METAPHORS OF LAWYERS' PROFESSIONALISM

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This article examines three common metaphors in several professional codes of legal conduct and supporting documents. The metaphors are the "metaphoric networks" based on the military, gentility and Christianity. Numerous examples of all three metaphoric networks are given.

Metaphors are non-arbitrary. The three metaphoric networks examined here are consistent with one of the most common orientation metaphors in the English language, the metaphor expressing relationships in bodily terms of "up" and "down."

These metaphoric networks evoke a hierarchy of society based on a strictly male, ethnocentric British-Canadian world. The lawyer reading the codes of conduct that contain these metaphors would see the image of the lawyer created according to the lawyer's own inclusion within or exclusion from that ideal. Also, this social elitism may contribute to the public's lack of respect for the legal profession.

L'auteure examine trois métaphores courantes utilisées dans plusieurs codes de conduite professionnelle et documents connexes. Ces métaphores sont les «réseaux métaphoriques» enracinés dans le secteur militaire, la haute bourgeoisie et le christianisme. Les exemples abondent dans les trois catégories de métaphores.

Les métaphores sont non arbitraires. Les trois réseaux de métaphores examinés ici suivent la tendance de la métaphore d'orientation la plus courante en anglais : celle qui exprime la notion physique de supériorité [up] et d'infériorité [down].

Ces réseaux métaphoriques évoquent une hiérarchie sociale enracinée dans un monde éthnocentrique britanno-canadien strictement masculin. Les membres du barreau qui parcourent ces codes de conduite riches en métaphores y verraient une image de l'avocat idéal qui l'inclut ou l'exclut. Cet élitisme social pourrait contribuer au manque de respect que la profession juridique inspire au grand public.

TABLE OF CONTENTS

I. INTRODUCTION

This article explores some of the most common metaphors of lawyers' professionalism. My analysis focuses on twentieth century North American codes of conduct, produced between 1908 and 1992, and, to a lesser extent, on the words of

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those who produced those texts. Predominant metaphoric networks in all of these codes are clustered around the concepts of the military, Christianity and gentility.[1]

The codes of conduct, as these metaphoric networks illustrate, embody the particular values of a particular culture at a particular time. The values, culture and time are those of the nineteenth century Christian gentleman, comfortable with his place in the social ordering and the hierarchy of the institutions of the established church and the military. Whether they were appropriate to the legal profession shortly after the turn of this century when these codes of conduct were first promulgated may be debatable; at that time the images were certainly commonplace enough in larger Canadian society.[2] Whether they are still appropriate to a legal profession soon facing the turn of another century is not debatable. The old ideal that lawyers should be gentlemen (and not businessmen), ministers, and officers continues unexamined in the metaphoric networks of even the most recent codes of conduct, with potentially harmful consequences.

I examine the codes of conduct produced by the American Bar Association in 1908, 1969 and 1983,[3] those promulgated by the Canadian Bar Association in 1920, 1974, and 1987,[4] and a recent code of conduct ratified by the Law Society of Alberta.[5] The

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1 The most common metaphors, not dealt with in this article, are those clustered around the idea that "seeing is knowing." Directives which tell lawyers expressing their *views* to give open and *undisguised* advice that *clearly discloses* what the lawyer honestly thinks, to speak out if they *see* an injustice when they *observe* the workings and *discover* the strengths and weaknesses of laws and legal institutions, to do nothing that *reflects* adversely on the profession, to *recognize* the limits of their competence, and to *reveal* potential conflicts of interest are illustrations of this metaphoric network. More interesting in this context are the multiple meanings of *appearance*. For example, lawyers are directed not to *appear* before a judge if their past association with that judge would create the *appearance* of impropriety. A lawyer who *appears* on behalf of a client is *representing* that other person.

2 See M. Valverde, *The Age of Light, Soap, and Water* (Toronto: McClelland & Stewart, 1991).

3 American Bar Association, *Canons of Professional Ethics* (1908) [hereinafter ABA 1908 *Canons*]; American Bar Association, *Model Code of Professional Responsibility* (1981) (originally published 1969) [hereinafter ABA *Model Code*]; and American Bar Association, *Model Rules of Professional Conduct* (1983) [hereinafter ABA *Model Rules*].

4 Canadian Bar Association, *Canons of Legal Ethics* (1920) [hereinafter CBA 1920 *Canons*]; Canadian Bar Association, *Code of Professional Conduct* (1974) [hereinafter CBA 1974 *Code*]; and Canadian Bar Association, *Code of Professional Conduct* (1987) [hereinafter CBA 1987 *Code*]. The CBA 1920 *Canons* were adopted by the law societies in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario between January and June of 1921. The CBA 1974 *Code* was adopted by the associations' governing body, the National Council, without a dissenting vote and by some provinces in its entirety. It formed the basis of other provinces' own ethical standards. The CBA 1987 *Code* was also adopted by the National Council without a dissenting vote.

5 The Law Society of Alberta, *Alberta Code of Professional Conduct* (1995: Alberta Law Society, Calgary) [hereinafter 1995 Alberta *Code*]. In the original presentation of this article, the *Proposed Code of Professional Conduct* (Discussion Draft -November, 1992) was referred to, as the 1995 Alberta *Code* had yet to come into effect. All references to the *Proposed Code* have been amended to reflect the content of the 1995 Alberta *Code*. The November 1992 draft had been circulated to all members of the Law Society. The text was substantially revised after more than one hundred written submissions were received from members and numerous subsequent hearings were held by the Code of Conduct Committee. An April 1994 draft was presented to the Benchers in June 1994. That draft was also revised. The September 1994 draft was considered by the Benchers at

ABA 1908 *Canons* drew heavily on George Sharswood's *Essay on Professional Ethics*, published in 1854.[6] As is obvious from any side-by-side reading of the two, the genesis of the CBA 1920 *Canons* was the ABA 1908 *Canons*,[7] in part because of long-standing contacts between leading Canadian lawyers and their U.S. counterparts in the early 1900s.[8] The influence of the ABA *Model Code* is also apparent in the wording of the two most recent codes of the Canadian Bar Association. The CBA 1987 *Code*, the ABA *Model Rules* of 1983 and the 1995 Alberta *Code* are used as examples of recent texts.

Why look to codes of conduct? First, the existence of a code of conduct "is often thought to be the very essence of professionalism."[9] Insofar as most definitions of professions consist of a set of attributes, the promulgation of ethical standards is typically included in that set. Second, "professionals themselves play the most important part in the definition or redefinition of their public image"[10] and these codes of conduct were written by (some) members of the profession.[11] The meanings of the

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a meeting on September 22, 1994. The September 1994 version was substantially adopted by the Benchers and the new 1995 Alberta *Code* came into effect on January 1, 1995.

6 J.S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976) at 41.

7 *Proceedings of the Fifth Annual Meeting of the Canadian Bar Association* (Winnipeg: Bulman Bros., 1920) at 95 (statement of Angus MacMurchy, K.C., of Toronto, Convenor of the CBA's Standing Committee on Legal Ethics).

8 W.W. Pue, "Becoming 'Ethical': Lawyers' Professional Ethics in Early Twentieth Century Canada" (1991) 20 Man. L.J. 227 at 257 [hereinafter "Becoming 'Ethical'"] (also published in D. Gibson & W.W. Pue, eds., *Glimpses of Canadian Legal History* (Winnipeg: Legal Research Institute, University of Manitoba, 1991) 237).

9 H.W. Arthurs, "Codes of Professional Ethics" in H.W. Arthurs, D.L. Mills & G. Starr, eds., *Materials on the Canadian Legal Profession* (Osgoode Hall School of Law, 1985) [unpublished] 247 at 247, quoted in "Becoming 'Ethical,'" *ibid.* at 229.

10 M.S. Larson, "Depoliticization and Lawyers' Functions: Reflections for a Comparative Analysis" (1986) 24 Osgoode Hall L.J. 743 at 744, 3n.

11 The members of the CBA's Standing Committee on Legal Ethics which drafted the CBA 1920 *Canons* were all male, all prominent in the profession. See *Proceedings of the Fifth Annual Meeting of The Canadian Bar Association, supra* note 7. That Committee, like the CBA itself in its early years, was dominated by elite Anglo-Canadian prairie lawyers and judges. See W.W. Pue, "Lawyers and the Constitution of Political Society: Containing Radicalism and Maintaining Order in Prairie Canada, 1900-1930" (Working Paper 93-4, University of Manitoba Canadian Legal History Project) at 4 [unpublished] [hereinafter "Containing Radicalism"].

The CBA 1974 *Code* was drafted by a Special Committee on Legal Ethics under the chairmanship of S.E. Fennell, Q.C., LL.D., a Past President of the Association. The Committee had eight other members, including one law school dean, one judge and four other Q.C.'s. All were men. The two research directors and the Committee's counsel were also men. The CBA 1987 *Code* was produced by a "Committee to Revise the Code of Professional Conduct" chaired by Robert P. Fraser, Q.C. The other members of that Committee were: William Mingel, Q.C., of Halifax, also a member of the original 1974 Committee; Barbara Stanley of Saint John, N.B.; Bâtonnier Guy Pépin of Montreal; Edward Greenspan of Toronto; Jim McCarthy of Toronto; Knox Foster of Winnipeg; Donald McKercher of Saskatoon; and G.R. Birchsmith of Vancouver. "All of them but one or two are Past Presidents or Treasurers of the Law Society of the province in which they reside[d]." See *The 1986 Year Book of the Canadian Bar Association and the Minutes of Proceedings of its Sixty-Eighth Annual Meeting* (Ottawa: Canadian Bar Association, 1986) at 161.

The Code of Conduct Committee of The Law Society of Alberta was chaired by Ed Molstad, who was also the President of the Law Society in 1993. All the members of the Committee were

metaphors in the codes of conduct are not contained within the boundaries of the texts of the codes. A knowledge of the social contexts in which these texts were produced is necessary.[12] These social relations — mainly of class, race/ethnicity, and gender — cannot be ignored.[13] Indeed, these social relations are obvious in the metaphoric networks in the texts of the codes to anyone who attends to them. One problem, however, is that the metaphors which used to speak of lawyers' professionalism are so commonplace within that particular discourse that they can be read literally, and thus pass unnoticed. Third, the legal profession's norms as concretely (but not exclusively) expressed in its codes and the content of those codes, show remarkable continuity,[14] as do the figures of speech contained in them. Indeed, a look at the metaphors of professionalism in even the most recent codes of conduct suggests that this continuity has been emphasized by their producers.

In the next part of this article, I provide some background on metaphors in general and "dead" metaphors, such as those found in the codes of conduct, in particular. The third, and largest, section of the article is organized around the metaphoric networks of the military, Christianity and gentility. Examples are provided from each of the codes, and from the words of those who produced those codes. Those networks are then, to a limited extent, contextualized. The relationships among those networks are also noted. In the conclusion, I raise some questions about the current contribution of each network to the definition of lawyers' professionalism.

II. METAPHORIC BACKGROUND

Aristotle's definition of metaphor is the usual starting point: "Metaphor consists in giving the thing a name that belongs to something else; the transference being either from genus to species, or from species to genus, or from species to species, or on grounds of analogy."[15] The terms "metaphor" and "metaphoric statement," as used

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male; the draftsperson and the secretary were female.

The Committee appointed in 1964 to revise the ABA *Canons* was chaired by Edward L. Wright and consisted of two law professors, two former judges, and eight lawyers in practice with substantial law firms, including two former presidents of the American Bar Association and one former chairman of its ethics committee. All were white, Christian and male. See M. Galanter and T. Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991) at 74-75.

Less than ten years later, the Kutak Commission was established to develop the ABA *Model Rules* adopted in 1983. The original nine members of the Kutak Commission were all lawyers; only three were private practitioners. That commission included a judge who was an outspoken critic of the "hired gun" attitude, a woman who was a consumer advocate, a former law school dean who was then president of the Legal Services Corporation, two law professors, and a retired judge. See T. Schneyer, "Professionalism as Bar Politics: The Making of the Model Rules of Professional Conduct" (1989) 14 Law & Social Inquiry 677 at 693-94.

12 *Supra* note 2 at 43.

13 *Ibid.* at 10.

14 G.C. Hazard, Jr., "The Future of Legal Ethics" (1991) 100 Yale L.J. 1239 at 1242.

15 Aristotle, *Poetics* 1457 b 6-9 in R. McKeon, ed., *The Basic Works of Aristotle*, trans. I. Bywater (New York: Random House, 1941) at 13, cited in P. Ricoeur, *The Rule of Metaphor: Multi-Disciplinary Studies of the Creation of Meaning in Language*, trans. R. Czerny (Toronto: University of Toronto Press, 1977).

throughout this article, are not confined to metaphors as one figure of speech among others, but rather refer to the transference principle common to all of them.[16] Part of the thesis of this article is that the metaphors of lawyers' professionalism are not just poetic or rhetorical devices with a merely decorative function.[17] They are a dominant mode of comprehension and reasoning, as the inclusion of "analogy" in Aristotle's definition should make apparent to lawyers.

One of the purposes of metaphors is to explain the unfamiliar in terms of the familiar. Like analogical reasoning, metaphors are a mapping of a previously known source domain to a newer, less well-known target domain.[18] One idea is presented "under the sign of another that is more striking or better known."[19] But in what sense can one idea be called "previously known" or "more striking and better known"? It is only in the sense of the idea as understood from the point of view of the producer or speaker of the metaphor.

It may be more enlightening to say that "metaphor creates the similarity" than that the "metaphor gives verbal form to some pre-existent similarity."[20] The underlying rationale of the metaphor does not necessarily lie in direct resemblance. It can result from a common attitude taken to both ideas.[21] The use of metaphors implies that participants share the metaphors' cultural and psychological content, so that everyone knows when a metaphor is appropriate and, more importantly, which metaphor is appropriate and what it is intended to signify.[22]

There are three other important points to note in connection with metaphors of lawyers' professionalism. The first is that they are systemic, with a cognitive, non-arbitrary dimension. The principal metaphors examined in this article are part of three metaphoric networks. The referential function of the metaphor is carried by these metaphoric networks, and not by isolated words or phrases.

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16 N. Goodman, *Languages of Art, An Approach to a Theory of Symbols* (Indianapolis: Bobbs-Merrill, 1968) at 81-83, cited in Ricoeur, *ibid.* at 237. The study of metaphors is interdisciplinary. It is the province of linguists, psychologists, cultural anthropologists, philosophers, theologians, literary critics and others. Metaphors have also received some attention from the legal profession, or at least the academic branch thereof. See *e.g.* S.L. Winter, "Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law" (1989) 137 U. Pa. L. Rev. 1105; P. Schlag, "Missing Pieces: A Cognitive Approach to Law" (1989) 67 Tex. L. Rev. 1195.

17 Metaphors (along with hyperbole, metonymy, irony, etc.) can also be classed as merely one of the ten or so tropes within semantics. Such a definition of tropes does, in fact, involve the idea of single concepts and their ornamentation. See C. Segre, *Introduction to the Analysis of the Literary Text*, trans. J. Meddemmen (Bloomington: Indiana University Press, 1988) at 259-60.

18 G.M. White, "Proverb and Cultural Models: An American Psychology of Problem Solving" in D. Holland & N. Quinn, eds., *Cultural Models in Language and Thought* (Cambridge: Cambridge University Press, 1987) 151 at 154; G. Lakoff & M. Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 1980) at 5.

19 P. Fontanier, *Les Figures du discours* (Paris: Flammarion, 1968) at 99, cited in Ricoeur, *supra* note 15 at 57.

20 Max Black, *Models and Metaphor* (Ithaca: Cornell University Press, 1962) cited in Ricoeur, *ibid.* at 86.

21 Ricoeur, *ibid.* at 81-82.

22 R.T. Lakoff, *Talking Power: The Politics of Language* (New York: Basic Books, 1990) at 103.

The second point is that the metaphors of lawyers' professionalism — or, at least, the predominant ones examined here — are what have been called used, worn-out, or "dead" metaphors.[23] Dead metaphors are well-known truths, part of "popular wisdom."[24] Their usage is habitual. Some of them have been used in such a fixed and standard fashion for so long that they act like a literal meaning. In fact, it is arguable that dead metaphors are not metaphors at all, for once they are adopted by a significant part of a culture, they become a common meaning, enter into the lexicon, and merely increase polysemy.[25] For example, the *Oxford English Dictionary* notes that the word "gentleman" is "used (with more or less of its literal meaning) as a complimentary designation of a member of certain societies or professions."[26] We cannot interpret metaphors unless we first perceive the incompatibility of the non-figurative meaning of the metaphoric statement with the rest of the context.[27] There is no incompatibility, no tension between "is" and "is not," at the literal level with such banal metaphors.[28]

There is another way of looking at such metaphors, however. In the used, worn-out metaphor, it is thought that metaphoricity functions in spite of us, behind our backs so to speak, as a sort of linguistic surplus value functioning unknown to speakers.[29] We are unaware that the language has slipped from the literal to the figurative. One category melts into another; metaphors are mixed promiscuously with literal truth.[30] From this perspective, worn-out metaphors can be seen as even more powerful than freshly coined ones, in much the same way that Nietzsche said "truths are illusions of which one has forgotten that they *are* illusions."[31]

While the first understanding of dead metaphors may be appropriate to their use in poetry, the second seems suited to their use in codes of conduct. These codes are examples of the directive use of language, statements meant to persuade and to control behaviour.[32] The metaphors within these codes are indirect directives. They are evaluative assumptions that take the form of descriptions, but have the effect of suggestions or commands themselves.[33] Telling lawyers to behave like "gentlemen" is not a step-by-step directive. Rather, it is aimed at producing in those to whom it is

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23 Ricoeur, *supra* note 15 at 99.

24 White, *supra* note 18 at 151.

25 Ricoeur, *supra* note 15 at 99, 162.

26 *Oxford English Dictionary*, 2d ed. (Oxford: Clarendon, 1989) [hereinafter *OED*].

27 M. Le Guern, *Sémantique de la métaphore et de la métonymie* (Paris: Larousse, 1973) at 16, cited in Ricoeur, *supra* note 15 at 183.

28 Ricoeur, *ibid.* at 214.

29 J. Derrida, "White Mythology," trans. F.C.T. Moore (1974) 6:1 *New Literary History* 5 at 7, cited in *ibid.* at 285.

30 *Supra* note 22 at 183.

31 M. Heidegger, *On the Way to Language*, trans. P.D. Hertz (New York: Harper & Row, 1971) at 15, quoted in Ricoeur, *supra* note 15 at 286 [emphasis in the original].

32 S.I. Hayakawa & A.R. Hayakawa, *Language in Thought and Action*, 5th ed. (San Diego: Harcourt Brace, 1990) at 65.

33 White, *supra* note 18 at 152.

directed the right type of consciousness.[34] Having been told that lawyers should act as gentlemen, readers are entrusted to know exactly how to put this into practice.[35]

Another preliminary point needs to be added here about "literal meaning." Superficially, metaphors contrast figurative meaning with literal meaning. The difference between the two is that the literal meaning is lexicalized.[36] The task of writing a dictionary[37] begins with the lexicographer reading what has been written by writers of some literary or historical importance. As the lexicographers read, they note every interesting or rare word, every unusual or peculiar occurrence of a common word, a large number of common words in their ordinary uses, and also the sentences in which each of these words appears. After these have been collected, there will be anywhere from two or three to several hundred illustrative quotations for each word. To define a word, a dictionary editor works with the actual uses of that word and what the collected quotations reveal about that word. A lexical meaning therefore says nothing about what a word ought to mean (its "proper" meaning):

> The writing of a dictionary is not, therefore, the task of setting up authoritative statements about the "true meanings" of words, but a task of *recording*, to the best of one's ability, what various words *have meant* to authors in the distant or immediate past. *The writer of a dictionary is a historian, not a lawgiver.*[38]

The third point is the rather trite one (in some disciplines) that metaphors are necessary to human thought. One cannot communicate without them. However, to say that directives of lawyers' professionalism require the use of metaphors is not to say that we should be content with metaphoric statements that persist when the reality that lays behind them has changed.

III. METAPHORIC NETWORKS IN THE CODES OF CONDUCT

A. MILITARY METAPHORS

Judge George Sharswood, whose *Essay on Professional Ethics*, published in 1854 and a predecessor to the ABA 1908 *Canons*, introduced military metaphors to written codes of conduct when he wrote:

> Nothing is more certain than that the practitioner will find, in the long run, the good opinion of his professional brethren of more importance than of what is commonly called the public. The good opinion and confidence of members of the same profession, like the *King's name on the field of battle*, is a *tower of strength* ... the *title of legitimacy.*[39]

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34 *Supra* note 2 at 41.

35 *Ibid.*

36 Ricoeur, *supra* note 15 at 291.

37 See *supra* note 32 at 34-35.

38 *Ibid.* [emphasis in original].

39 Quoted in T.L. Shaffer, "The Profession as a Moral Teacher" (1986) 18 St. Mary's L.J. 195 at 195-96. [Emphasis added. All emphasis used in this article has been added, unless otherwise noted].

Canon 22 of the ABA 1908 *Canons* speaks of lawyers as "*officer[s]* of the law charged ... with the *duty* of aiding in the administration of justice." Canon 29 requires a lawyer to "aid in *guarding* the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education."[40]

In Canon 1(4) of the CBA 1920 *Canons*, the lawyer is warned that it is "highly non-professional in a lawyer to stir up *strife* or litigation." Canon 3(7) commands a lawyer to "scrupulously *guard* and not divulge his client's secrets or confidences." He[41] is to agree to arrangements that suit the convenience of "*opposing* counsel" so long as the "cause of justice will not be *injured* by doing so."[42] In a repetition of Canon 29 of the ABA 1908 *Canons*, Canon 5(2) of the CBA 1920 *Canons* states that "[i]t is the *duty* of every lawyer to *guard* the Bar against the admission to the profession of any candidate whose moral character or education unfits him for admission thereto."

These military metaphors would have spoken powerfully to the generation that wrote the CBA 1920 *Canons*, a generation that had experienced the Riel Rebellion, the Boer War and, contemporaneously, the Great War. Somewhat surprisingly, the number of military metaphors actually increases in the more modern codes of conduct. Perhaps this is only because the later codes are much longer, setting out not only the short rules found in the turn-of-the-century codes, but also lengthy commentaries on those rules. It is in these commentaries or elaborations and illustrations of the more prosaic rules, that the more figurative language predominates.

The ABA *Model Code* uses a military metaphor in its preamble: "Lawyers, as *guardians* of the law, play a vital role in the preservation of society." Many of the ethical considerations speak of the need for lawyers to *protect*, *guard* and *safeguard*, whether it be the lawyer's own reputation, his clients, the legal profession, the courts, or the administration of justice.[43] Ethical Consideration 5-9[44] refers to the problem of a lawyer "*challenging* the credibility" of another lawyer who acts as both advocate and witness and insists that "the function of an advocate is to *advance* or argue the cause of another." Note 2 to Canon 1 refers to the power of the court "to *guard its portals against intrusion.*" Note 14 to Canon 1 characterizes the lawyer "as a *shield.*" Note 1 to Canon 5 describes an advocate as a "*champion.*" Note 23 to the same Canon

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40 This metaphoric statement is also part of the gentility network. For one example from that network warning of the danger to the profession when candidates are "deficient in either moral character or education," see text accompanying *infra* note 135.

41 Unlike its use in the codes of conduct, my use of the masculine pronoun, here and elsewhere in this article, is gender-specific, and not generic.

42 CBA 1920 *Canons*, *supra* note 4, Canon 4(2).

43 See *e.g.* ABA *Model Code*, *supra* note 3 at EC 4-2, EC 5-13, and EC 7-29.

44 The ABA *Model Code* has three separate but interrelated parts: Canons, Ethical Considerations [hereinafter EC], and Disciplinary Rules. As explained in the preliminary statement to that code, the Canons are "statements of axiomatic norms"; the Ethical Considerations are "aspirational in character and represent the objectives toward which every member of the profession should strive"; and the Disciplinary Rules, mandatory in nature, state "the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action."

speaks of a lawyer's "*fealty*," recalling feudal lords and their vassals,[45] as do the references to "*allegiance*" in Note 3 to Canon 7 and to "*safeguard[ing]* his *fidelity* as a lawyer" in EC 5-13.[46]

The recent ABA *Model Rules* assert in their preamble that a lawyer, who "play[s] a vital role in the preservation of society," is "an *officer* of the legal system," and must be ready to "*challenge* the rectitude of official action." However, as stated in the ABA *Model Rules*, the Rules themselves are not to be "invoked by *opposing* parties as *procedural weapons*," for "an *antagonist* in a collateral proceeding or transaction has [no] standing to seek enforcement of [a] Rule." The commentaries to various Rules go on to speak of *surrendering* rights,[47] of being "not bound to press for every advantage,"[48] of the "*pursuit* of an appeal,"[49] of *strategy* and *tactics*,[50] of *defending* against a charge,[51] of "the potential intensity of the *conflict*,"[52] of the need that evidence be "*marshalled* competitively by the *contending* parties,"[53] of *prevailing*,[54] and of *overwhelming*.[55]

The prefaces to both the CBA 1974 *Code* and the CBA 1987 *Code* assert that lawyers "must *command* the confidence and respect of the public" in order to satisfy the public's need for legal services from a "trusted adviser" whose "integrity, competence and loyalty are assured." Once again the lawyer is warned to *guard against* numerous evils.[56] Note 6 to chapter 3 in both *Codes* contains the following quote: "The *arms* which (the lawyer) *wields* are to be the *arms* of the *warrior* and not of the assassin." Chapter 11, Commentary 7 of the CBA 1974 *Code* admonishes the lawyer that he "should not *desert* his client at a critical stage of a matter or at a time when his *withdrawal* would put the client in a position of disadvantage or *peril*." There are numerous other examples of the military metaphoric network in the CBA 1974 *Code* (and corresponding references in the CBA 1987 *Code*), such as references to *securing*

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45 Professor W. Wesley Pue pointed out to me that there may be an important difference between the military metaphoric network and that derived more directly from feudal ordering (albeit that feudal ordering itself can be seen as derived from military needs). He noted that feudalism invokes a notion of reciprocity of obligation, which modern military structures are more reluctant to concede.

46 For an argument that "[t]he Feudal practices of patronage are alive and well in lawyering," see A. Rhodes-Little, "Teaching Lawyering Skills for the Real World: Whose Reality? Which World? Or the Closing of the Australian Legal Mind" in I. Duncanson, ed., (1991) 9:2 Law In Context, Special Issue on Legal Education and Legal Knowledge 47 at 59.

47 ABA *Model Code*, *supra* note 3, r. 1.2, Comment, para. 5.

48 *Ibid.*, r. 1.3, Comment, para. 1.

49 *Ibid.*, r. 1.3, Comment, para. 3.

50 *Ibid.*, r. 1.4, Comment, para. 2.

51 *Ibid.*, r. 1.6, Comment, para. 18.

52 *Ibid.*, r. 1.7, Comment, para. 13.

53 *Ibid.*, r. 3.4, Comment, para. 1.

54 *Ibid.*, r. 7.2, Comment, para. 1.

55 *Ibid.*, r. 7.3, Comment, para. 2. This is a non-exhaustive list, for there are many examples of the more commonplace *guarding against*, *protecting*, *defending* and *challenging*.

56 See *e.g.* CBA 1974 *Code*, *supra* note 4 and CBA 1987 *Code*, *supra* note 4 at c. 4, Commentary 8 and c. 5, Commentary 5. CBA 1974 *Code*, *ibid.* at c. 3, Commentary 6; and CBA 1987 *Code*, *ibid.* at c. 3, Commentary 7 warn the lawyer to be on "guard against becoming the tool or dupe of an unscrupulous client."

some advantage,[57] to *defeating* or *impairing* a claim,[58] to *breaches* of rules,[59] to *orders* of a client,[60] to *seizing* property,[61] to *attacking* evidence,[62] to justifying *withdrawal*,[63] to being the *target* of unjust criticism,[64] and to *offensive tactics*.[65]

The 1995 Alberta *Code*, in its preface alone, provides another illustration of the prevalence of the military metaphoric network in modern codes of conduct. The Preface includes references to lawyers' "vital role in the *protection and advancement* of individual rights and liberties," to the need for their "*obedience* to the law," to the code "*prevail[ing]* in the event of a *conflict*," to their need to "be *vigilant*" and to "*procedural weapon[s]*."[66] Of course, there are many other examples within this text of the banal: *breach, challenge, evasion, defence, invasion, protection, threat, strategy, shield, obstruct, force*, and so on.[67]

Part of the ideology of the legal profession at the turn of the century included an emphasis on "duty" and "service."[68] At the time of the Great War and the 1919 Winnipeg General Strike, a need for respect for authority, implicit in military metaphors, would have been commonplace wisdom to the leaders of the bar who formed the Canadian Bar Association. Language recalling fidelity and duty to the state would have been incorporated into the CBA *1920 Canons* because it coincided with "a genuinely held wider ideology [and] conception of appropriate social ordering."[69] The organized bar of that time was only one of many volunteer organizations who thought that it was "of vital importance that the traditional British respect for law, order, and authority should be maintained at all costs."[70]

The military metaphors in the codes of conduct are coherent with the more generally prevalent metaphor, within the Anglo-American adversary systems, that "argument is war."[71] Claims are "indefensible"; we "attack weak points"; arguments are "shot

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57 CBA 1974 *Code*, *supra* note 4, c. 3, Commentary 8.

58 *Ibid.*, c. 3, Commentary 10.

59 *Ibid.*, c. 5, Commentary 6.

60 *Ibid.*, c. 7, Commentary 4.

61 *Ibid.*, c. 7, Commentary 6.

62 *Ibid.*, c. 8, Commentary 9.

63 *Ibid.*, c. 11, Commentary 6.

64 *Ibid.*, c. 12, Commentary 4.

65 *Ibid.*, c. 16, Commentary 2.

66 1995 Alberta *Code*, *supra* note 5 at iii, iv.

67 See *e.g.* 1995 Alberta *Code*, *supra* note 5, c. 1, Commentaries 1, 2, 3, and 7; c. 2, Commentary G.1(c)(v); c. 3, Commentaries 4 and 5; c. 4, Commentaries G.2 and 4; and c. 6, Commentaries 3 and 5.

68 J.H. Cohen, *The Law: Business or Profession?* (New York: Banks Law, 1916) at 158-59, cited in Pue, "Containing Radicalism," *supra* note 11 at 17.

69 Pue, *ibid.* at 21, 77n.

70 *Supra* note 2 at 105.

71 A version of the "argument is war" metaphor is "the sporting theory of justice." In his text on professional responsibility, Gavin MacKenzie notes that "the resemblance between adversarial trials and hearings and athletic contests and other games has frequently been recognized.": G. MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline* (Toronto: Carswell, 1993) at 2-1. In 1906, in a well-known address, "The Causes of Dissatisfaction with the

down." This is not just talk. We actually "win" or "lose" legal arguments, characterize others as "opponents," "attack" opposing counsel's arguments, and "defend" our own.[72]

In addition to historical duties owed the state and respect for authority, both the military metaphoric network in the codes of conduct and the "argument is war" concept in the adversarial system invoke a "we" opposed to a "them." There are two sides: we and our allies, who are "good" and they, who are "bad."[73] Irrelevant to such a dichotomy are the proverbial "innocent civilians," the "public" whose interests are said to be protected by the codes of conduct.[74] The use of military metaphors may also invoke homogeneity, uniformity, and a hierarchical "no-questions" mode of behaviour and thinking.

Military metaphors may also have been, at the time they were introduced into the codes, connected to the "law is a profession, not a business" aspect of the gentility metaphoric network explored later in this article.[75] One reason for the use of the war metaphor, aside from invoking the goal of defeat of an enemy, is that war, traditionally, was an activity that was not supposed to be subject to calculations of profitability.[76] No financial sacrifice was seen as excessive. So too, lawyers are expected to sacrifice their own time and financial interests in certain instances. Insofar as such sacrifices were, and are, expected in the case of legal services for the poor, there is also a connection to the Christian metaphoric network.[77]

B. CHRISTIANITY METAPHORS

David J. Brewer, an associate justice of the Supreme Court and a member of the committee that drafted the ABA 1908 *Canons*, noted in their support that the ideal lawyer "looks above the *golden calf* and the shouting crowd, and ever sees on the lofty summits of *Sinai* the *tables of stone* chiselled with imperishable truth by the *finger of God*."[78] The preamble to the ABA 1908 *Canons* pontifies that "[t]he future of the

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Administration of Justice" 29 ABA Rep. 395 at 404, quoted in *ibid.* at 2-1, Harvard Dean Roscoe Pound identified the pervasiveness of this metaphor as one of the causes of the public's dissatisfaction. I would note that athletic contests and other games have resemblances to war and the military, and it is not surprising that lawyering is described both in terms of war and in terms of sports, both of which are described in terms of each other as well.

72 See Lakoff & Johnson, *supra* note 18 at 4.

73 Lakoff, *supra* note 22 at 195.

74 See *e.g.* the preface to the CBA 1974 *Code* ("The principle of protection of the public interest will serve to guide the reader to the true intent of the Code") and the preface to the 1995 Alberta *Code* ("[R]ules and regulations [of the legal profession] must be cast in the public interest....").

75 See text accompanying *infra* note 134.

76 *Ibid.* I use the past tense after noting the prevalence of market terminology in media reports concerning the invasion of Haiti approved by the United Nations in the summer of 1994. See *e.g.* D.H. Hackworth, "A Soldier's-Eye View" *Newsweek* (22 August 1994) 33: "The American invasion fleet should be brought home and the costly embargo lifted. U.S. national security is not at stake. Embargoes don't work. And American taxpayers' pockets aren't deep enough to bail Haiti out of a mess that has been 500 years in the making."

77 See text accompanying *infra* notes 105 and 106.

78 David J. Brewer, "The Ideal Lawyer" *Atlantic Monthly* (November 1906) 596 cited in Auerbach, *supra* note 6 at 51.

Republic, to a great extent, depends upon our maintenance of Justice *pure and unsullied.*" The ABA 1908 *Canons* also speak of "*brethren* at the Bar,"[79] "*brother* lawyers, and ... their widows and orphans,"[80] and of "the law whose *ministers* we are."[81] While the lawyer may owe "entire *devotion* to the interest of the client,"[82] he was also warned to "never *minister* to the malevolence or prejudices of a client."[83]

The CBA 1920 *Canons* adopted the ecclesiastical title of its American predecessor. The preamble to the CBA 1920 *Canons*, however, begins with a more prosaic and common-place Christian metaphor (as well as a military one): "The lawyer is more than a mere citizen. He is a *minister* of justice, an *officer* of the Courts, his client's advocate, and a member of an ancient, honourable and learned profession."

In the discussion following the introduction of the motion to adopt the CBA 1920 *Canons*, the Honourable John B.M. Baxter, K.C. used other religious metaphors when he stated:

> [I]n setting any guide, we ought to remember that there is a something that distinguishes the real professions from those which in this very modern day acquire the name of professions without having the *spirit.* The *spirit* of a profession is, I think, the spirit of service. When the spirit of service is lost, the *soul* of the profession, without which it cannot exist, is gone.[84]

The text of the ABA 1908 *Canons* and the CBA 1920 *Canons*, and the speeches of those who produced them, may strike contemporary readers as value-laden and excessive, as the mere flowery rhetoric of another time.[85] Rather than dismiss them, however, contemporary readers should bear in mind that what now seem to be rhetorical excesses were invisible to the reader of their period, and invisible precisely because they were familiar.[86] The concept of moral reform, of the need for "better men," was part of the dominant culture of the Anglo-Canadian middle and upper classes of that period. As recently as 1982, a former Chief Justice of the Trial Division of the Supreme Court of Alberta, J.V.H. Milvain, in characterizing his vision of law professors and their role in fostering ethical behaviour within the profession, used similar rhetoric when he stated that "[t]hey should be *priests in the Temple of Law*, and not *iconoclasts.*"[87]

In connection with the metaphors of Christianity, it should also be noted that the discourses of the legal profession — the "organized sets of signifying practices that

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79 ABA 1908 *Canons*, *supra* note 3, Canon 7.

80 *Ibid.*, Canon 12.

81 *Ibid.*, Canon 32.

82 *Ibid.*, Canon 15.

83 *Ibid.*, Canon 18.

84 *Proceedings of the Fifth Annual Meeting of The Canadian Bar Association*, *supra* note 7 at 102.

85 *Supra* note 2 at 34.

86 *Ibid.*

87 The Honourable J.V.H. Milvain, *Calgary Bar Association Oral History Project* (26 May 1982) at 72 [unpublished].

often cross the nineteenth-century boundary between 'reality' and 'language'"[88] — include more than linguistic formulations. The signifying practices of the legal profession include the architectural design of its courtrooms, which are constructed along the lines of a medieval church. They have a "nave," where the public sits; an enclosed "chancel," for the prisoners, jury, lawyers, and clerks; and an elevated "sanctuary," for the judges.[89]

The ABA *Model Code*, first promulgated in 1969, contains the following Christian metaphors in its preamble and preliminary statement: "standards by which to judge the *transgressor*"; "within his own *conscience*"; and "*inspirational* guide." One of the Ethical Considerations to Canon 4 on Confidentiality[90] (the ABA *Model Code* retains the ecclesiastical chapter titles) refers to "the *sanctity* of all confidences and secrets," calling to mind the confessional. Part of Canon 9, which requires a lawyer to avoid even the appearance of professional impropriety, states that "[e]very lawyer owes a *solemn* duty to uphold the integrity and honour of his profession," which includes a duty "to cooperate with his *brother* lawyers in supporting the organized bar through the *devoting* of his time, efforts, and financial support."[91]

The ABA *Model Rules* direct the lawyer to "hold *inviolate*" the confidential information of the client.[92] It is said that an advocate "does not *vouch* for the evidence submitted in a cause."[93] Comment 1 to Rule 3.8 notes that "[a] prosecutor has the responsibility of a *minister* of justice and not simply that of an advocate."

Both the CBA 1974 *Code* and the CBA 1987 *Code* speak of "sacrifice," in terms of "the public interest [that] must not be or appear to be *sacrificed*"[94] and of the lawyer's duty not to take advantage of another lawyer's mistakes not involving "the *sacrifice* of the client's rights."[95] The last rule in both of the CBA's most recent codes of conduct requires the lawyer to "observe the rules of professional conduct set out in this Code in the *spirit* as well as in the letter."[96] This is necessary, in part, the commentary goes on to say, in order "to *inspire* the confidence, respect and trust of his clients and the community."[97]

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88 *Supra* note 2 at 10.

89 *Manner, Morals and Mayhem: A Look at the First Two Hundred Years of Law and Society in New Brunswick* (Fredericton: Public Legal Information Services, 1985) at 38. Peter Fitzpatrick, writing about the legal profession in another context, argues that "[t]he whole community professionally organized around law is redolent of religion, not just in the perception of outside observers but also in its own self-presentation." (P. Fitzpatrick, *The Mythology of Modern Law* (London: Routledge, 1992) at 181-82).

90 ABA *Model Code*, *supra* note 3 at EC 4-2.

91 *Ibid.* at EC 9-6.

92 ABA *Model Rules*, *supra* note 3, r. 1.6, Comment, para. 2.

93 *Ibid.*, r. 3.3, Comment, para. 1.

94 CBA 1974 *Code*, *supra* note 4, c. 8, Commentary 10. In the equivalent provision of the CBA 1987 *Code*, *supra* note 4, c. 9, Commentary 12, the phrase was changed to "[t]he public interest and the client's interests must not, however, be *compromised* by agreeing to a guilty plea."

95 CBA 1974 *Code*, *ibid.*, c. 16, Commentary 4; CBA 1987 *Code*, *ibid.*, c. 16, Commentary 4.

96 CBA 1974 *Code*, *ibid.*, c. 17; and CBA 1987 *Code*, *ibid.*, c. 19.

97 CBA 1974 *Code*, *ibid.*, c. 17, Commentary 9; CBA 1987 *Code*, *ibid.*, c. 19, Commentary 10.

Even the 1995 Alberta *Code* makes use of a few religious metaphors. The preface refers to the *spirit* of the *Code*. Commentaries to several of the rules refer to lawyers' "dedication" such as their "*dedication* to the client's welfare."[98] Lawyers have to be wary of pre-existing relationships that might "*taint* others by association."[99] References to "good *faith*" arguments are commonplace,[100] as is the necessity for lawyers to "*devote*" their attention.[101]

The metaphors of Christianity and the references to law as one of the "real" professions and an "ancient, honourable and learned" profession are historically and definitionally related. One definition of "profession" is a "declaration, promise, or vow made by one entering a religious order."[102] Another definition refers specifically to the "three learned professions of divinity, law and medicine": those vocations "in which a professed knowledge of some department of learning or science is used in its application to the affairs of others or in the practice of an art founded upon it."[103] Thus, the vocation of law is lexically (historically) connected to the action of avowing a practice, or professing knowledge and skill.

The references to a "learned profession" and to law as one of the three "ancient and learned professions" seem to be appeals to the sort of ancient lineage that was the basis of the aristocrat's position in the social hierarchy. Both antiquity and hierarchy are connoted, as are respectability, refinement and class.[104] In adopting the archaic "learned," the legal profession implies continuity with a great historical tradition, and in doing so distances both itself from other occupations and its practitioners from ordinary persons.

The notion in the preamble to the CBA 1920 *Canons* and in the quotation from Baxter[105] — that "real" professions can be differentiated from those occupations only claiming to be professions — appeals to "the spirit of service." This public service claim ties into the "law is a profession, not a business" assertions to be explored in the gentility metaphoric network. It also ties into the idea of the "sacrifice" of financial gain. The "spirit of service" evoked is like that of the ministers of the Church, another of the three "ancient and learned professions." This concept appears most clearly in the rhetoric of legal aid to the poor, such as the following quotation from an American writing in 1926 about the newly founded Legal Aid Bureau:

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98 1995 Alberta *Code*, *supra* note 5, c. 2, Commentary G.1(a).

99 *Ibid.*, c. 6, Commentary G.1 (conflict of interest prohibitions on lawyers acting personally, where the disqualifying circumstance is sufficiently personal to the lawyer that it will presumably "not taint" other members of the firm). See also *ibid.*, c. 10, Commentary 9.1 (a lawyer's past relationship with a judge is contemplated to be "sufficiently personal that others in the lawyer's firm should be tainted by association").

100 See *e.g. ibid.*, c. 10, Commentary G.2.

101 See *e.g. ibid.*, c. 14, Commentary 2(c).

102 *OED*, *supra* note 26.

103 *Ibid.*

104 Professor W. Wesley Pue made these connections more explicit for me in his comments on an earlier draft of this article.

105 See text accompanying *supra* note 84.

> The Legal Aid Bureau needs the fostering care of its *spiritual* parent, the Bar Association, as a boarded-out child needs its natural mother. But the Bar Association needs the Legal Aid Bureau as an *aristocrat* in Russia needs calloused hands.[106]

However, even the ABA *Model Rules* of 1983 refer, in the preamble, to the need for lawyers to "*devote* professional time and civic influence" on behalf of the poor.

C. GENTILITY METAPHORS

The other network of metaphors common in these codes of conduct, which both speaks of the status of a professional and is tied historically to the military metaphors, is that surrounding the image of a "gentleman."[107] A "gentleman" is, lexically, "a man of gentle birth...; properly one who is entitled to bear arms, though not ranking among the nobility, ... but also applied to a person of distinction without precise definition of rank."[108] As previously noted, the literal meaning of "gentleman" has since become almost synonymous with "professional."[109]

Mr. Justice William Renwick Riddell of Ontario was one of only a few members of the legal profession to oppose the development of a written code of ethics by the Canadian Bar Association.[110] In an address delivered to that association in 1919 on the topic of "A Code of Legal Ethics," he noted that lawyers should be encouraged to aspire to the highest standards of conduct of a "scholar, gentleman, and Christian."[111] A code imposing only this requirement was seen by him as "superfluous, unnecessary."[112] However, Riddell's paternalistic vision of professionalism apparently seemed anachronistic to the vast majority of the leading members of the bar who were in favour of a written code of ethics.[113]

This anachronistic vision of the lawyer as "scholar, gentleman, and Christian" was written into the first Canadian code. The last rule in the CBA 1920 *Canons*, Canon 5(7), maintained:

> He should also bear in mind that he can only maintain the *high traditions* of his profession *by being in fact as well as in name a gentleman.*

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106 J.A. Hamilton, "Legal Aid Work and the Bar" (1926) Annals 124 at 147, quoted in M. Grossberg, "Counsel for the Poor? Legal Aid Societies and the Creation of Modern Urban Legal Structure 1900-1930" (University of British Columbia Legal History Papers, 1994-95) [unpublished].

107 As Professor W. Wesley Pue noted, in commenting on an earlier version of this article, the cultural construction of the qualities of a "gentleman" merits a full article in its own right by someone, some time.

108 *OED, supra* note 26.

109 See text accompanying *supra* note 26.

110 The ways in which the CBA first moved toward adoption of a "Code of Professional Ethics" and the debate among the eminent lawyers as to the desirability of adopting any such code at all is set out in "Becoming 'Ethical,'" *supra* note 8.

111 W.R. Riddell, "A Code of Ethics" in *Proceedings of the Fourth Annual Meeting of The Canadian Bar Association* (Ottawa: 1919) 136 at 139.

112 *Ibid.* at 140.

113 "Becoming 'Ethical,'" *supra* note 8 at 258.

The 1990-91 Alberta Bar Admission Course materials still included direct references to the ideology of the "gentleman." "In general this duty has been expressed historically in phraseology to the effect that lawyers are gentlemen and should act like gentlemen. If lawyers act like gentlemen towards each other no problem should arise."[114]

Other examples of the gentility metaphoric network occur in the CBA 1920 *Canons*. Canon 4(1), governing lawyers' "*conduct and demeanour* towards each other or towards suitors in the case," required that "[a]ll personalities between them should be *scrupulously* avoided as should also colloquies between counsel which cause delay and promote *unseemly* wrangling." Canon 4(4) requires a lawyer to do nothing "repugnant to his own sense of *honour and propriety*." Warning against advertising, Canon 5(3) notes that "self-laudations defy the *traditions* and *lower the tone* of the lawyer's *high calling*."

In the discussion following introduction of the motion to adopt the CBA 1920 *Canons*, Mr. R.B. Henderson of Toronto questioned whether it was desirable to adopt a code of ethics at all, alleging that:

> If we are careful to admit into our Bar the *proper kind of men*, then we are going to be protected from the abuses which the code is meant to prevent. One hesitates to use a word which has been very much prostituted, but really *the old idea, using the word in its best sense*, of what a *gentleman* should be, is what we want among our legal practitioners; and that cannot be taught, it seems to me, by codifying the rules of ethics or morality.[115]

Colonel W.N. Ponton, K.C. responded to Mr. Henderson with a religious analogy, saying:

> Mr. Henderson has said, 'Let us close the portals, let us tile the door. Let us keep out those members who are *unworthy*.' How can we? We have no means. We have no means of regulating the *character* of those who are admitted to the various law societies. On the great *moral law* were founded the churches — and, after all, the lawyers have helped the churches — and churches have their creeds...; and they are, after all, the great nuclei, the anchors, the strengtheners of religion. And so I believe a *creed* like this cannot do any harm in this, which is the sorriest of trades and noblest of professions....We must be '*tall men, sun-crowned, who stand above the fog*' in public duty and in private thinking.[116]

Both of these quotations also illustrate another part of the "gentility" metaphoric network — that of "the law is a profession, not a business" — in their use of the concepts of "*prostituted*" and "the *sorriest* of *trades*."

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[114] "The Lawyer's Obligations to his Profession" in *The Legal Profession: Management and Professional Skills* (1990/91 Alberta Bar Admission Course materials, Legal Education Society of Alberta) I-28 at I-28 [unpublished].

[115] *Proceedings of the Fifth Annual Meeting of The Canadian Bar Association*, *supra* note 7 at 98.

[116] *Ibid.* at 105-06.

The gentility metaphoric network in the early codes of conduct and the concept of social ordering it invokes, as well as concerns with lawyers' status in the social order, have cultural and political roots in a variety of nineteenth and early twentieth century concerns — concerns which differed by region within this country. For example, in New Brunswick shortly after the American Revolution, the governing elite of that "unique Loyalist colony" sought to impose a "gentlemanlike" society, based on principles of deference and hierarchy — an effort that floundered within the first twenty years of the founding of the province.[117] In the Loyalist revival of the 1880s, that province's legal profession lamented the passing (which was blamed on the rise of responsible government and social egalitarianism) of the "polished, Anglican legal-military elite."[118]

In the mid-1800s in Ontario, the legal profession struggled to maintain what they called a "government of gentlemen."[119] At that time and in that place, some of the leaders of the bar felt that the order of society required the maintenance of a graded social structure and that this structure's continuance was inseparable from the aristocracy.[120] Order was first secured by religious instruction, connecting to the metaphors of Christianity (for that was the only meaning of religion in that time and place). For many like Christopher Alexander Hagerman (militia officer, lawyer, politician, and judge), "the established church was the key bulwark against immorality, equality, and a godless democracy."[121] The second source of order was the "advice and example" of gentlemen, or the "regularly bred," as Sir John Beverley Robinson once called them.[122] However, as an aristocracy was absent from the Upper Canadian scene, lawyers were to fill the gap in the social structure.[123] As John Strachan, the Church of England Rector of York (Toronto) stated in 1826, "[l]awyers must, from the

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117 *Manners, Morals and Mayham*, *supra* note 89 at 10-11.

118 D.G. Bell, "Judicial Crisis in Post-Confederation New Brunswick" in D. Gibson & W.W. Pue, eds., *supra* note 8, 189 at 201.

119 R.L. Fraser, "'All the Privileges which Englishmen Possess': Order, Rights, and Constitutionalism in Upper Canada" in R.L. Fraser, ed., *Provincial Justice: Upper Canadian Portraits from the Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1992) xxi at xxix [hereinafter "All the Privileges"].

120 *Ibid.*

121 R.L. Fraser, "Christopher Alexander Hagerman" in *Provincial Justice*, *supra* note 119, 85 at 95. The reference to "a godless democracy" expresses the monarchical and aristocratic faith of many members of the legal profession in Upper Canada and a fear of the influences of the revolutionary changes in the late 1700s in France and in the Thirteen Colonies. "All the Privileges," *supra* note 119 at xxv. Similar sentiments were expressed by Winnipeg lawyer and founding President of the Canadian Bar Association, Sir James Aikens, in his official address to that association in 1920, when he asserted that the neglect of "popular suffrage" carried with it an "imminent danger of the despotism not so much of individuals as of classes...." (James Aikens, "The President's Address" (1920) 56 Can. L.J. 308 at 309).

122 "All the Privileges," *ibid.* at xxxviii. Sir John Beverley Robinson (1791-1863) was a lawyer, politician, judge and hereditary baronet who, more than any other single individual, is said to have incarnated the hierarchical spirit at the heart of the rule of gentlemen (*ibid.*).

123 Reproduced in J.R.W. Gwynne-Timothy, *Western's First Century* (London, Ont.: 1978) at 428, cited by G. Blaine Baker, "Legal Education in Upper Canada, 1785-1889: The Law Society as Educator" in D. Flaherty, ed., *Essays in the History of Canadian Law*, 2:55 (Toronto: Osgoode Society) quoted in *ibid.* at xlvii.

very nature of our political institutions — from there being no great landed proprietors — no privileged orders — become the most powerful profession, and must in time possess more influence and authority than any other."[124]

The status of professionals tends to be questioned most vigorously in times of populist politics, and the early decades of the twentieth century on the Canadian prairies saw the ascendancy of the Progressive and United Farmer political parties, the massive display of the Winnipeg General Strike, and waves of new immigrants to the west from southern and eastern Europe.[125] The profession's concerns with social order and status, and its ethnocentrism, are illustrated by the following quotation from the Committee on Legal Ethics to the annual meeting of the Canadian Bar Association in 1919:

> In view of the changed and changing conditions of this country, and the large number of students now admitted to practice, many of whom come from various countries *whose traditions and surroundings have not been similar to those of our own and the Motherland*, the time may be considered as having arrived when it is necessary to reduce to writing for the information of members of the Bar and the guidance of our law students some of the most general important principles governing the conduct of the profession....[126]

The CBA 1920 *Code*, a justification of the continuation of the *status quo*, was a response to the populist reforms of its times and of the place of the association's founding members,[127] but it also recalled the nineteenth century concerns of the more established profession in Ontario and the east.

The gentility metaphoric network and concerns with lawyers' status in the social structure carry through into the more recent codes and conversations of the bar. The Preamble to the ABA *Model Code* refers to law as a "*noble* profession." Ethical Consideration 9-6 states: "Every lawyer owes a solemn duty ... *to act* as a member of a *learned* profession."

In the CBA 1974 *Code*, Commentary 9 of Rule XVII requires a lawyer to "endeavour to *conduct* himself at all times so as to *reflect credit* on the legal profession." Chapter 8, Commentary 3, notes that a lawyer who appears as a witness "should not expect to receive special treatment by reason of his professional *status*."[128] Chapter 11, Commentary 12 disdains "*unseemly* rivalry."[129] In Commentary 3 to chapter 12, a reference to the lawyer's "*position* in the community" notes that "[h]is responsibilities are greater than those of a private citizen."[130] Commentary 3 in chapter 14 of the CBA 1974 *Code* states that there is a "proper *tone*

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124 *Ibid.* at xxix.

125 "Becoming 'Ethical,'" *supra* note 8 at 257.

126 "Report of the Committee on Legal Ethics" (1919) 55 Can. L.J. 294 at 296-97.

127 "Becoming 'Ethical,'" *supra* note 8 at 258.

128 See also CBA 1987 *Code*, *supra* note 4, c. 9, Commentary 5.

129 See also *ibid.*, c. 12, Commentary 10.

130 See also *ibid.*, c. 13, Commentary 3.

of a professional communication from a lawyer."[131] Commentary 6 to Rule VII in the CBA 1987 *Code*, concerning outside interests of the lawyer, states that in order to be compatible with the practice of law, an outside interest "must be an *honourable* one that *does not detract from the status* of the lawyer or the legal profession generally." One would have to concede that lawyers are still respected, because of their social position, at a time when practitioners are lamenting the lack of prestige and esteem accorded to them and their profession.[132]

In chapter 1 of the 1995 Alberta *Code*, the Statement of Principle refers to the "*privileges* accorded the legal profession." The elaboration of this principle, in Commentary G.1, states that because of such "*privileges*" and "exclusive *entitlement*," lawyers "have certain enhanced responsibilities to society." Commentary 1 in the same chapter states that behaviour that is "notorious" or has a "*dishonourable* element ... is the kind of conduct that may invoke ethical sanction." Commentary 6 in the same chapter refers to lawyers' "*position* of *privilege*," to the "*position in society* held by a member of the legal profession," and to lawyers' "*dominant position*." In chapter 13 on fees, Rule 1(d) refers to the "customary charges of other lawyers of equal *standing* in the locality," and Commentary G.1 warns that fee disputes may "*discredit* the profession in the eyes of the public." In chapter 14 on withdrawal, Rule 1(b) states that a lawyer is entitled to withdraw if a "client's conduct in the matter is *dishonourable*" by the lawyer's standards. Commentary 1(b) elaborates that such conduct includes "persistently rude, offensive or abusive behaviour towards others involved in a matter." A lawyer may also withdraw if "acceptance of the client's position would reflect poorly on the lawyer," according to the same Commentary.

Preoccupation with status is evident in chapter 15, which governs activities that a lawyer may engage in other than the practice of law. The Statement of Principle states that such activities cannot, of course, "bring discredit to the profession" (although there are few occupations with lower reputations among members of the public). There is a requirement that "lawyers should aspire to the highest standard of behaviour" at all times." Commentary 2 elaborates that "[m]embership in a professional body is often considered evidence of *good character* in itself."

One of the definitions of "gentleman" is "a man of superior position in society, or having the habits of life indicative of this; often, one whose means enable him to live in easy circumstances without engaging in trade, a man of money and leisure."[133] In

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131 See also *ibid.*, c. 15, Commentary 3.

132 See *e.g.* F. Kay, *Transitions in the Ontario Legal Profession: A Survey of Lawyers Called to the Bar Between 1975 and 1990* (Toronto: Law Society of Upper Canada, 1991) at 73-74, 81-82. (Comments made by surveyed practitioners include: "Respect for the profession continues to decline"; "Being a lawyer increasingly becomes less prestigious"; "Lawyers are not held in high esteem by the public at large"; "It is sad that the prestige once associated with the profession has (and is continuing) to decline"; "Too little prestige"; "I am also disturbed by the low esteem in which the public holds the profession in general.")

133 *OED*, *supra* note 26.

his 1919 Presidential Address to the CBA, Sir James Aikins[134] most eloquently explained:

> The administration of justice has always touched the nadir of its decline when the profession has been lowest in morals and least educated. In such times there is seen a tendency on the part of practitioners to regard the work of the Bar as a *trade and not a profession*, a thing to be *bartered and not a national service* to be sought after; then also is found the pettifogger, the ambulance chaser, the fabricator of evidence and the trickster, and the man who is *alien to the professional spirit* and its traditions, *destitute of gentlemanly instincts, disrespectful* to his seniors, and a slanderer of Judges.[135]

Concerns that the legal profession suffers if seen as, or conducted as, a "trade" have been common since codes of conduct were introduced, and probably date back even further.[136] One of the core notions of professional ethics — the ideology of professionalism — is the idea that a legal career should not be pursued as a business.[137] The first two decades of this century, when the first codes of conduct were written, coincided with the rise of an affluent industrial class which was seen as challenging the status of the professional class.[138] Efforts to maintain the status of the legal profession and its traditional ethical duties are evident in the "law is a profession, not a business" metaphors of the codes.

In the ABA 1908 *Canons*, Canon 12 warns that "it should never be forgotten that the profession is ... not a *mere money getting trade*." Canon 3(10) in the CBA 1920 *Canons* words the same sentiment almost identically: "He should always bear in mind that the profession is ... not a *mere money getting trade*." Decades later, the 1983 ABA *Model Rules* echoed this sentiment in a forthright assertion: "The practice of law is a profession, *not merely a business. Clients are not commodities that can be purchased and sold at will*."[139]

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134 Sir James Aikins, President of the CBA from 1915 until his death in 1929, bencher of the Law Society of Upper Canada for 50 years, and Lieutenant-Governor of Manitoba from 1916, was a "self-made millionaire," with the help of his father's influence. See "Becoming 'Ethical,'" *supra* note 8 at 240 43n.

135 J. Aikins, K.C., "The Legal Profession in Relation to Ethics, Education and Emolument" (1919) 55 Can. L.J. 335, quoted in *ibid.* at 242.

136 MacKenzie, *supra* note 71 at 1-7. See also text accompanying *supra* notes 112 and 113.

137 "Becoming 'Ethical,'" supra note 8 at 227-28. In an earlier article, Professor Pue notes that a major paradox in the historical development of common law capitalist states has been the simultaneous development of free market economies and "professional" monopolies: W.W. Pue, "'Trajectories of Professionalism?': Legal Professionalism After Abel" (1990) 19 Man. L.J. 384 at 386 (also published in A. Esau, ed., *Manitoba Law Annual, 1989-1990* (Winnipeg: Legal Research Institute, 1991)) [hereinafter "Trajectories"]. I would note another contradiction between the "law is a profession, not a business" ideology and the definition of "elite" law firms in this country. Law firms with the highest "status" are those who serve commercial interests — those that have direct associations (one or more partners serving as directors or senior executives) with one or more of the largest Canadian corporations and those whose most time-consuming work includes a large percentage of corporate and commercial law for major businesses and financial institutions. See B.D. Adam & K.A. Lahey, "Professional Opportunities: A Survey of the Ontario Legal Profession" (1981) 59 Can. Bar Rev. 674 at 676.

138 Auerbach, *supra* note 6 at 5.

139 Commentary 1, r. 1.17.

The "law is a profession, not a business" explanation is also expressed in statements using the metaphor of "prostitution." In 1915, Sir James Aikins warned that "[p]ersons who have ... sought to *commercialize* it [*i.e.* the practice of law], to *prostitute* it to such an end in itself [*i.e.* making money] have *lowered the professional tone* and so lost the respect and esteem of their fellow-practitioners and of the people."[140]

The rejection of market principles in the concept of professionalism has continued to this day.[141] It is most evident in the regulation of lawyers' advertising. Canon 5(3) in the CBA 1920 *Canons* warned that "self-laudations defy the traditions and *lower the tone* of the *lawyer's high calling.*" In the CBA 1987 *Code*, subsequent to court challenges of the profession's right to ban advertising, only advertising that is "so *undignified*, in *bad taste* or otherwise offensive as to be prejudicial to the interests of the public or the legal profession" is unethical.[142]

The "law is a profession, not a business" aspect of the gentleman concept of a lawyer, situated within a hierarchy similar to that of the established churches and the military, is also more noticeable in the absence of one metaphoric network that could have been expected to appear in institutional texts written after the turn of the century. Following the industrial revolution, the metaphor of the machine (especially the clockwork metaphor at first, and the computer metaphor later) became the new model for the explanation of institutions.[143] The only example from the machinery metaphoric network in the ABA 1908 *Canons* is in the preamble which notes that "it is peculiarly essential that the *system* for establishing and *dispensing* Justice be *developed* to a high point of *efficiency.*" There is nothing similar in the CBA 1920 *Canons*.

The ABA *Model Code*, promulgated in 1969, refers to the "*machinery* of law" in Note 2 to Canon 2, and to the "*machinery*" available to change advertising regulations in Ethical Consideration 2-10. Competent professional judgment is styled a "*product*" in Ethical Consideration 3-2. Otherwise, metaphors consequential to the industrial revolution are absent. Even by 1983, when the ABA *Model Rules* were promulgated, only a few more of these modern metaphors appeared. The preamble includes references to "performs various *functions*," "*cast* in the terms," "rules not *designed* to be a basis for civil liability," and "*work product* privilege." Other examples, from the Commentaries to various rules, include "joint undertaking,"[144] "[b]y the same

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140 Aikins, *supra* note 135 at 245. See text accompanying *supra* note 115.

141 "Becoming 'Ethical,'" *supra* note 8 at 229.

142 CBA 1987 *Code*, *supra* note 4, c. 14, Commentary 3.

143 H. Haste, *The Sexual Metaphor: Men, Women, and the Thinking that Makes the Difference* (Cambridge, Mass.: Harvard University Press, 1994) at 47. Metaphors from this network support the idea that Professor W. Wesley Pue has advanced in stating that the legal profession is consistent with "a vision of society in which *rationally* constructed *expert* knowledge is brought to bear on the problems ... facing humanity." ("Trajectories," *supra* note 137 at 407) [emphasis in original].

144 ABA *Model Rules*, *supra* note 3, r. 1.2, Comment. para. 1.

token,"[145] "*adjust* a relationship,"[146] "*measures* employed,"[147] and "information *transmitted*."[148]

The CBA 1974 *Code* and the CBA 1987 *Code* contain relatively few examples of the machinery metaphoric network as well. Commentary 1 in chapter 12 of the CBA 1974 *Code* insists that "judicial institutions will not *function effectively* unless they command the respect of the public."[149] Commentary 2 in the same chapter notes that the lawyer's background enables him "to observe the *workings* and discover the strengths and weaknesses" of the legal system. The rule in chapter 13 states that "[l]awyers should make legal services available to the public in an *efficient* and *convenient* manner."[150] Commentary 7 of the same chapter refers to actions "*designed* primarily to attract legal business" (which are prohibited). Commentary 5 in chapter 14 of the CBA 1974 *Code*,[151] encouraging lawyers' participation in law reform, continuing legal education, and the like, maintains that "the individual lawyer should do his part in assisting the profession to *function properly and effectively*."

It is not until the 1995 Alberta *Code* that metaphors of machinery predominate, surpassing the metaphors of Christianity and gentility in number. Even there, however, they occur less frequently than do the metaphors of the military. The preface refers to an "enforcement *mechanism*." The preface concludes with a note stating that it is improper to use any provision of that *Code* "as an *instrument* of harassment" (although the next words in the sentence are "or as a procedural *weapon*"). In chapter 1, entitled "Relationship of the Lawyer to Society and the Justice System," we read about the "justice *system* in *operation*," "perceived *weaknesses* in the *system*," "*reform* to the justice *system*," "*maintaining* the integrity of the justice *system* and ensuring that it *functions properly*," and of certain rules "operat[ing] independently."[152] Chapter 2, in addition to references to "operation" and "functioning," adds to the network in describing lawyers' duty to make legal services available to all, regardless of ability to pay, with such phrases as "*implement support systems*," "facilitate *optimum performance*," "facilitate the *monitoring* of competence on an ongoing basis," and "*monitored* on an ongoing basis."[153] Commentary G.2 in chapter 4 notes that good relations between lawyers "contribute to the *effective* and *expeditious dispatch* of clients' business." Commentary 2.2 in chapter 6 states that multiple representation is no justification for "*cutting corners*." Chapter 10, Commentary 8.1 lists "[c]ertain factors [that] will prevent the adversary *system* from *functioning* at its *optimum level*."

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145 *Ibid.*, r. 1.2, Comment, para. 3.

146 *Ibid.*, r. 2.2, Comment, para. 3.

147 *Ibid.*, r. 5.3, Comment, para. 1.

148 *Ibid.*, r. 7.3, Comment, para. 7.

149 See also CBA 1987 *Code*, *supra* note 4, c. 13, Commentary 1.

150 See also *ibid.*, c. 14. Commentary 10 to the same rule echoes these words in suggesting that lawyers who breach the restrictions on advertising should perhaps be dealt with leniently if they "acted in good faith in making legal services available more *efficiently*, *economically*, and *conveniently* than they would otherwise have been."

151 See also CBA 1987 *Code*, *ibid.*, c. 15, Commentary 4.

152 See 1995 Alberta *Code*, *supra* note 5, c. 1, Commentaries 2, 3, and 7.

153 See *ibid.*, c. 2, Commentaries G.1, 4.1 and 4.2.

Lawyers' actions are variously described throughout this *Code* in such terms as *weighed, designed, implement, formulate, convey, calculated* and *process*. Matters are broken down into *phases* or *steps*, and corporations into *constituent parts*.

IV. CONCLUSION

Metaphors, including the Christian, military, and gentility metaphors in the statements from the codes of conduct and those who produced the codes, are systemic. They are used as models for how things work, for how things should be valued, and for how they relate to (can be analogized to) other things.[154] One indication of the non-arbitrary nature of the three metaphoric networks examined in this article is their consistency with one of the most common orientation metaphors in the English language. That orientation metaphoric network expresses relationships in bodily terms, such as "up" and "down."[155] *Up* metaphors are positive and *down* metaphors are negative. For example, "happy" is expressed in terms of being *up*, as are "more," "good," and "virtue." More closely connected to the codes of conduct, "having control" is *up*, as in such phrases as "being on top of," "superior," and "ranks above." "High status" is also a relevant *up* metaphor. On the other hand, "sad" is expressed in terms of being *down*, as is "less," "bad," and "depravity." "Being subject to control," as in the phrase "fall from power," is also *down*. So is "low status."

There are numerous "up" metaphors in the quotations from the codes of conduct and those who produced them. Some of the most original and clearest illustrations of this orientation metaphor occurred when codes of conduct were first being written. Judge George Sharswood evoked the "tower of strength" that resulted from the good opinion of fellow lawyers.[156] David J. Brewer, a member of the committee that drafted the ABA 1908 *Canons*, referred us to the lawyer who "looks above" and "sees the lofty summits."[157] During the Canadian Bar Association's debate on the adoption of the CBA 1920 *Canons*, Colonel W.N. Ponton, K.C. evoked "tall men, sun-crowned, who stand above the fog."[158] Even in the codes of conduct promulgated in the past twenty-five years, however, we find phrases such as "uphold the integrity and honour of his profession," "highest standards," "uphold the dignity of the profession," "enhance the respect," and "dominant position."

There are also some "down" metaphors. In connection with the idea that law is a profession and not a business, and especially those rules concerned with outside interests, and advertising, the phrases "not detract from the status of lawyer," "nadir of its decline," and "lower the tone" were noted.

Each metaphoric network equates *up* with "good" and *down* with "bad." They are coherent in terms of the values they express. Their underlying rationale comes from the

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154 Haste, *supra* note 143 at 38.

155 Lakoff & Johnson, *supra* note 18 at 14-17.

156 See text accompanying *supra* note 39.

157 See text accompanying *supra* note 78.

158 See text accompanying *supra* note 116.

common attitudes taken towards them all. To be a lawyer, a gentleman, a minister, and an officer was to be above "what is commonly called the public"[159] and dedicated to a "high calling."[160]

What does each of these metaphoric networks currently contribute to the definition of lawyers' professionalism? The words we used and still use to describe the conduct required of lawyers contribute to the hierarchy within the profession on the basis of class, gender and ethnicity. They may also contribute to the "low esteem" in which the profession as a whole is held.

The metaphoric networks of gentility, religion, and the military are all hierarchical. They evoke a stratified social ordering. Power is most easily wielded in a hierarchical society, where there are explicitly followed distancing conventions and linguistic pomp and solemnity.[161] Non-linguistic signifying practices within the profession also illustrate this hierarchy through conventions such as bowing when entering or leaving a courtroom where a judge is presiding and the architectural design of a courtroom with its raised bench and the bar as boundary.

The metaphoric networks also evoke a strictly male world. Military officers, ministers and gentlemen were all men when these codes were promulgated. And yet, by the time the first national codes of conduct were produced, a few women were members of the legal profession, albeit they were admitted over the protests of the governing bodies of the profession and the bench. In Canada, the first woman, Clara Brett Martin, was admitted to practice as a solicitor in Ontario in 1893.[162]

The metaphoric networks in the codes of conduct also invoke an ethnocentric British-Canadian world. The first black lawyer, Delos Rogest Davis, was admitted to the bar in Ontario in 1886, and black lawyers were not unknown in Nova Scotia by the turn of the century.[163] However, the social construction of a "gentleman" was restricted not just to those who were white but to those who were from the "Motherland."[164]

As noted in the explanation of metaphors that began the body of this article, the essence of a metaphor can be said to be the understanding and experiencing of one kind of thing in terms of another.[165] The point is *not* that the metaphoric networks that

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159 See text accompanying *supra* note 39.

160 See text accompanying *supra* note 142.

161 Lakoff, *supra* note 22 at 266. The use of titles such as "My Lord" or "My Lady" is one example.

162 C. Harvey, "Women in Law in Canada" (1970) 4 Man. L.J. 9 at 17. The first Canadian woman lawyer was refused admittance for three years by the Law Society of Upper Canada because that institution interpreted the word "person," in the legislation allowing "persons" to be admitted, so as to exclude women. It took a statutory amendment to allow her to practice law. See C. Backhouse, "'To Open the Way for Others of My Sex'; Clara Brett Martin's Career as Canada's First Woman Lawyer" (1985) 1 C.J.W.L. 1 at 31.

163 P. Girard, "The Roots of a Professional Renaissance: Lawyers in Nova Scotia 1850-1910" (1991) 20 Man. L.J. 148 at 177. Delos Rogest Davis also had to be admitted by an act of the legislature, because he could not find a lawyer with whom to article (*ibid.*, 66n).

164 See text accompanying *supra* note 126.

165 See text accompanying *supra* note 18.

analogized lawyers to gentlemen, ministers, and military officers would not have explained who the ideal lawyer was to those excluded from the profession by their ethnicity, class or gender. To say that a lawyer was a Christian gentleman, with duties similar to those of an officer, is comprehensible to those situated otherwise. The point is that everyone, regardless of class, ethnicity, or gender, would read the texts of the codes of conduct and see the image of the lawyer produced thereby according to their own inclusion within or exclusion from that ideal. Analogizing lawyers to ministers, gentlemen, and officers is empowering for those who could or can assume those roles; it is disempowering for the "others."[166] The metaphoric networks in the codes of conduct — still in our codes of conduct — tell us not only of the social situation of those who produced them, but also who the readers of those texts are "supposed" to be.

There are more ways to exclude and disempower than by simply refusing admission; the method in use prior to the turn of the century. There are more ways to exclude and disempower than the current segregation and marginalization within the profession.[167] The predominant metaphors of the role of lawyers continue to exclude and disempower those whom these metaphors do not describe. The three metaphoric networks examined in this article rely for their meaning and practical effect on a pre-existing organization of social groups according to various factors, notably class, gender and ethnicity.[168] The images reflect pre-existing power relations. Examining the metaphors unmasks those power relations.

The three metaphoric networks may also contribute to the public's lack of trust in and respect for the legal profession. The profession's preoccupation with its "image"[169] and the negative public perception of lawyers may be related to these metaphoric networks of hierarchy and deference. The language that sets the profession apart from "mere money-getting trades" sets the profession above even its most favoured clients.[170] The elitism inherent in the conceptualization of the legal profession in terms of Christian, gentility and military metaphors — "dead" metaphors within the profession — may be more easily perceived from positions outside the profession. The incompatibility of the non-figurative meaning of the metaphoric statements with their context may be most apparent to those who do not share the "popular wisdom."

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166 Thanks to W. Wesley Pue for his emphasis of this point.

167 For example, in a variety of civil and common law countries, including Canada, women are clustered in particular occupations and particular tasks that are the least valued forms of legal practice in the particular culture. See C. Menkel-Meadow, "Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law" (1987) 42 U. Miami L. Rev. 29 at 40. Women of colour, Aboriginal women, women with disabilities and lesbians are not well represented in large, "elite" law firms, even in proportion to their (small) numbers in the legal profession. See *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993) at 85.

168 The same perhaps may be said for all metaphoric networks. See *e.g. supra* note 2 at 42.

169 See *e.g.* the July 1993 Decima Research poll conducted for *The Lawyers Weekly* in which subscribers asked to name the major issues facing the legal profession ranked "professional image" second, after the cost of legal services (J. Miller, "Off the Record" *The Lawyers Weekly* (11 March 1994) 3).

170 See text accompanying *supra* note 137.

Metaphors provide the framework within which we are able to think, serving as categories for grouping things and setting the agenda for the way that we conceptualize issues and the solutions we will find.[171] Ethical judgments within the North American common law legal professions are still governed by concepts — framed in words — from the turn of the century and earlier. How would the profession describe the "duty" of confidentiality between lawyers and their clients if it was not conceptualized in terms of the confessional or in terms of property to be guarded? What effect would a new analogy have on the duty of "loyalty" or the formulation of conflict of interest rules? What would lawyers' professionalism be like if framed in terms of cooking instead of war, of forests instead of Christianity, of equality instead of hierarchy?

The metaphoric networks that have continued in the codes of conduct from the turn of one century almost to the turn of another evidence the continued existence of obsolete institutional habits and forms. Lawyers' professionalism has not changed rapidly enough to keep up with changes both within and without the profession. It might seem amusing, rather than intellectually embarrassing or violent,[172] if one takes a sufficiently distant point of view, that a legal profession looking forward to the twenty-first century is still constructed and governed, to a large degree, by the images of the nineteenth century. But it is not amusing for those disempowered by these nineteenth century conceptions, however. Ethnocentricity, elitism, sexism and conservatism are part of the metaphoric networks of the Christian gentleman with his military duties. It is long past time to change the words and the ideas that have persisted when the reality behind them has changed.

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171 Haste, *supra* note 143 at 43.

172 Schlag, *supra* note 16 at 1248.