

# Identifying students' drive as a compass to being a 'good' lawyer<sup>1</sup>

**Abstract:** *The 'Priestley 11' mandates the teaching of professional responsibility, it constitutes little more than a shopping list of subjects to be covered. Students need to be able to identify ethical problems. But to be a 'good' lawyer they must also have the tools to respond effectively. In the context of alarmingly high levels of dissatisfaction and depression among lawyers and law students, those tools must be consistent with the student's own personal and professional identity. Drawing on work from outside legal education by authors like Martin Seligman and Daniel Pink, this paper will argue that scaffolding reflective practice within a broader framework of students' self-identified passions may provide a way of improving law students' resilience as well as assisting them to identify, resolve or avoid ethical problems. It will go on to suggest a practical guide to assisting students to identify their underlying drive for entering practice as a frame of reference for constructing authentic responses to ethical dilemmas based on developing practices being implemented in the undergraduate unit Lawyers and Professional Responsibility at the University of Canberra.*

## I INTRODUCTION

According to all published data, Australians are generally happy. The World Gallup Poll 2012 found that Australians self-report wellbeing as 7.2 out of 10 – well within the top 20 countries in the world.<sup>2</sup> More recent Australian Bureau of Statistics (ABS) data reported a slightly higher life satisfaction rating of 7.6 for Australians over the age of 15.<sup>3</sup>

Australians, at least on the basis of relatively limited data, are also generally happy at work. Australian's self-reported job satisfaction remained largely unchanged between 2001 and 2009.<sup>4</sup> Data published more recently by global recruiting firm Indeed put Australia *just* outside the top 10 countries in the world for job satisfaction.<sup>5</sup> Professionals also tend to be happier with their lot than employees in labour intensive industries. The Gallup World Poll in 2016 found that professional employees rated their life satisfaction as 6 out of 10 compared to 4.5 out of 10 for employees in agriculture or construction.<sup>6</sup>

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<sup>2</sup> New Economic Foundations, *Happy Planet Index Data 2016* (New Economic Foundations, 2016); Organisation for Economic Co-operation and Development, *Society at a Glance 2016: OECD Social Indicators* (OECD, 2016).

<sup>3</sup> Australian Bureau of Statistics, *General Social Survey: Summary Results, Australia, 2014* (ABS, 2014) cat no 4159.0.

<sup>4</sup> Australian Bureau of Statistics, *Measures of Australia's Progress, 2013* (ABS, 2015) Cat no 1390.0.

<sup>5</sup> Indeed Ltd, *The Indeed Job Happiness Index 2016: Ranking the World for Employee Satisfaction* (Indeed, 2016).

<sup>6</sup> Cited in John Helliwell, Layard Layard and Jeffrey Sachs, *World Happiness Report 2017* (Sustainable Development Solutions Network, 2016).

The fact that life satisfaction and job satisfaction both tend to be high is not surprising. International studies have tended to demonstrate that there is a strong link between a feeling of connectedness at work and overall life satisfaction.<sup>7</sup> However, the causative link is a little more difficult to establish.

In *Bleak House*, Dickens describes the miserable scene of the death of the law clerk, Nemo, alone in a dirty room over a rag and bone shop not far from the Court of Chancery. Although the inept coronial inquest into the death delivers a verdict of ‘accident’, Dickens’ heavy implication is that the clerk’s death was related to his heavy use of opium.

While Dicken’s tale occurred more than 150 years ago, some things would not appear to have changed. In an article published in the *New York Times* in July 2017, Eilene Zimmerman describes a tragically similar scene and the death of her ex-husband – an intellectual property lawyer.<sup>8</sup> The article provoked discussion on Twitter, Reddit, legal blogs and even prompted a response from the American Bar Association expressing its disappointment that the article had not commented on the ABA’s efforts to address ‘a much-overlooked and very important concern in the legal profession’.<sup>9</sup>

There is a small but growing body of evidence in the United States and more recently Australia to suggest that there is something about the way in which the legal profession and law schools function that is not meeting the needs of law students and young lawyers particularly in relation to preparing them for the pressures of a life in the law.

This paper describes a method of teaching and exploring professional conduct to create a demonstrable understanding among students of both the rules of conduct and how they meet students’ personal values. In doing so, it takes, as its starting point, the identification of students’ own motivations for studying law. Through a series of ethical dilemmas, students have the opportunity to refine their motivation in response. By focusing on the exchange between personal motivation and professional conduct, the objective is to provide the opportunity for students to identify motivation and meaning in their practice and thereby better prepare them as both ‘good’ and resilient lawyers.

II ‘THE CHILDREN ... SAY HE HAS SOLD HIMSELF TO THE DEVIL. I DON’T KNOW WHAT HE CAN HAVE DONE WITH THE MONEY.’<sup>10</sup>

A 2016 survey of almost 13,000 attorneys in the US, almost two thirds of respondents (61%) reported symptoms of anxiety and almost half reported symptoms of depression (45.7%). The same survey also found high levels of problematic alcohol and drug use – one third exhibiting signs of alcohol dependence and almost three quarters reporting weekly use of stimulants.<sup>11</sup> Disturbingly, the rates of

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<sup>7</sup> Timothy A. Judge et al, 'The Job Satisfaction-Job Performance Relationship: A Qualitative and Quantitative Review' (2001) 127(3) *Psychological Bulletin* 376.

<sup>8</sup> Eilene Zimmerman, 'The Lawyer, the Addict', *The New York Times* (online), 15 July 2017 <<https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html>>.

<sup>9</sup> Linda A. Klein, *ABA President responds to New York Times article 'The Lawyer, The Addict'* (4 August 2017) ABA <[https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/aba\\_president\\_respon.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/aba_president_respon.html)>.

<sup>10</sup> Miss Flite commenting on Nemo, Mr Krook’s law clerk lodger in Charles Dickens, *Bleak House* (The Penguin Group, 2003).

<sup>11</sup> Patrick R. Krill, Ryan Johnson and Linda Albert, 'The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys' (2016) 10(1) *Journal of Addiction Medicine* 46.

mental distress and substance abuse reported were both considerably greater than the last, much smaller, study of US attorneys published in 1990.<sup>12</sup>

The wellbeing of lawyers in the UK has been the subject of more limited discussion but the culture of law firms and legal practice, particularly the effect of 'round the clock' access, has been the subject of critical attention.<sup>13</sup>

Concerns with dissatisfaction among Australian lawyers was first hinted at in a very small study survey of lawyers leaving the profession in Western Australia in 1999. Many of the 47 identified that among their reasons for leaving was a decline in their 'quality of life'.<sup>14</sup> It would not appear to have been identified again until 2007 when Beaton Consulting's Annual Survey of the Professions<sup>15</sup> noted high rates of depression among the surveyed professionals, but particularly lawyers. Respondents also reported that they were more likely to use alcohol or drugs to manage their depressive symptoms.

While Beaton drew attention to lawyers among other professions, the publication by the Brain and Mind Research Institute (BMRI) in 2009 provided more focused evidence that lawyers as a group were reporting disproportionately high levels of psychological distress.<sup>16</sup> Respondents were also inclined to attempt to treat themselves, disinclined to seek help if they were depressed and also assumed that employers and people other than family and friends were likely to discriminate against someone with depression. Subsequent studies and surveys of both lawyers and law students have produced outcomes consistent with the BMRI report.<sup>17</sup>

A number of causes for higher levels of distress have been suggested, from long hours;<sup>18</sup> to the increasing accessibility of lawyers as a result of technology;<sup>19</sup> to the simple fact that perhaps people

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<sup>12</sup> G. Andrew H. Benjamin, Elaine J. Darling and Bruce Sales, 'The prevalence of depression, alcohol abuse, and cocaine abuse among US lawyers' (1990) 13(3) *International Journal of Law and Psychiatry* 233.

<sup>13</sup> Richard Collier, 'Wellbeing in the legal profession: reflections on recent developments (or, what do we talk about, when we talk about wellbeing?)' (2016) 23(1) *International Journal of the Legal Profession* 41; Richard Collier, 'Naming men as men in corporate legal practice: gender and the idea of 'virtually 24/7 commitment' in law' (2015) 85(3) *Fordham Law Review* 2387.

<sup>14</sup> Law Society of Western Australia, *Report on the Retention of Legal Practitioners* (Law Society of Western Australia, 1999).

<sup>15</sup> Beaton Consulting, *Annual professions survey: Research summary* (beyondblue, 2007).

<sup>16</sup> Norm Kelk et al, *Courting the Blues: Attitudes towards depression in Australian law students and lawyers* (Brain & Mind Research Institute at the University of Sydney, 2009).

<sup>17</sup> Judith Marychurch, *Good Practice Guide: Threshold Learning Outcome 6* (Australian Learning and Teaching Council, 2011); Arthur Moses, 'Wellbeing Survey of the NSW Bar' (Paper presented at the Public Defenders Criminal Law Conference 2017, Taronga Zoo Conference Centre, 18-19 March 2017) <<http://www.publicdefenders.nsw.gov.au/Documents/Wellbeing%20-%20Professional%20Identity%20-%20Ethics%20of%20Professional%20Civility%20in%20and%20out%20of%20Court%20-%20panel%20discussion.pdf>>; Thomas Oriti, 'Lawyers need more mental health support, advocates say', *ABC AM* (online), 17 May 2017 <<http://www.abc.net.au/news/2017-05-16/lawyers-need-more-mental-health-support/8529916>>; RT Michalak, *Causes and Consequences of Work-Related Psychosocial Risk Exposure* (Psychsafe Pty Ltd, 2015).

<sup>18</sup> Lara Bullock, 'Lawyers habits prohibit efficiency', *Lawyers Weekly* (online), 3 March 2016 <<http://www.lawyersweekly.com.au/careers/18089-lawyers-habits-prohibit-efficiency>>.

<sup>19</sup> *Ibid.*; Felicity Nelson, 'Loss of private life at heart of mental health crisis', *Lawyers Weekly* (online), 25 March 2016 <<http://www.lawyersweekly.com.au/news/18215-loss-of-private-life-at-heart-of-me%E2%80%A6>>.

don't like them.<sup>20</sup> It has also been suggested that distress is not the result of external factors but is instead the result of internal characteristics. For example, lawyers and law students who are identified as Myers-Briggs extroverted thinkers were thought to be more successful in practice and therefore introverted feelers more prone to dissatisfaction.<sup>21</sup> Despite the breadth of study, no single factor has been identified as the root cause.

Given that obtaining a law degree from a university has, since at least the 1960s,<sup>22</sup> become the most common way of preparing for entry to the legal profession in Australia, the prevalence of distress among lawyers and law students has prompted some research into the extent to which laws schools might be affecting the mental health of students.

Links between law school and its effect on students' perceptions of social relationships and the legal profession have been discussed in the US since the 1970s. Initial research about the effect of college on law students tended to focus on changes in students' understanding of how the law works<sup>23</sup> or on developmental changes in thinking styles as part of larger, generalised studies of college students.<sup>24</sup> As further studies began to focus primarily on law students, they began to reveal that what had been anecdotally referred to as 'the sophomore slump' in US colleges was in fact a demonstrable and almost uniform decline in enthusiasm among law students at the end of their first year of study.<sup>25</sup>

While these earlier studies continued to problematise students rather than teachers, within the next 10 years researchers in the US had turned the focus back on law schools, more specifically, how they were socialising students and placing a value on the adoption of certain behaviours pathways to successful practice.<sup>26</sup> They also questioned the focus in law school on substantive content and the lack of training in other skills, including interpersonal skills, which a survey of the bar had suggested was more valuable and may in fact help manage stress.<sup>27</sup>

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<sup>20</sup> Felicity Nelson, 'Why do people hate lawyers so much?', *Lawyers Weekly* (online), 18 February 2015 <<http://www.lawyersweekly.com.au/folklaw/16179-why-do-people-hate-lawyers>>.

<sup>21</sup> Susan Daicoff, 'Lawyer, Be Thyself: An Empirical Investigation of the Relationship Between the Ethic of Care, the Feeling Decisionmaking Preference and Lawyer Wellbeing' (2008) 16 *Virginia Journal of Social Policy & the Law* 87. For a more personal exploration of this idea see Brian Cuban, 'Being a Feeler in a Profession of Thinkers', *Above the Law* (online), 19 April 2017 <[http://abovethelaw.com/2017/04/being-a-feeler-in-a-profession-of-thinkers/?\\_hsenc=p2ANqtz-\\_y-EjX6ilTXPqsD7Ie4H13VojP--5XHs-4aK9fgC](http://abovethelaw.com/2017/04/being-a-feeler-in-a-profession-of-thinkers/?_hsenc=p2ANqtz-_y-EjX6ilTXPqsD7Ie4H13VojP--5XHs-4aK9fgC)>. Cuban has written extensively about his experience in practice and struggle with addiction see Brian Cuban, *The Addicted Lawyer: Tales Of The Bar, Booze, Blow & Redemption* (Post Hill Press, 2017).

<sup>22</sup> Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (Commonwealth Department of Education, Science and Training, 2003) 1-2.

<sup>23</sup> James M. Hedegard, 'The Impact of Legal Education: An In Depth Examination of Career-relevant Interests, Attitudes and Personality Traits Among First-Year Law Students ' (1979) *American Bar Foundation Research Journal* 791, 801.

<sup>24</sup> K.A. Feldman and T.M. Newcomb, *The Impact of College on Students* (Transaction Publishers, 1973).

<sup>25</sup> Wagner Thielens, *The Socialization of Law Students: A Case Study in Three Parts* (Arno Press, 1980).

<sup>26</sup> G. Andrew H. Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers' (1986) *American Bar Foundation Research Journal* 225; Stephen B. Shanfield and G. Andrew H. Benjamin, 'Psychiatric Distress in Law Students' (1985) 35 *Journal of Legal Education* 65.

<sup>27</sup> Benjamin et al, above n 26.

While research in the US has drawn very clear links between students' experiences of law school and their mental health,<sup>28</sup> Australian universities took comparatively little interest in the issue until the 2000s. Australia had a much smaller number of law schools producing a much smaller number of students.<sup>29</sup> At the same time the adoption of findings from the US, while sharing a similar English legal tradition, was actively challenged,<sup>30</sup> often on the basis that law students in the US are generally older, with different life experiences.<sup>31</sup>

The BMRI in 2009 report drew in responses from a small number of law students. While levels of distress for students were broadly similar to those for solicitors and barristers, disturbingly there was a much larger proportion of students reporting 'very high' levels of distress<sup>32</sup> and a disproportionately larger number of students reporting 'high' and 'very high' levels of distress compared to the general population.<sup>33</sup>

### III 'THE MESSINESS, CONFLICT AND COMPLEXITY OF LIFE ITSELF'

The absence of clear data on the cause of distress among law students in Australia has meant that there is also very little information on techniques to assist. Responses to the BMRI report and other surveys appeared very quickly. Academics, law schools and the Council of Australian Law Deans produced a range of materials and recommendations to address student wellbeing. Proposals for better pastoral care,<sup>34</sup> a greater focus on reflective practice<sup>35</sup> and even training in mindfulness and meditation<sup>36</sup> were offered as ways of improving outcomes for students.

What responses to the BMRI Report drew attention to was the absence of approaches in law school to support the personal and professional development of law in addition to their development of subject matter experts. In the context of teaching professional conduct, the predominant syllabus in law schools remains the 'Priestley 11'<sup>37</sup> intended to provide equivalency across jurisdictions and admitting authorities.<sup>38</sup> It is a list of *knowledge* areas that each graduate is expected to be able to demonstrate, including 'Ethics and Professional Responsibilities'.<sup>39</sup>

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<sup>28</sup> Molly Townes O'Brien, Stephen Tang and Kath Hall, 'Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum' (2011) 21(2) *Legal Education Review* 149.

<sup>29</sup> Johnstone and Vignaendra, above n 22.

<sup>30</sup> Kelk et al, above n 16, ii.

<sup>31</sup> Shanfield and Benjamin, above n 26.

<sup>32</sup> Kelk et al, above n 16, 11.

<sup>33</sup> Ibid. See also Natalie K. Skead and Shane L. Rogers, 'Do law students stand apart from other university students in their quest for mental health: A comparative study on wellbeing and associated behaviours in law and psychology students' (2015) 42 *International Journal of Law and Psychiatry* 81.

<sup>34</sup> Nicki Bromberger, 'Enhancing Student Learning - The Nurturing Teacher' (2010) 20 *Legal Education Review* 45.

<sup>35</sup> Kelley Burton and Judith McNamara, 'Assessing reflection skills in law using criterion-referenced assessment' (2009) 19 *Legal Education Review* 171.

<sup>36</sup> Colin James, 'Law Student Wellbeing: Benefits of Promoting Psychological Literacy and Self-Awareness Using Mindfulness, Strengths Theory and Emotional Intelligence' (2011) 21 *Legal Education Review* 217.

<sup>37</sup> Law Admissions Consultative Committee, *Prescribed Areas of Academic Knowledge* (Law Council of Australia, 2016).

<sup>38</sup> Law Admissions Consultative Committee, *Background Paper on Admission Requirements* (Law Council of Australia, 2010).

However, knowledge of or the capacity to recite professional conduct rules doesn't necessarily make for an 'ethical' lawyer. Research into undergraduates' ethical development has found that detailed discussion of the law is often quickly forgotten and does little to change behaviour. In a unique longitudinal study, Evans and Palermo<sup>40</sup> put a series of ethical dilemmas to 700 Victorian law students both before and after their legal ethics unit and once they had entered legal practice. They found that respondents' answers did not change and generally did not refer to or apply the law to reach a resolution.<sup>41</sup> More recent research in the United Kingdom with English law students has suggested that law students may be subject to more complex influences and that there may be a more nuanced change that occurs among undergraduates.<sup>42</sup> Tracking ethical and moral tendencies against vocational choice, it found that as a whole there was no decline in the 'ethicality' of students over time. However, vocational choice did tend to correlate with ethical choices and 'ethical fading'<sup>43</sup> leading the researchers to suggest that the profession may have more of an effect on professional identity than law school.

In a broader context, the practise of law is not 'the application of science to a system of rules, principles and institutions' but requires an understanding of the 'dynamics' and 'vagaries' of the institutions and rules involved.<sup>44</sup> Like other areas of the law, professional conduct rules 'cannot be learned and internalised through theoretical study, but rather in the midst of the messiness, conflict and complexity of life itself'.<sup>45</sup> There is considerable value in exposing students to ethical dilemma as a means of providing exposure to the 'messiness' of life. Experiential learning has a wealth of research to support its value in providing not only an awareness of the relevant theories, rules or principles, but also a deeper understanding of the concepts that underpin them. It also supports the development of more complex webs of knowledge and understanding that allow students to link seemingly distant pieces of information together to provide novel solutions.<sup>46</sup>

Legal education has traditionally been a practice of 'chalk and talk' with knowledge assumed to be transferred from the instructor to the student simply by explanation. The concept of experiential learning in law school has only comparatively recently found its way into more units as a means of providing authentic opportunities to practice.<sup>47</sup> However, the demonstrable benefits to exposing students to experiential learning opportunities have been explored for some time. Educators in a

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<sup>39</sup> Ibid 1-2.

<sup>40</sup> Adrian Evans and Josephine Palermo, 'Zero Impact: Are Lawyers' Values Affected by Law School?' (2005) 8 *Legal Ethics* 240.

<sup>41</sup> Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 2014).

<sup>42</sup> Richard Moorhead et al, 'The ethical identity of law students' (2016) 23(3) *International Journal of the Legal Profession* 235.

<sup>43</sup> Elizabeth Chambliss, 'Whose ethics? The benchmark problem in legal ethics research' in Leslie Levin and Lynn Mather (eds), *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press, 2012) 47.

<sup>44</sup> Charles Sampford, 'Law, ethics and institutional reform: finding philosophy, displacing ideology' (1994) 3(1) *Griffith Law Review* 1, 8.

<sup>45</sup> Maria Nicolae, 'Legal Education, Legal Practice and Ethics' (2015) 25(1) *Legal Education Review* 237, 244.

<sup>46</sup> Robert Burns, *The Adult Learner at Work: The Challenges of Lifelong Education in the New Millenium* (Allen & Unwin, 2nd ed, 2002) 260-261.

<sup>47</sup> Deborah Maranville, 'Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning' (2001) 51(1) *Journal of Legal Education* 51; O'Brien, Tang and Hall, above n 28.

range of disciplines often discuss the concept of ‘scaffolding’ learning, that is, providing a framework of experiences, concepts and encouragement to support the learner’s progression. The concept is not new. It was discussed and explored as early as the 1920s and 1930s in the context of children’s language and skills development.<sup>48</sup>

While an approach developed for working with children may sound odd, the model is not too far removed existing ideas about adult learners. It’s arguable that the differences between pedagogy and andragogy may be illusory.<sup>49</sup> In working with undergraduates, cognitive models of ‘young adults’ describe common themes between the two groups which suggest that an initially high degree of support is necessary. At its core, andragogy also advocates a humanist, learner-centred approach to teaching, similar to the humanist or sociocultural theories of learning developed by writers like Dewey and Vygotsky. In the context of professional conduct, exposing students to practical or authentic experiences may also have a positive effect on their perspective on legal practice with research in the UK suggesting that students who participated in clinics or pro bono opportunities demonstrating the intrinsic rewards of practice more than extrinsic rewards.

Approaching the teaching of professional conduct through experiential and reflective teaching episodes is also consistent with the academy’s response to the BMRI report. At about the same time as the BMRI Report was released, the Council of Australian Law Deans endorsed the Threshold Learning Outcomes (TLOs) for Bachelor of Laws programs.<sup>50</sup> The TLOs were the result of a lengthy consultation process with students, law schools and the wider profession to develop a series of uniform learning outcomes to identify what a graduate should ‘know, understand and be able to do as a result of learning’.<sup>51</sup> Following the BMRI report, the Council and academics highlighted the role of TLO 6 in addressing law students’ wellbeing.<sup>52</sup> In the promulgation of TLO 6 in particular, CALD also noted the importance of reflection as building ‘capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need’.<sup>53</sup>

#### IV HEIGH HO, HEIGH HO...

Decades of research into workplace motivation suggests that while salary and financial reward are important to attracting and engaging employees, it’s not what keeps people in their jobs, but something else. A survey of 9,000 Australians conducted by Roy Morgan in 2013 found that half of the respondents who considered they were poorly paid still reported that they were satisfied with the

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<sup>48</sup> See for example Barbara Rogoff, *Apprenticeship in Thinking: Cognitive development in social context* (Oxford University Press, 1990); John Dewey, ‘How We Think’, *The Middle Works 1899-1924* (Southern Illinois University Press, 1978).

<sup>49</sup> Burns, above n ; Sharan B. Merriam, ‘Andragogy and Self-Directed Learning: Pillars of Adult Learning Theory’ (2001) 2001(10) *New Directions for Adult and Continuing Education* 1.

<sup>50</sup> Learning and Teaching Academic Standards Project, *Bachelor of Laws: Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010).

<sup>51</sup> Australian Qualifications Framework Council, *Australian Qualifications Framework* (Australian Qualifications Framework Council, 2011) 9.

<sup>52</sup> Marychurch, above n 17; O’Brien, Tang and Hall, above n 28.

<sup>53</sup> Learning and Teaching Academic Standards Project, above n 50, 23

jobs.<sup>54</sup> Respondents reported that they received a high level of recognition for their work. A much smaller survey published last year found similar results, although respondents also reported high levels of satisfaction as a result of good relationships with colleagues (56%), access to resources (52%) and coaching (34%) as well as recognition.<sup>55</sup> Conversely, disengaged or dissatisfied employees are likely than to engage in what has been referred to as ‘counterproductive behaviours’ including intentional poor performance, absenteeism, gossip and – most relevantly to this paper – alcohol and substance abuse.<sup>56</sup>

Since the mid-1950s, vocational psychology has identified and explored the tension between extrinsic and intrinsic motivators to work. As early as 1950, experiments involving rhesus monkeys and simple puzzles had begun to reveal that extrinsic rewards can be a disruptive rather than motivating influence on puzzle solving.<sup>57</sup> During the 1970s, a series of experiments conducted with college students suggested that the experience wasn’t limited to primates. Two groups of students were invited to complete different tasks – one group was paid, the other was not. Researchers found that the performance of the group to which an extrinsic reward was offered improved but when it was withdrawn, performance fell below the unrewarded group.<sup>58</sup>

This tension between extrinsic and intrinsic motivators to performance has been the subject of ongoing research. In the context of wellbeing, individuals who respond more readily to intrinsic motivation demonstrate greater interest and excitement in their roles, to persist and to demonstrate resilience.<sup>59</sup> Individuals also tend to gravitate toward roles that allow them to fulfil those motivations. That is, there is a direct link between personal motivators and job characteristics.<sup>60</sup> For example, research into knowledge workers, like lawyers, has found that there is a tendency to take jobs that

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<sup>54</sup> Roy Morgan Research, 'Happy days: job satisfaction in Australia' (2013) Finding No 5308 <<http://www.roymorgan.com.au/findings/5308-job-satisfaction-in-australia-201311200105>>.

<sup>55</sup> Lindsey McMillan, *2016 Snapshot of the Australian Workplace: A Future That Works* (Reventure Ltd, 2016).

<sup>56</sup> Thomas W. Mangione and Robert P. Quinn, 'Job satisfaction, counterproductive behavior, and drug use at work' (1975) 60(1) *Journal of Applied Psychology* 114; Anthea Long, 'Happily Ever After?: A Study of Job Satisfaction in Australia' (2005) 81(255) *The Economic Record* 303; Andrew E. Clark, 'What really matters in a job? Hedonic measurement using quit data' (2001) 8(2) *Labour Economics* 223; Aldea-Capotescu Roxana, 'Antecedents and Mediators of Employees' Counterproductive Work Behavior and Intentions to Quit' (2013) 84 *Procedia - Social and Behavioral Sciences* 219.

<sup>57</sup> Harry Harlow, Margaret Harlow and Donald Meyer, 'Learning Motivated by a Manipulation Drive' (1950) 40 *Journal of Experimental Psychology* 231.

<sup>58</sup> Edward L. Deci, 'Effects of externally mediated rewards on intrinsic motivation' (1971) 18(1) *Journal of Personality and Social Psychology* 105; Edward L. Deci, 'Intrinsic motivation, extrinsic reinforcement, and inequity' (1972) 22(1) *Journal of Personality and Social Psychology* 113.

<sup>59</sup> Richard M. Ryan and Edward L. Deci, 'Self-determination theory and the facilitation of intrinsic motivation, social development, and well-being' (2000) 55(1) *American Psychologist* 68; Kennon M. Sheldon, Richard M. Ryan and Harry T. Reis, 'What Makes for a Good Day? Competence and Autonomy in the Day and in the Person' (1996) 22 *Personality and Social Psychology Bulletin* 1270.

<sup>60</sup> Murray R. Barrick, Michael K. Mount and Ning Li, 'The Theory of Purposeful Work Behavior: The Role of Personality, Higher Order Goals and Job Characteristics' (2013) 38(1) *Academy of Management Review* 132.

have a high degree of ‘task significance’ – the perception of ‘making a difference’ as well as a high degree of autonomy.<sup>61</sup>

Emerging literature on ‘Generation Y’ has also tended to suggest that while financial stability remains important, intrinsic motivators have an equally important influence on their job satisfaction. For example, studies conducted with Generation Y employees in northern Europe have found that in the context of reviewing workplace experience, salary took a lower priority than motivators such as competence and autonomy. Generation Y also saw their personal and professional lives as very closely connected, placing a greater emphasis on flexibility and work/life balance.<sup>62</sup> The outcomes reported are consistent with international survey results published by Gallup and drawn from its World Poll. Gallup found that the value on the pay check was less important to Generation Y than fulfilling a ‘purpose’. Relatedly, respondents saw their job and life as closely associated with one another.

Personal, value based, intrinsic motivators are closely linked to job satisfaction and therefore wellbeing. There is ample to research to suggest that the converse is also true - the absence of job satisfaction and absence of a role that meets intrinsic ideas of value has a negative effect on personal wellbeing. Identifying those intrinsic motivators and values therefore can have a critical role in assisting with career and job selection – to finding a role that ‘fits’. The question therefore becomes: ‘How can legal education support students to identify and refine their motivation?’

## V DEVELOPING DRIVE AND MOTIVATION

There is, unsurprisingly, very little written on developing reflective practice and thinking in legal education. However, as a result of the promulgation by CALD of its TLOs which place an emphasis on the skill, it becomes increasingly important to identify techniques to help students to develop it.

The starting point for designing teaching episodes must be the Priestley 11. Its requirements are relatively limited in terms of professional conduct, requiring only that the unit address practitioner’s duties to the law, the court, the client (including managing a trust account) and other practitioners. Moving beyond content to skills, CALD’s TLOs provide more guidance in relation to professional development and in managing ethical dilemmas. TLO 2 deals with ethics and professional responsibility and requires that all graduates be able to demonstrate:

- (b) an ability to recognise and *reflect upon*, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
- (c) an ability to recognise and *reflect upon* the professional responsibilities of lawyers in promoting justice and in service to the community... (emphasis added).

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<sup>61</sup> Tomislav Hernaus and Josip Mikulić, 'Work characteristics and work performance of knowledge workers' (2014) 9(3) *EuroMed Journal of Business* 268; Tomislav Hernaus and Nina Pološki Vokic, 'Work design for different generational cohorts: Determining common and idiosyncratic job characteristics' (2014) 27(4) *Journal of Organizational Change Management* 615.

<sup>62</sup> Susanna Kultalahti and Riitta Liisa Viitala, 'Sufficient challenges and a weekend ahead – Generation Y describing motivation at work' (Pt Emerald) (2014) 27(4) *Journal of Organizational Change Management* 569.

Identifying intrinsic motivation has, however, undergone something of a resurgence at least in popular literature very recently. The publication of books like *The Happy Lawyer*<sup>63</sup> and *The Good Lawyer*<sup>64</sup> along with the emergence of podcasts like *Happy Lawyer*, *Happy Life* in Australia have provided fantastic resources on which to base a discussion about what students want from their career in the law. However, there are limited resources on which to draw to base lectures and lesson plans.

Looking outside legal practice, there is a similarly growing body of literature available. One of the most cited books at least in the context of popular discussion of motivation, has been Daniel Pink's *Drive*.<sup>65</sup> Pink discusses the tension between extrinsic and extrinsic motivators in a manner that suits undergraduates. He also provides some practical suggestions for approaching questions about motivation. As a basis for discussions in the unit I convene, students are invited to read the following extract and respond to the questions that follow it:

The activity may appear simple, but to get the real value from it take some time to think about and reflect on your answers. You can re-write them as many times as you wish. They are *yours*. While you might include them in your reflective journal, you **are not** being assessed on the answer you provide but the process by which you arrived at that answer.

### **Question 1: First Ask a Big Question...**

Read the following extract from Daniel Pink, *Drive: The Surprising Truth About What Motivates Us* (Canongate Books, 2011), 154-155.

In 1962, Clare Boothe Luce, one of the first women to serve in the U.S. Congress, offered some advice to President John F. Kennedy. "A great man," she told him, "is one sentence." Abraham Lincoln's sentence was: "He preserved the union and freed the slaves." Franklin Roosevelt's was: "He lifted us out of a great depression and helped us win a world war." Luce feared that Kennedy's attention was so splintered among different priorities that his sentence risked becoming a muddled paragraph. You don't have to be a president— of the United States or of your local gardening club— to learn from this tale. One way to orient your life toward greater purpose is to think about your sentence. Maybe it's: "He raised four kids who became happy and healthy adults." Or "She invented a device that made people's lives easier." Or "He cared for every person who walked into his office regardless of whether that person could pay." Or "She taught two generations of children how to read." As you contemplate your purpose, begin with the big question: What's your sentence?

**What is your sentence?**

**Questions 2 and 3: What Gets You Up in the Morning? What Keeps You Up at Night?**

Read the following extract from Alan Webber, *Rules of Thumb* (HarperCollins, 2009).

**What gets you up in the morning?**

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<sup>63</sup> Nancy Levit and Douglas O. Linder, *The Happy Lawyer: Making a Good Life in the Law* (Oxford University Press, 2010).

<sup>64</sup> Nancy Levit and Douglas O. Linder, *The Good Lawyer: Seeking Quality in the Practice of Law* (Oxford University Press, 2014).

<sup>65</sup> Daniel Pink, *Drive: The Surprising Truth About What Motivates Us* (Cannongate Books Ltd, 2011).

It's a tragedy of American work life. Polls vary but in general it's safe to say that more than 50 percent of American workers hate their jobs. For them, the answer to the question "What gets you up in the morning?" must be "I just need the money. I don't have a choice; I'm so numb I just do it without thinking. It doesn't really matter."

The level of energy put out by an organization's people is one of the things that separate a company you'd want to work for from one that leaks talent like a sinking boat. When I'd go visit a company I could feel it the moment I arrived. There'd be a buzz in the air created by people who are working hard and working together. Places where people know why they get up in the morning feel, sound, and move differently from places where dread and drudgery are the sum total of the work experience.

### **What keeps you up at night?**

I like the question "What keeps you up at night?" because it's a chance for leaders to be honest. Much of what preoccupies men and women in positions of responsibility is of little long-term importance. Rarely do they get a chance to reflect on the things that really matter to the company's long-term viability. Business leaders who care deeply about matters of community and social change find day-to-day concerns crowding out broader issues. The things that keep leaders up at night, I've found, are the matters that never seem to find the time or place for serious engagement in the course of an ordinary workday. And, I've found, leaders genuinely believe there are things worth caring about so much, they do keep you up at night.

We all want to do work that excites us. We want to care about things that concern us. Here's a chance to make your list so you can work on those two things.

...[W]rite down your answer to the question "What gets you up in the morning?"

Try to keep it to one sentence. If you don't like your first answer, throw it away and do it again... Keep doing it until you've got an answer you can live with. When you're done with the first question, do the same exercise for the second one: "What keeps you up at night?" Work at it until you've got an honest answer.

Then read your two answers out loud to yourself. If you like them—if they give you a sense of purpose and direction—congratulations! Use them as your compass, checking from time to time to see if they're still true. If you don't like one or both of your answers, it opens up a new question: what are you going to do about it?

Because whatever your answers are, you're spending almost two thousand hours a year of your life doing it. That makes it worthwhile to come up with answers you can not only live with but also live for.

### **Question 4: What do you want to do with your law degree?**

Yes, this is the same questions we have asked each other since the beginning of law school. If so, then you already have an answer. However, are you happy with that answer? You can always have another try.

### **Question 5: Are there links between your answers to questions 1 to 4?**

Students are scaffolded through a reflective learning process including examples and the opportunity to assess examples of reflective writing against the marking criteria.

Throughout the semester, students are then presented with a series of ethical dilemma based on the readings and materials for the week, including discussions in seminars to which they must write a response. Students are however encouraged to write their response so that is consistent with their 'sentence' or, if they need to revise their sentence, to do so in their response.

Students' responses to the process have been diverse. Some have clearly identified a motivation at the start of the semester and have continued to reinforce it. Others have discovered that what they find rewarding and why they decided to study law were very different. As a result, they were able to take the opportunity to explore options for legal practice that might align more closely with their interests.

Interestingly, it has provided many students with an authentic guide on managing ethical dilemma or on how to approach different conflicts. It also provides a basis for the next step in the development of the approach, that is, longitudinal research of the effect of the approach on law students' and young lawyers' well-being as they enter the profession.

## VI CONCLUSION

Something about the way in which law is taught is failing to meet the needs of an increasingly large proportion of law students and young lawyers. It has been argued that the way in which law is taught has an effect on law students' perceptions of reward. Law schools, it's argued, encourage public competition and place a premium on extrinsic reward through mooting, trial advocacy and assessment.<sup>66</sup> However, the extent to which law school has an effect on ethical development is not as clear.<sup>67</sup>

While cause and effect are not clear, research into workplaces generally suggests that the rate of distress and depression among law students and young lawyers represents a disconnect between the practice of law and the life of lawyers. This paper argues that one possible approach is to encourage law students to identify and refine their motivation or studying or practising law through reflective practice. To the extent that job satisfaction and therefore wellbeing is linked to purpose, this approach may produce benefits in terms of supporting law students to become 'good' lawyers.

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<sup>66</sup> Susan Sturm and Lani Guinier, 'The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity' (2007) 60(2) *Vanderbilt Law Review* 515.

<sup>67</sup> Moorhead et al, above n 42.