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Men and women lawyers are likely to apply their ethical principles differently when faced with professional ethical dilemmas.

By Adrian Evans and Josephine Palermo

Men and women lawyers value ethics differently, according to a study into law students' values. About 700 final year law students responded to a questionnaire on hypothetical ethical situations which gave a snapshot understanding of the values of Australian students in their last year of law school.

The questionnaire was part of a larger study, funded by the Australian Research Council and entitled "The development of new lawyers' values", which is now nearing completion. While the majority of participants responded as expected, a surprising number indicated they would choose to act in ways that could be generally considered as opposed to the requirements of professional codes of conduct. This appears to highlight a failure by law schools to inculcate a "justice ethic" among their students, particularly males.

Public and professional discussion about lawyers' behaviour is perennial to the point of cliché in many national legal systems. Lawyers generally are tried of the repetition of these tales, but while anecdotes might influence politicians, they do not necessarily persuade law deans or the profession that systemic problems are at the core of them. Even the findings of the HHI Royal Commission, which included a call for renewed vigour in tertiary ethics education, have not obviously affected either the learning priorities of law schools or the approach that the profession takes to dealing with the re-entry to legal practice of lawyers who have been disciplined and suspended.

A concentration on values (that is, the beliefs and priorities that fundamentally define a person) seemed more important to the authors than "ethics" (that is, the systems of philosophical thinking that justify different behavioural choices), not only because values may be said to underlie ethics at a fundamental level, but also because values are much discussed nowadays, although rarely investigated.

Law schools have always assumed homogeneity and "superiority" in values and it has suited the profession to go along with this view.

The investigation initially aimed to establish whether the assumption of shared values has an empirical basis. The questions asked were "what role should legal education play in the reinforcement of personal values appropriate for the legal profession?" and "what attitude can the profession take to practitioners' values awareness and development, in the post-admission context?"

If values define us, attitudes are derived from those values and generally reflect our thinking about particular issues.

Thus, "honesty" is a value, while "discomfort with stealing" is an attitude. Beyond attitudes, there are "behaviours", that is, the actions that make attitudes concrete and accountable.

Research that has studied the relationships between values, attitudes and behaviours indicates that there is a weak but direct relationship between values and actual behaviours. However, there is evidence of strong relationships between values and behaviour-relevant attitudes.

This study of law students describes some of the most intense of these relationships.

**STUDY HIGHLIGHTS**

**Participants**

In 2003, law faculties across Australia were asked to assist in distributing surveys to final-year law students. Seven hundred individuals responded to the mail questionnaire, representing about 18 per cent of the population of 4000 Australian final-year law students. All jurisdictions were represented in the final sample, although most respondents came from NSW, Victoria and Queensland. Females accounted for 61 per cent (n=431) and males 39 per cent (n=272) of the respondents. Sixty per cent of the respondents categorised themselves in the 28-35 age group and 72 per cent classified themselves as "Australian".

Nearly 70 per cent had completed an "ethics" course and might therefore be thought to have some exposure to the ethical issues of practice, while only 40 per cent had
experienced a “clinical” course – a course that exposes law students to supervised contact with real clients facing real legal dilemmas. The sample was considered representative of the population of law graduates in Australia.

Effects of values on ethical decision making
The study examined the effects of values systems on ethical decision making by placing participants within contexts that provided for ethical dilemmas. A questionnaire presented hypothetical situations in 11 scenarios. The findings of the 2001 snapshot, which were analysed using various statistical tools, suggest that differing values hierarchies did significantly predict what behavioural choices the participants made on the ethical questions presented to them.

The results of the most extreme scenarios presented to participants appear in the above table.

SELECTED SCENARIOS USED TO ELICIT ETHICAL RESPONSES
Scenario 1 – You are a new solicitor working in a large commercial law firm. A voluntary public-interest organisation approaches you to work on a prominent test case about conditions in refugee detention centres. Your interest in this area is well known. The work would be pro bono and 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 realistically only do one or the other. Would you agree to work on the public interest case?

Scenario 3 – You are a partner in the firm of GTLD. Your nephew (the son of your elder sister) is an associate in the firm. You discover your nephew has a significant gambling problem and has taken money from the firm’s trust account to cover his debts. Fortunately, you discover the defalcation in its early stages. Your nephew is now undergoing counselling for his gambling addiction and your sister is hopeful for his recovery. The amount missing from the trust account is moderate and you are certain could be reimbursed without attracting any attention. Would you report the matter to the local law society?

Scenario 4 – Despite long hours and a great deal of work, you have been struggling for some months to make ends meet in your first couple of years as an employee lawyer. You are close to becoming an associate but have a HECS debt that you need to clear and someone in whom you are interested and who wants to start living life a bit.

A corporate client of your firm, for whom you have done some useful work, takes you and others in your section to lunch to celebrate (confidentially) the award of a major tender. You know that the client is grateful and wants to recognise your collective contributions to this particular success. The client CEO says as much and, in addition to the usual hinds about more work, speculates off-handedly that the price of the company’s shares is likely to reflect the win, once it is announced. Would you purchase shares in the company before the public announcement of the tender success?

Scenario 8 – In your first year of work in a law firm, the partner supervising you gives you some files to get ready for “costing”. She asks you to total the number of hours which you have spent on each file and, from her harried expression, it is pretty clear that she is concerned to charge out a significant amount on each matter. She asks you to “round up” your hours to the next hundred in each file, saying that, on average, clients are happy because the main thing they
demand is quality work. You know that these clients are more or less satisfied with the firm and that your supervisor is not about to debate the issue with you. Would you round up the hours as requested?

**Scenario 1** — You are acting for a mother of three small children in a divorce and intervention order matter. Your client has previously shown you some old photographs of bruises and scratches on the children which she, unconvincingly, claims were inflicted not by their father, but by her new boyfriend.

One of the children now has blurred vision. Your client 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 your client tells you, as she leaves, to do nothing. Would you break client confidentiality and inform the relevant welfare department of your fears?

**BEHAVIOURAL CHOICE**

The participants were asked to indicate their probable behavioural choices and, after reflection, to weight the importance of various specified behaviour-relevant values (BRVs) in making those choices, on a scale ranging from 1 = not important to 5 = very important. Since the scenarios were also relatively commonplace, it was reasoned that a degree of personal identification with the lawyer's dilemma in each scenario would emerge. Statistical methods were then applied to the responses, to produce the "hard data" that might influence professional opinion. BRVs specific to each of the scenarios were used as independent variables in analyses of variance of reported behaviour, for each of the scenarios.

**RESULTS**

**Reported behaviours**

While the majority of participants responded as expected, and while allowance was made for the possibility that some students were unclear about the requirements of rules of conduct, a surprising number of participants indicated they would choose to act in ways that could be generally considered as opposed to the requirements of professional codes.

**DISCUSSION**

There is a statistically significant association between espoused personal values and actual decision making, as indicated by the results of this study. The behavioural outcomes used in the study were limited to the participants' intentional rather than observed, natures. Even so, the results do provide evidence of how personal values predict reported behaviours in ethically intensive dilemmas.

In most of the scenarios, females were more likely than males to indicate that BRVs are important to their thinking.

**Scenario 1**

Pro bono activity may be considered a primary indicator of a professional attitude. Some writers are in fact adamant that the quality of "almshum" — which for this study we have compacted somewhat into a forced choice about whether or not to give something to the community — is an archetype of professionalism.*

Only a small majority of respondents (all still in law school at the time of the survey) considered that they would commit to a public interest pro bono matter (50.8 per cent). Significant mean differences (that is, differences which were not explained by mere chance alone) were evident between the participants who would take on the pro bono case, for all values except professional ambition. Here, women were more likely than men to undertake pro bono cases. Women were more likely to prioritise the value of "access to justice", whereas males were more likely to prioritise "business efficacy".

**Scenario 3**

Reporting trust account deficiency explored the connection between personal integrity — involving a relatively close family member — and the specific requirements of trust account administration. In all Australian jurisdictions, it is a mandatory requirement to report a trust deficiency, no matter the size.
of the deficiency or its possible cause.

Since nearly 70 per cent of the students had completed an ethics subject before completing this survey, respondents were assumed to be more likely aware than not of the reporting requirement. Nevertheless, a sizeable majority was prepared to remain silent when aware of a trust account deficiency which involved a relative (60 per cent). Interestingly, males and females reported similar results for the BRVs that were salient in their decision. The means for respondents who indicated they would report the matter to the police suggest that “personal obedience” was given priority over family loyalty in informing their decision (F(5,664) = 228.70, p < .001). We are particularly concerned to see whether this majority decision to tolerate defalcations is reflected in the follow-up study of these law students as they enter practice.

Scenario 4
Insider trading is directed towards the broad issues of business ethics in an area clearly relevant to legal practice. Enron, Worldcom and related corporate failures were an international scandal only after this survey was completed, but there were already many signs in the Australian corporate experience that the past two decades of the century have been marked by an excess of corporate greed.1

Many of these students would be going to business/law firm-related workplaces.2 We considered it important to investigate the extent to which such students, in particular, were sensitised to the values inherent in the phenomenon of greed.

While the majority (75.7 per cent) recognised the “insider trading” opportunity as inappropriate, 23.2 per cent were apparently unconcerned. We are inclined to think that one-quarter of all law students is far too high, especially considering that within that quarter the motivating values were associated with “personal achievement” and the benefits of “commercial advantage” within the firm (F(4,666) = 157.69, p < .001).

As expected, females tended to identify the ethical intensity of the issue, which was demonstrated by their greater concern or discomfort with the use of the information (F(4,666) = 5.14, p < .001).

Scenario 8
Rounding up hours on a client bill. A considerable majority of the law students was prepared, when requested, to round up hours on a file for billing a client to the next 100 hours (56.6 per cent). In a number of cases, it is likely that such an increase would add many thousands of dollars to a client's bill.

Some commentators on this scenario have remarked that the process of settling the final amount of a bill is complex and that the partner responsible for each client account will often vary a bill up or down, after basic time calculations have occurred. In such a context this request, made to a summer clerk, is hardly improper. But in trialling the question, other practitioners were of the contrary view and we think that, given that the question asks about rounding up hours (not dollars) to the next one hundred, it was reasonable to ask for a choice.

BRVs differed significantly according to participants’ reported behaviours on this scenario. Participants who would round up hours prioritised “employment prospects”, “professional ambition” and “loyalty to supervisor” in the decision-making process. Participants who indicated that they would not round up hours assigned greater weight to “discomfort with request” and “client concern” (F(5,664) = 100.65, p < .001). Interestingly, females were more likely than males to prioritise all these values in their decision-making process (F(5,664) = 6.88, p < .001). However, females did not differ from males in their propensity to round up the hours. These results do not support the anecdotal complaint that overcharging is endemic to the profession, but they do suggest that articled clerks are unlikely to have the inclination or confidence to resist when asked to overcharge a client.

Scenario 15
Breaching client confidentiality. Confidentiality has been described as one of the “core values” of the Australian legal profession3 and most law students (59.3 per cent) indicated that they would breach their obligation in this socially notorious scenario. The values that influenced their decision included values associated with ideas about civic duty, whereas “client confidentiality” and “professional integrity” were given weight in informing a decision not to break confidentiality (F(3,661) = 295.66, p < .001). We are again not surprised by this result and attribute it to the fact that these respondents had not then, for the most part, experienced the realities of legal practice and, in particular, the trust ordinarily placed in lawyers by their clients.

IMPLICATIONS
While these findings, taken together, do not reflect well on the efforts of law schools to inculcate a “justice ethic” within the basic law degree, they do indicate a greater propensity for female students to be more aware than male students of BRVs when confronted with ethical dilemmas and they confirm prior studies of gender differences.4

On the basis of these first-year results alone, law student values generally and the specific needs of gender groups may require more specific attention in undergraduate curricula than is currently the case.

As McCarthy5 has suggested, the implication of these findings requires revisiting legal ethics education within the context of individual substantive law subjects, and incorporating multidisciplinary, normative expertise from practitioners and the social sciences.

Roekach6 suggests that value change is possible only when discrepancies are presented that threaten a person’s self-concept: in other words, when individuals are able to reflect on the differences between their own intentions and social norms. Only then is self-motivation enhanced or threatened, depending on the clarity of the reflection process.

Awareness of discrepancies between the values that relate to the self-concept, compared with those values that are generally considered preferable in ethical systems, can lead to dissatisfaction or “dissonance” and allow a person to change in their cognition and behaviour. In short, values awareness, when explored in context, is likely to be a productive route for legal ethics education.
If the forthcoming analyses of post-graduation responses to this study (by articled clerks and first/second year practitioners) indicate that there are continuing discrepancies between ethical norms and intentions, there will be an urgent need for generalised values-awareness processes to be implemented for practising lawyers as well. Although we have looked only at the general population of law students and practitioners, the special case of practitioners who are identified by the disciplinary process as having behavioural problems could raise a more pressing need. If there is a degree of statistical significance in associated values behaviours among disciplined practitioners, this group and the community might benefit from such attention.

There may be a strong case for the profession, in the exercise of an underlined self-governance (and before an outside regulator gets into it), to prescribe particularly focused values awareness training for those who seek a return to practice. Even more, those whose practising certificates have conditions attached as a result of unsatisfactory conduct or misconduct could be asked or required to "get with" values awareness. Such activity may be well regarded by the community and state, and the majority of practitioners, as in the interests of both the profession and the public interest.

ADRIAN EVANS is associate professor of law and convenor of legal practice programs at Monash University.

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1. Justice Owen (from "The HII Royal Commission: A personal perspective") said:

"Right and wrong are moral concepts, and morality does not exist in a vacuum. I think all those who participate in the direction and management of public companies, as well as their professional advisers, need to identify and examine what they regard as the basic moral underpinning of their system of values. They must then apply those tenets in the decision-making process. The education system - particularly at tertiary level - should take seriously the responsibility it has to inculcate in students a sense of ethical method."


3. The full list of scenarios and initial analyses may be perused at Adrian Evans and Josephine Paiero, "Australian law students' perceptions of their values: interim results in the first year - 2001 - of a three-year empirical assessment" (2003)'s Legal Ethics 18, 120-129. The length of this article did not allow for reproduction of all scenarios.


5. For example, HII was beset by archetypal breaches of governance during the late 1990s, as this quote from The Age shows: "Rodney Adler summoned Brad Cooper to a hotel room early yesterday morning to warn him against telling the truth about an alleged insider trading deal, Mr Cooper told the HII Royal Commission today. The entrepreneur and long-time associate of Mr Adler is appearing at the commission for the second time to answer questions about a $1 million short-selling share deal to prop up HII's ailing share price in August 1999", The Age, 14 October 2002, http://www.theage.com.au/articles/2002/10/ 14/1035561084735.html.

6. Nearly 75 per cent of Australian law graduates were destined for legal professional and "business professional" positions in 2000 and 2001, according to the Australian Graduate Careers Council. Misha Ketchell, "Race for that dream job gets tougher", The Age, 9 November 2002, p5.

7. Former law institute of Victoria CEO Ian Dunn, "Incorporation and MBAs" (2000) 74(9) LLJ 3.

