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Joshua J. A. Henderson

Trevor C. W. Farrow
Osgoode Hall Law School of York University, tfarrow@osgoode.yorku.ca

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SASKATCHEWAN
LAW REVIEW

The Ethical Development of Law Students: An Empirical Study

Joshua J.A. Henderson and Trevor C.W. Farrow***

The purpose of this article is to examine the involvement of law schools in the ethical development of their students. Specifically, using an empirical study of 176 law students at two different universities, this article examines the role that law schools can play in shaping the opinions of students regarding two fundamental ethical and professional issues: the role of personal morality in the lawyering process (should lawyers be moral agents or zealous advocates?), and the commercialization of law (is law a profession or a business?). We hope this article—by adding to the lack of current available empirical data regarding the socialization of law students—will be useful when thinking specifically about the teaching of ethics and professionalism as well as the reform of law school curriculums more generally.

I. INTRODUCTION

There was a man in our town
And he was wonderous wise,
He jumped into a bramble bush
And scratched out both his eyes...
So when he saw he could not see,
And knew the fact was plain,
He jumped back into the bramble bush
And scratched them in again.[1]

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* LL.B., Osgoode Hall Law School, York University.

** Associate Professor, Osgoode Hall Law School, York University.

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1 Robert Penn Warren, "The Bramble Bush" in John Burt, ed., *The Collected Poems of Robert Penn Warren* (Baton Rouge: Louisiana State University Press, 1998) at 177, cited in Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* (Dobbs Ferry, NY: Oceana Publications, 1951) at 4.

Law schools have traditionally asked students to shed their civilian sensibilities—to "scratch...out both...eyes"—and to start to act and "think like lawyers."[2] Learning to think like a lawyer has traditionally been seen as a highly desirable ideal for law students; so desirable, in fact, that it has typically not been questioned during students' time at law school.

There are many technical aspects to this traditional rite of passage. Students have learned the case-method, tools of critical analysis, how to "do" law and legal writing, and to see the world as a set of conflicting facts that, if processed through the appropriate rule, may produce an acceptable legal result. There are also several ethical and professional aspects to this rite of passage. For example, thinking like a lawyer has traditionally required students to develop the ability to distinguish between legal ethics[3] (what counts as an acceptable basis for ethical lawyering) and "ordinary standards of moral conduct"[4] (what counts as an acceptable basis for ordinary human action). This distinction—which is the primary basis for a lawyer's role-differentiated behaviour[5]—provides the foundation for today's dominant model of lawyering.[6] Further, law schools have also pushed students to think

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2 See Trevor C.W. Farrow, "Sustainable Professionalism" (2008) 46 Osgoode Hall L.J. 51 at 59, n. 44 and accompanying text [Farrow, "Sustainable Professionalism"]. See also James R. Elkins, "Thinking Like a Lawyer: Second Thoughts" (1996) 47 Mercer L. Rev. 511 [Elkins, "Thinking Like a Lawyer"].

3 For useful background sources, see Donald Nicholson & Julian Webb, *Professional Legal Ethics* (New York: Oxford University Press, 1999); J.B. Schneewind, "Modern Moral Philosophy" in Peter Singer, ed., *A Companion to Ethics* (Oxford: Basil Blackwell Ltd., 1991) 147; R.M. Hare, *The Language of Morals* (New York: Oxford University Press, 1964); Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, 2d ed. (Oxford: Oxford University Press, 2002); George H. Sabine, *A History of Political Theory* (London: George G. Harrap & Co. Ltd., 1948); Philippa Foot, ed., *Theories of Ethics* (London: Oxford University Press, 1967); J.L. Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth, England: Penguin Books Ltd., 1977); and W.D. Hudson, *Modern Moral Philosophy*, 2d ed. (London: MacMillan and Co. Ltd., 1983). See further Farrow, "Sustainable Professionalism," *supra* note 2 at 59-63; Alice Woolley, "Introduction to Legal Ethics" [Woolley, "Introduction to Legal Ethics"] in Alice Woolley *et al.*, eds., *Lawyers' Ethics and Professional Regulation* (Markham, Ont.: LexisNexis Canada Inc., 2008) at 10-15 [Wooley *et al.*, eds., *Lawyers' Ethics and Professional Regulation*].

4 See Samuel Dash, "Legal Ethics and Morality: Can a Legally Ethical Lawyer Be a Moral Person?" (1993) 1 Frank G. Raichle Lecture Series on Law in American Society 209 at 212, 214, discussed further in Farrow, "Sustainable Professionalism," *supra* note 2 at 54.

5 For a discussion of role-differentiated behaviour (a behavioural approach that "often makes it both appropriate and desirable for the person in a particular role to put to one side considerations of various sorts—and especially various moral considerations—that would otherwise be relevant if not decisive"), see Richard Wasserstrom, "Lawyers as Professionals: Some Moral Issues" (1975) 5 Hum. Rts. J. 1 at 3, discussed further in Farrow, "Sustainable Professionalism," *supra* note 2 at 56.

6 See Farrow, "Sustainable Professionalism," *supra* note 2 at 63-71.

about the nature of the legal profession, and in particular, whether the profession is somehow distinct from other vocations—"an ancient and honourable profession"[7]—or whether, particularly now, it has essentially become primarily a commercial enterprise.[8]

The purpose of this article is to look at these two basic ethical and professional aspects to the traditional law school rite of passage. Specifically—using an empirical study involving surveys of 176 law students at two different Canadian law schools—this article examines the role that law schools can play in shaping the opinions of students regarding two fundamental ethical and professional issues: the role of personal morality in the lawyering process (should lawyers be moral agents or zealous advocates?), and the commercialization of law (is law a profession or a business?). This article is motivated by developmental changes that we have seen students undergo as they progress through three years of law school. This article is also motivated, as discussed further below,[9] by the lack of empirical data that currently exists regarding the ethical development of law students. Finally, while this article does address law school and its developmental impact on students, it does not directly address our views on the need for significant new thinking when approaching law school programs and legal education.[10] Rather, our project is to assist with the development of empirical data that we hope will be useful when thinking about the teaching of ethics and professionalism specifically, as well as the reform of law school curriculums more generally.

Following this introduction, Part II canvasses the scholarship and existing empirical data regarding law schools and their impact on the ethical development of law students. Parts III and IV discuss the categories of inquiry and the methodology of the survey that underlies this research. Parts V and VI set out our analysis of the survey's comparisons and correlations. Parts VII and VIII provide a discussion

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7 Mark M. Orkin, *Legal Ethics: A Study of Professional Conduct* (Toronto: Cartwright & Sons Ltd., 1957) at 3.

8 For a useful discussion of "lawyers and commercialism," see Gavin MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, 4th ed. (Toronto: Thomson Carswell, 2002) at § 1.3 [MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*].

9 See Part II, below.

10 For further comments on the normative implications of this discussion in the context of legal education, see Farrow, "Sustainable Professionalism," *supra* note 2 at 100-102. See further Trevor C.W. Farrow, "Dispute Resolution, Access to Civil Justice and Legal Education" (2005) 42 Alta. L. Rev. 741; Trevor C.W. Farrow, "Dispute Resolution and Legal Education: A Bibliography" (2005) 7 Cardozo J. Confl. Resol. 119; Trevor C.W. Farrow, "Globalizing Approaches to Legal Education and Training: Canada to Japan" (2005) 38 Hosei Riron J. L. & Pol. 144.

of this analysis and our conclusion. Part IX—the Appendix—sets out the specific survey questions.

II. LAW SCHOOL AND THE ETHICAL DEVELOPMENT OF LAW STUDENTS

A. ACADEMIC COMMENTARY

That students go through law school and, typically, are faced with technical and professional aspects to their rite of passage is not controversial.[11] What is more controversial, however, is the role that law schools play in the shaping and socialization of their law students *vis-à-vis* the students' personal beliefs, particularly with respect to the ethical and professional aspects of the traditional rite of passage.

Many scholars argue that law schools exercise a powerful socializing effect on law students. For example, according to Adam Dodek, "[l]egal education is very much a socialization process. To a degree, it shares certain commonalities with the army. Both attempt to inculcate the young and to strip the would-be soldier/lawyer of his/her previous affiliations. Neither legal education nor the military values true diversity."[12] Donald Buckingham pushes this inculcation sentiment further, arguing that the method of teaching in law schools is largely to blame for the lack of growth of law students' moral character. He holds that "[i]ntense competition, the ranking of students, and intimidation of students by reckless use of the Socratic method" all contribute to destroying students' individuality and moral character.[13] Duncan Kennedy similarly argues that professors, through their use of the Socratic method, psychologically intimidate students to such an extent that students are forced to change their personalities in response in an attempt to assimilate the personality of a lawyer as viewed through the eyes of their professors.[14]

Not all commentators, however, agree that law schools play such an active role in students' ethical socialization. For example, Monroe

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11 Again, we are not presenting normative arguments in this article on the merits of the typical law school curriculum or experience.

12 Adam M. Dodek, "Canadian Legal Ethics: A Subject in Search of Scholarship" (2000) 50 U.T.L.J. 115 at 125. See also Adam M. Dodek, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last" (2008) 46 Osgoode Hall L.J. 1 [Dodek, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last"].

13 Donald E. Buckingham, "Rules and Roles: Casting Off Legal Education's Moral Blinders for an Approach that Encourages Moral Development" (1996) 9 Can. J.L. & Jur. 111 at 123. See also generally *ibid.* at 111-26.

14 Duncan Kennedy, "How the Law School Fails: A Polemic" (1970-1971) 1 Yale Rev. L. & Soc. Action 71. See also Allan C. Hutchinson, *Legal Ethics and Professional Responsibility*, 2d ed. (Toronto: Irwin Law Inc., 2006) at 208 [Hutchinson, *Legal Ethics and Professional Responsibility*]; Allan C. Hutchinson, "Considering the ethical responsibility of teaching ethics" *The Lawyers Weekly* 25:34 (20 January 2006) (QL).

Freedman does not believe that students lose their idealistic goals of righting social wrongs when they come to law school. Based on his own anecdotal experience, Freedman does not think that law schools are socializing students out of these lofty goals because he believes that entering students do not typically have these goals to begin with.[15]

B. PREVIOUS EMPIRICAL STUDIES

While there is some anecdotal and empirical evidence on both sides of this academic discussion, our understanding and knowledge of "key questions involving professional roles, rules, and regulation"—as Deborah Rhode has commented—is "shamefully thin."[16] According to Rhode, "[w]e are awash in theory and starved for facts. Too much professional responsibility scholarship is data-free doctrinal analysis, the functional equivalent of 'geology without the rocks.'"[17] Consistent with Rhode's general observation, our review of the empirical data in this field uncovered very little in the way of primary materials that specifically look at the development of law students' ethical and professional sensibilities. Put simply, there is a surprising lack of empirical evidence concerning the socializing effects of law school.

No major research in this area has been done in the context of Canadian law schools. The situation is not much better in the United States. There have been a few studies, mostly doctoral theses, which have examined the ethical values of lawyers in general. However, the body of literature is neither large nor conclusive. In 1989, Rand Jack and Dana Crowley Jack reported on interviews with eighteen male and eighteen female lawyers.[18] According to that study, men were more aligned with the "zealous advocacy" model of lawyering and women tended towards the "moral agency" view.[19] This study was partially confirmed by Judith White and Chris Manolis in a 1997 study which demonstrated that female law students identified with the "moral agency" view and male law students identified with the "zealous advocacy" view of the lawyer.[20] Other researchers have found

15 Monroe H. Freedman, "The Loss of Idealism—By Whom? And When?" (1978) 53 N.Y.U.L. Rev. 658.

16 Deborah L. Rhode, "Legal Ethics in an Adversary System: The Persistent Questions" (2005-2006) 34 Hofstra L. Rev. 641 at 659.

17 *Ibid.*

18 Rand Jack & Dana Crowley Jack, *Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers* (Cambridge: Cambridge University Press, 1989).

19 *Ibid.* at 188.

20 Judith White & Chris Manolis, "Individual Differences in Ethical Reasoning Among Law Students" (1997) 25 Soc. Behav. & Personal'y 19.

that public sector lawyers' moral judgments are more concerned with well-being at the societal level, whereas lawyers working in the private sector are more concerned with individual morality.[21] Further studies have found that "age, education, well-being, and faith [are] not predictive of ethical and moral decision making" for lawyers (contrary to one researcher's original hypothesis);[22] and that practising lawyers display pluralistic ignorance in their perception of unethical behaviour in others (that is, lawyers think other lawyers are more unethical than they actually are).[23] Overall, a useful—although rather limited—understanding of practising lawyers emerges from these few studies: male and private lawyers are more likely to be zealous advocates, and female and public lawyers are more likely to be moral agents. None of these studies, however, speaks to the effect of law school on the development of ethical values and moral decision making.

According to our research, surprisingly few studies have examined law school's developmental effect on law students. A 1976 study by Gregory Rathjen found that students at the Tennessee College of Law experienced a decreased interest in performing civil liberties work as they progressed from the first to third year of study.[24] Similarly, Howard Erlanger and Douglas Klegon showed in a 1978 study that students at the University of Wisconsin-Madison Law School showed a small but significant decrease in their perceived importance of pro-bono work as they progressed through law school.[25] Those students also expressed changes in thinking patterns as they learned to "think like lawyers."[26] In 1996, Howard Erlanger updated his 1978 research to determine whether those students who were most interested in public interest work in their first year of law school maintained that interest upon graduation.[27] He found that although half of the class

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21 See Virginia Anne Long, *The moral judgment of attorneys: Employment in the public or the private sector and courses in legal ethics* (Ph.D. Dissertation, The American University, 1993) [available at: Dissertation Abstracts International (UMI No. 9418954)] at iii.

22 Kerri Grace Parsons, *Moral and Ethical Decision Making of Physicians and Attorneys: The Influence of Faith Across Career Lifespans* (Ph.D. Thesis, Texas Tech University, 1999) [available at: Dissertation Abstracts International (UMI No. 9940339)] at vi.

23 Jonathan R.B. Halbesleben, M. Ronald Buckley & Nicole D. Sauer, "The Role of Pluralistic Ignorance in Perceptions of Unethical Behaviour: An Investigation of Attorneys' and Students' Perceptions of Ethical Behavior" (2004) 14 Ethics & Behav. 17.

24 Gregory J. Rathjen, "The Impact of Legal Education on the Beliefs, Attitudes and Values of Law Students" (1976-1977) 44 Tenn. L. Rev. 85 at 95.

25 Howard S. Erlanger & Douglas A. Klegon, "Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns" (1978-1979) 13 Law & Soc'y Rev. 11 at 30.

26 *Ibid.*

27 Howard S. Erlanger *et al.*, "Law Student Idealism and Job Choice: Some New Data on an Old Question" (1996) 30 Law & Soc'y Rev. 851.

studied indicated a proclivity for public interest work, only 13 per cent of the graduates took a job in that field as their first place of employment.[28] These studies were complicated by Thomas Willing and Thomas Dunn's conclusion—based on their 1981 study—that neither the first year of law school nor any upper year course on legal ethics altered the moral development of law students (a finding that tends to substantiate Monroe Freedman's comments on the issue).[29]

The only study to be completed in the last ten years with direct relevance to the ethical beliefs of law students is a 2007 Australian study by Josephine Palermo and Adrian Evans.[30] Their study found that women were more likely to provide ethical answers to given scenarios than men, and further, that students' personal beliefs influenced the types of answers they provided in the context of several given scenarios. While this Australian study is clearly useful, it provides a snapshot of the effects of personal beliefs on ethical decision making and does not look directly at the socialization effect of law schools.

With regard to law school socialization, therefore, very little is known.[31] There is no definitive study of the changes that law students in Canada experience as they progress through law school. The data from American schools from twenty-five to thirty years ago does provide some evidence that law students lose interest in public-interest work as they learn to "think like lawyers." However, these findings cannot necessarily be directly extrapolated to current students in Canada. The motivation and ultimate purpose of this article, therefore, is to present some current empirical findings on the ethical development of law students—or in the words of Deborah Rhode, to add some "rocks" to the "geology" of this foundational pedagogical enquiry[32]—by looking at the changes in the ethical values of law students as they progress through their three years of law school.

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28 Of course many factors, such as student debt and availability of positions, might also account for (or at least influence) these findings.

29 Thomas E. Willging & Thomas G. Dunn, "The Moral Development of the Law Student: Theory and Data on Legal Education" (1981-1982) 31 J. Legal Educ. 306.

30 Josephine Palermo & Adrian Evans, "Relationships Between Personal Values and Reported Behavior on Ethical Scenarios for Law Students" (2007) 25 Behav. Sci. & Law 121.

31 For some further relevant current initiatives, see National Survey of Student Engagement, online: NSSE <http://nsse.iub.edu/index.cfm> [NSSE]. See also William M. Sullivan *et al.*, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007); Roy Stuckey *et al.*, *Best Practices for Legal Education: A Vision and a Road Map* (New York: Clinical Legal Education Association, 2007).

32 See Rhode, *supra* note 16 and accompanying text.

III. CATEGORIES OF ENQUIRY

As mentioned above, there are two fundamental theoretical issues underlying this article: the role of personal morality in the lawyering process (that is, should lawyers be moral agents or zealous advocates?), and the commercialization of law (that is, is law a profession or a business?). The first issue underlies the micro (personal) aspects of ethical self-reflection (that is, "who am I as a lawyer?"). The second issue underlies the macro (systemic) aspects of professional purpose, organization, and regulation (that is, "what do lawyers—and the profession generally—do?"). For the purpose of this study and to examine these two fundamental theoretical issues, we have developed three areas of enquiry. The first (category one), by way of background, looks at law students' general ethical values. The second (category two) is the *Moral Agent—Zealous Advocate* continuum, along which the beliefs of any law student may fall. The third area of enquiry (category three) is the *Law as a Profession—Law as a Business* continuum,[33] again along which the beliefs of any law student may fall.

A. CATEGORY ONE: GENERAL ETHICAL VALUES

This preliminary area of enquiry, designed to assist in developing our understanding of the students' views about their own role as lawyers, examines some of the basic ethical values that law students hold generally, and whether these values vary with gender, age, law school year, or parental socio-economic status. It focuses on whether law students view themselves and others in the profession as ethical and, further, whether they are comfortable with their general understanding of legal ethics.

B. CATEGORY TWO: MORAL AGENCY

Law students are located on the *Moral Agent—Zealous Advocate* continuum according to their understanding of the role of the lawyer in representing a client. Lawyers who adhere to the classic "zealous advocate"[34] model of representation—which continues to

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33 The second and third categories of enquiry were used in Trevor C. W. Farrow, *Legal Ethics Seminar Notes* (Osgoode Hall Law School, September 2007) [unpublished] as two axes of a notional graph along which specific ethical and professional views of any individual could be placed. In fact, when students were asked to self-identify their location on the graph, a wide variety of beliefs were found to be held. It was this observation, in part, which led to the development of the empirical study in this article.

34 We are aware that several different terms (with slightly different connotations) can be applied to this vision of the lawyer: "zealous advocate," "neutral partisan," and "amoral technician," for example. For mention of these different labels, see Farrow, "Sustainable Professionalism," *supra* note 2 at 63.

be regarded in the legal profession (as well as among students) as the dominant model of lawyering[35]—generally believe that their role in our adversarial system is simply to provide the most vigorous representation possible for their clients within the bounds of the law. If this representation results in a criminal going free, a righteous plaintiff losing or, as Henry Brougham, L.C. famously stated when defending Queen Caroline against adultery charges brought by her husband King George IV, "alarm...torments...[or] destruction" being brought upon others,[36] then so be it; justice—as contemplated by the adversarial system—is being done.[37]

In contrast, lawyers who understand their role to be one of moral agency believe that factors other than law, including morality, religion, politics, custom, and the like, do, and moreover should, influence the way in which they represent their clients. Central to this view of the

35 *Ibid.* at 63-71. See also Trevor C. W. Farrow, "Ethics in Advocacy" in Woolley *et al.*, eds., *Lawyers' Ethics and Professional Regulation, supra* note 3 at 203-204.

36 Joseph Nightingale, ed., *Trial of Queen Caroline* (London: Albion Press, 1821), vol. 2 at 8. Lord Brougham argued that a lawyer "knows but one person in all the world, and that person is his client," and further, that "[t]o save that client by all means and expedients, and at all hazards and costs to other persons, and, among them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others." *Ibid.* See also Farrow, "Sustainable Professionalism," *supra* note 2 at 63-64.

37 For commentaries on the zealous advocate model of lawyering, see Monroe H. Freedman, "How Lawyers Act in the Interests of Justice" (2001-2002) 70 Fordham L. Rev. 1717; Monroe H. Freedman, "Personal Responsibility in a Profession System" (1977-1978) 27 Catholic U. L. Rev. 191; Monroe H. Freedman, "Symposium on Professional Ethics: Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions" (1965-1966) 64 Mich. L. Rev. 1469; Monroe H. Freedman, *Lawyers' Ethics in an Adversary System* (Indianapolis: Bobbs-Merrill, 1975); Monroe H. Freedman, "The Trouble with Postmodern Zeal" (1996-1997) 38 Wm. & Mary L. Rev. 63. See also Stephen L. Pepper, "The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities" (1986) Am. Bar Found. Res. J. 613 at 616-18, 626-27; Stephen L. Pepper, "A Rejoinder to Professors Kaufman and Luban" (1986) Am. Bar Found. Res. J. 657; Charles Fried, "The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation" (1975-1976) 85 Yale L.J. 1060 at 1073-74, 1077. For useful background discussions of the dominant model, see Lon L. Fuller, "The Adversary System" in Harold J. Berman, ed., *Talks on American Law* (New York: Vintage Books, 1961) at 32-37; William H. Simon, "Ethical Discretion in Lawyering" (1987-1988) 101 Harv. L. Rev. 1083 at 1084-1090; Sharon Dolovich, "Ethical Lawyering and the Possibility of Integrity" (2001-2002) 70 Fordham L. Rev. 1629 at 1632-39; Geoffrey C. Hazard, Jr. & Deborah L. Rhode, *The Legal Profession: Responsibility and Regulation*, 3d ed. (Westbury: Foundation Press, 1994) at 135-213; Robert K. Vischer, "Legal Advice as Moral Perspective" (2006) 19 Geo. J. Legal Ethics 225 at 226-27. Compare also Leonard L. Riskin's critique of the traditional lawyer's "standard philosophical map." Leonard L. Riskin, "Mediation and Lawyers" (1982) 43 Ohio St. L.J. 29 at 44.

lawyer is the opinion that, while important, the client is not the ultimate arbiter when it comes to making decisions about how to handle a given retainer or course of legal action.[38] The fact that we have set this part of the inquiry up as a continuum recognizes that between the absolutist end-points of this continuum sit a number of potential hybrid visions of a lawyer's role.[39]

C. CATEGORY THREE: LAW AND COMMERCIALISM

The *Law as a Profession—Law as a Business* continuum is essentially a scale that roughly locates a student's view of the purpose of the practice of law. Put simply, individuals who believe that the law is a profession that exists first and foremost to protect the public interest, think that the lawyer's role is to improve society and to help citizens recognize and maximize their legal rights (regardless of their economic power or commercial considerations). By contrast, individuals who believe that law is primarily a business think of law in terms of its commercial opportunities (as a vehicle for maximizing client interests with a view to making money for both the client and the lawyer). Put in these terms, but for its professional trappings (regulations, discipline, and so forth), law is essentially no different than any other sophisticated commercial enterprise.[40]

IV. SURVEYS

A. GENERAL APPROACH

The study reported on in this article was conducted over a six-month period from October 2006 to March 2007. The first phase of the study

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38 For commentaries that are alternative to the zealous advocate model of lawyering, see e.g. David Luban, ed., *The Good Lawyer: Lawyers' Roles and Lawyers' Ethics* (Totowa, N.J.: Rowman & Allanheld, 1983); Richard Wasserstrom, "Legal Education and the Good Lawyer" (1984) 34 J. Legal Educ. 155; Rob Atkinson, "How the Butler Was Made to Do It: The Perverted Professionalism of the *Remains of the Day*" (1995-1996) 105 Yale L.J. 177; William H. Simon, "'Thinking Like a Lawyer' about Ethical Questions" (1998-1999) 27 Hofstra L. Rev. 1; Allan C. Hutchinson, "Legal Ethics for a Fragmented Society: Between Professional and Personal" (1998) 5 Int'l J. Legal Prof. 175 [Hutchinson, "Legal Ethics for a Fragmented Society"]; Duncan Kennedy, "The Responsibility of Lawyers for the Justice of Their Causes" (1987) 18 Tex. Tech L. Rev. 1157. For a general discussion of the moral agency role, see Farrow, "Sustainable Professionalism," *supra* note 2 at 71-83.

39 For a discussion of some alternate or hybrid views, see Farrow, *ibid.* at 83-100. See also generally Woolley, "Introduction to Legal Ethics," *supra* note 3 at 10-15.

40 For comments on law and commercialism, see the Honourable Frank Iacobucci, "The Practice of Law: Business and Professionalism" *The Advocate* 49:6 (November 1991) 859; Donald E. Buckingham *et al.*, *Legal Ethics in Canada: Theory and Practice* (Toronto: Harcourt, 1996) at 194; John R. R. Jennings, "Concepts and Values" *L. Soc'y Gaz.* 24:4 (1990) 275; MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline, supra* note 8 at § 1.3. See also Gavin Mackenzie, "The Valentine's Card in the Operating Room: Codes of Ethics and the Failing Ideals of the Legal Profession" (1994-1995) 33 Alta L. Rev. 859.

was conducted in the fall of 2006 at Osgoode Hall Law School, York University (Osgoode).[41] The second phase was conducted in the winter of 2007 at the University of Saskatchewan, College of Law (Saskatchewan).[42] At both schools, participants were asked to perform an online questionnaire concerning their legal ethics. The students who completed the questionnaires always remained anonymous; their names were never requested nor provided.[43] At Osgoode, 106 students participated in the study with at least 88 students completing every "ethical question."[44] Given that at the time of the study there were over 900 LL.B. students, this sample represented approximately 10 per cent of the Osgoode LL.B. student population. At Saskatchewan, 70 students participated in the study with at least 56 students completing every ethical question. There were approximately 300 LL.B. students at the time, giving a sample that represented roughly 19 per cent of the Saskatchewan LL.B. population.[45]

Students at Osgoode were recruited via a faculty-wide e-mail delivered to all students then enrolled at the faculty. Students at Saskatchewan were recruited via a posting on an online electronic-notice board used by the faculty's administration to inform students of upcoming events. Due to the nature of the electronic-notice board, students were expected to regularly check for updates. Both the Osgoode e-mail and the Saskatchewan posting contained a brief message encouraging students to participate in the study and provided a hyperlink for them to directly access the questionnaire. The survey was hosted by an online survey site.[46] Two distinct surveys were used to keep the schools separate.[47]

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41 See online: <http://www.osgoode.yorku.ca/>.

42 See online: <http://www.usask.ca/law/>.

43 The students' internet protocol (IP) addresses, however, were obtained to ensure that no one repeated the survey.

44 See *infra* note 48 and surrounding text.

45 Both of these sample sizes are large enough that we can assume they represent the general ethical values of students at the two schools. Further, we are aware of no reason to presume there was any bias in the students who chose to complete the survey.

46 The survey site was SurveyMonkey.com, online: <http://www.surveymonkey.com/>.

47 Upon clicking on a hyperlink, students were directed to an introductory page which welcomed them to the survey and obtained their consent to participate (in-line with the protocol required by ethics approval that was sought and obtained for this research). The students were asked either to click a button stating "I consent" or one stating "I do not consent." After choosing to consent or not, students were allowed to view and answer the remaining questions. None of the questions were mandatory. The students could move forward and backward through the questionnaire as desired. However, once they finished the questionnaire they could not access it again. The survey took approximately fifteen minutes to complete. Once students submitted their data it was automatically recorded in a database by the online survey site.

The questionnaire asked what year the students were in and whether they were transfer students (and if so, from where). The questionnaire also asked for the students' age, gender, ethnicity, and economic class background. It then asked twenty-three questions to determine the students' ethical beliefs ("ethical questions").[48] The questions, which are set out in the Appendix to this article, were grouped according to the three categories of enquiry (identified above) as follows: (category one) questions regarding general ethical beliefs of the students themselves and their view of those in the legal profession; (category two) questions regarding the *Moral Agent—Zealous Advocate* continuum; and (category three) questions regarding the *Law as a Profession—Law as a Business* continuum. The surveys were identical for both universities except for two questions added to the end of the survey administered to the students at Saskatchewan. These questions asked the students to specify their current debt and debt expected upon graduation.

B. CONDENSED SCORES

Each student's answers to the twenty-three ethical questions were condensed into a set of three scores, each representing one of the three categories of enquiry. The condensed score for category one (General Ethics Questions) was a measure of the students' beliefs as to their own personal ethics and the perceived ethics of those in the legal profession. Students who scored low (towards 1) on this category were more likely to strongly agree that they were an ethical person and that legal professionals were generally ethical. In contrast, students who scored higher (towards 5) were more likely to view themselves and others in the profession as unethical.

The condensed score for category two (*Moral Agent—Zealous Advocate*) was a measure of where each student fell on the continuum. Students with low condensed scores were more likely to allow their personal moral beliefs to dictate who they would represent and how they would do so, whereas students with high scores believed that their role as lawyers was to be zealous advocates (see Fig. 1).

48 The ethics questions were in the form of statements that the students were asked either to agree with or disagree with on a 5-point Likert scale. The options given were 1 (strongly agree), 2, 3, 4, and 5 (strongly disagree). For example, if a student strongly agreed with a given statement, he or she would select 1 (strongly agree), etc.

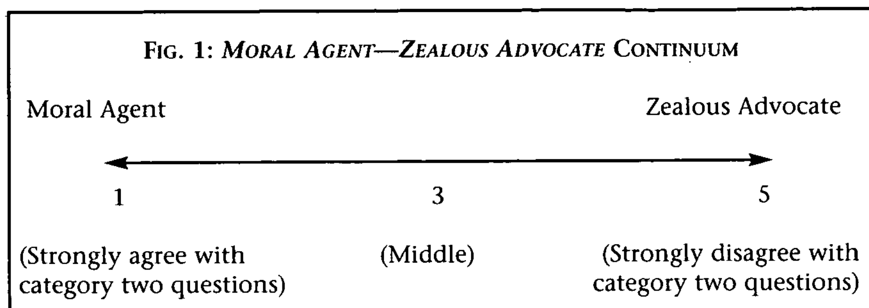

FIG. 1: *MORAL AGENT—ZEALOUS ADVOCATE* CONTINUUM

The condensed score for category three (*Law as a Profession—Law as a Business*) was also a measure of each student's place on the continuum. Students with low category three scores strongly agreed with the view of law as a business with pecuniary gain as its central goal; whereas students with high scores viewed law as a profession primarily focused on the public interest (see Fig. 2).

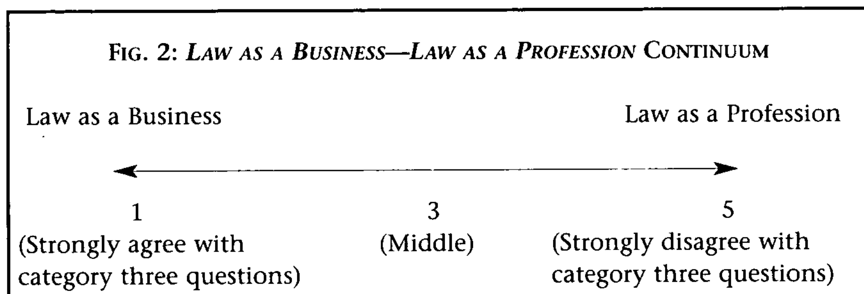

FIG. 2: *LAW AS A BUSINESS—LAW AS A PROFESSION* CONTINUUM

This method of condensing numerous related questions into three scores has two benefits. First, it allows for easier comparisons between ethical questions using dependent variables such as age, gender, school, year of degree, and so forth. Second, if significant results are found, condensed scoring on continuums tends to confirm that dividing categories into questions by which to examine multiple facets of the same factor or issue is heuristically useful for understanding law students' ethics.

As a final note on the survey, it is important to recognize that—*subsequent* to this survey—Osgoode dramatically revised its curriculum to include a mandatory first-year ethics course: "Ethical Lawyering in a Global Community."[49] It also added a mandatory pre-graduation public interest requirement.[50] These curriculum reforms, had they

49 See "Ethical Lawyering in a Global Community," online: Osgoode <http://osgoode.yorku.ca/QuickPlace/trevorfarrow/PageLibrary852573410062FAF0.nsf/h_Toc/92be13faec1b58390525670800167238/!OpenDocument>.

50 See "First Year Degree Requirements," Osgoode Public Interest Requirement Program, online: Osgoode <http://www.osgoode.yorku.ca/jd/first_year_requirements.html>.

been in place prior to our research, may well have impacted on the survey results. However, because the results and analysis of the survey have broad implications for other similarly-situated pre-curriculum reform law schools, we are of the view that Osgoode's curriculum reforms do not lessen the importance or usefulness of our findings.

V. ANALYSIS OF RESPONSES: COMPARISONS

The results of the students' responses to the twenty-three ethical questions, represented by the three condensed category scores, yielded some extremely interesting findings. The three category scores were compared on the following independent variables: gender, school, ethnicity, and year of study. The three categories were also correlated with age, socio-economic background, and debt load.[51] Investigation of each independent variable, except for socio-economic background and debt load, resulted in a statistically significant finding.

Table 1: T-Tests Comparing Independent Variables: Gender, School, Ethnicity and Year[52]

Variable	Comparison Groups	Category One	Category Two	Category Three
Sex	Male (51) Female (90)	M = 2.40, V = .40 M = 2.14, V = .17 P = .0045	M = 2.93, V = .24 M = 2.77, V = .16 P = .024	M = 3.29, V = .54 M = 3.72, V = .35 P = .00027
School	Osgoode (88) Sask. (56)	M = 2.33, V = .28 M = 2.08, V = .21 P = .0014	M = 2.75, V = .20 M = 2.95, V = .16 P = .0035	M = 3.46, V = .46 M = 3.74, V = .41 P = .0071
Ethnicity	Caucasian (31) Non-Caucasian (61)	M = 2.14, V = .25 M = 2.30, V = .16 P = .063	M = 2.76, V = .19 M = 2.81, V = .17 P = .32	M = 3.37, V = .47 M = 3.67, V = .39 P = .026
Year	1st Year (35) 3rd Year (62)	M = 2.35, V = .20 M = 2.22, V = .32 P = .10	M = 2.73, V = .22 M = 2.86, V = .19 P = .096	M = 3.55, V = .28 M = 3.49, V = .63 P = .32
Year (Osgoode only)	1st Year Osg. (18) 3rd Year Osg. (42)	M = 2.43, V = .28 M = 2.34, V = .31 P = .27	M = 2.59, V = .15 M = 2.80, V = .22 P = .039	M = 3.61, V = .30 M = 3.30, V = .65 P = .047
Year (Sask. only)	1st Year Sask. (17) 3rd Year Sask. (20)	M = 2.27, V = .10 M = 1.98, V = .27 P = .024	M = 2.89, V = .25 M = 2.99, V = .12 P = .25	M = 3.50, V = .27 M = 3.88, V = .39 P = .023

51 See Part VI, C, below.

52 This is a table of t-tests comparing the two groups in each row under the "Comparison Group" heading. "M" stands for mean and represents the mean of all scores for every question in the identified category. For example, in category one, the "M" (mean) for all the scores of the fifty males who answered the nine questions in that category is 2.40. This result indicates that, in general, men

A. GENDER COMPARISON

One of the main purposes of the study was to examine the potential effect that gender has upon the ethics of law students. The study found that women held significantly different ethical views from men in all three categories. Both women (2.14) and men (2.40) tended to agree with the statements in category one: they thought of both themselves and others in the legal profession as ethical. Statistically, however, women held this view more strongly than men. In category two, women (2.77) were more likely to strongly identify with the role of a moral agent, whereas men (2.93) also identified with that side of the continuum but to a significantly lesser extent. As for category three, although both men (3.29) and women (3.72) tended to view the law as a profession designed primarily to protect the public interest as opposed to a business for financial gain, women were significantly more likely to strongly hold that view.[53]

B. UNIVERSITY COMPARISON[54]

Another primary purpose of the study was to examine whether students at different law schools in different Canadian provinces held similar

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agreed with the statements in that category. The "V" represents the variance in the mean. Very generally, the higher the variance score, the wider the range of answers that made up the corresponding mean. The "P" score is the probability of the two means in a comparison group differing by chance. Where the "M" of the men in category one was 2.40, the "M" of the women in that category was 2.14. The "P" score of .0045 tells us that there is a 00.45% probability of this difference occurring by chance. The generally accepted threshold for stating that something is significantly different is $P < .05$. This means that if the probability of a difference occurring by chance is less than 5%, then we are confident in stating that the means are statistically different and there is a real difference between the scores. In this case, $P = .0045$. Therefore, we are confident in stating that women tend to agree more strongly with the statements in category one than men. The "P" scores bolded in the above table indicate that the accompanying "M" scores are statistically different at the .05 level.

53 For useful background discussions of gender issues and the legal profession, see e.g. Constance Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives" (Paper presented to the Chief Justice of Ontario's Advisory Committee on Professionalism, First Colloquium on the Legal Profession, 20 October 2003) [unpublished] at 2, online: Law Society of Upper Canada <http://www.lsuc.on.ca/media/constance_backhouse_gender_and_race.pdf>; Ulrike Schultz & Gisela Shaw, eds., *Women in the World's Legal Professions* (Portland: Hart, 2003); Joan Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* (Vancouver: University of British Columbia Press, 2001); Sheila McIntyre & Elizabeth Sheehy, eds., *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006). See also Report of the Canadian Bar Association [CBA] Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: CBA, 1993).

54 Recall that the Osgoode survey was conducted prior to Osgoode's significant ethics curriculum reform. See *supra* notes 49-50 and accompanying text.

ethical beliefs. The results indicate that students at different law schools may hold different ethical beliefs. Students at Osgoode differed in every category from students at Saskatchewan.[55] Students at Saskatchewan (2.08) were significantly more likely than students at Osgoode (2.33) to view both themselves and those in the legal profession as ethical. That is not to say students at Osgoode thought of themselves and those in the profession as unethical (as would be indicated by a score over 3.00). Rather, it is simply to point out the significant difference in the perception of ethics between the two schools. The students at Osgoode (2.75) were more likely to identify with the moral agent end of the category two continuum, even though the students at Saskatchewan (2.95) were also on this side of the continuum. In category three, the students at Saskatchewan (3.74) were significantly more likely than the students at Osgoode (3.46) to believe that law is a profession for the good of society (although the students at Osgoode also tended to view the law in this light).

C. ETHNICITY COMPARISON

Our research revealed several findings on ethnicity. The study allowed for a comparison between individuals who self-identified as White/Causasian/Anglo-Saxon and those who self-identified as "other."[56] When comparing scores for category one, it appears that students who self-identified as Caucasian (2.14) were more likely than those who self-identified as non-Caucasian (2.30) to view themselves and others in the legal profession as ethical. However, this effect was only significant at the marginal level (P = .063) rather than at the .05 level. Although there were no significant differences in the group responses to category two, there were significant differences in the responses to category three. Students who self-identified as Caucasian (3.37) were significantly less likely than those who self-identified as non-Caucasian to embrace the *Law as a Profession* end of the continuum (3.67). It should be noted, however, that the vast majority of individuals who self-identified as non-Caucasian attended Osgoode, while the majority of respondents at Saskatchewan self-identified as Caucasian. Given that the differential answers between Caucasian/non-Caucasian groups were so similar to the differential answers between Saskatchewan/Osgoode students, it is very likely

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55 The average year of the Saskatchewan respondents was 2.06, while the average year of Osgoode respondents was 2.3. Therefore, the respondents at Osgoode tended to be slightly more advanced in their law school careers.

56 The range of ethnicities reported in the "other" group included: Asian, Black, Chilean, East Indian, Greek, Egyptian, Jewish, Korean, Métis, Mixed, Native, Pakistani, Russian, Ukrainian, Minority, and West Indian.

that the difference between ethnicities was simply a manifestation of the difference between schools. As such, we are very hesitant to attach much significance, if any, to the ethnicity of an individual in relation to his or her ethical values.[57]

D. FIRST YEAR/THIRD YEAR COMPARISON

As expected, the comparison between first year and third year students yielded some extremely interesting results. Third year students (2.22) were significantly more likely than first year students (2.35) to agree strongly that both themselves and the people they knew in the legal profession were highly ethical. Furthermore, first years (2.73) were marginally more likely (P = .096) to adhere to the moral agent end of the continuum than third years (2.86) who, although still on the moral agent side of the continuum, had moved closer to the zealous advocate position. The final finding is perhaps the most interesting. On an overall comparison by years it does not appear that law school significantly changed first years' (3.55) place on the business/profession continuum on their journey to third year (3.49). However, this apparent lack of change is only part of the story. While first years (3.50) at Saskatchewan had learned to embrace the professional side of law by the time they were in third year (3.88), students at Osgoode had apparently been socialized in the opposite direction. First years (3.61) at Osgoode had learned to place less value on the professional side of law and had become more concerned about money by the time they reached third year (3.30) (although they were still slightly on the professional side of the continuum). This result is even more interesting when one considers that Osgoode students (3.61) appeared to be entering law school with greater concern for the professional side of law than Saskatchewan students (3.50).[58]

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[57] For useful background discussions on the issues of ethnicity, diversity and equality in the legal profession, see e.g. Hutchinson, "Legal Ethics for a Fragmented Society", *supra* note 38 at 187; Hutchinson, *Legal Ethics and Professional Responsibility, supra* note 14 at c. 3.; Harry W. Arthurs, Richard Weisman & Frederick H. Zemans, "Canadian Lawyers: A Peculiar Professionalism" in Richard L. Abel & Philip S.C. Lewis, eds., *Lawyers in Society: The Common Law World*, vol. 1 (Berkeley: University of California Press, 1988) at 123; David A.A. Stager & Harry W. Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990) at 321; Geoffrey C. Hazard, Jr. & Deborah L. Rhode, *The Legal Profession: Responsibility and Regulation*, 3d ed. (Westbury: Foundation Press, 1994) at c. 3; David B. Wilkins, "Identities and Roles: Race, Recognition, and Professional Responsibility" (1998) 57 Md. L. Rev. 1502. See also Rosemary Cairns Way, "Reconceptualizing Professional Responsibility: Incorporating Equality" (2002) 25 Dal. L.J. 27.

[58] This last distinction is not statistically significant (P = .30), possibly because the sample sizes are too small.

VI. ANALYSIS OF RESPONSES: CORRELATIONS

The t-test comparisons in the preceding sections are appropriate for comparing two different groups and a given independent variable. However, t-tests are not appropriate for independent variables with a range of possible answers. For these types of variables, correlative statistical tests are better. In this study, three independent variables were suitable for correlative analysis: age, socio-economic status, and debt load. The following table shows the correlation between each of these variables and the three category scores for each student as well as correlations between the three category scores themselves.

Table 2: Correlations[59]

Variable	Category One	Category Two	Category Three
Age (n = 141, P(.05) > .18)	**R = -.21**	**R = .24**	R = .069
Socio-Economic Background (n = 136, P(.05) > .18)	R = -.069	R = -.074	R = .033
Current Debt Load (Sask. students only) (n = 51, P(.05) > .27)	R = -.13	R = .093	R = .25
Expected Graduating Debt Load (Sask.) (n = 51, P (.05) > .27)	R = -.091	R = .095	R = .21
Category One (n = 144, P (.05) > .18)	N/A	R = -.012	**R = -.49**
Category Two (n = 144, P (.05) > .18)	N/A	N/A	R = -.077

59 Correlations are interpreted in somewhat the same manner as t-tests. We were again looking for correlations that were statistically significant at the .05 level (that is, less than a 5% chance of happening by chance). This means that the observed correlation "R" is actually describing a real correlation between the two variables. Significance levels are dependent upon the number of matched pairs in a given correlation. For example, the correlation between the age of the respondents and their category one responses is R = -.21. Because there were 141 matched pairs (n = 141 is the number of pairs in the correlation), we were able to detect a significant correlation. Thus, even though R = -.21 is a relatively mild correlation, we are able to say that the two variables are statistically related. In contrast, the smaller sample size for students answering the Expected Graduating Debt Load question (n = 51) means that a correlation in that case cannot be conclusively said to be statistically significant even though R = .21 when it is correlated with category three (although it is close). The bolded correlations in the table indicate that the correlations are significant at the .05 level or better.

A. CORRELATION WITH AGE

When every participant's self-reported age is correlated with his or her scores in the three categories, two significant relationships are discovered. Age negatively correlates with category one: individuals who are older tend to score lower in that category. This indicates that older individuals tend to view both themselves and others in the legal profession as more ethical than do younger individuals. Age also positively correlates with category two: older individuals score higher in category two than do younger individuals. This indicates that older individuals seem to endorse the zealous advocate model of client representation more so than younger individuals.

These findings should be interpreted in light of the fact that older students are more likely than younger students to be in the upper years of law school. Given that the study revealed that third year students are more likely than first year students to embrace the zealous advocate model, this comparison would explain the correlation between age and category two. It may also explain the correlation between age and category one: upper year students are more likely to have encountered many practising lawyers whom they view as ethical, and are more likely to have thought about (or taken a course in) legal ethics, and thereby rank themselves as more ethical.

B. CORRELATION WITH SOCIO-ECONOMIC STATUS

The study did not reveal any correlation between parental socio-economic status and the students' answers to any of the questions.

C. CORRELATION WITH DEBT LOAD

Of the six correlations performed on the Saskatchewan students who answered this question, none turned out to be significant at the .05 level. However, two correlations were marginally significant and can be interpreted to mean that there likely is a real correlation between the variables. These correlations were the mild correlations between current debt load expected and graduating debt load and category three answers. These correlations indicate that those students who self-identified as having or expecting to have higher debt loads were slightly more likely to view the law as a profession to help society rather than as a business to make money. These findings are, on their face, counterintuitive in that one might expect those students who have higher debt loads to be more focused on the business aspects of law. However, the data does not support that interpretation. It appears that students with the greatest debt load may be the ones who are least concerned with the money-making aspects of law.

D. CORRELATIONS BETWEEN THE THREE CATEGORIES OF INQUIRY

When the scores from the three categories are correlated with each other, the only significant correlation is between category one and category three. The moderately strong negative correlation between category one and three indicates that individuals who score lower on category one questions score higher on category three questions. This means that those individuals who believe that they themselves and others in the profession are more ethical are more likely to view the law as a profession for helping society, while those individuals who view themselves and others as less ethical are more likely to view the law as a business to make money. Thus, it appears that those students who are in law to make money are less likely to view themselves or others in law as being ethical.

It is interesting to note that there was no such correlation between ethical levels and the perception of a lawyer's role in allowing for personal ethics. This means that both individuals who thought that lawyers should be zealous advocates and individuals who thought that lawyers could be moral agents scored similarly on views of their own ethicality and others in the profession. This finding seems to imply that there may be no inherent superiority of ethics in those who subscribe to either end of the continuum; both ends allow for individuals to view their actions as highly ethical.[60] It is also interesting to note that there was no correlation between the two continuums. It does not appear that an individual's belief as to the role of a lawyer being a zealous advocate or a moral agent is related to the individual's perception of the law as a business or the law as a profession.

VII. DISCUSSION

This study on the ethical beliefs of law students at Osgoode and Saskatchewan yielded a number of statistically significant results. It confirmed that there are gender, age and (potentially) ethnicity differences in law students' ethical beliefs. It has shown that socio-economic background appears to play no role in those beliefs and that debt load influences ethics to some extent. Perhaps more importantly, it has shown that law schools socialize law students into adopting ethical beliefs over the course of their three years of study that are different from those held at the beginning of law school. Furthermore, these changes in ethics can be different depending on the school a student attends. Although some of these findings have been documented elsewhere,[61] this is the first study of which we are

60 See Farrow, "Sustainable Professionalism," *supra* note 2 at 63-83.

61 See Part II, B, above.

aware that empirically establishes the ethical socialization effects of Canadian law schools.[62] Set out below is a brief discussion of these various findings.

A. LAW SCHOOL SOCIALIZATION

As discussed above,[63] the academic debate surrounding the effects of law school socialization has been inconclusive. Some, such as Freedman,[64] suggest that law schools play little role in turning people away from a career in social justice. Others, including Dodek[65] and Buckingham,[66] believe that law schools have traditionally turned people toward the business side of law. The empirical data on this point has also to date been inconclusive.[67] Rathjen's study,[68] for example, found a decrease in students' interests in social justice work, as did the study of Erlanger and Klegon,[69] while others, such as Willging and Dunn,[70] found that neither law school nor courses in legal ethics produced a change in law student morality.

Our study has strengthened the position of those who argue that law school exercises a powerful socializing effect. For example, as is discussed immediately below, we observed that law schools can influence a student's view of his or her own moral agency in the context of the lawyering role. Further, it appears that law schools can also affect law students' perceptions concerning the fundamental purpose of practising law.

B. MORAL AGENCY SOCIALIZATION

By and large, lay people do not have a sophisticated understanding of the requirements of zealous advocacy in an adversary system. It is common in literature, movies and the mass media to hear criticisms leveled at lawyers for too zealous a representation of clients. As has been discussed elsewhere:

> We...see the realities of legal practice playing themselves out in the ways that lawyers are portrayed in literature, film, popular culture, and the media. From before Shakespeare to after Shaw, lawyers continue to be viewed in literature

62 See also NSSE, *supra* note 31.
63 See Part II, A, above.
64 See e.g. *supra* note 15.
65 See e.g. *supra* note 12.
66 See e.g. *supra* note 13.
67 See Part II, B, above.
68 See *supra* note 24 and accompanying text.
69 See *supra* note 25.
70 See *supra* note 29.

> primarily through the lens of amorality and by the choices and actions that result from that amoral viewpoint... Representations of lawyers in movies and other popular culture venues continue this tendency. For example, for fans of *Law & Order*, there is no doubt that Jack McCoy's views that "justice is a by-product of winning" and that "sometimes you have to make deals with the devil" separate the attorney's personal morals from the client's causes. The media also regularly highlight the ethical challenges of lawyers as well as normalize or romanticize the role of the zealous advocate. Either way, the dominant message is delivered and perpetuated both inside and outside of the profession.[71]

What counts as a "just" representation of a client may, therefore, not be the same for the public as for someone knowledgeable on the ins and outs of professional practice as sanctioned by codes of conduct.[72] As such, it is not surprising that students in their first year of law school, who have little more knowledge than lay people, would have a view of the role of the lawyer that downplays the necessity of zealous advocacy in favour of the belief that the lawyer should only perform those actions that are "just." However, because the zealous advocacy role continues to be the dominant model of lawyering,[73] it is also not surprising that law schools socialize students into being more accepting of its place in client representation. This is also potentially the case in situations where legal ethics courses are taught, if at all, by practising lawyers.

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71 Farrow, "Sustainable Professionalism," *supra* note 2 at 68-69. See generally Richard A. Posner, *Law and Literature*, rev. ed. (Cambridge, MA: Harvard University Press, 1998); Irving Browne, *Law and Lawyers in Literature* (Littleton, CO: Fred B. Rothman, 1982); John Marshall Gest, *The Lawyer in Literature* (Boston: Boston Book Company, 1913). For a useful Canadian collection of papers and discussions on the topic of law and literature, see The Honourable Mr. Justice James M. Farley, "Law, Lawyers and Judges in Literature" (The Chief Justice of Ontario's Advisory Committee on Professionalism, Sixth Colloquium on the Legal Profession: Law and Lawyers in Literature and Film, 10 March 2006), Law Society of Upper Canada, online: <http://www.lsuc.on.ca/latest-news/a/hottopics/committee-on-professionalism/papers-from-past-colloquia/>. See further Paul Bergman, "The Movie Lawyers' Guide to Redemptive Legal Practice" in Susan D. Carle, ed., *Lawyers' Ethics and the Pursuit of Social Justice* (New York: New York University Press, 2005) at 309.

72 See e.g. American Bar Association, *Model Rules of Professional Conduct* (adopted 1983, as amended) at Preamble and Scope, para. 2; Canadian Bar Association, *Code of Professional Conduct* (adopted August 2004 and February 2006), c. IX.

73 See e.g. Farrow, "Sustainable Professionalism," *supra* note 2 at 63-64.

This study has empirically shown that ethical socialization of law students at law school does happen. While the law students in this study entered law school leaning moderately toward the belief that they will practise law based on their own personal ethics, they ended their law school career having been moved more toward the zealous advocacy side of the continuum. Still, this effect should not be overstated. The data suggest that third year students are almost exactly in the middle of the *Moral Agent—Zealous Advocate* continuum.[74] It would be intriguing to conduct a study of practising lawyers to determine whether the exigencies of practice further promote the adoption of the role of the zealous advocate. It is entirely possible that this would be the case and that practising lawyers would fall more heavily on the zealous advocate side of the continuum (and farther away from their first year of law school starting point).[75] In sum, this study indicates that both Saskatchewan and Osgoode socialize their students into a greater acceptance of the role of the lawyer as a zealous advocate (although in both cases students ended up almost exactly in the middle of the continuum).[76]

C. BUSINESS/PROFESSION

Where Saskatchwan and Osgoode showed nearly identical socialization patterns on the *Moral Agent—Zealous Advocate* continuum, the two schools showed different socialization patterns on the *Law as a Business—Law as a Profession* continuum. Osgoode students in the study tended to become more concerned with the business aspects of law (although on the whole they remained on the professional side of the continuum); Saskatchewan students became increasingly attached to the view of law as a profession. The fact that Saskatchewan respondents did not move toward the business end of the continuum in the study is difficult to reconcile with the literature reviewed in the first part of this paper on this point.[77] It was originally expected that Saskatchewan students may not become as concerned

74 Students at Osgoode also exhibited slightly more affinity for the moral agent role of a lawyer than did students at Saskatchewan.

75 Significant personal anecdotal evidence—from practice experience and also from teaching practising lawyers in the context of graduate courses and continuing education programs—supports this supposition. However, we do not have empirical data to support it.

76 Recall also that the specific data regarding Osgoode students might have been different had the survey been conducted after Osgoode's ethics curriculum reforms. One of the specific goals of the "Ethical Lawyering in a Global Community" course is to introduce students to a range of credible lawyering models. See "Ethical Lawyering in a Global Community" course, *supra* note 49.

77 See Part II, A, above.

as Osgoode students with the business aspects of law simply because, at least based on the difference between the basic tuition fees alone between the two schools,[78] they likely do not typically have as high a debt load as Osgoode students do (at least accumulating from their law school years).

However, this explanation is not overly persuasive given the mild correlation between debt load and category three questions.[79] What it does indicate, however, is that region and faculty difference seem to be significant factors when it comes to thinking about ethicality and law school socialization. Several other factors could also account for this finding: expected location and type of work upon graduation; the kind of culture of ethicality maintained by a given school; the kind of students that are drawn to a given faculty; curriculum choices; and so forth.[80]

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78 As a general matter, we recognize our approach to this issue is based on anecdotal evidence as supported by very rough estimates, assumptions, and calculations. The reported tuition fee for Osgoode for the 2008 academic year was approximately $15,000 with an extra fee of approximately $800. See "Future Students, Applying: Fees," online: Osgoode <http://www.osgoode.yorku.ca/jd/applying_fees.html>. Estimates for further expenses for Osgoode students for the academic year in Toronto range from $8,000-$11,000 (for books, meals, accommodation, etc.). See Official Guide to Canadian Law Schools, "Osgoode Hall Law School, York University: Expenses and Financial Aid," online: Law School Admission Council <http://www.lsac.org/canadiancfc/template2.asp?url=Schools/York.htm>. By comparison, the reported tuition fee for Saskatchewan for the 2008 academic year was approximately $6,800 with an extra fee of approximately $650. See "Prospective Students, LL.B. Program Information, FAQs for LL.B. Students: What does it cost to attend the College of Law...," online: <http://www.usask.ca/law/prospective_students/program_information/faqs_llb_students.php#seventeen>. It is estimated that books cost an additional $2,200. Living expenses would be in addition to those amounts.

79 That part of the study found that Saskatchewan students with higher debt loads were more likely than students with lower debt loads to identify with the perception of law as profession. This finding does not mesh with the assumption that, since Osgoode students have higher debt loads, they were more concerned about the business aspects of law. Of course, this one particular correlation could be anomalous and so this aspect of why the two schools socialize differently cannot be definitively answered here.

80 These results potentially have important implications for the academic literature on the deprofessionalization of law (for example, see *supra* note 8 and accompanying text). The findings of this study challenge some of these earlier assumptions. For example, Saskatchewan is able to develop an appreciation for the honourable profession of law in its student body, while simultaneously downplaying the role that money has in the practice. Many of the Canadian scholars on the deprofessionalization of law argue that it is the presence on campus of "Big Law" (major law firms, etc.) that is having a negative effect on this aspect of the profession. They argue, for example, that it is the large firms' emphasis on high billable hours that is forcing students and young lawyers to forego the view that law is a profession and instead adopt the view that it has become more of a commercial venture (see *supra* note 8 and accompanying text). In a sense, the results of this study support this interpretation. From personal experience at both

D. GENDER, AGE, ETHNICITY, AND SOCIO-ECONOMIC STATUS

A number of authors have previously shown that gender plays a large role in the ethical values of legal professionals and law students. Jack and Jack[81] and White and Manolis[82] found that women tend to identify with the moral agent view of legal representation, while men tend to identify with the zealous advocate view. This study is consistent with those previous findings. It is apparent that women are more likely than men to rely on their personal moral judgment of a client and cause of action when deciding who to represent and how to do so. The study also, for the first time in Canada, found that women are less concerned than their male counterparts with the pecuniary aspects of legal practice and are more concerned with using the law to benefit society. These findings may be of use in the many ongoing discussions regarding gender roles and equality in the legal profession and legal education.

Unlike gender, this study did not provide overly meaningful data relating to the factors of age, ethnicity or socio-economic status. The effect of age has previously been studied. Long[83] found that age had no effect on the moral reasoning of legal professionals. In contrast, this study found that age influenced the ethics of law students. However, we are very hesitant to ascribe much importance to this

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of these institutions, it is clear that the presence of large firm advertising in these schools is markedly different. From on-campus interviews to law firm logos on all sorts of paraphernalia (pens, binders, memory sticks, etc.), students at Osgoode have traditionally been exposed to a significant level to a large firm presence (although efforts are being made to curb this influence in favour of a balanced exposure to all aspects of law). This presence also, consciously or subconsciously, often leads to a perceived hierarchy of post-law school jobs, with employment at big firms being seen to be more prestigious than other non-large firm jobs. In contrast, the lack of large firm advertising at Saskatchewan is noticeable (Joshua Henderson spent the Winter 2007 term at Saskatchewan as a third year student). Students are much less frequently invited to events hosted by law firms, given lighted pens or post-it notes emblazoned with a firm's name, or surrounded by other students who are constantly discussing their plans of getting into large firms. The difference in the presence of large law firms at the two schools is potentially one significant factor why the Osgoode respondents tended to identify as more concerned about the business aspects of law, while students at Saskatchewan were more concerned about using the law to improve society. If this conjecture is true, then it carries certain implications for career service offices at law schools. Of course, it must be noted that the foregoing discussion is all conjecture: it was not empirically tested in this study. The only finding established in this study was that there were statistically significant differences between the two schools with respect to the students' views about the purpose of the profession.

81 See *supra* note 18.

82 See *supra* note 20.

83 See *supra* note 21.

finding, given that this effect is likely because third year students are older than first year students and, therefore, is caused not so much by age as the socialization impact of the move from the first to third year of law school. The question of age as a factor in ethical development is clearly a good candidate for future research.

Similarly, ethnicity was found to play a potential role in ethical values. Again, however, we do not ascribe much weight to this finding. Because the majority of students at Saskatchewan self-identified as Caucasian, and the majority of students at Osgoode self-identified as non-Caucasian, the socialization role of the schools is likely a confounding variable that precludes any meaningful interpretation of the ethnicity findings of this study. Again, more research is needed on this factor.

Finally, it is interesting to note that there did not appear to be any relationship between students' parental socio-economic status and ethical beliefs. Without this knowledge, two plausible hypotheses would be that students from a low socio-economic background would be more likely to enter law so as to aid other disadvantaged individuals in society or, conversely, such individuals might be expected to enter law so as to make money to improve their own socio-economic status. Neither effect was observed, however, and it does not appear that parental wealth affects the ethics of law students.

E. LEGAL EDUCATION

Probably the most significant implication of this study is in the areas of legal education and curriculum reform. The question of whether law schools should teach ethics was recently asked by Lorne Sossin.[84]

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[84] Lorne Sossin, "Can ethics be taught?" *The Lawyers Weekly* 26:45 (6 April 2007) 5. See also "Can Legal Ethics Be Taught" (Conference at the Centre for Professionalism, Ethics and Public Service [now the Centre for the Legal Profession], University of Toronto, Faculty of Law, 4 April 2008), online: University of Toronto <http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/5/0/0/0&contentId=1744>. In his article, Sossin identified four methods through which law schools can teach ethics: the "integrated method, where there is no one course on legal ethics but legal ethics pervades the curriculum"; the clinical method, where students learn ethics through interactions with real clients; by offering a course which combines legal ethics and another subject, such as teaching ethics in civil litigation or legal research and writing; or by offering a course entirely dedicated to legal ethics (either mandatory or not). There is of course a fifth option, and that is not to teach ethics at all in law schools and leave it up to the Bar admission course. (For a recent decision of the Benchers of the Law Society of Upper Canada regarding the Society's role in future professional responsibility training, see "Convocation confirms articling requirement and enhances licensing process," online: Law Society of Upper Canada <http://www.lsuc.on.ca/media/articling_requirements_licensing_process_en.pdf>.) At the time of this study, the schools on which this research is based generally followed the fourth option by offering non-mandatory courses in legal ethics or professional responsibility, as supported—in some cases—by ethical

In our view, the results of this study show quite clearly that law students are, in fact, learning ethics at law school because their ethical values are changing during law school. But, are the changes that students are experiencing the ones that law schools want to be instilling? As earlier noted, Duncan Kennedy believes that law professors implicitly mould students after their own beliefs.[85] In an article on the socialization of students he states:

> As for any form of work outside the established system—for example, legal services for the poor, and neighborhood law practice—teachers convey to students that, although morally exalted, the work is hopelessly dull and unchallenging and the possibilities of reaching a standard of living appropriate to a lawyer are slim or nonexistent.[86]

Although the words were written twenty-seven years ago, they often (unfortunately) still ring true today. There is often still a bias around the halls of law schools against small firm or social justice work or, at the very least, a belief that it is not as challenging or prestigious as big firm work. This bias is then passed on to students as a derogation of work that is done at lower cost or for the benefit of marginalized sectors of society. Students implicitly understand that the legal profession respects those areas of law; however, at the end of the day it is the large firm experience that is seen as the "Cadillac" of legal practice.

The finding that students are ethically socialized at law school confirms the need for faculties to take seriously the need for curriculum reform that includes a robust treatment of legal ethics and professionalism (ideally at all levels of law school). Happily, a number of faculties in Canada are making positive steps on this front. For starters, students themselves are now "hoping not to be asked to make a 'pact with the Devil' as the cost of becoming a lawyer, and are instead looking to find areas in the law that fit with their personal, political, and economic preferences."[87] Further, legal academics are increasingly teaching and writing about progressive ways to view the

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discussions both in clinical settings as well as in other, substantive, courses (for example, civil procedure). As has been discussed above, Osgoode's program changed considerably after this survey was conducted.

85 See *supra* note 14 and accompanying text.

86 Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy" (1982) 32 J. Legal Educ. 591 at 601.

87 Farrow, "Sustainable Professionalism," *supra* note 2 at 53. See also Sophie Bryan, "Personally Professional: A Law Student in Search of an Advocacy Model" (2000) 35 Harv. C.R.-C.L.L. Rev. 277; Marilyn Poitras, "Through My Eyes: Lessons on Life in Law School" (2005) 17 C.J.W.L. 41; Elkins, "Thinking Like a Lawyer," *supra* note 2.

lawyering process.[88] And, generally, law faculties are starting to actively reform "their programs and [are] creating centres and initiatives designed to make space for innovative ethics offerings and public interest programs."[89] The findings of this study confirm the need for these initiatives. The issue is clearly not whether law schools can have an ethical impact on the development of their students. That, to us, has been established. How law schools will choose to impact their students is another question: one that needs urgently to be taken up directly by faculties and curriculum reform committees.

VIII. CONCLUSION

The empirical study of 176 law students underlying this research confirmed the first jump of the *Bramble Bush*.[90] Students' ethical beliefs generally changed after entering law school toward a sensibility of "thinking like a lawyer."[91] This shift is not surprising, particularly given the tendency of law schools—as part of their traditional rites of passage—to encourage this kind of ethical sensibility and professional mode of thinking. What this study provides is some much-needed empirical data on which to start to build a clearer picture of the types of changes involved in this shift in ethical thinking that law schools induce in their students, and to provide some possible explanations for why these changes occur.

As mentioned at the outset of the article, the primary purpose for conducting this empirical study is to assist in the overall understanding of the ethical development of law students with a view to assisting law school faculties with their thinking about the teaching of ethics and professionalism specifically, as well as the reform of law school curriculums more generally. And while the point of this pedagogical exercise is not ultimately to force students either to "scratch out" or "in" their eyes,[92] we do hope that law schools will

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88 Farrow, "Sustainable Professionalism," *ibid.* at 53. For a very useful discussion of trends in Canadian academic scholarship in the area of legal ethics and professionalism, see Dodek, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last," *supra* note 12.

89 *Ibid.* at 53-54. See e.g. Osgoode, "Ethical Lawyering in a Global Community" course, *supra* note 49; Osgoode Public Interest Requirement Program, First Year Degree Requirements, *supra* note 50. See also Harvard Law School, Program on the Legal Profession, online: Harvard University <http://www.law.harvard.edu/programs/plp/>; University of Toronto, Faculty of Law, Centre for the Legal Profession, online: University of Toronto <http://www.law.utoronto.ca/faculty_content.asp?itemPath=1/9/12/0/0&contentId=1602&cType=webpages>.

90 *Supra* note 1 and accompanying text.

91 *Supra* note 2 and accompanying text.

92 *Supra* note 1.

take seriously their impact on their students' ethical development and make active choices about the kinds of professionals they are developing.

IX. APPENDIX

CATEGORY ONE: GENERAL ETHICS
Question 9 - I often think about the ethical aspects of the cases I read.
Question 12 - The unethical reputation of lawyers in society is well deserved. (Reverse Scored)[93]
Question 13 - I believe practising lawyers in general are ethical.
Question 16 - I adhere to societal morals.
Question 19 - I believe the people I know in the legal profession are unethical (peers, professors, and lawyers). (Reverse Scored)
Question 20 - Legal ethics should be a mandatory course for all law students in Canada.
Question 21 - I am comfortable with my understanding of the ethical requirements of the practice of law.
Question 26 - I am an ethical person.
Question 30 - I am familiar with the ethical guidelines of the Canadian Bar Association and Law Society of Upper Canada (Note: for the U of S, "Law Society of Upper Canada" was replaced with "SBA" meaning Saskatchewan Bar Association)

93 To obtain the generalized category score, some questions were reverse scored for the purpose of data processing. For example, category 1 generally poses the questions such that a very ethical person would normally strongly agree with most statements. However, in question 12, a very ethical person would strongly disagree with the statement. Therefore, scores for that question were reversed such that ethical people who entered 5 (strongly disagree) had their answer reversed to 1 (strongly agree). In effect, their scores were taken to mean that they strongly agreed with the opposite of the statement. This procedure was used for all of the questions that went against the general trend of all three categories (which is what "reverse scored" indicates).

CATEGORY TWO: *MORAL AGENT—ZEALOUS ADVOCATE*

Question 10 - I would turn down a client or refuse to argue an issue based on my personal moral beliefs.

Question 15 - I can practise law ethically while still following my personal morals.

Question 17 - I feel the role of the lawyer is solely to provide the best service to the client possible within the bounds of law. (Reverse Scored)

Question 18 - I would feel comfortable representing a tobacco company who is being sued for lying about the addictive properties of cigarettes. (Reverse Scored)

Question 22 - It is best for society at large if lawyers base decisions on who to represent upon their personal morals.

Question 23 - Every person is entitled to have a lawyer represent them in court, []regardless[94] of cause of action or financial capacity. (Reverse Scored)

Question 25 - I would not feel comfortable representing a father who I know sexually molested his child.

Question 28 - A lawyer must be able to put aside their personal beliefs to argue a client's case of which they do not approve.

Question 31 - Scenario 1 - A lawyer files a medical malpractice suit on behalf of a client. Based on the suit the doctor's lawyers offer to settle. Before the settlement is accepted, the client is definitively informed that they were not actually injured by a third party. The client informs their lawyer of this yet nevertheless instructs their lawyer to accept the settlement on the basis that it is the responsibility of the opposing party to discover any weaknesses in their suit. The lawyer accepts the settlement on behalf of their client. Was the lawyer's acceptance ethical? (Reverse Scored)[95]

CATEGORY THREE: *LAW AS A PROFESSION—LAW AS A BUSINESS*

Question 11 - I entered law school because it is a good way to achieve financial security.

Question 14 - Law is a business with pecuniary gain as its central goal.

Question 24 - Law is a profession to serve the good of society. (Reverse Scored)

Question 27 - Law school will provide me with the ability to change society for the better. (Reverse Scored)

Question 29 - My main consideration when seeking employment is remuneration.

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94 In the surveys, "irregardless" was mistakenly used in place of the word "regardless." Although some students pointed out the mistake, we have assumed that it had no effect on the students' answers.

95 This question was adapted directly from a scenario described by Allan Hutchinson. See Hutchinson, *Legal Ethics and Professional Responsibility*, *supra* note 14 at 25 ("problem 1").