B was as follows, “The following questionnaire contains a broad index value survey which will be used for comparative purposes to Part A. Please indicate the importance to *you* of each of the following concepts and values in relation to *your approach to the practice of law* by circling your choice using a pen. The indicators on this scale are as follows:
0 = irrelevant, 1 = unimportant, 2 = important, 3 = very important, 4 = extremely important.

The available RVS categories were as follows:

Ambitious	0 1 2 3 4	Self controlled	0 1 2 3 4
Broadminded	0 1 2 3 4	A comfortable life	0 1 2 3 4
Capable	0 1 2 3 4	An exciting life	0 1 2 3 4
Cheerful	0 1 2 3 4	A sense of accomplishment	0 1 2 3 4
Courageous	0 1 2 3 4	Equality	0 1 2 3 4
Forgiving	0 1 2 3 4	Family security	0 1 2 3 4
Helpful	0 1 2 3 4	Freedom	0 1 2 3 4
Honest	0 1 2 3 4	Happiness	0 1 2 3 4
Imaginative	0 1 2 3 4	Inner harmony	0 1 2 3 4
Independent	0 1 2 3 4	Pleasure	0 1 2 3 4
Intellectual	0 1 2 3 4	Self respect	0 1 2 3 4
Logical	0 1 2 3 4	Social recognition	0 1 2 3 4
Obedient	0 1 2 3 4	True friendship	0 1 2 3 4
Polite	0 1 2 3 4	Wisdom	0 1 2 3 4
Responsible	0 1 2 3 4		

reflect the views of respondents. In fact, in the footnote, "Instrumental" values appear in column one and "Terminal" values appear in column two. Unless respondents are familiar with an RVS, they would not likely be able to predict which values might be "required."

It is common in RVS analysis to encounter *all* respondents giving priority to the same values for the first three or four choices so that, for example, "ambitious" might receive 1047 as a sum of responses, followed by "logical" at 967, "independent" at 832, and so on in descending levels of magnitude. Often, it is only at, say, the fourth or lower level of magnitude, where differences in values become evident. Thus, in the analysis below of whether lawyers would choose a *pro bono* opportunity or work towards their promotion by putting in longer billable hours, the first three values chosen for both groups of respondents in the "Instrumental" category were the same. However, the fourth most important value for the group choosing *pro bono* was "helpful," while "logical" was chosen by the group which preferred extra work for the employer.

The "Part B" instructions ask for RVS choices to be made in the context of respondents "approach to the practice of law. . . ." This instruction allows the sum of responses to "Part B" RVS values choices to be connected to the sum of responses to the "Part A" legal scenarios. After RVS values choices are coded and preferences divided among the available options, it is possible to gauge if the responses to "Part A" legal scenarios are likely to be valid, that is, accurate and internally consistent with one another.

As a general result, from "Part B" respondents in fact gave most weight to "honesty" (Instrumental) and "self respect" (Terminal) ranging down to those considered least important – in comparative terms – "self control" and "equality" respectively. As will be seen below when answers to individual Part A legal scenarios are considered, analysis and comparison between responses to Parts A and B of the whole survey indicated a high level of accuracy and internal consistency among respondents.

Three specific tests of statistical relationship were used in the analyses. Pearson's Chi Squared Test of Association (χ^2) is a standard descriptive statistic. It was used extensively in the analyses to determine if a hypothesised relationship between two factors, for example, between gender and an interest in doing "good (legal) works," existed or not. χ^2 shows the strength of association between two variables.

The lower the χ^2 value, the smaller the association and vice versa. A high level of association does not necessarily *confirm* a causative relationship between the two variables (in either direction), but it is indicative of some causative effect.

A UnivariateF analysis was performed in some questions to measure the connection between variables. The UnivariateF test has a similar purpose to χ^2 and was used to provide additional support for any likely correlations. It is a variety of the Multivariate Analysis of Variance ("MANOVA") mathematical procedure and measures mean (average) differences between test results to determine the strength of their relationship to one another.

A correlation matrix was also used in some analyses. This technique allows correlations between more than two variables to be compared in a table, indicating which relationships are significantly related.

Results

Basic Statistics

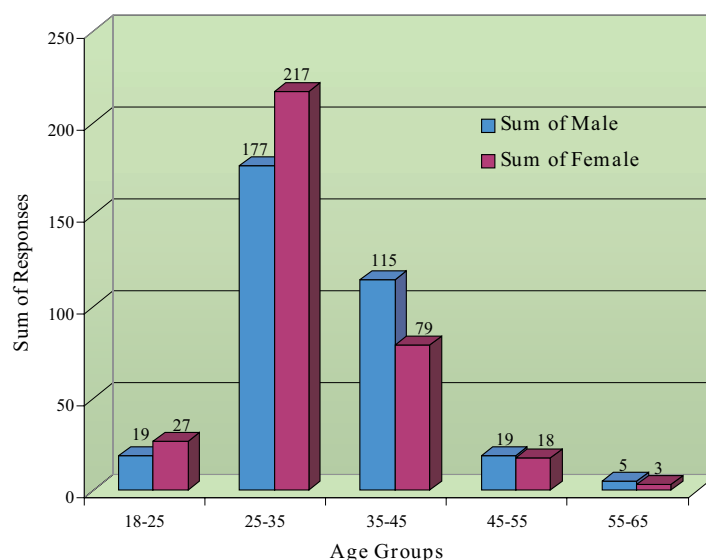
Three-hundred-and-forty-four (50.66%) females and 335 males (49.34%) completed the survey sufficiently to allow coding of responses. This balance in gender responses is important because, although the sample was not random and was, in effect, self-selecting, it mirrors the general population. The reasonable inference from the size and make-up of the sample is that it is a reasonable predictor of population responses, subject to the issue of the age of respondents. The age distribution, segmented by gender, was instructive: [see Figure 1].

As may be observed, most respondents fell within a 25-45 year old age range. Most of these were in the younger range of 25-35 years. Males tend to dominate in the sample in the older groups, perhaps as a function of the reputed "glass ceiling" which appears to operate in law⁹⁴ or perhaps because women in these age groups are likely to be concentrating on families. It is also possible that the sample is skewed against older respondents because Alumni records are more likely to be accurate for more recent graduates. As a result, the frequency distributions for the older age groups do not, in this pilot,⁹⁵ contain enough responses to assess

94 See Law Institute of Victoria ("LIV"), Annual Survey of Legal Practitioners (1999) 73 (3) *LJ* 52, at 52.

95 It is considered that subsequent larger scale investigations will require cross-matching of all alumni records (that is, including those for whom

Figure 1: All Respondents – Segmented by Age and Gender – Males Dominant with Age



whether their patterns of response differ markedly from younger graduates. It is, however, fairly clear that responses from respondents in the younger age groups are adequate to measure their impact for the population in those groups.

Graphic representations of respondents' gender, segmented by occupation, ethnicity, year of graduation, and parents' occupations, indicate that respondents as a group were dominated by solicitors who considered themselves "Australian." The term "Australian," while imprecise because of the tendency for respondents from families where parents were born overseas to identify with more than one background in varying circumstances, was a categorisation that could not be excluded. Female solicitors (197) overall slightly outnumbered their male counterparts (183) – especially among recent graduates – however, male barristers (49) easily outnumbered females (14). Most respondents (399) had parents with professional, teaching, or business – what might be considered as "middle class" – backgrounds, compared to the total of 679. All in all, the profiles of respondents – relatively "comfortable," – practicing lawyers – are unsurprising and are consistent with

no current address is available) against law society records and, if there are still insufficient numbers in consequence, electoral rolls also.

anecdotal information and demographic snapshots of Victorian lawyers.⁹⁶

In the subsequent analyses of “yes/no” choices in relation to individual questions, it is most interesting that the values of self-control and equality are *consistently* more or less important for particular choices. This is to be expected if respondents are answering the survey questions in an internally consistent manner. Thus, for example, in the question designed to discover how many graduates thought lawyers’ *pro bono* activities important, those who answered “yes” often gave a higher weighting to the RVS value of “equality” in preference to “self-control.” Repetition of similar patterns across different questions provides a key validator indicating that respondents in the sample were answering questions carefully.

Frequency Distributions and Tests of Significance of Answers to Each Question

In the following description of results, answers to separate questions are analysed and the main findings stated for ease of understanding in relation to that question alone. Further, questions which could be expected to produce answers which may bear upon one another are dealt with immediately afterwards in this article rather than in the order that the questions were asked. Not all questions are reproduced here for reasons of space and because some tend only to confirm broadly similar information. Frequency distributions performed for responses to specific questions are available from the author. A summary of findings and of conclusions drawn from those findings appears at the end of this paper.

Demographic information of the sort represented in the graph above was available for cross-tabulation against answers to all questions; however, as will be seen in relation to the answers to Question 1 (“Q1”) below, such information is of minimal use because the number of responses in sub-categories are, in most cases, too small to permit extrapolation to the population (that is, to *all* Monash law graduates). Accordingly, while answers to Q1 are canvassed extensively to illustrate this point, in succeeding questions only a selection of all distributions calculated are discussed in order to save space and avoid restatement of similar information. I consider those chosen for reproduction here to provide useful insights.

⁹⁶ LIV, *supra* note 94.

The text of the chosen questions, which were preceded by a set of instructions,⁹⁷ are set out as they appeared in the survey document and are followed by individual analysis.

"Corporate" or "Justice" priorities

Question 1 – "Corporate" or "Justice" priorities

You are a solicitor working in a large commercial law firm. The Public Interest Law Clearing House (PILCH) approaches you to work on a prominent test case about women who kill in self-defence. Your interest in this area is well known. The work would be pro bono and very high profile for you personally but of little interest to your firm. The matter requires a lot of time and work. Your senior partner however wants you to increase your billable hours for the firm. The firm does not usually do any pro bono work but there is no actual policy against it. Your time is currently so limited you could only realistically do one or the other.

Would you agree to work on the PILCH case? Y or N

Motivating Value Weight

0	1	2	3	4	Business Efficacy (Firm's Profit)
0	1	2	3	4	Employer Loyalty
0	1	2	3	4	Access to Justice
0	1	2	3	4	Professional Ambition
0	1	2	3	4	Employment Security

Response to Q1

There was a slight preference among respondents for "extra work for the firm" (52.2%), thus respondents declined the *pro bono* request [see Fig. 2]. As the sample size is reasonable in

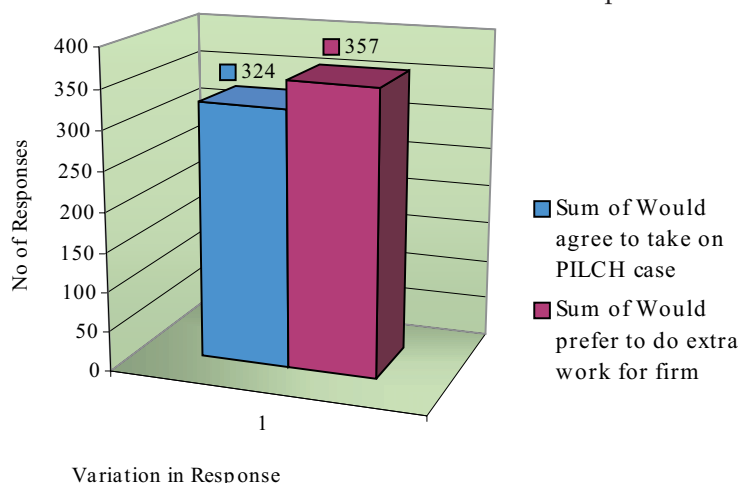
⁹⁷ "INSTRUCTIONS

The format of this questionnaire requires respondents to answer Yes or No to a single question concerning a dilemma posed in a preceding scenario. The respondents are also asked to indicate on a scale of 0 to 4 the relative weight given to the corresponding motivating value in reaching their decision. The indicators on this scale are as follows:
0 = irrelevant, 1 = unimportant, 2 = important, 3 = very important, 4 = extremely important.

Please indicate all answers by circling your choice using a pen. The language used in the following scenarios should not be read in a technical legal sense, rather it should be interpreted in an everyday, common usage manner. Some scenarios are ambiguous in order to realistically reflect the uncertainties arising from imperfect knowledge. All the scenarios are fictitious although obviously based on general experience."

the younger age groups, it is safe to conclude that, in respect of this scenario, younger Monash graduates in law are fairly equally distributed between those who care to some extent about the public good and those who may not care as much. While it could be thought that they might also care equally about both had they a job with some security, it can be argued that the sample size is large enough to contain respondents from both categories and to balance out the differences that might be caused by this factor.

Figure 2: Slight Preference of Respondents to Do Extra Work for Firm and to Decline Pro Bono Request



This result also appears to indicate that there is significant hesitation, possibly even a lack of sufficient interest, in working for the public good. Given that the scenario balances the cost/benefit of the *pro bono* opportunity in such a way as to identify employer reluctance without confirming it, this decision points towards a substantial values “gap” or difference. The implicit, though largely anecdotal,⁹⁸ assumption that Australian lawyers hold homogeneous values is, therefore, not supported by this evidence.

However, it may be thought that if about half of all respondents are interested in the public good, Monash alumni (at least) have “good” values.⁹⁹ This is, it seems, the view taken

⁹⁸ In the United States at least one writer seems disconcertingly comfortable with the assumption of homogeneity for all the lawyers in that country. See Tremblay, *supra* note 7.

⁹⁹ That observation could, however, legitimise a level of professionalism that does not aspire to a “best practice” philosophy and would justify the maintenance of an educational and regulatory status quo.

by the Law Institute of Victoria ("LIV"), which considers that there is a substantial *pro bono* commitment by the Victorian profession as a whole. In the only other recent survey published of Victorian legal practitioners in relation to this issue, a study by a research division of LIV indicated that 53.2% of the 32% who responded to the survey (2684 responses to 8500 questionnaires) handled one or more *pro bono* matters in the previous 12 months.¹⁰⁰ To the extent that this result of the LIV survey is consistent with a central prediction of this survey – that there is a link between values and "justice" behaviour – it seems likely that, in future, parallel investigations of lawyers' behaviour – ideally by collaborating law societies – will be useful to test for the existence of a causal relationship between values and actions.

Interestingly, however, the LIV finding was qualified by the statement that 30% of the respondents declined to answer the question. The discrepancy in results between this investigation and that of the LIV is perhaps, in part, explained by the response failure: most other questions put by the LIV – concerned with areas of legal practice, remuneration, hours of work, and other matters associated with awareness of professional services to members – were answered fully.¹⁰¹ It is difficult to see why a respondent to the LIV survey would not be willing, even confidentially, to record his/her participation in *pro bono* activity. It is fruitless to speculate too much, but, since a 30% nil response may well be composed of persons who had no *pro bono* activity, the LIV survey may be significantly over-recording actual *pro bono* participation. Accordingly, the responses in this study may be closer to the reality of actual *pro bono* participation.

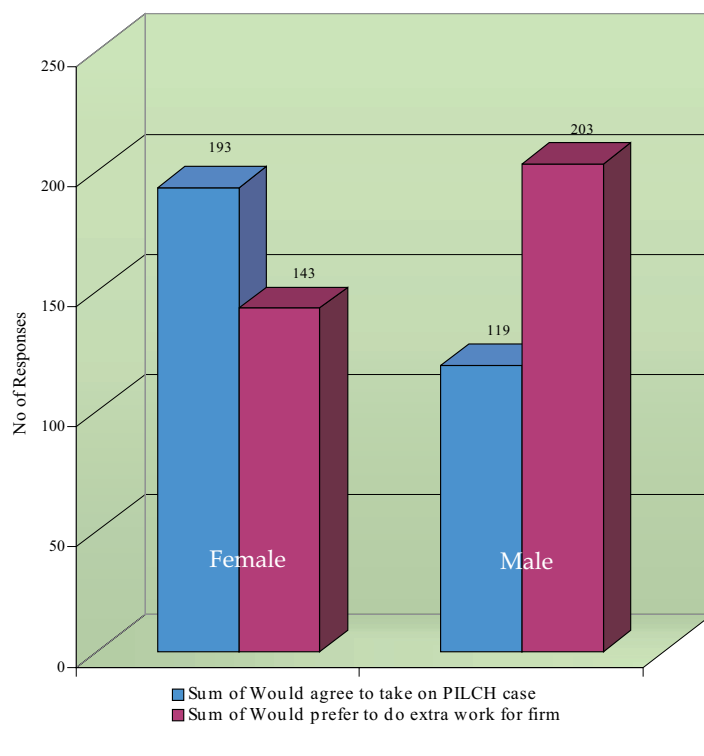
Another note of discordance between the two surveys concerned the gender split in relation to *pro bono* activity. While the LIV cautiously observed¹⁰² that more males than females were engaged in *pro bono* work, the study that surveyed only Monash graduates reached the opposite conclusion [see Figure 3].

¹⁰⁰ LIV *supra* note 94, at 54-55.

¹⁰¹ *Id.*, at 52-57.

¹⁰² *Id.*, at 55. The caution arose from the abovementioned 30% non-response rate to the *pro bono* question.

Figure 3: More Females than Males Would Participate in Pro Bono Activity

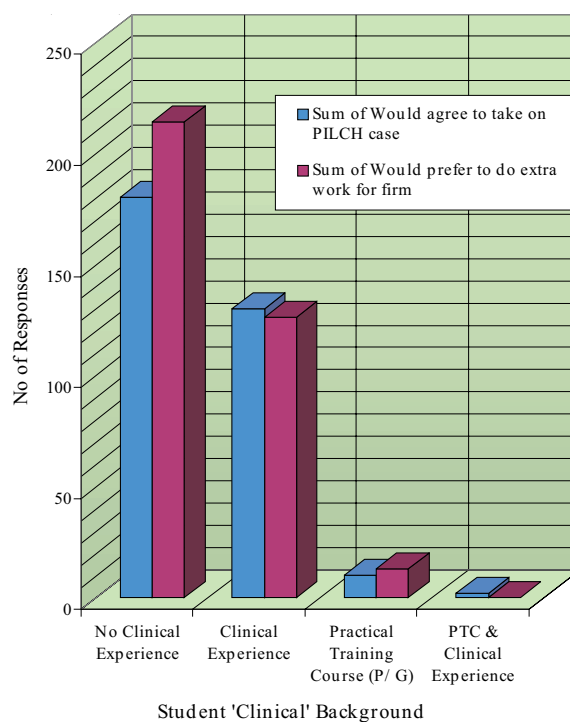


In this question, Pearson's Chi Squared Test of Association (χ^2) expressed in standard statistical notation for this association as: $\chi^2(1) = 28.10$, $p = .0000001$ – showed a highly significant association between gender and whether an individual would choose to do PILCH work. The correlation here is sufficiently strong to assert that females indicate that they are far more likely assume *pro bono* work. The relationship between gender and the decision taken is evident throughout this study and, in the light of the LIV findings, is clearly an issue that would benefit from further study.

It is interesting that in the Monash survey of those who did have a background with clinical experience, a slight majority indicated that they would have chosen to do *pro bono* work. In itself, this is unlikely to be significant. However, the difference in decisions indicated by the respondents emerges when the numbers who had no such background are examined [see Figure 4]. In the group of graduates without any clinical exposure, a larger number chose "extra work for the firm." Taken together, the differing responses recorded for the two groups

point to some relationship; however, the result is not statistically significant ($\chi^2(1) = 1.67$, $p = .20$) to demonstrate a relationship between a clinical education experience and a decision to undertake public interest work. This relationship also requires further detailed exploration.

Figure 4: Minor Positive Relationship between Clinical Experience and "Yes" decision re PILCH work



In assigning relative importance to particular "legal" values as decision motivators, all respondents behaved consistently regardless of gender. "Access to Justice" was important for those who selected *pro bono* activity as their priority, and "Employment Security" was most important for those who chose extra work for the firm. The only obvious variable was the decision itself to opt for public interest work or not. When the responses for "marital status" and the existence of children are added to the analysis, it is notable that, while married respondents are slightly more inclined to choose extra work for the firm rather than *pro bono* activity, the existence of children appears to have no effect on the decision indicated.

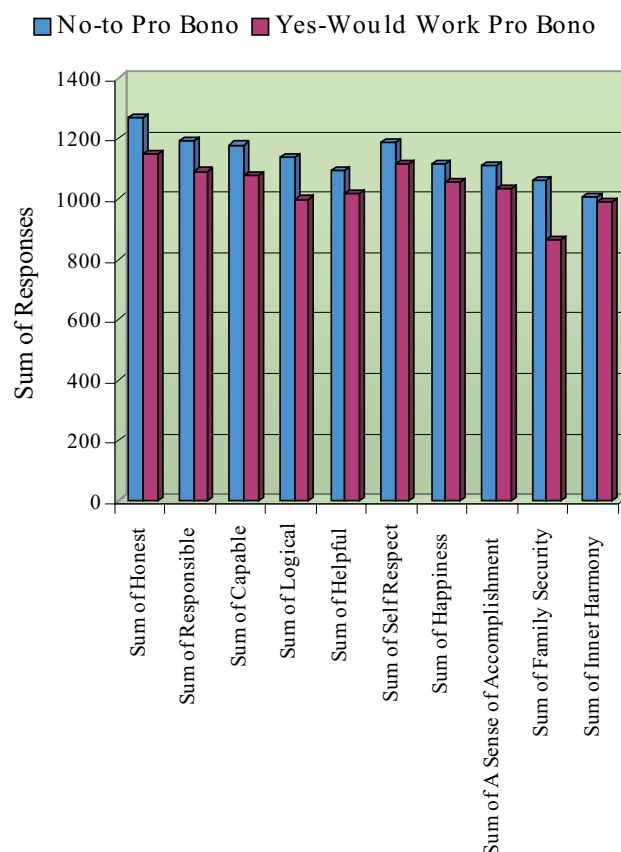
A higher number of respondents among those who opted for “extra work for the firm” had parents whose occupations fell into business categories. Otherwise, the primary decision had little statistical association with parents’ occupations ($\chi^2(1) = 10.88$, $p = 0.14$). Professional, academic, and business backgrounds were dominant in both cases.

A comparison of ethnicity and parents’ occupations was not conclusive, presumably because the number of responses from non-dominant cultures is again too small ($\chi^2(1) = .21$, $p = 0.65$). Correspondingly, it is clear that respondents have very pronounced Anglo-Saxon or Anglo-Celt heritages. Occupational grouping did not appear to make any difference to the size of the “yes” and “no” camps, with solicitors accounting for over half of all occupations in each category.

Reference has already been made to the Rokeach Values Survey and to its crucial role in validating respondents’ answers in the section on methodology above. In this question, as in the survey as a whole, a comparison of responses between the scenarios and the RVS values reveals a pattern which is consistent with the “Yes”/“No” choices made by respondents [see Figure 5]. Thus, the three most important RVS values to all respondents, whether they were in favour of Public Interest Law Clearing House (PILCH) work or not, were identical. Importantly, this observation is true for both Instrumental as well as Terminal values in the RVS. Among the “Instrumental” values group, the first three most important values to both “yes” and “no” respondents were “honest,” “responsible,” and “capable,” and in the “Terminal” values group, the first three most important values were “self respect,” “happiness,” and a “sense of accomplishment.” Thereafter, the relative importance of different values to both groups began to diverge, indicating where the real values difference may be.

As illustrated in the figure below, in the “Instrumental” category the fourth most important value for the *pro bono* group was “helpful,” while “logical” was chosen by the group that preferred to do extra work for the employer. Among those who said “yes” to *pro bono* work in the “Terminal” group, the fourth most important value was “inner harmony” to be contrasted with “family security” for those who chose “extra work for the firm.” These results tend to confirm that the “Yes”/“No” choices made by respondents to this question are valid and reflect personal values underlying professional choices.

Q1: Key Instrumental and Terminal Values
[Rokeach Values Survey]



Finally, a correlation matrix was developed to display statistically significant associations between motivating “professional” values and RVS values. The use of the correlation matrix supported the primary correlations, indicating that individuals who weight “employment security” as a motivating value in a decision about whether to take on PILCH work will also be likely to value “business efficacy” and “employment loyalty” as important. “Family security” and “a comfortable life” correlate with their approach to the practice of law. Similarly, “professional ambition” correlates with “pleasure,” “social recognition,” and “a comfortable life” for these individuals.

The next scenario focuses on an issue that has a very high level of professional recognition, irrespective of clinical experience. It highlights the importance of the use of the hypothetical situation as an exploratory tool.

Denial of Legal Aid

Question 8 – Denial of Legal Aid

You are a Victoria Legal Aid solicitor handling criminal matters. You have just received a file to defend charges of child sexual abuse where the victim is the only witness. Your client denies the allegations. The alleged victim is 14 years old. Your application for aid is rejected and you are told informally the managing director of Victoria Legal Aid wants to change the grant guidelines to exclude any grant of aid for a matter that would involve the cross examination of an alleged child victim in a sex abuse case. You suspect the change is due to bad press attacking such cross-examinations.

Would you argue in writing within VLA against this change in policy?

Y or N

Motivating Value Weight

- 0 1 2 3 4 *Employer Loyalty*
- 0 1 2 3 4 *Professional Ambition*
- 0 1 2 3 4 *Client's Interests*
- 0 1 2 3 4 *Access to Justice*
- 0 1 2 3 4 *Employment Security*

Response to Q8

In this question respondents were presented with a relatively simple choice that centered around the availability of legal aid in the community. It was to be expected that most would choose to retain aid because, in the Victorian context, its availability has been steadily reduced in recent years, and this has produced much criticism in the legal profession. Thus, among the “retain aid” majority, Univariate^{F103} tests place “access to justice” and the “client’s interests” as the principal motivating values.

It was considered possible, however, that the subsidiary issue of sensitivity to victims of sexual assault might counter the legal aid emphasis, particularly if women were strongly represented in the sample. Of considerable interest is that, although female respondent numbers were well represented, females were in the *majority* among the, admittedly, small number of those who would deny legal aid. As may be observed below, these respondents placed reliance upon “access to justice” as

¹⁰³ See generally, S Coakes & L Steed, *SPSS: Analysis Without Anguish* (Milton, Queensland: Wiley & Sons, 1999).

their motivating value. UnivariateF analysis confirms "access to justice" as the value that motivates women to deny aid, while men were principally motivated by "professional ambition." Pearson's Chi Squared Test of Association analysis confirms a significant association between gender and choice, with males being more likely to indicate that they would retain aid ($\chi^2(1) = 11.26, p = .0008$).

This result may indicate a definitional and, in fact, a political issue with the terminology in this question. Nevertheless, the corresponding chart for those who would allow aid indicates that women in that group were also clear that "access to justice" was quite important to their decision. In fact, among both males and females who would retain aid, "access to justice" was their prime motivator. In this question there appears to be little impact attributable to clinical experience; this could be due to the considerable profile which legal aid has as an issue generally.

Comparison with the RVS values responses shows a high level of agreement among those who would retain aid and those who would deny it. "Instrumental" values were identified as the first five most important categories, while the first seven were identical in the "Terminal" values sub-category. In the "Instrumental" group, the divergence emerged at the sixth most important value. Those who would retain legal aid chose "broadminded" while those who would deny it settled upon "self-control." In the "Terminal" group, "equality" was preferred (at the eighth level of magnitude) by those who choose to retain aid while "true friendship" was chosen by those respondents who would deny aid. Again, it would seem that uniform personal values among the "Yes"/"No" groups are the norm in relation to this question, and divergence is along expected lines.

The level of consistency in the responses supports the contention that respondents are identifying sufficiently with the scenarios to give some confidence in the results. Question construction (and, therefore, the precise situation in which respondents find themselves) is likely to be a crucial ingredient in exposing differences in values.

While the values of those who chose to deny aid may be considered atypical, responses to the next question indicated that there can be no easy conclusion that the clear majority of respondents who chose to retain legal aid might therefore be considered to have "higher" values.

Concealment of Defalcation

Question 3 – Concealment of Defalcation

You are the Senior Partner in the firm of AMBD. Your son is the junior partner in the firm. You discover your son has a minor gambling problem and has taken money from the firm's trust account to cover his debts. Fortunately you discover the problem in its very early stages. Your son is now undergoing counselling for his gambling addiction and appears to be recovering. The amount missing from the trust account is relatively small and you are certain could be reimbursed without attracting any attention.

Would you report the matter to the Legal Practice Board or Victorian Lawyers RPA?

Y or N

Motivating Value Weight

0 1 2 3 4 *Personal Obedience to the Law*
0 1 2 3 4 *Parental Loyalty*

Response to Q3

Despite an explicit obligation on all practitioners under the section 189 of the *Legal Practice Act 1996* (Vic) to report a suspected defalcation, a clear majority of respondents (mostly males – see Figure 6) would remain silent. Although this is speculation, their response may be because of what appear to be good prospects for secrecy and their desire to protect their child rather than report the deficiency to the Legal Practice Board [see Figure 7].

UnivariateF tests confirm what I had expected: that “personal obedience to the law” is more important than “parental loyalty” among the *minority* who would report, and, vice versa, among the majority who would remain silent. Interestingly, Pearson's Chi Squared Test of Association analysis shows that gender is not significant in the decision to report ($\chi^2(1) = 2.91$, $p = .09$). Among those who would keep silent, “spouse/parental loyalty” and “personal happiness” rated highly. Where “silence” was preferred, it did not matter whether the respondents were parents themselves. Among those who have clinical experience, there appear to be more respondents who would report a deficiency than remain silent. However, based on the insignificant results for any clinical effect in the other questions, the small differences for this question in the number of responses for those with or without clinical backgrounds are unlikely to be statistically significant. Accordingly and in order to save on the costs of

Figure 6: Males More Likely than Females to Remain Silent than Report Deficiency in Son's Trust Account

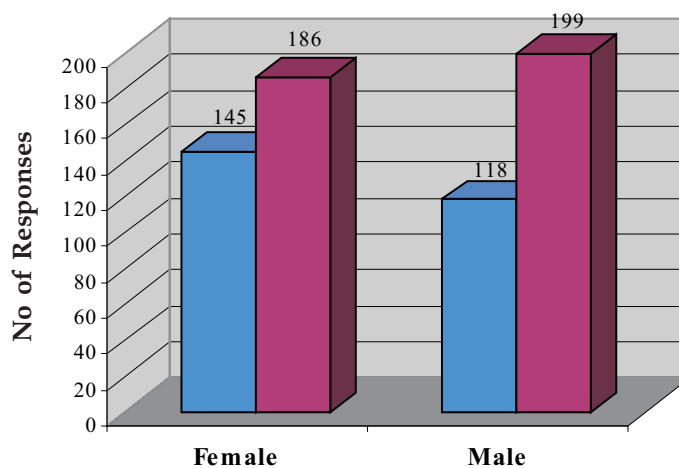
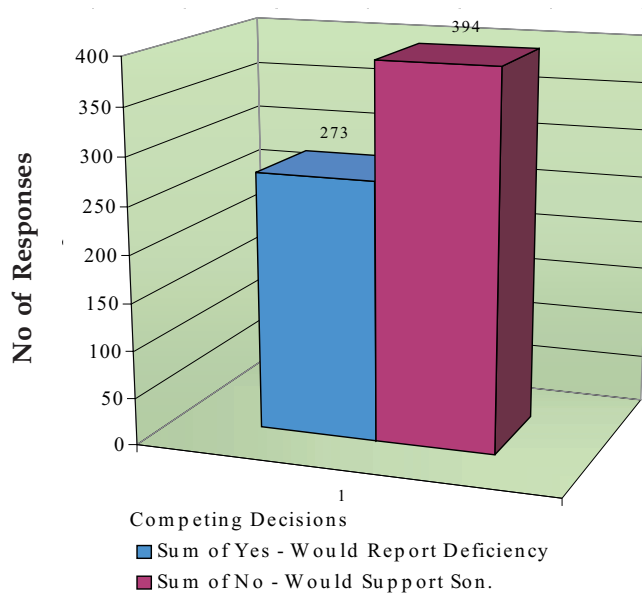


Figure 7: 3:2 Preference to Suppress Information on Trust Account Deficiency when Child would be Prosecuted



calculation, I did not think it likely that a significant clinical effect would emerge and did not organise a statistical analysis of this result. My general conclusion remains that clinical experience is unlikely to be significant in this sample.

RVS responses differed slightly from previous questions insofar as "Terminal" values are concerned. While "Instrumental" values coincide for both groups to five levels of importance (with "honesty" at the top of the list and diverging with the "Yes-Report" group selecting "broadminded" and the "No-Be Silent" group selecting "self-control" at the sixth level) divergence in the "Terminal" values group occurred much earlier. The *second* most important value to those who would report was "a sense of accomplishment," but for those who would keep silent, it was "happiness." Respondents early divergence on "Terminal" values suggest strong views were held by the respondents, yet both groups placed "honesty" at the top of their "Instrumental" list.

The unsurprising but centrally disturbing implication here is that most respondents see no necessary contradiction between the primacy of honesty as a value and a failure to report a suspected offence, if it concerns "their own." A correlation matrix was consistent with this interpretation, matching "personal obedience to the law" in a decision to report the deficiency with "honesty" and "responsibility."

The next scenario was inserted to provide some comparison with the trust account dilemma and is similarly instructive.

Concealment of Criminality

Question 7 – Concealment of Criminality

You are a DPP prosecutor who has concentrated on drug trafficking cases. You have argued to many juries that every case of drug dealing harms society and must be reported and dealt with by the Police. You discover that your daughter has been selling cannabis to other students at her school. Your partner implores you not to report the matter and threatens to end your relationship (already strained by overwork) if you do.

Would you report the matter to the Police? Y or N

Motivating Value Weight

0 1 2 3 4	Personal Integrity
0 1 2 3 4	Spouse Loyalty
0 1 2 3 4	Parental Loyalty
0 1 2 3 4	Personal Happiness
0 1 2 3 4	Personal Obedience to the Law

Response to Q7

As in Question 3, a large majority of respondents (criminal prosecutors) would choose to remain silent rather than report a daughter to police for dealing in cannabis. "Parental loyalty" followed by "spousal loyalty" was rated as most important for both males and females in reaching this decision. There does not appear to have been any statistically observable impact upon this decision arising from clinical experience ($\chi^2(1) = 2.443$, $p = .12$) or actual status as parents; however, the relationship with gender is again important. Univariate tests indicate that there was a significant difference between females and males on issues of "personal integrity" and "personal obedience to the law." Females are more likely to place greater importance on these values than males in relation to a decision to report and are, in fact, in the statistically significant sense also more likely to report than males ($\chi^2(1) = 4.29$, $p = .04$). Also, within the minority of all respondents who would report their daughter to police, women were in the majority. For them the most important motivating value was "personal integrity" followed by "personal obedience to the law." Of further (and, perhaps, considerable) interest is the response that females in this group rated "personal obedience to the law" more highly than "parental loyalty," in contrast to males, who did not clearly distinguish between the two.

RVS responses were identical for the first three values in the "Instrumental" list, again placing "honesty" first but diverging with "helpful" for those who would report and "logical" for those who would keep silent. In the "Terminal" list, the pro-reporting group chose "a sense of accomplishment" as their second most important value, while the silent majority again strove for "happiness."

The Choice Between "the Firm" and "a Life"

Question 5 – The choice between 'the Firm' and 'a Life'.

You are a junior solicitor working for a large city firm. The long working hours are causing a lot of pressure at home with your partner and children. This issue has been the topic of many recent conversations at home. The firm's managing practitioner asks you to show commitment on a file. This would involve even longer hours than usual with many late nights for at least the next month. The managing practitioner has intimated that if you perform well in this task it could lead to a promotion. Working longer hours would cause a serious

argument at home and be very detrimental to your relationship with your partner and children.

Would you take on the extra hours? Y or N

Motivating Value Weight

0 1 2 3 4 Business Efficacy (Firm's Profit)
 0 1 2 3 4 Employer Loyalty
 0 1 2 3 4 Professional Ambition
 0 1 2 3 4 Spouse Loyalty
 0 1 2 3 4 Parental Loyalty
 0 1 2 3 4 Personal Happiness

Response to Q5

In support of the possibility that "loyalty to the family" rates more highly with respondents than notions of personal honesty and integrity – evidenced in the reluctance of parents to report their children for crimes – respondents chose to maintain their home relationships (494) in preference to furthering their careers (181) by a large majority. Males and females were almost equally attached to the value of "spousal loyalty" in their decision to give priority to home relationships. Although males valued "professional ambition" (314) over "employer loyalty" (231) among the minority who choose to put in extra hours at work, the differences were not major.

All respondents who would work extra hours valued "business efficacy," "employer loyalty," and "professional ambition" highly at statistically significant levels for UnivariateF.¹⁰⁴ Also significant, as indicated in the footnoted table below, were "spousal loyalty," "parental loyalty," and "personal happiness" for those who gave priority to their home life. Male and female respondents with children were overwhelmingly married as opposed to living in de facto relationships; however, married

¹⁰⁴ The following is the Table of Mean Responses for the UnivariateF analysis of those who would and would not choose to work extra hours at the expense of their home life.

	NO		YES	
	Mean	Standard Deviation	Mean	Standard Deviation
Business Efficacy	1.47	.94	2.02	1.10
Employer Loyalty	1.90	.88	2.49	1.03
Professional Ambition	2.10	.85	3.18	.79
Spouse Loyalty	3.67	.55	2.73	.84
Parental Loyalty	3.71	.57	2.74	.89
Personal Happiness	3.63	1.41	2.48	1.10

females who chose to work extra hours had substantially fewer children than married males who made the same choice. It is clear that, whether or not respondents had children, this family priority remains.

There was no obvious effect of clinical experience in this area of decision-making, and gender was not a significant influence ($\chi^2(1) = 3.90, p = .05$).

RVS responses for "Instrumental" values diverged on the third choice with home-focused respondents preferring "capable"/"responsible," and the paid workers selecting "logical." In the "Terminal" values group, those who would give priority to home relationships diverged at the second most important value and selected "happiness," while paid workers chose "a sense of accomplishment."

In the following scenarios, the effect of gender on decision-making again appears to assert itself.

Willingness to Act on a Suspected Lie

Question 6 – Willingness to act on a suspected lie

You are a sole practitioner specialising in family law. A client approaches you to handle his divorce. You and your spouse have been long time friends of this person and you also know his wife and children reasonably well. Whilst drafting the property settlement you suspect your friend has not declared all his assets. The settlement as is will leave his wife and children with little security and they will probably experience some financial hardship. Your old friend says that his list of assets is complete. You are not convinced but you cannot realistically get more information.

Would you continue to represent your friend? Y or N

Motivating Value Weight

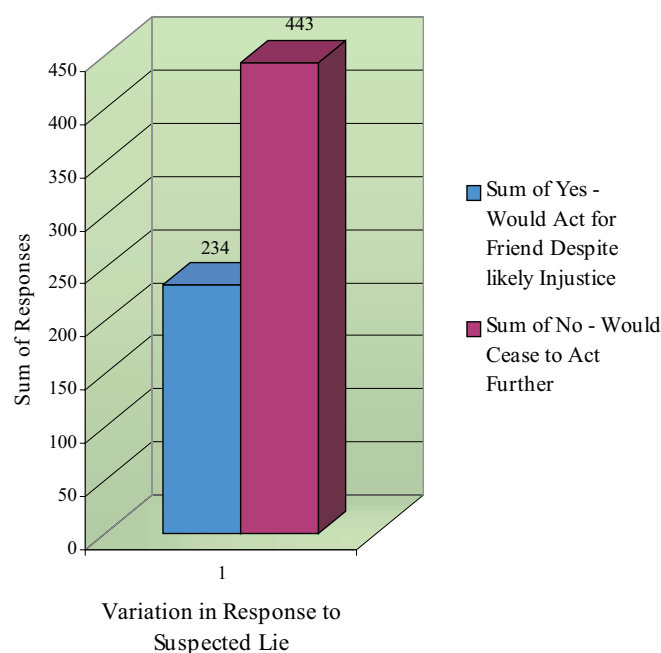
- 0 1 2 3 4 *Business Efficacy (Firm's Profit)*
- 0 1 2 3 4 *Professional Integrity*
- 0 1 2 3 4 *Client's Interests*
- 0 1 2 3 4 *Personal Integrity*

Response to Q6

In this scenario approximately two-thirds of respondents decided to cease acting for their friend on the basis of a suspicion (unsubstantiated in an evidentiary sense) that an injustice was about to occur. "Professional" and "personal integrity"

were the key values here and were statistically significant in UnivariateF analysis.¹⁰⁵

Figure 8: Most Would Not Act Further for Friend in Family Law Dispute when Injustice Suspected to His Former Wife and Children



“Business efficacy” and the “client’s interest” were the statistically significant values for those who would cease acting. There was no clear clinical experience effect. Among those who decided to continue to act, there was no particular influence of gender upon the specified values. However, when examining the gender difference among those who would

¹⁰⁵ UnivariateF mean responses to importance of motivating values in respect of the decision whether to act for a friend were:

	NO		YES	
	Mean	Standard Deviation	Mean	Standard Deviation
Business Efficacy	1.47	.94	2.02	1.10
Employer Loyalty	1.90	.88	2.49	1.03
Professional Ambition	2.10	.85	3.18	.79
Spouse Loyalty	3.67	.55	2.73	.84
Parental Loyalty	3.71	.57	2.74	.89
Personal Happiness	3.63	1.41	2.48	1.10

cease to act, that is the majority, most are female. Between the sexes the values of "personal integrity" and "professional integrity" all but cancelled out that of the "client's interests." The gender effect on the majority view – to cease acting for a friend – was sufficiently strong to be significant in Pearson's Chi Squared Test of Association analysis ($\chi^2(1) = 7.95$, $p = .005$).

In the RVS responses, perfect matches were obtained in the most important values only: "Instrumental" – "honesty" and "Terminal" – "self respect." Second place for "Instrumental" values, in the case of those who would cease to act, went to "responsible," while those who would continue to act chose "capable." In the "Terminal" category, "self accomplishment" was the second most important value for those who would continue to act, and "happiness" was the second priority for those who decided not to act.

As with other questions, a correlation matrix shows that associations exist between "professional/personal integrity" and "capability," "helpfulness," "honesty," "independence," "responsibility," and "a sense of achievement" in the approach to the practice of law. In contrast, "business efficacy" / "client's interest" correlate with "a comfortable life" and "social recognition" in the approach to legal practice.

Reporting of Abuse

Question 11 – Reporting of Abuse

You are acting for a mother of 3 small children in a divorce and intervention order matter. Your client has previously shown you photographs of bruises and marks on the children which she claims were inflicted by their stepfather. One of the children now has blurred vision. Your client now instructs you to stop all legal proceedings as she intends to return to the children's father with her children. You believe the children will be at risk if this happens but you know "mandatory reporting" does not apply to lawyers.

Would you break client confidentiality and inform the Department of Human Services of your fears? Y or N

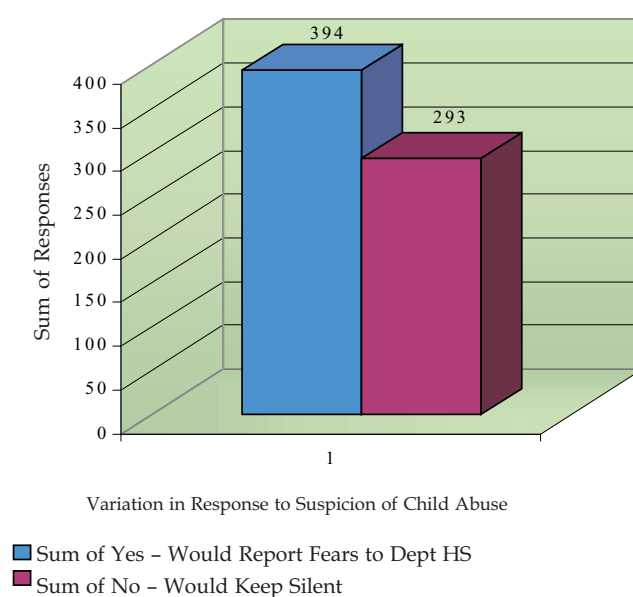
Motivating Value Weight

0 1 2 3 4 *Client Confidentiality*
 0 1 2 3 4 *Professional Integrity*
 0 1 2 3 4 *Civic Duty(child protection)*

Response to Q11

This scenario was designed to pose a particularly difficult choice for respondents. Although a majority was in favour of breaching client confidentiality and reporting the matter, the size of the majority was not overwhelming [see Fig. 9].

Figure 9: Slight Majority in Favour of Reporting Fears of Child Abuse (Breaching Client's Confidentiality) Rather than Keeping Silent



The gender division was clear and somewhat one-sided. Males (156) outnumbered females (125) among those staying silent/maintaining confidentiality, and females (202) were more numerous than males (168) among those who would report the matter. Among those who would report, the specified values were similar for males and females although women rated all nominated values more highly than males. Exactly the reverse rating was recorded for those who preferred to remain silent, with the males valuing "confidentiality" ahead of "civic duty" (child protection). In this area, the differences in motivating values are profound. Among those with clinical experience there was a strong preference for remaining silent. I speculate that those with Monash clinical backgrounds have seen more criminal cases than other Monash graduates and are more conscious of duties of confidentiality and a defendant's right to silence.

RVS responses were consistent with the above choices. "Instrumental" values placed those reporting as "logical" and those keeping silent as "helpful" at the fourth level of magnitude, while "Terminal" values diverged at the second level of magnitude. Those who would report selected "happiness" and those who would keep silent selected "a sense of accomplishment."

Choice between an old friendship and a new, powerful client

Question 2 – Choice between an old friendship and a new, powerful client

You are a senior associate of a small commercial law firm with a niche reputation in the area of privatisation tendering processes. Your firm has been approached by a significant corporation to help them draft their tender submission for the privatised tram network contract. Your firm would almost certainly gain an enormous amount of new work from this corporation if you were to take them on as a new client. At the same time you become aware that a long standing close friend, who has not previously been a client, is about to request and will expect your help with their tender for the same government contract. You owe a great deal to this friend at a personal level. However, in your opinion the potential new corporate client is more likely to be successful in their tender due to size and experience. The work this corporation would generate far outweighs that of your old friend. The choice is yours alone in this case as the firm expects you to take responsibility for developing this area of the practice. Thus in this situation it is of no assistance to decide solely on the basis of first come first served.

Would you act for the corporation and therefore detrimentally affect the relationship with your old friend? Y or N

Motivating Value Weight

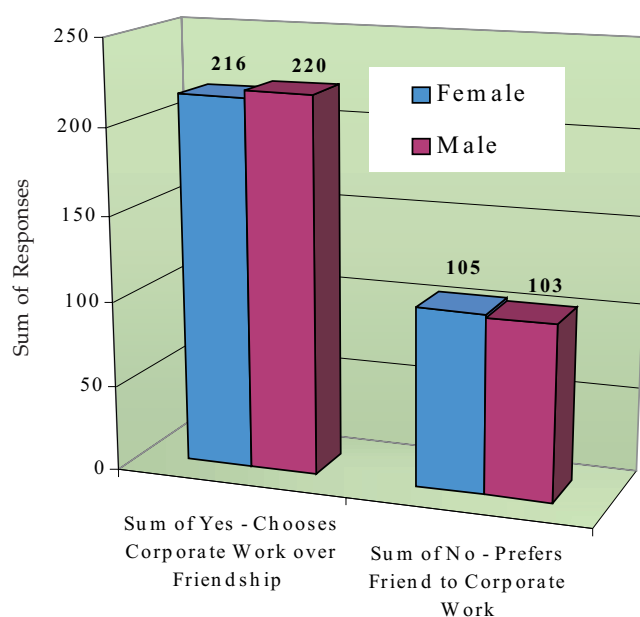
0	1	2	3	4	<i>Business Efficacy (Firm's Profit)</i>
0	1	2	3	4	<i>Personal Integrity</i>
0	1	2	3	4	<i>Friendship Loyalty</i>
0	1	2	3	4	<i>Personal Happiness</i>

Responses to Q2

Twice as many respondents indicated that they would prefer to represent the corporation as a client, instead of an old

friend as a client, notwithstanding the personal cost, regardless of gender ($\chi^2(1) = 1.16, p = .69$) [see Figure 10].

Figure 10: Strong Preference for Corporate Client over Friend – Minimal Effect of Gender



However, the principal (and statistically significant) motivating value in the decision was not “business efficacy,” which ran a close second regardless of age or gender, but “personal integrity.” Among the minority who preferred to maintain the old friendship – at the possible cost of their firm losing a continuing and potentially more lucrative new client – both males and females rated “personal happiness,” “friendship,” “loyalty,” and “personal integrity” at similar high levels compared to “business efficacy.”

Clinical experience did not appear to be particularly important to this decision, although some minor differentiation in decisions is observable.

RVS responses placed “logical” as the fourth magnitude value in the “Instrumental” group among those who would go “corporate,” while “broadminded” was chosen by the friendship minority. “A sense of accomplishment,” at the second level of magnitude, was selected by those in the corporate group of “Terminal” values and “happiness” was chosen by those who preferred the friendship over the corporation.

A correlation matrix shows significant associations between "personal integrity," "friendship/loyalty," and "personal happiness." It seems, therefore, that respondents in both camps were confident that their decision was based on "personal integrity." The divergence in values became evident at the second order of magnitude, splitting between "business efficacy" (pro-corporate) and "friendship/loyalty" (pro-friendship).

Willingness to "defend" rape

Question 4 – Willingness to "defend" rape

You are the Practice Manager of a small but well-known law firm. In this position you commonly have the final say on taking on new clients. Your firm has just successfully defended a string of notorious, high profile rape cases. The media has begun to refer to your firm as one that is well known and has a preference for taking on such cases. Other partners in the firm are starting to suggest this profile is having a detrimental effect on gaining and keeping clientele in the other divisions of the practice. You are approached by an old friend (first met at law school) who is now a well-known politician to represent him against a rape prosecution. This will definitely be a high profile case in the media.

Would you take on your friend as a new client? Y or N

Motivating Value Weight

0 1 2 3 4 *Business Efficacy (Firm's Profit)*
 0 1 2 3 4 *Access to Justice*
 0 1 2 3 4 *Friendship Loyalty*

Response to Q4

A very strong majority would defend this client and (perhaps unsurprisingly?), gender was a major influence in this decision. Males were statistically more likely to defend this client ($\chi^2(1) = 8.30, p = .004$). Priority values were as might be expected, with "access to justice" and "friendship loyalty" rating above "business efficacy" in that order among those who would take on the case. In the minority that would accede to the partners' wishes and decline to act, "business efficacy" came slightly before the other values.

RVS responses were consistent, placing "logical" alongside the "yes" case and "helpful" alongside the "no" case. In the "Terminal" category, "happiness" was selected by the

“yes” group, and “a sense of accomplishment” was selected by the “no” group.

The correlation matrix associated “access to justice” with “friendship/ loyalty” and “business efficacy” with “ambition” and “a comfortable life.”

It is perhaps not surprising that clinical experience has no great impact of itself in this scenario because the intense notoriety of the issue of rape and gender may drown out other influences.

Summary and Discussion of Findings

In this section I discuss and highlight the important findings of the survey.

Summary of Findings to Question 1: “Corporate or justice priorities”

Women are identified as being more inclined than men to choose a “justice” focus for their work, although among all respondents, those who choose to focus upon career are the majority.

Clinical experience at the undergraduate level may have some effect upon values, but it is not clearly related to a justice agenda.

Summary of Findings to Question 8: “Denial of legal aid”

Gender is important in determining the values base of lawyers, and there appears to be limited if any variation due to other factors.

Summary of Findings to Question 3: “Concealment of defalcation”

Taken as a whole, the results of this question clearly indicate that there are definite limits to respondents’ willingness to put honesty and obedience to the law first.

Perhaps this ought to be no surprise that family loyalty is so strong among lawyers. It may be that the prospect of a child going to gaol is an (unfairly) extreme scenario for any parent to contemplate and that the “cutoff” point on honesty is only reached at these and similar harrowing edges of human stress.¹⁰⁶

106 Future variations to this question will substitute “nephew/niece” or even “child of best friend” in order to approach the actual limit or edge of honesty more closely.

Nevertheless, and notwithstanding the positive influence of clinical exposure, there is clearly a concern here about the importance of "honesty" to lawyers. Since a major objective of legal education and perhaps the key value underlying legal practice is compromised, we must reassess the impact of curricula and teaching methods in relation to this crucial value.

Summary of Findings to Question 7: "Concealment of criminality"

Most lawyers would keep silent to protect their children, but women are (perhaps surprisingly) more likely than men to disclose an offence by their child. These results do not give cause for confidence that lawyers' values are particularly "good" – unless it is considered, perhaps on very reasonable grounds, that an emphasis on "family values" (to use the cliché) is no bad thing.

Summary of Findings to Question 5: "The choice between 'The Firm' and 'a life'"

These results confirm the conclusions of the last two questions: that notions of family loyalty among respondents (regardless of marital status, children, or even promotion opportunities) are dominant and will prevail if necessary over personal obedience to the law. It is, as yet, unknown where the limits to this view emerge.

Summary of Findings to Question 6: "Willingness to act on a suspected lie"

In this scenario – as in the next – the instinct to do what may be regarded as "morally right" was for females more powerful than giving a client the benefit of any strictly defined doubt. It is not to be forgotten, however, that one-third of respondents (mostly males) considered that future representation was appropriate regardless of doubt.

Summary of Findings to Question 11: "Reporting of abuse"

A small majority of respondents would report the suspected abuse and of these, the majority were women.

Summary of Findings to Question 2: "Choice between an old friendship and a new, powerful client"

While both pro-corporate and pro-friendship respondents are significantly represented in the resulting distribution, the emphasis upon corporate as opposed to personal provides a major insight into lawyers' fundamental motivations.

Summary of Findings to Question 4: "Willingness to 'defend' rape"

There was a significant variation in the motivation of males compared with females in responses for and against the decision to act for a defendant accused of rape. Females in both groups gave greater weight than males to "access to justice" in their decision as compared to other values.

These patterns suggest that, while there is considerable recognition within the legal profession that criminal defence is an area of great importance, females appear to be more sensitive than males to "gender crimes" and relate more directly to the issue of sexual violence in terms of access to justice.

Comparisons with the Findings of the Law Institute of Victoria

The findings for Question 1, focused upon responses as to intended behaviour, are consistent with limited results obtained from actual behavioural investigation conducted by the Law Institute of Victoria.¹⁰⁷ As yet there are no other published behavioural studies of Victorian lawyers for comparison. Nevertheless, prediction from this survey of former Monash students to the population of lawyers from Monash and in Victoria as a whole seems reasonable to the extent of the statistical analyses performed on the sample data. A study of actual behaviour among lawyers, in comparison with the values associated with their intended behaviour, is likely to lead to significant further insights.

General Findings

Beyond Victoria, prediction is difficult and is outside the scope of this enquiry, though some may believe that Victorian lawyers are reasonably representative of the rest of Australia. It is not possible at present even to speculate as to the values

¹⁰⁷ LIV *supra* note 94.

of lawyers outside Australia. Nevertheless, with these qualifications in mind, I am able to draw some conclusions from the cumulative responses to the scenarios described in this survey:

- “Corporate” aspirations¹⁰⁸ of lawyers do affect the moral choices that lawyers make, and the values of lawyers who opt for “corporate” priorities appear to be different and apparently less concerned with “justice” than those who pursue non-corporate careers. To the extent that the value choices available to respondents in this survey allowed, respondents were more or less equally divided in their choice between “pro-corporate” or “pro-justice” values alternatives. The Law Institute of Victoria survey – measuring actual lawyer behaviour – seems to support this finding. To the extent that a choice to work on public interest cases *pro bono* can be identified with “pro-justice” values, an emphasis upon ambition and personal security motivates decisions to decline an active involvement in “justice” issues.
- Subject to the point immediately below, gender stands out (statistically) as a highly significant variable in determining moral choices among law graduates. In many situations, women opt for outcomes that can be characterised as placing greater emphasis on “access to justice,” “personal integrity,” “friendship/ loyalty,” and lesser emphasis on “business efficacy,” “employer loyalty,” and “professional ambition,” as compared with men. In particular, males and females tend to treat defendants in sex offences differently – in the case of male lawyers, apparently still with less than full awareness of the nature of sexual politics – on the evidence available in this survey.
- Respondents, with only a minor gender effect, are quite prepared to ignore and disobey specific areas of the criminal law when the interests of their families appear threatened. The extent to which this sort of decision operates in practice is an important area for discussion with law students and new practitioners.
- Taken as a whole, this study suggests but does not confirm the assumption that clinical experiences do make some difference to the attitudes that lawyers hold. It is possible that this difference is significant in statistical terms, and this could well be evident in future studies.

¹⁰⁸ “Corporate aspiration” is here used to refer to some lawyers’ desires to achieve high incomes in large firms from representing “big business”/ commercial clientele.

Conclusions

In this article I have discussed a survey of former Monash University law students who graduated between the years of 1980 and 1998 and have reported on the findings. I wanted to find out what personal values were regarded by these graduates as most important when faced with difficult choices in their professional lives. The reason this project is important is because it challenges implicit assumptions in the legal profession and among legal educators that are commonly held about the homogeneity of (so-called "good") values among lawyers. It is possible that the lack of uniformly "good" values among students and lawyers undermines the "ethical" practice of law by the profession as a whole, though that possibility was not directly investigated in this project.

It is possible also that these assumptions about homogeneous values have been invalid for some time: perhaps more so in recent years with the often commented transition from law as a "profession" to law as a "business." Without evidence, however, it was unlikely that legal educators and the profession feel the need to introduce a "values awareness" programme for students and new practitioners. At present, the discussion of values and any linkage to behaviour occurs only occasionally in legal education and almost never within the profession, in my experience.

The survey respondents were mainly practicing lawyers from predominantly middle class environments; however, even within this group there are considerable differences in underlying values. Thus, as there does not appear to be a clear basis for the popular and often unstated assumption in legal education that lawyers' values are both homogeneous and "moral," it is most appropriate to reconsider – and restructure – much of the law curriculum at fundamental levels. If it is true that skills training has become acceptable within undergraduate legal education, it may be partly¹⁰⁹ because the profession has convinced law schools that law graduates are under-prepared for the work force. The organised profession (as an institution) is, however, in my opinion, unlikely to acknowledge that new lawyers are morally "at sea" and (perhaps) in need of guidance. The regulatory implications

109 Legal educators have been concerned for some time to use skills as a vehicle (for example, at Griffith University, Newcastle University, and the University of Wollongong) to enhance undergraduate learning first and foremost.

of such an open admission would be far-reaching. It is, therefore, unlikely that the Law Council of Australia or its constituents will ask law schools to put equal energy into a values awareness education programme for their students.

Nevertheless, law schools need to embrace this issue. We legal educators cannot afford to concentrate on the rules – or even upon ethics – without also recognising what lies behind lawyers' behavioural decisions. We do need to, respectfully, engage students at the level of their values – preferably in an experiential manner – if we are to encourage their moral awareness.

There are some lawyers who have clearly passed beyond the need to satisfy basic and everyday needs; they are in conventional terms successful, yet they have not developed significant respect for fairness and justice – that is, for ethics. Longstaff speculates that without ethics, lawyers may become “semi-skilled tradespersons.”¹¹⁰ He describes lawyers who are prepared to behave unethically for a sufficient fee as

reduce[d] . . . to a cipher “a brilliant and creative cipher perhaps” but one who has surrendered all claims to exercise professional judgment on matters affecting a client's interest.¹¹¹

My findings, preliminary as they are, suggest that what must be a key objective of Australian legal education – the graduation of morally responsible lawyers – is not being achieved. It is not just the odd one or two lawyers that may fit Longstaff's description. Although significant numbers of lawyers choose “just” courses of action, that is of little comfort when large numbers – often a majority – would choose an unjust course of action. A paradigm shift in legal education is now I think essential, but that may not result from this study alone.

To persuade legal educators to assess the need for an (integrated) values awareness programme within law curricula, we will require more in-depth investigation on a much larger scale to be convincing. I believe comparisons *within* and *between* major national jurisdictions will be necessary to create momentum because, as a generalisation, national systems appear slow to emulate each other – except in the business arena. There is a case for a transnational, longitudinal study of lawyers'

110 S Longstaff, Ethics Drive Needed to Restore Profession's Legitimacy (1994) 32 *Law Society J* 29-30.

111 *Id.*, at 30.

values – in collaboration with behavioural studies by the organised legal profession – to derive real knowledge of the values bases that do support, or undermine, all notions of ethics in the law.

I sense, but of course cannot demonstrate convincingly, that there may be only a short time left in which the legal profession – as a general collection of people known for their “good” values – can be safeguarded. If law students do not explore their own values, their understanding and acceptance of the *rules* of conduct – let alone systems of ethics – are likely to be superficial. I hope that when (not “if”) law students are encouraged to pursue a personal values enquiry, their willingness to identify a justice priority in their professional lives will emerge or be strengthened.