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BUTTERCUP GOES TO LAW SCHOOL

Student wellbeing in stressed law schools

JUDY ALLEN AND PAULA BARON

The quintessential first year law student at UWA is 17. She is exceptionally bright, having scored over 90 on her HEEAT. She is Christian, single and plans the world. She is very busy, you can't even find her in her room. She is enrolled in law full time. She expects to work around 20 hours a week during law studies and also to work in a legal employment for around 40 hours. Her preferred career choice on completion of her studies is to do a commercial law and she would like to work in a large law firm. Let's call this semester 10 student Buttercup.

This article is concerned with issues of the health and wellbeing of Australian law students. Overseas studies show a decline in the values and motivation of students who undertake law, leading to a significant risk to mental health. We are currently engaged in research that seeks to determine whether Australian law students experience a similar decline. The hypothesis of this study is that law students experience a decline in life satisfaction and wellbeing that correlates with a decline in intrinsic motivation and values. To date, our preliminary demographic survey of the 2004 first year cohort at the University of Western Australia (UWA) has yielded a picture of the first year law student that raises questions about her future wellbeing. This article reports on this preliminary demographic and reflects on the implications of our hypothesis in the current tertiary climate. Our conclusion is pessimistic: we are of the view that the likely increase in student numbers in law, and the consequent pressures brought to bear on Australian law schools, are likely to have a deleterious effect on Buttercup, our quintessential first year student, in both the short and the long term.

Buttercup and her friends: studies of health and wellbeing

Our earlier work on student perceptions of law school has revealed fragility behind the confident mask of the law student.¹ This manifests itself in a fear of failure, concern about image and peer perceptions and a deep insecurity about academic performance that leads to conservative education choices and reluctance to take risks in the classroom.

There is now a considerable body of empirical work in the United States on the perilous mental health of lawyers and law students. Studies of lawyers have found disproportionately high rates of depression, anxiety, phobia, interpersonal sensitivity, drug abuse and suicide.²

Studies of law students have found that these trends are already apparent in law school and it has been argued that the law school experience contributes to declining mental health.³ Reich found that the law students studied projected as polished, confident, sharp witted and competitive but at the same time scored below average on a Sense of Well Being scale and were inwardly self-doubting, insecure and defensive.⁴ A 1986 study by Benjamin et al found that while students reported normal levels of psychiatric distress before they began their legal studies, their levels of depression, anxiety, hostility, paranoia, social alienation and obsessive compulsion increased dramatically in their first year of study. The heightened levels of psychiatric symptoms continued through law school and did not abate after graduation.⁵ These studies suggest that legal education itself has a negative impact on the health of law students. A number of reasons can be put forward for this negative impact.

The first is intense competition and emphasis on grades. Competition to get into the large law firms is very high. Law students need to evidence not only outstanding academic results, but experience that shows such qualities as leadership, teamwork and the potential for commercial work.⁶ Not only does this impinge significantly on all aspects of the students' lives, the pressures heighten the anxiety of individual students.⁷

The competitive pressures of law school can lead students away from their positive personal values towards status-seeking rewards causing a loss of self-esteem and wellbeing.⁸ Sheldon and Krieger have now tested this hypothesis applying self-determination theory to the study of wellbeing in law students.⁹ This theory indicates that the behaviour motivated by one's own intrinsic beliefs, values and interests maximises satisfaction but behaviour motivated by extrinsic factors of coercion, fear, guilt and pleasing others leads to loss of satisfaction and maladjustment. A further distinction is drawn between intrinsic goals and values such as intimacy, relationships and personal growth and extrinsic goals and values such as money, image and fame. There is a strong correlation between an emphasis on extrinsic values and diminished sense of wellbeing and adjustment.

Sheldon and Krieger hypothesised that law students moved away from both intrinsic motivation and intrinsic values during their law studies. Their work showed that during their first year of law studies, law students evidenced a large decline in life satisfaction and

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2. W. Eaton, J. Anthony, W. Mandel and R. Garrison, 'Occupations and the Prevalence of Major Depressive Disorder' (1990) 32 *Journal of Occupation Medicine* 1079 found lawyers had the highest incidence of major depressive disorder among 104 occupational groups. CJA Beck, BD Sales and CAH Benjamin, 'Lawyer Distress: Alcohol Abuse and Cocaine Abuse Among United States Lawyers' (1995) 10 *Journal of Law and Health* 1 found depression, anxiety, phobia and interpersonal sensitivity 5–15 times more prevalent amongst lawyers. See also R. B. Allen, 'Alcoholism, Drug Abuse and Lawyers: Are we Ready to Address the Denial?' (1997) 31 *Creighton Law Review* 265; S. Daicoff, *Lawyer Know Thyself: a Psychological Analysis of Personality Strengths and Weaknesses* (2004; American Psychological Association, Washington DC).
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4. S. Reich, 'California Psychological Inventory: Profile of a Sample of First Year Law Students' (1976) 39 *Psychol. Rep.* 871.
5. G. A. H. Benjamin, A. Kaszniak, B. Sales and SB Shanfield, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers' (1986) *American Bar Foundation Research Journal* 225.
6. Gina McCall, 'A Wrig and a Prayer' (2004) Sept 30-Oct 6 *Business Review Weekly*, 46.
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9. K M Sheldon and L S Kreiger, 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Wellbeing' (2004) 22 *Behavioural Sciences and Law* 261.

10. P Carrington and J J Conley, 'The Alienation of Law Students' (1977) 75 *Mich L Rev* 887.

11. As far as we are aware, there have been no studies in Australia that have sought to follow up the US studies empirically, although there has been some acknowledgement of the issues raised by these studies in the literature. See for instance Christine Parker, 'What do they Learn when they Learn Legal Ethics?' (2001) 12 (1 & 2) *Legal Ed Rev* 175 at 181; Andrew Goldsmith, 'Warning: Law School Can Endanger Your Health!' (1995) 21 *Monash U L Rev* 272.

12. There appears to be a gender bias in the sample. Nevertheless, there are more women than men enrolled in law at UWA. First year statistics for law in 2004 show an enrolment of 127 men to 179 women.

13. In the 2001 Census, the two most common ancestries identified within WA were English and Australian, together accounting for 74.2%. See Australian Bureau of Statistics ('ABS'), '2001 Census Basic Community Profile and Snapshot', available at <<http://www.abs.gov.au/ausstats/abs@census.nsf/lookup2001Census/D7B3B8ED6083E71CA256B8BF000171DB#Birthplace>> at 14 November 2004.

14. We suggest this would accord with the 2001 census figures which showed that 70% of adults had exercised for recreation, sport or fitness during the previous two weeks: ABS, note13, available at <<http://www.abs.gov.au/Ausstats/abs@nsf/e8ae5488b598839cc a25682000131612/cac1a34167e36be3ca256dea00053a7a?OpenDocument>> at 10 November 2004.

15. This is rather higher than the 2001 census figures which showed that 15.5% of Australians identified as having no religious belief: ABS, note13, <<http://www.abs.gov.au/Ausstats/abs@nsf/e8ae5488b598839cc a25682000131612/cac1a34167e36be3ca256dea00053a7a?OpenDocument>> at 10 November 2004.

wellbeing and significant increases in depression and other negative symptoms of wellbeing. The students felt less self-determining and were pursuing their goals less for personal satisfaction and more for reasons of pleasing or impressing others. They shifted their preference away from intrinsic goals towards extrinsic goals and, in particular, moved away from values of community service towards valuing appearance and status.

The studies also show that the negative impact of competition is exacerbated by comparative grading and teaching methods that are impersonal and isolating and fail to provide meaningful feedback. Course content that is abstract and unconnected to real experience and emphasises analysis, rationality and thinking 'like a lawyer' at the expense of development of interpersonal skills may cause the loss of connection to values, morals, convictions and feelings and suppress the development of creativity and moral reasoning.¹⁰

Buttercup and her friends: The preliminary demographics

Concerned by the findings of these studies, we sought to discover whether the outcomes identified by Sheldon and Krieger are valid for Australian law schools or whether the differences in demographics, pedagogy and culture alter the outcomes.¹¹ The project seeks to repeat the research conducted at the United States universities. Measures of psychological wellbeing, motivation and personal values are administered to students on entry to the law school to determine the types of individuals who are drawn to law school. These measures are repeated later in the first and again in the second year of study to identify any changes that occur. Students entering the UWA in 2004 have begun participating in the project and a further cohort will be recruited in 2005. No data is yet available on the survey measures. When this study is complete, however, we hope to learn more about the effect of our current pedagogy on the wellbeing of our law students.

At this stage, however, the preliminary demographic survey of participants provides an interesting 'snapshot' of the first year intake in law at the UWA for the 2004 year. We use this picture together with the hypothesis of the study to reflect on the wellbeing of our students in the current educational climate.

We approached the first year students in their introductory lectures, explained the survey and asked them to participate. Seventy-one students chose to do

so. Of these, 51 were female and only 20 male.¹² The respondents had the following characteristics:

Our respondents tended to be young: 80% (57) of respondents were aged 25 and under. Of these, some 39 were under the age of 18. Only five were aged over 40.

There was not a high level of cultural diversity amongst the cohort: 34 students identified their family background as Australian/New Zealand. A further 15 identified as European/UK. Of the rest, the predominant family background was Chinese (10 participants). This appears to be consistent with the WA profile generally.¹³

Our respondents tended to be single: given the youth of the cohort this was not particularly surprising. The majority identified as single. Ten were in committed non-cohabiting relationships. Of the remainder, five were married and only one identified as being in a committed cohabiting relationship.

Our respondents tended to exercise frequently: despite the youthful age demographic, however, only seven students exercised every day. A substantial number, 26, identified as exercising 'occasionally'.¹⁴

Our respondents did not tend to be strongly religious: a large proportion of the group identified as having little or no spiritual or religious belief (33 respondents). Only nine identified as having a high degree of such faith.¹⁵

In relation to their studies

Our respondents tended to be academically outstanding: around 45% of the cohort recorded a TER score of over 98.¹⁶

Our respondents were almost all studying full time: only six participants identified as part time students.

Our respondents tended to be in paid employment: despite the overwhelming majority of students identifying as full time, only nine participants intended not to undertake paid employment in the coming year. Twenty-five expected to work more than 10 hours a week in paid employment.

Our respondents varied significantly on their expectations of time likely to be spent on study outside class: One optimistic full-time student anticipated spending less than five hours a week on his/her study. Ten anticipated spending over thirty hours a week, with two anticipating working outside class for more than 40 hours a week.

... during their first year of law studies, law students evidenced a large decline in life satisfaction and wellbeing and large increases in depression and other negative symptoms of wellbeing.

In relation to their career expectations

Our respondents tended strongly toward corporate/commercial work: this was the most popular of a list of career choices, with some 47% nominating it as one of their three top career choices and 15 nominating it as their first choice.

A number of respondents tended towards business as a career choice: The second most popular career choice was in-house counsel (25 respondents) but an almost equal number nominated business, rather than legal practice, as a favoured career choice (23 respondents).

Our respondents were least likely to choose tax or work for public agencies as preferred career choices.

Our respondents were far more likely to nominate a large firm in preference to a small firm as a career destination: 12 respondents hoped to work in a large firm, with 3 placing this as their first career choice. Only five wanted to work for a small firm but no one nominated a small firm as their first career choice.

A number of our respondents selected 'other' as their preferred career choice. Their specified choices in this category included diplomat, property developer, political adviser, entertainment law, work for the UN, native title work, sports law, journalism, environmental law, international law, accountancy, parliamentary draftsperson and work for the family business.

Some respondents would change their first choice of career to take into account their HECS debt: Unsurprisingly, given the overwhelming majority of students had a commercial focus, only seven said they would change their preferred career choice because of the HECS debt. However, these changes created a further swing away from 'public good' aspects of legal practice to corporate, commercial, business and large firm work.

UWA has a very particular demographic of high achieving school leavers. We appreciate that the demographic will vary from law school to law school. Nevertheless, we suggest that there will be substantial similarities in the typical demographic of law students in Australian law schools. With this profile in mind, what does the changing tertiary environment hold for Buttercup and her friends?

Buttercup's environment: the changes to tertiary education

The number of students enrolling in law is likely to increase over the next few years. As part of the so-called 'Nelson Reforms' to higher education that were introduced in December 2003, full fee paying domestic

undergraduate places can increase from 25% to 35% of the total domestic student load. The reforms also introduce a scheme called 'Fee-Help' so that a full fee-paying student can borrow up to \$50,000 under an income contingent loans scheme (these loans do not attract interest rates but students must pay a 20% administration charge). As a consequence of these changes, a number of Australian universities have opened their doors to fee-paying students from 2005 for the first time, while others intend to increase their domestic full-fee paying numbers. These places are likely to be over and above existing HECS enrolments.

At many universities, including UWA, it is anticipated that demand will be particularly intense for admission to law. Current demand for Law substantially exceeds available HECS places at UWA (as it does at most universities) and cut-off scores for admission are very high. It is hoped that the provision of fee-paying places will lower cut off scores and allow more students the opportunity to study law.

Despite the introduction of domestic fee-paying places on equity grounds, however, there is some perception that law students are the new 'cash cows' for universities seeking to survive in an era of chronic government under funding. In particular, there is concern that, although student numbers will increase, money received from full-fee paying students may be used to subsidise other disciplines. Although this in itself is not objectionable (in many universities, law already subsidises more costly disciplines), without significantly increased financial resources being returned to law schools, the problems that many law schools have experienced over recent years will be exacerbated. Such problems include declining staff numbers, increases in student numbers, and consequent unsustainable workloads. These problems will, in turn, increase pressure to return to traditional teaching and learning methods of large lectures, overcrowded tutorials and 100% examinations.

Further, the strategy raises concerns for the legal profession. The number of law students at Australian universities has almost doubled over the past ten years.¹⁷ Already, there is some concern that there are too many law graduates.¹⁸ Figures from Victoria suggest that next year, in that state alone, 1340 graduates will compete for 650 articulated clerkships and 285 practical legal training positions, leaving 30% of law graduates, with HECS debts of between \$30,000 and \$50,000, unable to qualify. A similar pattern can be seen in Western Australia where completion of articles is still

16. The necessary entrance score for law at UWA is very high. In 2004, law required a TEE score of 97.85 compared to 93.90 for engineering/science: <http://www.uwa.edu.au/prospective/undergrad/courses/cutoff_ranks> at 10 November 2004.

17. McColl, above n 6, 46.

18. *Ibid.*

the principal method of qualifying for admission to practice and there is no locally based training alternative. Many graduates with good academic records now find it difficult to get articles. This problem can only be increased with the acceptance of more law students into the LLB.

Clearly students need to be informed before they enrol in law that completion of the degree is not a guaranteed ticket into legal practice. But if students were informed of this, would the current demand for law be as strong? Much of the current demand is driven by the perception that completion of the degree ensures access to a high-earning, high-status career.¹⁹ Would this be sustained if law students were told on enrolment that their chances of entering legal practice were relatively slim? Alternatively, if demand were to remain high, what would this mean for existing concerns about the highly competitive nature of law students? Clearly, the changing educational and professional context has significant implications for Buttercup and her friends.

The future for Buttercup and her friends

We have suggested that the increase in student numbers we anticipate as a result of an increase in domestic fee-paying students will increase competition in law schools, without necessarily improving the quality of legal education. We have also seen from studies completed overseas that this increased competition is one factor linked to the decline in the wellbeing of law students.

The prospects for Buttercup are not encouraging. Once Buttercup and her friends are in a law school there are significant questions about the quality of teaching and learning they are likely to receive there unless the chronic under-resourcing of law schools is addressed. In an Australian law school in this climate Buttercup is likely to find herself in very large classes, taught increasingly by traditional methods and/or with increasing reliance on web-based learning. She is likely to receive a lack of feedback and support. Buttercup is likely to find her law school experience to be lonely, insecure and alienating.²⁰ We would suggest this is likely to be particularly problematic to extroverted students who require personal contact with their teachers and peers to maximise their learning and thrive emotionally.

Without an increase in resources, law schools will need to rationalise their subject offerings to reduce workloads and meet budgets. Jurisprudential units that offer students the opportunity to reflect on the role of law and their own values may well be casualties. The commercial law units that are favoured by students in

the competitive environment are likely to oust units that provide students with exposure to community-based legal service. There is likely to be very little re-enforcement of intrinsic values of community contribution and emotional connection in this environment with resulting pressure to conform to the dominant extrinsic values.

Buttercup is likely to find herself in intense competition with her friends, and her dream of working in a large corporate/commercial law firm will require her to achieve very high marks and demonstrate her leadership qualities. This increased pressure to achieve will come from extrinsic motives such as fear that she will not obtain articles and the need to impress others to achieve her goals rather than from more healthy intrinsic motivation of personal achievement, enjoyment and interest in what she is studying. These factors will also drive her choices of subjects and she is likely to do as many commercial subjects as possible and undertake professional skills units in the belief that this is necessary to maximise her chances of obtaining articles.

Yet, the studies support the view that this pressure towards extrinsic motivation is likely to have a deleterious impact on Buttercup's health and on her emotional and moral wellbeing, both in the short and the long term. Buttercup's ambitions on entering law school suggest that her values are already primarily extrinsic since she appears to be seeking money and status. This environment will reinforce these values and add to the risks to Buttercup's mental health in the short and long term.

These pressures will have further risks for Buttercup's friend who comes to the law school with dreams of using her law degree to help others and contribute to the community. If she conforms to the prevailing view of her peers and accepts that articles in a large commercial firm represent success, then she will be abandoning her inclination toward intrinsic values of community service, personal growth and relational concerns and in order to embrace the extrinsic values of her friend. To make matters worse this change to extrinsic values will be driven by extrinsic motivation such as peer acceptance and fear of unemployment. Instead of spending her summer doing volunteer work for the disadvantaged she will compete for summer clerkships in a national firm. This comes with increased risks to her health since these values may be poorly internalised and the consequences for her wellbeing will be exacerbated.²¹

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19. *Ibid* 47.

20. Carrington and Conley, above n 10.

21. E.L. Deci and R.M. Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and the Self-determination of Behavior' (2000) 11 *Psychological Inquiry* 227.

and domestic relationships and broadens the definition of family violence to include ongoing intimidating or offensive behaviour and emotional abuse.

In the Bill's second reading, WA Attorney General, Jim McGinty, said, 'The inclusion of emotional abuse is a new element, and acknowledges the insidious nature of this form of abuse'. This means behaviours that would have previously resulted in a misconduct restraining order are now grounds for a violence restraining order if they occur within a family or domestic relationship.

Police will have a statutory obligation to investigate if they have a reasonable suspicion that a person is committing an act of family and domestic violence that is also a criminal offence. Police will also have the power to issue 24-hour on-the-spot restraining orders whether or not they have the consent of the protected person. In a provision that will bring WA into line with the rest of the country, consent as a defence to a breach of violence restraining order will be abolished. The Bill also provides for automatic life-long restraining orders (subject to the victim's consent) against perpetrators of serious offences such as sexual assault and grievous bodily harm.

The Bill followed a review of the *Restraining Orders Act 1997* (WA) which compared the WA legislation with restraining orders legislation in other Australian states and overseas, the 2002 report of the Joondalup Family Violence Court, an Auditor General's report on the management and effectiveness of restraining orders, the state Ombudsman's investigation into the police response to assault in the family home and the Gordon inquiry.

Mr McGinty said that in WA police prepare approximately 12,000 family violence incident reports annually and that last year 15 people died at the hand of their spouse or partner, while four other family members were killed in domestic violence situations.

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law degrees. The aim of this article was to suggest some small ways to facilitate this work.

More importantly, the continued existence of practical legal education courses within university law schools is not only practically useful, it will produce better lawyers and better law schools. This will enhance the contribution which university law schools make to the development of the law and a just society.

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The future for Buttercup and her friends does not look bright. Our profile suggests that Buttercup already holds extrinsic values linked to status and material rewards. On present indications, Buttercup's learning experience in law school is likely to be intensely competitive and is likely to re-enforce extrinsic values and foster extrinsic motivation. If it is true that she will experience a decline in values and motivation in the course of her degree as a result of such factors, real issues are raised about Buttercup's wellbeing and contentment and that of our legal profession more generally.

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MENTIONS



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