

## **LAW STUDENT WELLBEING IN THE UK: A CALL FOR CURRICULUM INTERVENTION**

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### **Abstract**

This paper argues that the design of the law curriculum in England and Wales should be revised to include programme learning outcomes that address the development of the competencies of resilience and management of subjective wellbeing. This need for the curriculum to be underpinned by principles of positive psychology, including self-determination theory, is signalled by the current research from Australia into law student psychological distress and subjective wellbeing and justified by the broad similarities in the context of legal education between Australia and England and Wales. The new 2015 Law benchmark statement provides an ideal opportunity for this to be achieved in the UK.

### **Introduction**

To develop professional students into effective life-long learners is a highly admirable goal. One of the key components to being fully engaged in life-long learning is high levels of subjective wellbeing (Huppert and So, 2013). Yet, this crucial component is often ignored in tertiary education. Indeed, high levels of psychological distress have been reported in many students completing a professional tertiary degree but distress whilst completing a law degree has been the most widely researched (Kelk, Medlow and Hickie, 2010; Larcombe and Feathers 2013; Leahy et al, 2010; Townes O'Brien, Tang and Hall, 2011). This is despite a general belief that students entering University are likely to be embarking on a new stage in their lives and fulfilling desired goals and thus have high motivation and optimism. Indeed, this general belief may enforce the idea that struggling at university is highly 'abnormal' and thereby exacerbate it.

One well-tested route to increasing subjective wellbeing in learners is to utilise Self-Determination Theory (SDT), a theory of motivation and engagement (Deci and Ryan, 2000). The three aspects of psychological functioning that this theory manipulates to increase wellbeing are: autonomy, competency and relatedness (Deci and Ryan, 2000). Sheldon and Krieger (2007) explain SDT in simple terms:

According to SDT, all human beings require regular experiences of autonomy, competence, and relatedness to thrive and maximize their positive motivation. In other words, people need to feel that they are good at what they do or at least can become good at it (competence); that they are doing what they choose and want to be doing, that is, what they enjoy or at least believe in (autonomy); and that they are relating meaningfully to others in the process, that is, connecting with the selves of other people

(relatedness). These needs are considered so fundamental that Ryan (1995) has likened them to a plant's need for sunlight, soil, and water.

(Sheldon and Krieger, 2007, p885)

The main focus of the theory is to explain what is needed for people to be able to motivate themselves to take required actions (that is, to be self-determined). Thus, it is also a theory of self-regulation. The thrust of the theory is that people will regulate themselves most appropriately when they are highly intrinsically motivated to do so (that is, the motivation is the result of psychological factors internal to themselves and thus the task is done for its own reward, such as, 'for the love of it'; Baard, Deci and Ryan, 2004). Indeed, Bailey, and Phillips (2015) confirmed that not only is intrinsic motivation associated with higher wellbeing but also better academic performance and greater student retention. Further, Kanat-Maymon, Benjamin, Stavsky, Shoshani and Roth (2015) found when the three basic 'needs' of SDT were thwarted, students were significantly more likely to cheat. As a full review of SDT is beyond the scope of this paper, please see Hagger, and Chatzisarantis, (2015) for a recent meta-analysis of motivation in education.

Thus, the present paper proposed changing the law curriculum to include information and exercises to enhance resiliency and subjective wellbeing via SDT. Although this will be a radical change in the UK, it is already a reality in Australia (see Field, 2014; Field, Duffy and Huggins, 2014).

### **Definitions of wellbeing**

The World Trade Organisation coined the term 'wellbeing' in 1948 (WHO 1948: 100). According to Fleuret et al 2011 "In Europe, use of the term was found in domains of economy, social welfare or social cohesion, and only penetrated wider policy discussions including health in the 1990s (Perret 2002 in France; Sointu 2005 in the United Kingdom).

Wellbeing is now being discussed in the context of Higher Education, including law (Biswas-Diener et al 2011; Parks 2011). Subjective wellbeing specifically focuses on quality of life from the point of view of emotional reactions and cognitive judgements (sometimes used interchangeably with the term *psychological wellbeing*).

Academics in Europe have turned their attention to the study of subjective wellbeing because it has been correlated with many positive indicators. According to Huppert and So (2013): "In cross-sectional, longitudinal and experimental studies, high levels of well-being have been shown to be associated with a range of positive outcomes, including effective learning, productivity and creativity, good relationships, pro-social behaviour, and good health and life expectancy". For a more extensive review of the literature linking subjective wellbeing with positive outcome indicators, see also reviews by Chida and Steptoe 2008; Diener et al, 2010a; Dolan et al. 2008; Huppert 2009b; Lyubomirsky et al 2005.

Further, Ruff (1989) defined Psychological (subjective) wellbeing as a combination of the following: self-acceptance; the establishment of quality ties to other; a sense of autonomy in thought and action; the ability to manage complex environments to suit personal needs and values; the pursuit of meaningful goals and a sense of purpose in life; and continued growth and development as a person. It is worth noting that the three components of SDT, autonomy, competency and relatedness, were also three aspects of Ryff's definition of psychological wellbeing (Ryff, 1989). Thus, by fostering motivation and engagement in students, their psychological wellbeing should also improve (as the two overlap). Further, student expectations of a course (as discussed below) are likely to also reflect their meanings for doing the course and their values – two other crucial aspects of Ryff's definition of psychological wellbeing. Finally, SDT encourages learners to be proactive in consciously engaging in the learning process (eg. Bailey and Phillips, 2015; Hagger, and Chatzisarantis, 2015).

### **Why should we aim to develop wellbeing?**

Some may be concerned that student wellbeing is seen as an academic concern at all (Escobales, 2004). Why should academics focus on student psychological wellbeing given that it has a complex definition that could be off-putting? One reason is that if students perceive what they are doing as developing their competencies, autonomy, as well as relationships (i.e. it is meaningful in these ways), their motivation and engagement in their course is likely to be high. Indeed, research in two law schools in America (Sheldon and Krieger 2007) demonstrated that by increasing these three factors via curriculum design changes, students showed increased wellbeing, better exam results and higher self-motivation for their first job after graduation.

As mentioned earlier, much of the current research primarily looks at student distress as opposed to wellbeing. This may be problematic for two reasons: First, it looks solely at the emotion and not at what causes it (Verger, et al., 2009). The relevancy of that distress needs to be understood in the context in which it is experienced. For example, a student who may find learning law a struggle, and feel hopeless about their future is in a very different situation to a student who is fully engaged in studying law, finds it very meaningful but also very challenging and time consuming. Both students may report similar levels of distress, despite the fact that the former has very low levels of psychological wellbeing and the latter, high levels of psychological wellbeing. Second, we argue that it may imply academics should be tasked with making students feel comfortable. That is, the "happiness" of the students becomes an academic's responsibility. That has the potential to be patronising to staff and students alike. Indeed, Ecclestone (2014) has expressed similar concerns with focusing on emotional wellbeing:

In my research on the rise of emotional well-being as a focus for educational intervention, I've learned that raising critical questions about these developments leads to allegations of having an elitist disregard for students' needs. I am not suggesting that universities should be indifferent to anxieties, but I believe unchallenged assumptions about vulnerability are damaging the educational relationship between students and academics.

(Ecclestone, 2014, p.1)

Thus, we suggest, the goal of legal educators need not be to safeguard their students' emotional wellbeing, nor the students' happiness per se but as Molly Townes O'Brien 2014 has eloquently written:

The goal is not to produce relaxed and superficially happy lawyers, but to produce competent lawyers and problem solvers, who have the skills and the creativity to address legal and social problems and make a positive difference. Legal education should be experientially and emotionally grounded so that lawyers can embrace the idea of struggle and change.

(O'Brien, 2014, p.8)

### **Student expectations and motivation**

Anecdotally, we see that students in the UK and in Australia entering law school choose to do so "with strong altruistic and naïve ambitions to learn the law in order to become good citizens, to help to change the world for a better place and to help those within it suffering injustice" (Coper, 2010). This is a good example of strong intrinsic motivations. Most first year students share a transformative experience as they begin their studies whether in the UK or in Australia (Field 2014b). It is submitted that the competitiveness of the entry process, the approach to teaching black letter law, the change to independent learning, and a growing realisation of the importance of gaining good grades to secure the key training contract or first job are shared contexts in general terms. These factors may all serve to potentially undermine that intrinsic motivation. Further, research undertaken in Australia by Cvetkovski et al (2012) and in Great Britain by Richardson et al (2015) indicate a risk of higher distress as a result of financial pressures common to both jurisdictions, which may also switch the focus away from intrinsically motivating aspects of completing a law degree. However, very little work has been conducted in exploring this issue. We also know that many students in England and Wales also have ambitions to become barristers and solicitors and that fewer than 50% eventually seek that career path. The formation of this ambition may be linked to fulfilling those altruistic ambitions, or it may be linked with extrinsic motivation of achieving status in society and a secure and substantial income.

We know little about how students develop their expectations of law school whether in the UK or elsewhere. They may have been influenced by media portrayal of lawyers and out of

date parental views on the legal profession. There may be a large gulf between the way law is taught in schools in England and Wales and in Further Education colleges and the way it is taught in university or a student may arrive at law school never having studied law before. This is less likely in many other A level subjects and may account for the apparent gulf between expectation and the first year law school experience in the UK. Further, university law school web sites are full of pictures of wigs and gowns and courtroom settings and this may reinforce student expectations of the activities enjoyed during their degree and the career opportunities they can expect upon graduation. Some interesting research has been conducted by Broadbent and Sellman (2013) on the images law schools in the UK use on their web sites. They comment:

Clegg's (2004) study suggested that law students were sometimes dissatisfied with the way law is taught, thinking that they would be arguing on their feet more of the time, a feeling perhaps reinforced by images of students mooting that populate many of the law school web pages.

(Broadbent and Sellman, 2013, p.1)

According to the Hardee Report, the most important reason respondents gave for choosing to study law was interest in the subject matter. This was followed by a desire for intellectual stimulation, and wanting a stable, secure future. The Hardee Report appears to downplay parental and family pressure upon degree choice and career expectation and appears to indicate that students are intrinsically motivated to study law since they find the subject matter of interest.

Nonetheless Larcombe et al (2012) support the notion that expectations are a key concept for those interested in research into student wellbeing:

Overall, this analysis provides tentative insight into the relationship between students' motivations and expectations and the high levels of psychological distress that many law students experience. The findings suggest that further exploration of motivations and goals, informed by SDT [Self-Determination Theory], would be a productive focus for future research into law student wellbeing.

(Larcombe et al, 2012, p74)

### **Regulation and curriculum design**

Regulation of law degrees in the UK follows a two level process mirrored in Australia. At institutional level, the degree program must satisfy national requirements for standards laid down by the Quality Assurance Agency (QAA) for the UK and the Tertiary Education Quality and Standards Agency (TEQSA) in Australia. Although students may opt to study law degrees without going on into legal practice most law degrees are also designed to satisfy requirements established by the professional bodies. In the UK these consist of the Bar

Standards Board (BSB) and the Solicitors Regulation Authority (SRA). Accreditation of Law Schools in Australia is governed by the Admitting Authorities in each Australian jurisdiction.

In the UK pursuant to the Courts and Legal Services Act 1990 the Law Society and Bar Council are required to agree qualification regulations in respect of those looking to qualify as solicitors and barristers and publish requirements that cover knowledge (through what is known as the Foundation Subjects) and general transferable skills. The qualifying law degree (QLD) is controlled in terms of length, number of attempts at Foundation subjects, and content. However, there is no mention of wellbeing, resilience or self-management within the joint statement. An opportunity to influence the curriculum has not been adopted by the professional bodies. In January 2014, the SRA and the BSB moved from institutional visits to a process of self-certification by Universities who offer QLDs. The expressed aim was “to remove the duplication of oversight of academic standards and quality with that of the Quality Assurance Agency (QAA)” (Academic Stage Handbook, 2014, p4).

This might signal a withdrawal of the professional bodies from taking a role in influencing the requirements for preparation for legal practice. It also appears to conflict with the rationale for including questions about mental health in the Practising Certificate Holder’s survey conducted annually by the professional bodies in the UK. If the legal profession is based upon a fiduciary relationship between client and lawyer this provides a compelling reason for individuals to understand and maintain their own psychological wellbeing and resilience to stress. Mental health issues may result in poor decision making, highly experienced lawyers leaving the profession or even suicide (Eaton, Anthony, Mandel and Garrison, 1990; Gatland, 1997; Leignel et al, 2014). This concern about mental health in the legal profession has resulted in the establishment of the Wellbeing at the Bar Programme<sup>1</sup> and the creation of staff programmes to support resilience by number of leading City of London solicitors firms including Clifford Chance and Hogan Lovell. The 2015 UK Health and Safety Executive statistics on work related stress, anxiety and depression in Great Britain reveal that professional occupations report the highest prevalence of work related stress. If wellbeing is a concern for the profession then addressing its development within the education and training of lawyers would be sensible.

For those not familiar with the Australian context the Law Admissions Consultative Committee (LACC) consists of representatives of the Law Admitting Authority in each Australian jurisdiction, the Committee of Australian Law Deans, the Australasian Professional Legal Education Council and the Law Council of Australia. LACC's main role is to forge consensus between the bodies represented by its members on matters relating to the academic and Practical Legal Training requirements for admission to the Australian legal profession. This includes the Priestley 11, the accreditation and appraisal of academic and

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<sup>1</sup> See findings of the 2015 survey of the Bar at <http://www.barcouncil.org.uk/media-centre/publications/2015/may/wellbeing-at-the-bar-report/>

Practical Legal Training institutions and courses. Although Australia has largely abolished the training contract, it effectively retains the concept of the QLD with the “Priestley 11” being equivalent to the UK seven foundation subjects (see Table 4.4 LETR section 4).

In 2010, Threshold Learning Outcomes (TLOs) for law were developed by the Australian Learning and Teaching Council (for similar reasons to the UK system of subject benchmarks explained below) and included self-management as TLO 6. This required Australian law graduates to be able to “reflect on and assess their own capabilities and performance, make use of feedback as appropriate, to support personal and professional development.” This was explicitly included to address the issues raised by research findings around of psychological wellbeing in Law students as is evident from the Good Practice Guide published in 2011 by the Australian Learning and Teaching Council. As explained by Huggins (2015), the TLOs for law have been widely supported by professional and academic bodies across Australia.

The UK QAA publish subject benchmarks for a variety of disciplines including Law, and these “define what can be expected of a graduate in terms of the abilities and skills needed to develop understanding or competence in the subject.” The Law benchmark provides guidance for members of the public including specifically students and employers on minimum standards of knowledge and skills that all law graduates with honours degrees will have achieved. The benchmarks inform the drafting of program learning outcomes by Law Schools and in some subject benchmarks examples are given in the Statement of how the outcomes might be demonstrated and assessed. Thus, most Law Schools in the UK work from these benchmarks and the professional requirements to draft their programme specifications and thereafter draft learning outcomes, appropriate to the level of study, for each module or unit that makes up the degree. This well understood process could be used to effect change. As noted above, an opportunity for curriculum review has arisen with the revision of the Law Subject benchmark in 2015 to include the introduction of self-management and personal development.

At the request of the Council of Chief Justices, LACC conducted a limited review of the Academic Requirements for admission to the legal profession in Australia in 2015. This has resulted in a revised set of Model Admission Rules (MAR) which cover all stages of qualification as a legal professional including the Priestley 11 requirements of the academic stage. The MAR explicitly require Practical Legal Training (PLT) and Supervised workplace learning (SWT) to include resilience and wellbeing in their required competencies and are so clear as to be worthy of quoting in full.

“4.6 All PLT providers and SWT providers should: (a) make applicants aware of the importance of personal resilience in dealing with the demands of legal practice; (b) provide applicants with appropriate access to resources that will help them develop such resilience; (c) provide applicants with information about how and

where to seek help in identifying mental health difficulties and in dealing with their effects; (d) make applicants aware of the benefits of developing and maintaining personal well-being in their professional and personal lives; and (e) provide applicants with information about how and where to find resources to help them develop and maintain such well-being.”

(Model Admission Rules 4.6)

Furthermore the entry level competency standards required of Admitting Authorities now includes Self-Management and in particular to demonstrate “an ability to manage work and personal issues consistent with principles of resilience and wellbeing”.

Although they are clearly written they do not go further than the provision of information. If these were to be reworded to ensure there is some measurable engagement by students with the issues of personal resilience and with tools to develop and maintain wellbeing they would form outcomes capable of measurement by formal assessment.

This clear recognition from Australia of the imperative to address wellbeing should be adopted more widely and in particular in England and Wales due to the contextual similarities. Furthermore the opportunity for widespread curriculum review has presented itself in the UK. In July 2015, the QAA published a revised Law benchmark Statement that now includes two relevant skills and qualities of mind:

“self-management, including an ability to reflect on their own learning, make effective use of feedback, a willingness to acknowledge and correct errors and an ability to work collaboratively”; and

“engagement with their own personal and professional development, and academic integrity.”

(Law Benchmark statement 2015 P7 Para 2.4)

The Law Schools across England and Wales as they map their curricula to these new benchmarks, as is required by the QAA as our regulatory body, are now able to address the issue of wellbeing. Thus the UK has been offered a framework that could be adapted and introduced into the undergraduate law curriculum.

### **Conclusion**

This paper argues that academics should be concerned with student subjective wellbeing and that the law curriculum should include basic principles of positive psychology (including SDT). An effective approach has emerged from Australia and an opportunity has arisen in the UK with the introduction, in the QAA Law benchmark statement, of new qualities of mind: ‘self-management’ and ‘engagement with personal development’. The Australian Model Admission Rules describe appropriate competencies that could be adopted in the UK as

programme learning outcomes. Across both Australia and the US further research is being undertaken into levels of psychological distress in law and other students. Research into wellbeing of students is in its infancy in the UK. This paper supports the imperative to address the issue of wellbeing and calls for further research into effective curriculum intervention in Higher Education aimed at the development of the competencies of resilience and of management of subjective wellbeing.

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