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Ethical Imperatives for Legal Educators to Promote Law Student Wellbeing

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Introduction
Why should legal educators be motivated to work to promote law student wellbeing? Why is it our responsibility to intentionally design curricular and pedagogical approaches, and extra-curricula initiatives also, to seek to prevent a decline in the psychological health of our students and to support their wellbeing?

There are many possible justifications for such a responsibility falling on legal academics, although some (if not many) in the legal academy still consider this sort of work as 'outside the boundaries of our competence' or 'non-core business'.[2] One key justification is that it is our collective professional interest, as law teachers, to assist our students to learn, and students who have good psychological health have a greater capacity to achieve learning success.[3] As Baik et al argue, 'academics have a critical role to play in fostering mental wellbeing. This is because the academic curriculum structures and gives coherence to student life. Increasingly, the curriculum is the one consistent element of the student experience'.[4] Indeed, in this article we argue that our responsibility to our students to create learning environments conducive to successful learning creates an ethical duty to ensure that those environments are purposely designed to promote law student wellbeing and to prevent a decline in their psychological health.[5]

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[2] See for example, Nick James, 'Dealing with Resistance to Change by Legal Academics' in Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Wellbeing in Australia and Beyond* (Routledge, 2016). See also, Judith Marychurch and Adiva Sifris (eds), *Wellness for Law: Making Wellness Core Business* (LexisNexis, 2019). In the Report for the project *Enhancing Student Mental Wellbeing*, Baik and others acknowledge: 'Happily, supporting student wellbeing does not require academics to be or become psychologists, mental health experts or counsellors. It is not the job of university educators to make students happy or to help students resolve their mental health difficulties. However, as educators, it is our job to facilitate learning. This means it is in our interests to adopt curriculum, teaching and assessment approaches – informed by psychological principles and research – that may mitigate psychological stressors in the educational environment: Chi Baik and others, *Enhancing Student Mental Wellbeing: A Handbook for Academic Educators* (Australian Government, 2017) 11-12, <http://unistudentwellbeing.edu.au/> accessed 18 June 2020.

[3] See for example, Martin Seligman, *Flourish* (William Heinemann, 2011); Rachael Field and Jan HF Meyer, 'Threshold Concepts in Law: A Key Future Direction for Intentional Curriculum Reform to Support Law Student Learning Success and Wellbeing' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) ch 10.

[4] Baik and others (n 2) 11.

[5] The existence of an ethical imperative in this context has also been acknowledged by the author team in Nigel Duncan, Caroline Strevens and Rachael Field, 'Resilience and Student Wellbeing in Higher Education: A Theoretical Basis for Establishing Law School Responsibilities for Helping our Students to Thrive' (2020) 1(1) European Journal of Legal Education 83. See also, Rachael Field, 'Harnessing the Law Curriculum to Promote Law Student Wellbeing, Particularly in the First Year of Legal Education' in Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Wellbeing in Australia and Beyond* (Routledge, 2016) 182, 186, and Penelope Watson and Rachael Field, 'Promoting Student Wellbeing and Resilience at Law School' in Sally Kift and others (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011). See

Scholarly awareness of the potentially negative impact that legal education can have on the psychological wellbeing of law students came out of the United States as early as 1957.[6] In Australia it has been empirically established since 2009 that legal education has the potential to negatively impact the psychological wellbeing of law students, although writing on the topic began much earlier than that.[7] In the UK, the issue of tertiary student wellbeing has for

also, for example, Meira Levinson, 'Moral Injury and the Ethics of Educational Injustice' (2015) 85(2) *Harvard Educational Review* 203.

[6] See, for example, Leonard D Eron and Robert S Redmount, 'The Effect of Legal Education on Attitudes' (1957) 9(4) Journal of Legal Education 431; Andrew S Watson, 'The Quest for Professional Competence: Psychological Aspects of Legal Education' (1968) 37 Cincinnati Law Review 93; Lawrence Silver, 'Anxiety and the First Semester of Law School' (1968) Wisconsin Law Review 1201. For a sample of the US literature see, for example, Andrew Benjamin and others, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers' (1986) 11(2) American Bar Foundation Research Journal 225; Susan Daicoff, 'Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46 American University Law Review 1337; Ann L Iijima, 'Lessons Learned: Legal Education and Law Student Dysfunction' (1998) 48 Journal of Legal Education 524; Lawrence S Krieger, 'What We're Not Telling Law Students - and Lawyers - That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession From Its Roots' (1998) 13 Journal of Law and Health 1; Ruth Ann McKinney, 'Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?' (2002) 8 Legal Writing: The Journal of the Legal Writing Institute 229; Gerald F Hess, 'Heads and Hearts: The Teaching and Learning Environment in Law School' (2002) 52 Journal of Legal Education 75; Susan Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (American Psychological Association 2004). See further, Lawrence S Krieger, 'Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence' (2002) 52 Journal of Legal Education 112; Kennon M Sheldon and Lawrence S Krieger, 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Wellbeing' (2004) 22 Behavioural Science and Law 261; Lawrence S Krieger, 'The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness' (2005) 11 Clinical Law Review 425; Lawrence S Krieger, 'Human Nature as a New Guiding Philosophy for Legal Education and the Profession' (2008) 47 Washburn Law Journal 247; Lawrence S Krieger, 'The Most Ethical of People, The Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation' (2011) 8 University of Saint Thomas Law Journal 168; Filippa Anzalone, 'Lawyer and Law Student Wellbeing' (2018) 22(4) AALL Spectrum 44.

[7] See, for example, Norm Kelk and others, 'Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers' (Monograph 2009-1, Brain & Mind Research Institute, University of Sydney, January 2009). The Australian literature now includes a significant body of scholarship, for example: Judy Allen and Paula Baron, 'Buttercup Goes to Law School: Student Wellbeing in Stressed Law Schools' (2004) 29(6) Alternative Law Journal 285; Colin James, 'Seeing Things as We Are. Emotional Intelligence and Clinical Legal Education' (2005) 8 Clinical Legal Education 123; Martin Seligman, Paul Verkuil and Terry Kang, 'Why Lawyers are Unhappy' (2005) 10(1) Deakin Law Review 49; Massimilano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (2007) 19(1) Legal Education Review 3; Kath Hall, 'Do We Really Want to Know? Recognising the Importance of Student Psychological Wellbeing in Australian Law Schools' (2009) 9 QUT Journal of Law and Justice 1; Catherine Leahy and others, 'Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Students: Cross-Sectional Study' (2010) 44(7) Australian and New Zealand Journal of Psychiatry 608; Kath Hall, Molly Townes O'Brien and Stephen Tang, 'Developing a Professional Identity in Law Schools: A View from Australia' (2010) 4 Phoenix Law Review 19; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'No Time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One' (2011) 2(2) International Journal of the First Year in Higher Education 49; 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; Natalia Antolak-Saper, Lloyd England and Anthony Lester, 'Health and Wellbeing in the First Year: The Law School Experience' (2011) 36(1) Alternative Law Journal 47; Beaton Research & Consulting, 2011 Annual Business and Professions Study (2011) <https://das.bluestaronline.com.au/api/BEYONDBLUE/document?token=BL/0903> accessed 18 June 2020; Penelope Watson and Rachael Field, 'Promoting Student Wellbeing and Resilience at Law School' in Sally Kift and others (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) ch 15; Helen Stallman, 'A Qualitative Evaluation of Perceptions of the Role of Competition in the Success and Distress of Law Students'

some time been considered more fully at a broader higher education sectoral level, than from the specific perspective of the discipline of law.[8] However, awareness of the importance of wellbeing in legal educational and professional contexts has grown in the UK in recent years.[9] Further, it is arguable that the experience of law school internationally – at least in Western liberal democracies – has many common characteristics and elements, with the result that the research on the experiences of law students in Australia and the US are cross-jurisdictionally relevant. Overall, there is now a solid base of empirical evidence that establishes that the psychological wellbeing levels of law students are the same or higher than

(2012) 31 Higher Education Research and Development 891; Wendy Larcombe and Katherine Fethers 'Schooling the Blues? An Investigation of Factors Associated with Psychological Distress Among Law Students' (2013) 36(2) UNSW Law Journal 390; Wendy Larcombe and others, 'Does an Improved Experience of Law School Protect Students Against Depression, Anxiety and Stress? An Empirical Study of Wellbeing and the Law School Experience of LLB and JD Students' (2013) 35 Sydney Law Review 407; Adele Bergin and Kenneth Pakenham, 'Law Student Stress: Relationships Between Academic Demands, Social Isolation, Career Pressure, Study/Life Imbalance and Adjustment Outcomes in Law Students' (2014) Psychiatry, Psychology and Law 1. These studies can be contrasted with the results of studies with students undertaking practical legal training (post-graduation) – see Stephen Tang and Anneka Ferguson, 'The Possibility of Wellbeing: Preliminary Results from Surveys of Australian Professional Legal Education Students' (2014) 14(1) QUT Law Review 27; Wendy Larcombe and others, 'Prevalence and Socio-Demographic Correlates of Psychological Distress Among Students at an Australian University' (2016) 41(6) Studies in Higher Education 1074. See also recent works such as Natalie K Skead, Shane L Rogers and Jerome Doraisamy, 'Looking Beyond the Mirror: Psychological Distress; Disordered Eating, Weight and Shape Concerns; and Maladaptive Eating Habits in Lawyers and Law Students' (2018) 61 International Journal of Law and Psychiatry 90. For collections of Australian works see: (2011) 21(2) Legal Education Review Special Issue: Law Student Wellbeing; (2014) 14(1) QUT Law Journal Special Edition: Wellness for Law; Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Wellbeing in Australia and Beyond* (Routledge, 2016); Caroline Strevens and Rachael Field (eds), *Educating for Wellbeing in Law: Positive Professional Identities and Practice* (Routledge 2019). See also, Paula Baron, 'Sleight of Hand: Lawyer Distress and the Attribution of Responsibility' (2014) 23(2) Griffith Law Review 261.

[8] See, for example, Viv Caruana and others, *Promoting Students' 'Resilient Thinking' in Diverse Higher Education Learning Environments: Project Report* (Higher Education Academy 2011); Student Minds, *Understanding Provision for Students with Mental Health Problems and Intensive Support Needs* (Student Minds, 2014) <https://www.studentminds.org.uk> accessed 18 June 2020; Julieta Galante and others, 'A Randomised Controlled Trial of the Provision of a Mindfulness Intervention to Support University Students' Wellbeing and Resilience to Stress: Preliminary Results' (2016) 388 The Lancet S49; Julieta Galante and others, 'A Mindfulness-Based Intervention to Increase Resilience to Stress in University Students (The Mindful Student Study): A Pragmatic Randomised Controlled Trial' (2018) 3(2) The Lancet Public Health e72; Nicola Byrom, 'An Evaluation of a Peer Support Intervention for Student Mental Health' (2018) 27(3) Journal of Mental Health 240; Gareth Hughes and Leigh Spanner, *The University Mental Health Charter* (Student Minds, 2019) <https://www.studentminds.org.uk/charter.html> accessed 18 June 2020.

[9] See for example, Richard Collier, '"Love Law, Love Life": Neoliberalism, Wellbeing and Gender in the Legal Profession - The Case of Law School' (2014) 17 Legal Ethics 202; 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, 'Work–Life Balance' in Chris Ashford, Jessica Guth (eds), *The Legal Academic's Handbook* (Macmillan International Higher Education, 2016) 9; Lydia Bleasdale and Sarah Humphreys, 'Undergraduate Resilience Research Report' (LITE, University of Leeds 2018) < https://teachingexcellence.leeds.ac.uk/wp-content/uploads/sites/89/2018/01/LITEbleasdalehumphreys_fullreport_online.pdf> accessed 18 June 2020; Emma Jones, Rajvinder Samra and Mathijs Lucassen, 'The World at their Fingertips? The Mental Wellbeing of Online Distance-Based Law Students' (2019) 53(1) *The Law Teacher* 49. See also for example, Rachel Spearing and Rachael Field, 'Wellbeing and a Positive Professional Identity in the Legal Profession: A Snapshot of the UK Bar', Emma Jones, 'Connectivity, Socialisation and Identity Formation: Exploring Mental Wellbeing in Online Distance Learning Law Students', Caroline Gibby, 'Clinical Legal Education and the Hidden Curriculum in the Neoliberal University in England and Wales,' Nigel Duncan, 'Resilience, positive motivation and professional identity: the experience of law clinic students working with real clients,' Anthony Cullen and Lughaidh Kerin, 'Meditation in Legal Education: The Value Added Toward the Wellbeing of Law Students', Lydia Bleasdale and Sarah Humphreys, 'Identity, Wellbeing and Law Students', all in Strevens and Field (n 7).

the general population when they begin their university study, but about a third of students are experiencing psychological distress by the end of their first year of legal education.

The existing significant body of scholarly evidence and literature on this issue means that as legal academics we have nowhere to hide. The evidence-base establishes that there is a problem for the legal academy to address – on a global scale. As the Australian Brain and Mind Research Institute Report of 2009 put it, 'this is not a problem *for individuals*, it is a problem *for communities,* a series of overlapping communities'.[10] Legal educators are an international community consisting of diverse elements across education practice and the academy.

On the basis of the evidence of the experience of law student psychological distress established above, this article argues that it is our collective moral responsibility as legal educators to act on the knowledge that we have. Not only because of the duty we owe to our students as educators with responsibility for designing curricular and pedagogical approaches that support their learning, but also because the consequences of not acting may be dire, and further, simply because it is the *right thing to do*. In this article, first, we consider a range of ethical viewpoints, each of which support the ethical imperative to act in this context. Second, we consider how and where such action should be directed – for example, to the support of individual students, or as a response to the broader damaging impact of the current neo-liberal university. Third, we explore positive psychology's Self-Determination Theory (SDT) as a conceptual framework that can assist with the achievement of curriculum design that can promote the wellbeing of individual students as well as guide the nature of constructive structural and cultural reform in law schools. Finally, we provide some practical examples of what academics can do in enacting SDT in their law school for the promotion of law student wellbeing. We conclude that not only do we have an ethical obligation to respond actively and fittingly to this issue, but in doing so we will be contributing to a more positive and sustainable future for our profession.[11]

It is important to acknowledge before proceeding that psychological health issues in tertiary students are not limited to law students. Comparative studies[12] and institution-wide studies[13] have shown that psychological ill-health is a pervasive problem in higher education –

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[10] Norm Kelk and others, 'Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers' (Monograph 2009-1, Brain & Mind Research Institute, 2009). Ian Hickie in the preface to the *Courting the Blues Report* commented: 'A reduction in tragedies associated with mental health problems depends on expanding and enriching the broad-based community response. Our educational institutions and our professions have particularly important roles to play in this process', ibid v.

[11] We acknowledge, however, that in many jurisdictions many law students (and in some jurisdictions a majority of law graduates, for example, in England and Wales) do not enter the legal profession.

[12] Kelk and others, (n 10) 43. See also, Marilyn Heins, Shirley Nickols Fahey and Roger C Henderson, 'Law Students and Medical Students: A Comparison of Perceived Stress' (1983) 33 Journal of Legal Education 51; Marilyn Heins, Shirley Nickols Fahey and Lisa I Leiden, 'Perceived Stress in Medical, Law, and Graduate Students' (1984) 59 Journal of Medical Education 169; Stephen B Shanfield and G Andrew H Benjamin, 'Psychiatric Distress in Law Students' (1985) 35(1) Journal of Legal Education 65; Robert Kellner, Roger J Wiggins and Dorothy Pathak, 'Distress in Medical and Law Students' (1986) 27(3) Comprehensive Psychiatry 220.

[13] Karin F Helmers and others, 'Stress and Depressed Mood in Medical Students, Law Students, and Graduate Students at McGill University' (1997) 72(8) Academic Medicine 708; Catherine M Leahy and others, 'Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Tertiary Students: Cross-Sectional Study' (2010) 44 (7) Australian & New Zealand Journal of Psychiatry 608; Wendy Larcombe and others, 'Prevalence and Socio-Demographic Correlates of Psychological Distress Among Students at an Australian University' (2016) 41(6) Studies in Higher Education 1074.

internationally. We focus in this article on the ethical imperative for law teachers because the legal academy is where we work, teach and research; it is our sphere of influence. It is also our professional commitment to the legal profession to see law students who leave law school, and other legal education contexts, wanting to enter the legal profession, able to do so psychologically well and equipped to flourish.

An Ethical Imperative for Legal Educators to Promote Student Wellbeing

Scholarly discussion of the ethics of legal educational practice at a curriculum level, and the ethical obligations we have in our role as law curriculum designers as legal educators, is sparse. The focus of ethical theorists thinking about education has tended to be on systemic and institutional issues at high policy levels, rather than on educators' individual obligations in the day-to-day context of the classroom.[14] Whilst educational ethics have also been the subject of fuller consideration at the primary and secondary levels of education, as opposed to the tertiary level,[15] many universities around the world now have statements and codes of ethical principles concerning teaching.[16] As far as we know, detailed consideration of an ethical imperative for intentional curriculum design for the promotion of law student wellbeing is as yet absent from the literature.

There are, however, a number of possible ways to explain and justify an ethical obligation for legal educators to design the curriculum intentionally to promote the psychological wellbeing of students. Nevertheless, there exists a persistent strain of resistance (particularly in our own discipline of law)[17] to this perspective. For this reason, it is important to examine and explain

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[14] See for example, Kenneth A Strike and P Lance Ternasky, *Ethics for Professionals in Education: Perspectives for Preparation and Practice* (Teachers College Press, 1993); Kathleen McGrory, 'Ethics in Teaching: Putting it Together' (1996) 66 *New Directions for Teaching and Learning* 101; Jerrold R Coombs, 'Educational Ethics: Are We on the Right Track?' (1998) 48(4) *Educational Theory* 555; Harry Brighouse, *School Choice and Social Justice* (Oxford University Press, 2000); Rob Reich, *Bridging Liberalism and Multiculturalism in American Education* (University of Chicago Press, 2002); Danielle S Allen and Rob Reich (eds), *Education, Justice and Democracy* (Chicago University Press, 2013); Harry Brighouse and Elaine Unterhalter, 'Education for Primary Goods or For Capabilities?' in Harry Brighouse and Ingrid Robeyns (eds), *Measuring Justice: Primary Goods and Capabilities* (Cambridge University Press, 2010) 193;

[15] Alan R Tom, *Teaching as a Moral Craft* (Longman, 1984); John I Goodlad, Roger Soder and Kenneth A Sirotnik (eds), *The Moral Dimensions of Teaching* (Jossey-Bass, 1990); David Carr, *Professionalism and Ethics in Teaching* (Routledge, 2000); Elizabeth Campbell, *The Ethical Teacher* (Open University Press, 2003); Michael W Apple and James A Beane (eds), *Democratic Schools: Lessons in Powerful Education* (Heinemann, 2007); Elizabeth Campbell, 'The Ethics of Teaching as a Moral Profession' (2008) 38(4) *Curriculum Inquiry* 357; Robert Infantino and Rebecca Wilke, *Tough Choices for Teachers: Ethical Challenges in Today's Schools and Classrooms* (Rowman and Littlefield, 2009); Bree Picower, *Practice What You Teach: Social Justice Education in the Classroom and the Streets* (Routledge, 2012); Daniella J Forster, 'Codes of Ethics in Australian Education: Towards a National Perspective' (2012) 37(9) *Australian Journal of Teacher Education* n9; Matthew N Sanger and Richard D Osguthorpe (eds), *The Moral Work of Teaching and Teacher Education: Preparing and Supporting Practitioners* (Teachers College Press, 2013). See also, however, Lisa C Ehrich and others, 'Ethical Practices and Ethical Dilemmas in Universities: Academic Leaders' Perceptions' (2012) 40(2) *International Studies in Educational Administration* 99; Saima Ahmad, Syed Muhammad Fazal-E-Hasan and Ahmad Kaleem, 'How Ethical Leadership Stimulates Academics' Retention in Universities: The Mediating Role of Job-Related Affective Wellbeing' (2018) 32(7) *International Journal of Educational Management* 1348.

[16] See for example, University of Helsinki, *Ethical Principals of Teaching and Studies at the University of Helsinki* <https://www.helsinki.fi/sites/default/files/atoms/files/249485_hy_eettiset_per_eng_paino.pdf> accessed 18 June 2020; The George Washington University, *Statement of Ethical Principles* <https://compliance.gwu.edu/statement-ethical-principles> accessed 18 June 2020; The Australian National University, *Code of Conduct* <https://policies.anu.edu.au/ppl/document/ANUP_000388> accessed 2 January 2020.

[17] Eloquently acknowledged by Kath Hall in Kath Hall, 'Do We Really Want to Know? Recognising the

the ethical imperative(s) to act.

Parker defines an ethical question as relating to 'what is the good or right thing to do in particular circumstances', and 'the moral evaluation of a person's character and actions'.[18] As tertiary level educators, our professional ethics provide the principles and values that regulate our moral behaviour. Our ethical, moral compass guides us to ensure that, as far as possible as teachers, when faced with challenging dilemmas about what is fitting, appropriate or proper, we do the right thing and pursue a just and appropriate approach. It is through our ethical principles that we know how we *ought* to act. Our ethics are therefore our bedrock benchmark of what is right and proper – foundational to what we do as educators and fundamental to the efficacy of our personal and professional identities.

The ethical question of what we *should do* given what we now know about the psychological distress experienced by law students is for many of us self-evident. It is simply, fundamentally, apparent that the ethical thing to do in this context, the good and right thing to do, what we *ought to do*, is act to address the evident decline in mental wellbeing for students, and work to promote student wellness. Preston comments that 'ethics need to challenge injustice'.[19] In this sense an ethical response to the issue of student psychological ill-health must be formulated within the context of the 'complex interaction of social forces and vested interests' with a counter-hegemonic agenda of social transformation.[20] Legal education practices that contribute to a decline in law student psychological wellbeing at law school constitute an injustice in the tertiary educational environment. What we *should* do as educators is respond to what we know.

Why is the ethical nature of the imperative to act self-evident? How can we be so sure? There are in fact numerous (and diverse) ethical theories, conceptual frameworks and practical ethical decision-making models that offer distinct support for our position – for example, deontological, teleological, as well as virtue and care ethical perspectives (discussed below). In addition, both the concept of a moral compass and deliberative ethical decision-making models offer applied ethical frameworks, providing practical perspectives on how ethical decisions in this context involve responsible action.[21] The intention of our brief exploration of the ethical justifications for working to promote student psychological wellbeing in this section is to demonstrate that from a diverse range of ethical angles the moral imperative to work to address the high levels of law student psychological ill-health cannot be legitimately questioned.

Importance of Student Psychological Wellbeing in Australian Law Schools' (2009) 9 QUT Journal of Law and Justice 1. See also, Christine Parker, 'The "Moral Panic" over Psychological Wellbeing in the Legal Profession' (2014) 37(3) UNSW Law Journal 1103 and, for a different view, the work of Stanley Fish, Frank Furedi and Kathryn Ecclestone.

[18] Christine Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30 Monash University Law Review 49, 51.

[19] Noel Preston, *Understanding Ethics* (The Federation Press, 4th ed, 2014) 12.

[20] ibid, 11.

[21] For example, the Queensland Law Society Ethics Centre provides members with a deliberative ethical decision-making model, as well as the notion of a moral compass, because it: 'aims to equip lawyers with the information and the tools they need to act ethically at all times, while also providing the community with an insight into legal ethics': see <http://www.qls.com.au/Knowledge_centre/Ethics/> accessed 18 June 2020.

Philosopher Elizabeth Minnich has argued that when academics are faced with ethical challenges, for example about their teaching, they should ask the question: 'What's at stake?'[22] This consequentialist query brings ethical decision-making back to a fundamental issue of impact, requiring a preliminary ethical cognitive process to inform whether or not action is called for. In considering the ethical challenge of whether or not to act to promote student wellbeing, it is useful to contemplate 'what is at stake?' This reflection can be assisted by articulating some of the dichotomous practical realities of action as compared with inaction. For example, our choice as to whether we act to address student psychological distress or not could mean the difference between a student being mentally well and thriving, or mentally unwell and distressed, anxious or depressed. What is at stake is the human condition, a serious and important concern. Further, our choice about acting or remaining inactive could mean the difference between: alleviating suffering or allowing suffering to occur; supporting fulfilled and meaningful lives, or accepting that we have contributed to a compromised life; preventing a death, or being complicit in failing to prevent a death; acknowledging that the responsibility for addressing this issue lies with community, or casting responsibility back on individuals to help themselves; succumbing to the negative impact of the broader, neo-liberalist, social contexts in which education now operates, or challenging and pushing back against those contexts; giving up and giving in, or taking control, empowering students and making a difference.

Which of these dichotomous choices can best be supported ethically? Is the morally right option so hard to identify? Even at the basic level of asking 'what is at stake?', our position is that the protection of the wellbeing of law students is important at both an individual level as well as at the level of the legal education community, the profession and even society more broadly. For some, however, the choice is not as easy as it might first appear reasonable to expect. Indeed, there are still members of the legal community (including Law Professors, Deans, and partners of law firms) who continue to struggle with the ethics of whether to act on this issue or not. For this reason, it is important to articulate the serious ethics behind the imperative *to do something about what we know*. The ethical choice we make as individual educators in response to the question of whether to act or not is ostensibly a private choice, but it is one that has public and potentially far-reaching consequences.[23] It is important to recognise the ethical duty that accompanies the power we possess through our role as legal educators. When we act collectively this power is even stronger and potentially may address the systemic and cultural problems at the root of the neoliberal university.

There is indeed a unique ethical relatedness between students and educators. McGrory argues that, as teachers, academics are daily put in a position of making 'moral, ethical, and legal decisions', decision-making which is critical, influential and impactful for our students.[24] She refers to 'our postmodern disavowal of binary thinking' while admitting that 'the world in

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[22] Elizabeth Minnich, 'What is at Stake? Risking the Pleasures of Politics' (Society for Values in Higher Education Annual Fellows Lecture Monograph Series, 1994).

[23] Kathleen McGrory, 'Ethics in Teaching: Putting it Together' (1996) 66 New Directions for Teaching and Learning 101. See also, Edward LeRoy Long Jr, Higher Education as a Moral Enterprise (Georgetown University Press, 1992).

[24] McGrory, (n 23) 101.

which the academic person lives and moves and acts has become increasingly bipolar'.[25] Certainly, education systems operate within the structure of neoliberalism, with its emphasis on reduced government support, driven by market forces, and focussing on efficiencies, improved productivity, cost-cutting and increased measurable outputs. Neoliberalism is now a dominant paradigm globally (but perhaps is one which COVID-19 may disrupt).[26] It is the context of the neoliberal university that confirms the importance of engagement with our moral obligations as educators to students as a way of resisting the potential injustices and de-humanising tendencies of that paradigm. In the sections that follow, we briefly tour a diverse range of ethical perspectives to demonstrate that all of the dominant ethical theories support an active and positive response to the question of whether legal educators, and educators more broadly, have a moral obligation to work to promote the wellbeing of their students.

Different ethical perspectives

Deontological ethical perspectives
Deontological ethical perspectives are rule-based approaches to ethics that focus on the existence of duties, obligations and rights, and 'enjoin us to do the right thing simply because it is the right thing'.[27] The word is derived from Greek origins – 'deon' - meaning 'duty'.[28] Immanuel Kant offered one of the most influential articulations of deontological ethics as a form of absolute moral science based on rationality, consistency and logic.[29] In Kantian ethics, rational reasoning results in a universally applicable categorical imperative to operationalise the principle of respect for others, and to 'do unto others as you would have them do to you'.[30] A categorical imperative applies no matter what an individual's goals and desires may be. According to Kant, individuals exercise their autonomous authority through their rational application of universal rules, or maxims, to dictate the ethical course of action.

A deontological approach to identifying the ethical thing to do about the issue of law student wellbeing requires us to ask what rule, arrived at rationally, with universal categorical application, and grounded in the principle of respect for persons, should we follow? In our view, the answer lies in the maxim 'to do no harm'. This maxim includes a positive duty to protect the wellbeing of students. For example, the Code of Ethics for Educators developed by the Association of American Educators Advisory Board provides in 'Principle 1' that professional educators accept a position of public trust, and as such have a duty to 'make a constructive effort to protect students from conditions detrimental to learning, health, or safety'.[31] In saying this we do not mean to imply that students should not be challenged or stretched through their learning. Rather that when legal educators design law curricula that is

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[25] ibid.

[26] See further discussion below.

[27] Preston, (n 19) 38. See also, Gerald, F Gaus, 'What is Deontology? Part Two: Reasons to Act' (2001) 35(2) *Journal of Value Inquiry* 179; Christine Parker and Adrien Evans, *Inside Lawyers' Ethics* (Cambridge, 4th ed, 2018) 14.

[28] Preston, (n 19) 35.

[29] Immanuel Kant, *Critique of Pure Reason* (Kritik der reinen Vernunft) (1781), Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Grundlegung zur Metaphysik der Sitten) (1785). See also, William D Ross, *Kant's Ethical Theory* (Oxford University Press, 1954); Philip Stratton-Lake, *Kant, Duty and Moral Worth* (Routledge, 2000); George Sher (ed), *Ethics: Essential Readings in Moral Theory* (Routledge, 2012); Robert Audi, 'Methodological Reflections on Kant's Ethical Theory' (2018) (Dec) Synthese 1.

[30] Preston, (n 19) 40.

[31] See <https://www.aaeteachers.org/index.php/about-us/aae-code-of-ethics> accessed 18 June 2020.

challenging, provocative or difficult, they do so intentionally and with an eye to ensuring that the extent of the challenge is reasonable; that is, at a level that would not be detrimental to the learning, health or safety of the student but will enable personal growth and development. They should also ensure that students have had opportunities to prepare and develop to meet the challenges introduced.

On the basis of the evidence-base that establishes that the experience of legal education can psychologically harm students, it can be logically concluded that legal educators have an ethical obligation to ensure that the legal curriculum and law school experience is designed, not only 'to do no harm' to students, but also to positively protect them and create conditions that support their learning, health and safety.

Teleological ethical approaches
Teleological ethical approaches are consequentialist ethical theories which focus on the greater good and 'in which the end justifies the means'.[32] As Preston points out, the Greek etymology of the word teleology is 'telos' meaning 'goal' or 'end'.[33] A well-known and widely accepted teleological theory is utilitarianism which 'emphasises happiness or pleasure or utility as the desirable goal for human choice and action'.[34] As Jeremy Bentham espoused, 'it is the greatest happiness of the greatest number that is the measure of right and wrong';[35] and according to John Stuart Mill, generally speaking people desire happiness, so happiness is the utilitarian end goal.[36] Preston points out that 'in calculating the happiness or unhappiness to result from an action, everyone with an interest in the matter is entitled to have their happiness considered equally with everybody else'.[37]

Our position is that through the utilitarian lens, the greater good at law school is fulfilled through actions that promote the wellbeing of students. As Wilson and Strevens explain, subjective wellbeing involves 'quality of life from the point of view of emotional reactions and cognitive judgements'.[38] Promoting law student wellbeing will ensure happiness for more students and result in the greater good for the greater number. This is confirmed by Huppert and So, who, referring to a significant range of research, state that the demonstrated benefits of high levels of wellbeing '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'.[39]

Virtue ethics
In relation to understanding the imperative to act to promote law student wellbeing as being part of our moral character as legal educators, virtue ethics is perhaps one of the most fitting

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[32] Preston, (n 19) 35.

[33] ibid.

[34] ibid. Parker and Evans, (n 27) 15.

[35] Jeremy Bentham, *A Fragment on Government* (1776) Preface. See also, JH Burns and HLA Hart (eds), *A Comment on the Commentaries and a Fragment on Government* (Clarendon Press, 1977) 393.

[36] A definitive collection of Mill's writings is the 33 volume: J Robson (ed), *Collected Works of John Stuart Mill* (University of Toronto Press, 1965–91).

[37] Preston, (n 19) 36. See also, James Rachels, 'The Debate over Utilitarianism' in James E White, *Contemporary Moral Problems* (West Publishing Co, 4th ed, 1994) 31.

[38] Caroline Strevens and Clare Wilson, 'Law Student Wellbeing in the UK: A Call for Curriculum Intervention' (2016) 11(1) *Journal of Commonwealth Law and Legal Education* 44, 45.

[39] Felicia A Huppert and Timothy TC So, 'Flourishing across Europe: Application of a New Conceptual Framework for Defining Wellbeing' (2013) 110(3) Social Indicators Research 837, 838.

guides.[40] Virtue ethics helps to explain how people are motivated at a deeply personal level, shifting the ethical onus from one of duties or rules, or the consequences of actions, to virtues, or the moral 'character of the actor'.[41] Originating in the thinking of Aristotle,[42] virtue ethics assume that a good person will know and do the right thing. The 'qualities that are characteristic of the life that achieves its proper end' are the 'virtues which together constitute the ethical life'.[43]

In applying virtue ethics to the dilemma of law student psychological wellbeing we could say that a morally virtuous person is unable to stand by and do nothing about the experience of psychological distress. According to virtue ethics, action on this issue does not need to result from a rule or command, action results from the fact that a person of moral character understands that they *ought to act* to promote student wellbeing because it is the virtuous and right thing to do.

Ethic of care
An ethic of care perspective also supports the view that educators have a moral obligation to work to address student psychological distress and promote student wellbeing. Carol Gilligan identified a feminist ethic of care in her work in the early 1980s.[44] Gilligan's empirical work with women and men on moral imperatives found that women repeatedly evidenced 'an injunction to care', whereas for men 'the moral imperative appeared rather as an injunction to respect the rights of others and thus to protect from interference the right to life and self-fulfilment'.[45] Mendus comments that since Gilligan's work: 'Moral theories couched in terms of rights, justice and abstract rationality have given way to moral theories which emphasise care, compassion and contextualisation'.[46] As educators, an ethic of care highlights that the caring and compassionate thing to do is to work actively to reduce the experience of psychological distress and promote student wellbeing.

Intuitive ethics
Another theory that supports the existence of an ethical imperative to act to address the levels of psychological distress in students is intuitive ethics.[47] Under intuitive ethics basic moral propositions are seen as self-evident, that is, evident in and of themselves. Through relationality, social-constructedness, and the recognition of the connections between the

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[40] Alasdair Macintyre, *After Virtue* (University of Notre Dame Press, 3rd ed, 2007). See also, Preston, (n 19) 47-51; Parker and Evans, (n 27) 16; David Carr, James Arthur and Kristján Kristjánsson, *Varieties of Virtue Ethics* (Palgrave Macmillan, 2017).
[41] Parker, (n 18) 54.
[42] See for example, Harold H Joachim and David A Rees, 'Aristotle: The Nicomachean Ethics' (1952) 49(14) Journal of Philosophy 484; Nancy Sherman, *The Fabric of Character: Aristotle's Theory of Virtue* (Oxford University Press, 1989).
[43] Preston, (n 19) 48.
[44] Carol Gilligan, 'In a Different Voice: Women's Conceptions of Self and Morality' (1977) 47 Harvard Educational Review 481; Carol Gilligan, *In a Different Voice* (Harvard University Press, 1982). See also Preston, (n 19) 45-47; Parker and Evans, (n 27) 49-55.
[45] Carol Gilligan, *In a Different Voice* (Harvard University Press, 1982).
[46] Susan Mendus, 'Different Voices, Still Lives: Problems in the Ethics of Care' (1993) 10(1) Journal of Applied Philosophy 17, 17.
[47] James Q Wilson, 'The Moral Sense' (1993) 87(1) *American Political Science Review* 1; Brenton Faber, 'Intuitive Ethics: Understanding and Critiquing the Role of Intuition in Ethical Decisions' (1999) 8(2) Technical Communication Quarterly 189; Jonathan Haidt, 'The Emotional Dog and its Rational Tail: A Social Intuitionist Approach to Moral Judgment' (2001) 108(4) Psychological Review 814; Jonathan Haidt and Craig Joseph, 'Intuitive Ethics: How Innately Prepared Intuitions Generate Culturally Variable Virtues' (2004) 133(4) Daedalus 55.

cognitive and emotional in our daily lives, intuitive ethics inform our understanding of what is right. Haidt and Joseph propose that 'human beings come equipped with an intuitive ethics, an innate preparedness to feel flashes of approval or disapproval toward certain patterns of events involving other human beings'.[48]

Acting to address psychological distress through this ethical lens can be seen as intuitively something we must do because it would be inherently wrong *not* to act. Our intuition tells us that ignoring what we know about the suffering of students is wrong. It feels innately appropriate that it is the right thing to do to support the psychological wellbeing of students and to respond to what we know about their experience of distress.

Contextual ethics
An additional theory of ethics that supports the imperative to act to address student psychological wellbeing is contextual ethics.[49] Contextual ethics connect with, and to some extent draw from, the work of postmodern ethicists, such as Levinas,[50] Lyotard,[51] and Bauman.[52] Contextual ethics are ethical approaches, sometimes referred to as contextualism, occasionalism, circumstantialism, actualism or situation ethics, that require the ethical agent to engage with, assess, and take account of, the context of the situation in which an ethical decision must be made. The assessment of the context helps the actor to come to an ethically justifiable position and to determine the ethically 'fitting action'.[53] In other words, contextual ethics are about determining what is ethically appropriate and justifiable for the circumstances of a given situation.[54]

Contextual approaches to ethical dilemmas are not necessarily straightforward, because there are no rules or formulae for identifying the right thing to do. Rather, contextual ethical approaches require intentional, informed, competent discretionary judgments that take account of the particular conditions of specific cases, and respond to them reflectively and relationally.[55] Through contextual ethical reasoning, it is possible to arrive at an ethical decision which has a morally justifiable foundation. In the context of what we know about law student psychological distress, we argue that the only morally justifiable response is one of intentional action.

Ethic of response
The ethic of response brings together elements of other approaches under the unifying concepts of 'responsiveness' and 'responsibility'.[56] Preston comments: 'If teleology is a theory of "the good", and deontology a theory of "the right", then the ethics of response is

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[48] Haidt and Joseph, (n 47) 56.

[49] Charles W Morris, 'The total-situation theory of ethics' (1927) 37(3) International Journal of Ethics 258; H Richard Niebuhr, *The Responsible Self: An Essay in Christian Moral Philosophy* (Harper and Row, 1963); Joseph Fletcher, *Situation Ethics* (SCM Press Ltd, 1966).

[50] Emmanual Levinas, *Totality and Infinity: An Essay on Exteriority* (Kluwer, 1969).

[51] Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington and Brian Massumi (University of Minnesota Press, 1984).

[52] Zygmunt Bauman, *Postmodern Ethics* (Blackwell, 1993); Zygmunt Bauman, *Life in Fragments: Essays in Postmodern Moralities* (Blackwell, 1995).

[53] Fletcher, (n 49) 72.

[54] Fletcher, (n 49) 27-28.

[55] William H Simon, *The Practice of Justice: A Theory of Lawyers' Ethics* (Harvard University Press, 1998) 141.

[56] See for example, Helmut R Niebuhr, *The Responsible Self: An Essay in Christian Moral Philosophy* (Harper and Row, 1963). See also, Jonathan Glover, *Responsibility* (Routledge and Kegan Paul, 1974).

one of "the fitting"'.[57] As such, a fitting ethical response to an issue is what is both conducive to the good and what is right.[58] Preston describes an ethic of response as 'a process enabling and justifying normative ethical decisions including the following: (i) it is organized around the idea of responsibility and the quest for a fitting response, (ii) it supports the employment of a synthesis incorporating other normative approaches, (iii) it is amenable to practical, responsive and comprehensive ethical decision-making, and (iv) it facilitates justificatory discourse which enables others to evaluate ethical decisions, without being obstructed by the conflict between normative perspectives, although it must still confront the difficulties raised by them'.[59] Through the lens of an ethic of response we have a responsibility as educators to use our sphere of influence – pedagogy and curriculum design – to respond to the dilemma of psychological distress at law school with practical actions that work to promote law student wellbeing.

Having established that a problem with law student psychological wellbeing exists, and that a moral imperative to address this problem can be established through multiple ethical perspectives, we consider in the next section the issue of *how* the ethically motivated action should be enacted, considering the tensions between a focus on targeting the wellbeing of individuals and the need to ensure that cultural and structural issues underlying psychological ill-health at law school, and in the profession, are addressed.

Resolving the Tensions in Deciding *How* to Act Ethically
In the extant literature on the issue of wellbeing in law a tension has developed between those who promote active approaches to student and practitioner wellbeing and those who regard it as risking individualising the problem, allowing, for example, managers to avoid their responsibilities, and effectively 'buying-in' to the neoliberal agenda. One of the first to express the latter view was Christine Parker in her challenging seminal article of 2014.[60] Parker points out flaws in the research that suggests that lawyers and law students are especially distressed while agreeing that high levels of distress are shown in students and practitioners of many professional disciplines. The risk, she suggests is 'that there might … be a price to pay for emphasising the clinical, individual and unique aspects of lawyer and law student psychological distress in calls for action, rather than the politics of commercialisation and marketisation of legal education and practice'.[61] As Paula Baron has said, the 'individualist discourse may tend to mask systemic issues and pathologise certain behaviours that may, in fact, not be signs of illness at all'.[62] We agree. However, our concern is that these positions, without further context and extrapolation, potentially open the way for law school managers, for example, to resile from any responsibility for the individual wellbeing of students in their law schools, arguing that their attention is more appropriately directed to the structural and cultural dilemmas created by the neoliberal environment of the legal academy and practice. [63] We feel confident that this is not Parker's intention, as in her

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[57] Preston, (n 19) 59.
[58] ibid.
[59] Preston, (n 19) 62.
[60] Parker, (n 18).
[61] ibid 1123.
[62] Paula Baron, 'The Elephant in the Room? Lawyer Wellbeing and the Impact of Unethical Behaviours' (2015) 41(1) Australian Feminist Law Journal 87, 90 referring to Baron Paula 'Sleight of Hand: Lawyer Distress and the Attribution of Responsibility' (2014) 23(2) Griffith Law Review 261.
[63] See for example, Sheila Slaughter and Larry L Leslie, *Academic Capitalism: Politics, Policies, and the Entrepreneurial University* (The Johns Hopkins University Press, 1997); John W Meyer and Francisco Ramírez, 'The World Institutionalization of Education' in Jürgen Schriewer (ed), *Discourse Formation in Comparative*

conclusion she states:

> The ways that lawyers and academics talk and write about these issues are powerful –
> they create discourses that frame the way young lawyers see their situation, and the
> ways that the profession and public respond. It is important to note dissatisfaction with
> legal professional roles and jobs, and respond compassionately and appropriately to
> individual distress. It is also important to notice that these statements of distress and
> discontent raise fundamental and enduring questions about the role of the legal
> profession and the rule of law in society. We should be extremely wary of the
> possibility that instead we are creating a regime that treats, manages and palliates
> lawyers and law students in distress so that they can cope with getting back to work in a
> system that is itself broken.[64]

Paula Baron makes a similar argument, saying: 'This is not to say that measures aimed at
improving individual wellbeing should not be pursued where appropriate. Rather, my point is
that we cannot afford to ignore the effect of organisational and structural factors on
wellbeing'.[65] Again, we agree. The sources of law student and lawyer psychological distress
are many and may interact in complex ways. They include the increasing globalisation,
commodification and marketisation of legal education, and neoliberal, globalised and
competitive approaches to commercial practice, and economic management. They also
include the behaviours of individuals in positions of power or influence, as bullying and
harassment exist in the higher education context as well as in the world of legal practice.[66]
Individual students and lawyers bring their own personalities and experience into this
challenging environment.

A thoughtful and nuanced response is required in relation to these tensions. Managers,
whether of universities, law firms, other corporate bodies that employ lawyers or within
regulators, have a prime responsibility to address the damaging consequences of neoliberal

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Education (Peter Lang Publishers, 2000) 111; Margaret Thornton, 'Among the Ruins: Law in the Neo-Liberal
Academy' (2001) 20 Windsor Year Book of Access to Justice 3; Margaret Thornton, 'Neoliberal Melancholia:
The Case of Feminist Legal Scholarship' (2004) 20(1) Australian Feminist Law Journal 7-22; Margaret
Thornton, 'The Law School, the Market and the New Knowledge Economy' (2007) 17 Legal Education Review
1; Darla Twale and Barbara De Luca, *Faculty Incivility: The Rise of the Academic Bully Culture and What to
Do About It* (Jossey-Bass, 2008); Margaret Thornton, *Privatising the Public University: The Case of Law*
(Routledge, 2011); Richard Hil, *Whackademia: An Insider's Account of the Troubled University* (NewSouth
Publishing, 2012); Paula Baron, 'A Dangerous Cult: Response to the Effect of the Market on Legal Education'
(2013) 23 Legal Education Review 273; Paula Baron, 'Working the Clock: The Academic Body on Neoliberal
Time' (2014) 4(2) Somatechnics 253; Nikki Sullivan and Jane Simon, 'Academic Work Cultures: Somatic
Crisis in the Enterprise University' (2014) 4(2) Somatechnics 205; Richard Collier, '"Love Law, Love Life":
Neoliberalism, Wellbeing and Gender in the Legal Profession - The Case of Law School' (2014) 17(2) Legal
Ethics 202; Richard Hil, *Selling Students Short: Why You Won't Get the University Education You Deserve*
(Allen & Unwin, 2015); Jeffrey R Di Leo, Academe Degree Zero: Reconsidering the Politics of Higher
Education (Routledge, 2015); Margaret Thornton, 'Law student wellbeing: A neoliberal conundrum' (2016)
58(2) Australian Universities Review 42; Ivar Bleiklie, 'New Public Management or Neoliberalism, Higher
Education' in JC Shin and P Teixeira (eds), *Encyclopedia of International Higher Education Systems and
Institutions* (Springer, 2018); Catherine Manathunga and Dorothy Bottrell (eds), *Resisting Neoliberalism in
Higher Education Volume II* (Palgrave Macmillan, 2019); Simon Baker, 'Outdated university rules protect
harassers and bullies' *Times Higher Education*, June 26, 2019.

[64] Parker, (n 18) 1136.

[65] Baron, 'The Elephant in the Room?' (n 62) 90.

[66] For recent international research into the legal profession, see Kieran Pender, *Us Too: Bullying and Sexual
Harassment in the Legal Profession*, IBA, 2019, <https://www.ibanet.org/bullying-and-sexual-
harassment.aspx> accessed 18 June 2020.

economic and political culture. The globalised nature of legal practice, and increasingly of legal education, makes this a responsibility of politicians as well. This is a long-term project. Everyone engaged in legal education and legal practice has an immediate personal responsibility to ensure that the way they behave towards others does not cause or contribute to psychological distress. More than this, individuals who are suffering psychological distress need the support that is appropriate to their own personal circumstances. This requires compassionate care networks to be built into organisations, flexibility in systems, and empathy.

None of these are mutually exclusive. We cannot wait to fix the aspects of the system that are broken before we address the matters within our personal control or attend to the needs of individuals who are in distress. Some of us may be able to influence major change, but all of us can influence the environment of our workplaces and learning spaces – especially if we work together and harness our collective strength. Whatever theoretical ethical analysis provides for us the best basis for taking decisions and living our lives, these are practical responses which are ethically supportable.

Our position is that the issue of curriculum reform in response to what we know about the experience of psychological distress by law students at law school is an urgent one. It will constitute an ethical and fitting response to law student psychological distress, and contribute to a great good in terms of the promotion of law student wellbeing and ensuring that as educators we adequately fulfil our duty to teach in ways that properly support student learning. At the same time, we cannot ignore the broader structural, cultural and economic issues of the neoliberal context in which law schools now operate. We are hopeful, however, that the wellbeing curriculum reform agenda can be harnessed in terms of addressing the bigger issues of structure and cultural reform in law schools and universities. Indeed, in our view the wellbeing curriculum reform project, when taken up by law schools around the world, has the potential to impact the global profession and even society more broadly. The final sections of the article explain why we think this to be so.

Using Self-Determination Theory to Inform Intentional Responses to the Ethical Imperative to Support Law Student Wellbeing

In relation to fulfilling our ethical responsibility to design curriculum and pedagogy so that, at the very least a student's experience of law school is not the cause of psychological distress, and indeed so that the experience of law school may even contribute to student wellbeing, we do not have to start with a blank page. An established, credible conceptual framework has already been identified as relevant and cogent – positive psychology's Self-Determination Theory (SDT).[67] Through the application of SDT to the law curriculum we are

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[67] See, for example, the influential work of Larry Krieger, much of which is grounded in self-determination theory: see the Krieger citations (n 6) and also Lawrence S Krieger, 'Psychological Insights: Why our Students and Graduates Suffer, and What we Might do About It' (2002) 1 Journal of the Association of Legal Writing Directors 258; Lawrence S Krieger, 'The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness' (2004) 11 Clinical Law Review 425; Kennon M Sheldon and Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33(6) Personality and Social Psychology Bulletin 883; Lawrence S Krieger, 'The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation' (2010) 8 University of St. Thomas Law Journal 168; Kennon M Sheldon and Lawrence S Krieger, 'Walking the Talk: Value Importance, Value Enactment, and Wellbeing' (2014) 38(5) Motivation and Emotion 609; Kennon M Sheldon and Lawrence S Krieger, 'Service Job Lawyers

able not only to discharge our moral duties as educators in relation to student wellbeing, but we can also improve our own sense of professional efficacy as well as fulfilling our duty to the profession to provide graduates who are psychologically well and ready to flourish in their practice of the law. In fact, in contributing actively to the wellbeing of early career lawyers leaving law school we may well be equipping them with the skills and energy necessary to tackle the structural and cultural issues in relation to psychological wellbeing for the profession referred to above.

SDT is a complex macro-theory concerning human motivation, personality and wellbeing.[68] Its origins are grounded in the work on motivation of positive psychologists Edward L Deci and Richard M Ryan in the 1970s and 1980s,[69] and particularly their seminal work in 1985, *Intrinsic Motivation and Self-Determination in Human Behaviour*.[70] There is now a significant body of scholarly literature on the theory,[71] and it has been further developed and tested by many researchers in a variety of contexts including education.[72] Essentially, SDT

are Happier than Money Job Lawyers, Despite their Lower Income' (2014) 9(3) The Journal of Positive Psychology 219; Lawrence S Krieger and Kennon M Sheldon, 'What Makes Lawyers Happy: A Data-Driven Prescription to Redefine Professional Success' (2015) 83(2) George Washington Law Review 554. See also, Michael H Schwartz, 'Humanizing Legal Education: An Introduction to a Symposium Whose Time Came' (2008) 47(2) Washburn Law Journal 235; Katherine Lindsay and others, '"Oh, the Places You'll Go!": Newcastle Law School's Partnership Interventions for Wellbeing in First Year Law' (2015) 8(2) Journal of Learning Design 11; Wendy Larcombe, 'Towards an Integrated, Whole-School Approach to Promoting Law Student Wellbeing' in Rachael Field, James Duffy and Colin James, *Promoting Law Student and Lawyer Wellbeing in Australia and Beyond* Routledge, 2016) 40; Edward L Deci, Anja H Olafsen and Richard M Ryan, 'Self-Determination Theory in Work Organizations: The State of a Science' (2017) 4 Annual Review of Organizational Psychology and Organizational Behavior 19.

[68] SDT's five sub-theories of motivation and human behaviour are: Cognitive Evaluation Theory, Organismic Integration Theory, Causality Orientations Theory, Basic Needs Theory, and Goal Content Theory. See Maarten Vansteenkiste, Christopher P Niemiec and Bart Soenens, 'The Development of the Five Mini-Theories of Self-Determination Theory: An Historical Overview, Emerging Trends, and Future Directions' in Timothy C Urdan and Stuart A Karabenick (eds), *The Decade Ahead: Theoretical Perspectives on Motivation and Achievement* (Emerald Group Publishing Limited 2010) 105.

[69] See for example, Edward L Deci, 'Effects of Externally Mediated Rewards on Intrinsic Motivation' (1971) 18(1) Journal of Personality and Social Psychology 105; Edward L Deci, 'The Effects of Contingent and Noncontingent Rewards and Controls on Intrinsic Motivation' (1972) 8(2) Organizational Behavior and Human Performance 217; Edward L Deci, 'Intrinsic Motivation, Extrinsic Reinforcement, and Inequity' (1972) 22(1) Journal of Personality and Social Psychology 113; Edward L Deci, 'Notes on the Theory and Metatheory of Intrinsic Motivation' (1976) 15(1) Organizational Behavior and Human Performance 130; Edward L Deci and Richard M Ryan, 'The Empirical Exploration of Intrinsic Motivational Processes' (1980) 13 Advances in Experimental Social Psychology 39; Edward L Deci, 'The Psychology of Self-Determination (Free Press, 1980); Edward L Deci and Richard M Ryan, *Curiosity and Self-Directed Learning: The Role of Motivation in Education* (ERIC Clearinghouse on Elementary and Early Childhood Education, 1981); Edward L Deci and others, 'An Instrument to Assess Adults' Orientations Toward Control Versus Autonomy With Children: Reflections on Intrinsic Motivation and Perceived Competence' (1981) 73(5) Journal of Educational Psychology 642; Edward L Deci and others, 'When Trying to Win: Competition and Intrinsic Motivation' (1981) 7(1) Personality and Social Psychology Bulletin 79; Carl A Benware and Edward L Deci, 'Quality of Learning with an Active Versus Passive Motivational Set' (1984) 21(4) American Educational Research Journal 755. See also, Miron Zuckerman and others, 'On the Importance of Self-Determination for Intrinsically-Motivated Behavior' (1978) 4(3) Personality and Social Psychology Bulletin 443.

[70] Edward E Deci and Richard M Ryan, *Intrinsic Motivation and Self-Determination in Human Behaviour* (Springer Science & Business Media, 1985). See also, Edward Deci and Richard Ryan (eds) *Handbook of Self Determination Research* (University of Rochester Press, 2002).

[71] For a useful repository of the areas in which this theory has been applied and developed see <www.selfdeterminationtheory.org> accessed 18 June 2020.

[72] See for example, Edward L Deci and Richard M Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior' (2000) 11(4) Psychological Inquiry 227; Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development,

provides ways of understanding human motivation, engagement and wellbeing, and the implications for wellbeing of intrinsic and extrinsic goals, values and motivations. The key premise of the theory is that human beings have an inherent orientation towards growth, adaptation and development; however a vulnerability to amotivation and psychological ill-health arises when unsupportive conditions are experienced.[73] The theory offers a means of identifying the positive elements of wellbeing, and predicting 'social conditions that promote high quality development and performance'.[74] This means it can inform the development of measures which can assist with creating favourable conditions for promoting optimal individual wellbeing and with the flow-on effect of assisting law students to cope with the stressors of legal education and subsequently of legal practice.

An important sub-theory of SDT, identified as a 'unifying principle within SDT' by Vansteenkiste et al, is Basic Psychological Needs Theory.[75] The three basic psychological needs for wellbeing have been identified as autonomy, competence and relatedness.[76] The complex need of *autonomy* refers to an individual's subjective experience of living a life true to the personal values that give their life meaning. When people experience autonomy they have a sense of being in control and self-governed; they have agency,[77] and are able to engage in volitional behaviours that are congruent with their own true beliefs, values and interests.[78] Autonomous people understand what is important to them, they are able to make decisions for themselves and they don't feel controlled by others or by external factors. 'Autonomy-supportive' conditions are necessary to satisfy the need for autonomy.[79] The

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and Wellbeing' (2000) 55 American Psychologist 68; Kennon M Sheldon and Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33(6) Personality and Social Psychology Bulletin 883; Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior' in Oliver P John, Richard W Robins and Lawrence A Pervin (eds), *Handbook of Personality: Theory and Research* (Guilford Press, 3rd ed, 2008) 654; Christopher Niemiec, Richard Ryan and Edward Deci, 'Self-Determination Theory and the Relation of Autonomy to Self-Regulatory Processes and Personality Development' in Rick Hoyle (ed), *Handbook of Personality and Self-Regulation* (Wiley-Blackwell, 2010) 169; Lawrence S Krieger, 'The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation' (2011) 8 University of St Thomas Law Journal 168; Edward L Deci and Richard M Ryan, 'Motivation, Personality, and Development within Embedded Social Contexts: An Overview of Self-Determination Theory' in Richard M Ryan (ed), *Oxford Handbook of Human Motivation* (Oxford University Press, 2012) 85; Edward L Deci and Richard M Ryan, 'Optimizing Students' Motivation in the Era of Testing and Pressure: A Self-Determination Theory Perspective' in Woon Chia Liu, John Chee Keng Wang and Richard M Ryan, Building Autonomous Learners: Perspectives from Research and Practice using Self-Determination Theory (Springer, 2016) 9-29,10; Edward L Deci, Anja H Olafsen and Richard M Ryan, 'Self-Determination Theory in Work Organizations: The State of a Science' (2017) 4 Annual Review of Organizational Psychology and Organizational Behavior 19; Richard M Ryan and Edward L Deci, *Self-Determination Theory: Basic Psychological Needs in Motivation, Development, and Wellness* (Guilford Publishing, 2017).
[73] Christopher Niemiec, Richard Ryan and Edward Deci, 'Self-Determination Theory and the Relation of Autonomy to Self-Regulatory Processes and Personality Development' in Rick Hoyle (ed), *Handbook of Personality and Self-Regulation* (Wiley-Blackwell, 2010) 169, 174 and 175.
[74] Deci and Ryan, (n 72) 263.
[75] Vansteenkiste, Niemiec and Soenens, (n 68) 131.
[76] Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior' in Oliver P John, Richard W Robins and Lawrence A Pervin (eds) *Handbook of Personality: Theory and Research* (Guilford Press, 3rd ed, 2008) 654.
[77] Albert Bandura, 'Social Cognitive Theory: An Agentic Perspective' (2001) 52(1) Annual Review of Psychology 1.
[78] Christopher Niemiec, Richard Ryan and Edward Deci, 'Self-Determination Theory and the Relation of Autonomy to Self-Regulatory Processes and Personality Development' in Rick Hoyle (ed), *Handbook of Personality and Self-Regulation* (Wiley-Blackwell, 2010) 169, 176.
[79] Vansteenkiste, Niemiec and Soenens, (n 68) 131–2.

second need, which is the need to experience *competence,* is satisfied when a person has a sense of ability, capability and mastery in relation to managing tasks and challenges.[80] Well-structured, affirming environments support competence; however competence is not supported in 'chaotic and demeaning' environments.[81] The third need - for relatedness - refers to the need for meaningful and reciprocal connections with other key human beings.[82] Environments that are 'warm and responsive', rather than 'cold and neglectful', can support the need for relatedness.[83]

Sheldon and Krieger have provided a succinct summary of the three basic needs in the following 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.[84]

As this summary infers, the relationship between motivation and wellbeing is another important aspect of SDT, with the complex interaction of a person's beliefs, goals and values informing their experience of motivation. Deci and Ryan distinguish between intrinsic and extrinsic motivation; and as Sheldon and Kreiger explain 'motivation for behavior is distinguished based on the locus of its source, either "internal" (the behaviour is inherently interesting and enjoyable, or it is meaningful because it furthers one's own values) or "external" (behavior is compelled by guilt, fear, or pressure, or choosing to please or impress others)'.[85] Therefore, an *intrinsically* motivated person engages in activities that they have an interest in and/or derive enjoyment from and they harness their inner will to do so.[86] For example, the enjoyment of playing a musical instrument can intrinsically motivate a person to practise the instrument. A person can be said to have intrinsic goals when their goal is 'intimacy, community, and personal growth'.[87] According to empirical research undertaken by Kasser and Ryan having intrinsic goals is associated with higher wellbeing.[88] On the other hand, extrinsic motivations, which are primarily predicated on some form of external recognition, typically constitute a means to an end.[89] External goals, which involve rewards

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[80] Lawrence S Krieger, 'The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation' (2011) 8 *University of St. Thomas Law Journal* 168, 172.
[81] Vansteenkiste, Niemiec and Soenens, (n 68) 131–2.
[82] Niemiec, Ryan and Deci, (n 20) 176; Krieger, (n 22) 172.
[83] Vansteenkiste, Niemiec and Soenens, (n 68) 131–2.
[84] Kennon M Sheldon and Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33(6) *Personality and Social Psychology Bulletin* 883, 885.
[85] Lawrence S Krieger and Kennon M Sheldon, 'What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers' (2015) 83 *George Washington Law Review* 554, 565.
[86] Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior' in Oliver P John, Richard W Robins and Lawrence A Pervin (eds) *Handbook of Personality: Theory and Research* (Guilford Press, 3rd ed, 2008) 654, 660–1; Edward Deci and Richard Ryan (eds) *Handbook of Self Determination Research* (University of Rochester Press, 2002).
[87] Sheldon and Krieger, (n 6) 264.
[88] ibid.
[89] Edward L Deci and others, 'Self-Determination Theory: An Approach to Human Motivation and Personality'

such as riches and renown, are generally outside a person's locus of control.[90] For example, a person is extrinsically motivated if they go to work simply because they need to earn money to satisfy their lavish lifestyle; a student is extrinsically motivated if they study hard because they are driven to achieve a high grade. Research by Ryan and Chirkov has indicated that the attainment of extrinsic goals is not positively associated with wellbeing.[91]

Deci and Ryan have evidenced through their empirical work that if the three basic psychological needs are satisfied, intrinsic motivation and goal setting are supported, which in turn results in higher levels of wellbeing.[92] In the alternative, according to SDT, if an individual does not experience satisfaction of the three basic needs, then adverse consequences for mental health, persistence and achievement are likely. Further empirical research undertaken in America by Sheldon and Krieger in 2015 confirmed the importance for lawyer wellbeing of the experience of the three basic needs, and of intrinsic motivation, in lawyers' professional work contexts.[93] That research found that satisfying the basic needs 'facilitates natural growth processes including intrinsically motivated behavior and integration of extrinsic motivations', whereas an absence of autonomy, competence, or relatedness was 'associated with poorer motivation, performance, and wellbeing'.[94]

Krieger and Sheldon also conducted two large scale empirical research studies in American Law Schools informed by SDT. In the first study the data 'showed that students beginning law school with the most internal motivations and intrinsic values earned higher grades', however the study also found that many students shifted over the course of their legal education to 'more external (money-oriented) job preferences'.[95] This suggests that working to address the three basic needs and support intrinsic motivation in the first year of legal education may have a positive impact on student wellbeing. In the second study Krieger and Sheldon found that the single most important factor in supporting student wellbeing was autonomy support. This was because autonomy support preserves a student's intrinsic motivation to study law and all its concomitant benefits. As Krieger and Sheldon noted, autonomy support was correlated with 'wellbeing, career motivation, and academic outcomes (grades and bar exam performance)'.[96]

An understanding of SDT indicates that improved wellbeing will follow if law students experience support through the curriculum for autonomy, relatedness and competence. The next section briefly profiles some SDT informed curriculum design strategies that law teachers could enact in response to the ethical imperative identified earlier in the article to intentionally create a law curriculum that promotes law student wellbeing.

SDT Informed Curriculum Design Strategies for Law

SDT gives legal educators a positive conceptual framework and an outline of potential

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(2013) <http://www.selfdeterminationtheory.org/theory> accessed 18 June 2020.

[90] Sheldon and Krieger, (n 6) 264.

[91] Richard M Ryan and others, 'The American Dream in Russia: Extrinsic Aspirations and Wellbeing in Two Cultures' (1999) 25(12) Personality and Social Psychology Bulletin 1509.

[92] Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development and Wellbeing' (2000) 55(1) *American Psychologist* 68.

[93] Krieger and Sheldon, (n 72) 579.

[94] Deci and Ryan, (n 72) 227.

[95] Krieger and Sheldon, (n 72) 566.

[96] ibid 567.

strategies that can assist with responding to the ethical imperative for law teachers to work to prevent a decline in law student wellbeing and to promote law student wellness. The general premise of establishing an SDT-informed learning environment at law school is that through the curriculum (by which we mean *what* is taught to law students), pedagogy (meaning *how* law is taught) and assessment, a learning environment is created which supports the student experience of the three basic needs, and in which their intrinsic motivation is preserved and encouraged.

This requires whole-of-program approaches which 'takes time, dedicated resourcing and a discipline commitment to transformative practice',[97] but which is also very much worth the effort. A range of reports on legal education have suggested that significant opportunities exist in working with programmatic curriculum and assessment in legal education to better engage, motivate and support student learning.[98] Hess, however, noted in 2002 that legal academics had not to that point capitalised on the opportunities presented by the curriculum to address psychological distress in law students.[99] The use of curriculum, pedagogy and assessment as tools to address the high psychological distress levels of students is therefore an innovative and viable approach because it uses a core point of student contact and engagement.

The Enhancing Student Mental Wellbeing Project led by Chi Baik and Wendy Larcombe of Melbourne University developed a set of five principles for 'enhancing student mental wellbeing through learning and teaching'.[100] These principles have been developed in line with SDT theory and good pedagogical practices. Legal academics can use them, along with the curriculum design and teaching strategies also developed through the project to overcome any uncertainty about what an SDT informed curriculum could and should look like.

The first principle is to foster students' '*autonomous motivation*, and sense of meaning and purpose'.[101] This can be done by bringing the learning of law to life and connecting with the altruistic and employment goals of students. The project suggests using learning and teaching practice to 'highlight the social value of discipline practitioners' knowledge and skills', supporting 'students to develop learning goals in line with their intrinsic values and emerging interests and capabilities' and making it explicit to students that their perspectives are understood and valued, and the quality of their learning experience is important to the teaching staff of the law school.[102]

The second principle for an SDT-informed approach to designing curricula for law student wellbeing is to 'promote inclusion and *belonging*'.[103] This requires us as legal academics to know 'our students' diverse needs and interests', to respond to diversity and ensure social inclusion, and to induct our students into our discipline's values and professional standards.[104]

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[97] Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 Legal Education Review 1, 18.

[98] William Sullivan and others, *Educating Lawyers: Preparation of the Profession of Law* (2007) (the 'Carnegie Report').

[99] Hess, (n 6).

[100] Baik and others, (n 2) 13.

[101] ibid.

[102] ibid.

[103] Baik and others, (n 2) 13.

[104] ibid.

The third principle is to 'promote inclusion and *relationships*'.[105] This can be done by facilitating 'student-faculty and peer social interactions', fostering 'collaborative (not competitive) learning' and expressing 'interest in and care and concern for others'.[106]

The fourth principle concerns enabling *autonomy*.[107] This can be achieved through providing justifications for the 'tasks and knowledge, and teaching and assessment methods' that students are required to learn and experience.[108] It can also be achieved 'within the constraints of the curriculum' by giving 'students choice' and ensuring that they experience 'variety in learning activities and assessment tasks'.[109] Further, ensuring that systems are in place to 'support students to make informed choices aligned with their interests, values or goals' is also a critical way of enabling student autonomy.[110]

The fifth and final principle of an SDT informed law curriculum for student wellbeing is to 'scaffold *competence*'.[111] This can be achieved, for example, by using 'informational (rather than controlling) language' by ensuring 'an appropriate level of challenge and support at each program level' and by providing 'meaningful feedback on student learning and performance'.[112]

In terms of *what* is taught at law school, legal academics encounter different constraints in different countries. In Australia, for example, in 1992 the Law Admissions Consultative Committee brought in the Uniform Admission Rules which prescribed in detail eleven areas of study which constitute the academic requirements for admission to the legal profession, known as the 'Priestley 11'.[113] The Priestley 11 areas of knowledge effectively constitute the compulsory core knowledge requirements of the law degree.[114] This means that SDT-informed curriculum content must be woven into these core subjects in order for the benefit of such curriculum reform to reach all law students. In the UK, on the other hand, the situation is less clear. Students interested in joining the Bar must include the seven 'foundations of legal knowledge' within their undergraduate study.[115] However, students

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[105] ibid.
[106] ibid.
[107] ibid.
[108] ibid.
[109] ibid.
[110] See also, Anna Huggins, 'The Threshold Learning Outcome on Self-Management for the Bachelor of Laws degree: A Proposed Focus for Teaching Strategies in the First Year Law Curriculum' (2011) 2(2) International Journal of the First Year in Higher Education 23; Anna Huggins, Sally Kift and Rachael Field, 'Implementing the Self-Management Threshold Learning Outcome for Law: Some International Design Strategies from the Current Curriculum Toolbox' (2011) 21 Legal Education Review 183; Anna Huggins, 'Autonomy Supportive Curriculum Design: A Salient Factor in Promoting Law Students' Wellbeing' (2012) 35 UNSW Law Journal 683; Alex Steel, Julian Laurens and Anna Huggins, 'Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning' (2013) 36 UNSW Law Journal 30.
[111] Baik and others, (n 2) 13.
[112] ibid.
[113] See Law Admissions Consultative Committee (LACC), Model Admission Rules 2015 (Revised 2016) <https://www.lawcouncil.asn.au/resources/law-admissions-consultative-committee> accessed 18 June2020. See also generally for other relevant resources, Law Admissions Consultative Committee, Law Council of Australia, <https://www.lawcouncil.asn.au/resources/law-admissions-consultative-committee> accessed 18 June 2020.
[114] The Priestley 11 subjects are: Administrative Law, Civil Dispute Resolution, Company Law, Contracts, Criminal Law and Procedure, Equity (including Trusts), Ethics and Professional, Responsibility, Evidence, Federal and State Constitutional Law, Property and Torts.
[115] These are: Criminal Law, Equity and Trusts, Law of the European Union, Obligations 1 (Contract), Obligations 2 (Tort), Property/Land law, Public Law (Constitutional Law, Administrative Law and Human

wishing to become solicitors (who currently have to pass the same foundation subjects), may shortly encounter a new regime in which the regulating body will make no requirements of their undergraduate study other than that they acquire a degree or its equivalent. Instead the regulator is proposing to introduce new exams which would be highly prescriptive and based on multiple choice tests. Law schools will be free to decide whether to maintain their existing degree courses or design new courses aimed at facilitating success with doing well in these new exams.[116] Whilst this proposed new approach to admission is contentious, the abolition of the qualifying status of the undergraduate law degree could potentially positively provide an opportunity to redesign the curriculum to embrace SDT-informed content that extends beyond black letter law and legal skills. The Law Subject benchmark 2019 encourages this approach with the inclusion in the indicative list of a Law Student's Skills and Qualities of mind, for example: 'ii 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'.[117]

Notwithstanding these constraints, the principles of an SDT informed approach to a wellbeing curriculum in law can be achieved through a range of established curriculum content approaches. For example, explicitly inculcating a positive professional identity in law students,[118] teaching dispute resolution knowledge, skills and attitudes,[119] and teaching ethics and values.[120] There is also a persuasive extant literature that establishes that teaching

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Rights Law). See <https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/academic-component.html> accessed 18 June 2020.

[116] These proposals are yet to achieve final approval. For details see <https://www.sra.org.uk/sra/policy/sqe/> accessed 18 June 2020.

[117] See <https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16> accessed 18 June 2020.

[118] See for example, Neil Hamilton and Verna Monson, 'Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism)' (2011) 9 University of St Thomas Law Journal 325; Rachael Field, James Duffy and Anna Huggins, 'Supporting Transition to Law School and Student Wellbeing: The Role of Professional Legal Identity' (2013) 4(2) First Year in Higher Education International Journal 15; Kate Galloway and Peter Jones, 'Guarding our Identities: The Dilemma of Transformation in the Legal Academy' (2014) 14 QUT Law Review 15; Caroline Strevens and Rachael Field (eds), *Educating for Wellbeing: Positive Professional Identities and Practice* (Routledge, 2019); Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis, 2nd ed, 2020).

[119] Rachael Field and James Duffy, 'Law Student Psychological Distress, Alternative Dispute Resolution, and Sweet-Minded, Sweet-Eyed Hope' (2012) Australasian Dispute Resolution Journal 195; Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Wellbeing through a First Year Law Subject' (2012) 12 (2) QUT Law and Justice Journal 133; Tania Sourdin, 'Not Teaching ADR in Law Schools? Implications for Law Students, Clients and the ADR Field' (2012) 23(3) Australasian Dispute Resolution Journal 148; Kathy Douglas and Rachael Field, 'Teaching Non-Adversarial Practice in the First Year of Law: A Proposed Strategy for Addressing High Levels of Psychological Distress in Law Students' 14th Pacific Rim First Year in Higher Education Conference, Fremantle, June 28 –July 1, 2011; Rachael Field and Alpana Roy, 'A Compulsory Dispute Resolution Capstone Subject: An Important Inclusion in a 21st Century Australian Law Curriculum' (2017) 27(1) Legal Education Review 73.

[120] See, for example, the work of Vivienne Holmes, Tony Foley and Stephen Tang,'Practising Professionalism: Observations from an Empirical Study of New Australian Lawyers' (2012) 15 Legal Ethics 29; Vivien Holmes, '"Giving Voice to Values": Enhancing Students' Capacity to Cope with Ethical Challenges in Legal Practice.' (2015) 18 Legal Ethics 115. See also, Lawrence S Krieger, 'The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness' (2004) 11 Clinical Law Review 425; J David Creswell and others, 'Affirmation of Personal Values Buffers Neuroendocrine and Psychological Stress Responses' (2005) 16 Psychological Science 846; Terence Lovat, Neville Clement and Ron Toomey (eds), *International Research Handbook on Values Education and Student Wellbeing* (Springer, 2010); Paul Maharg and Caroline Maughan (eds), *Emerging Legal Learning: Affect and Legal Education: Emotion in the Learning and Teaching the Law* (Ashgate, 2011); Nigel Duncan and Susan L Kay, 'Addressing Lawyer Competence,

threshold concepts is a positive curriculum approach to supporting law student wellbeing,[121] as is the teaching of self-management and reflective practice skills[122] and independent learning skills.[123] Many of these elements of knowledge, skill and attitude are reflected in the Australian threshold learning outcomes for law developed in 2010 which focus on the importance of an holistic and broad based approach to the law curriculum (in contrast to the limited doctrinal focus of the Priestley 11 referred to above).[124]

It is important in curriculum design that intentional *assessment design* is not overlooked. SDT-informed approaches to assessment design are very important to developing a complete and comprehensive SDT-informed curriculum for law student wellbeing.[125] SDT-informed

Ethics and Professionalism' in Frank S Bloch, *The Global Clinical Movement: Educating Lawyers for Social Justice*, (OUP 2011) 183-195; Kennon M Sheldon and Lawrence S Krieger, 'Walking the Talk: Value Importance, Value Enactment, and Wellbeing' (2014) 38 Motivation and Emotion 609; Tigran W Eldred, 'Insights from Psychology: Teaching Behavioral Legal Ethics as a Core Element of Professional Responsibility' (2016) Michigan State Law Review 757; Ines Trindade and others, 'Clarity of Personal Values and Committed Action: Development of a Shorter Engaged Living Scale' (2016) 38 Journal of Psychopathology and Behavioral Assessment 258; Richard Moorhead and others, 'The Ethical Identity of Law Students' (2016) 23 International Journal of the Legal Profession 235; Anna Cody, 'Developing Students' Sense of Autonomy, Competence and Purpose Through a Clinical Component in Ethics Teaching' (2019) 29 Legal Education Review 1.

[121] Rachael Field and Jan HF Meyer, 'Threshold Capabilities as a Foundational for Student Learning Success through Wellbeing' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education* (Routledge, 2020) ch 10. See also, Rebecca Huxley-Binns, 'Tripping over Thresholds: A Reflection on Legal Andragogy' (2016) 50(1) *The Law Teacher* 1;, Jan Meyer and Ray Land, *Threshold Concepts and Troublesome Knowledge: Linkages to Ways of Thinking and Practising within the Disciplines*, Occasional Report 4 (2003) University of Edinburgh Centre for Teaching, Learning and Assessment <http://www.tla.ed.ac.uk/etl/docs/ETLreport4.pdf> accessed 18 June 2020: 'A threshold concept can be considered as akin to a portal, opening up a new and previously inaccessible way of thinking about something …. It represents a transformed way of understanding, or interpreting, or viewing something without which the learner cannot progress'. Examples of threshold concepts in law that might be considered transformative could include, for example, the notion of equitable title, the skill of legal analysis and attribute of 'thinking like a lawyer'.

[122] Sally Kift, Mark Israel and Rachael Field, Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement December 2010 (Australian Learning and Teaching Council, 2011) https://cald.asn.au/wp-content/uploads/2017/11/KiftetalLTASStandardsStatement2010.pdf accessed 18 June 2020. See also, Judith McNamara, Rachael Field and Catherine Brown, 'Learning to Reflect in the First Year of Legal Education: The Key to Surviving Legal Education and Legal Practice', Paper Presented at the 12th Pacific Rim First Year in Higher Education Conference, Townsville, June 29 –July 1, 2009.

[123] Rachael Field, James Duffy and Anna Huggins, 'Teaching Independent Learning Skills in the First Year: A Positive Psychology Strategy for Promoting Law Student Wellbeing' (2015) 8(2) Journal of Learning Design 1.

[124] See Kift, (n 97); David Weisbrot, 'What Lawyers Need to Know, What Lawyers Need to be Able to Do: 'An Australian Experience' (2001) Journal of the Association of Legal Writing Directors 21. See also, Nickolas James, 'Expertise as Privilege: Australian Legal Education and the Persistent Emphasis Upon Doctrine' (2004) 8 University of Western Sydney Law Review 1; David Weisbrot, 'Taking Skills Seriously: Reforming Australian Legal Education' (2004) 29(6) Alternative Law Journal 266; Paul O'shea, 'The Complete Law School: Avoiding the Production of "Half-Lawyers"' (2004) 29(6) Alternative Law Journal 272; Elizabeth Handsley, Gary Davis and Mark Israel, 'Law School Lemonade: Or Can You Turn External Pressures into Educational Advantages?' (2005) 14(1) Griffith Law Review 108; Nickolas James, 'The Marginalisation of Radical Discourses in Australian Legal Education' (2006) 16 Legal Education Review 55; Donna Cooper and others, 'The Emergence of the JD in the Australian Legal Education Marketplace and its Impact on Academic Standards' (2011) 21 Legal Education Review 23; Kate Galloway and Peter Jones, 'Guarding our Identities: The Dilemma of Transformation in the Legal Academy' (2014) 14 QUT Law Review 15; Anna Huggins, 'Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law' (2015) 38(1) UNSW Law Journal 264; Collins (n 32); Field and Roy (n 32); Simon Rice, 'Why Prescriptive Legal Education Demands Critical Perspectives' in Kevin Lindgren, François Kunc and Michael Coper (eds), *The Future of Australian Legal Education: A Collection* (Lawbook Co, 2018) 217.

[125] Rachael Field and Sally Kift, 'Addressing the High Levels of Psychological Distress in Law Students

assessment design strategies can capitalise on assessment as a significant point of contact, influence and engagement with students. As Kift has said: 'Critical to the efficacy of any pedagogical approach adopted is how we frame our assessment practices. This is because 'what teachers value - what they deem important and essential for students to learn - can be ascertained most directly by what they assess — what they require students to know and be able to do'.[126] Further, Kift points out, assessment used in this way represents assessment '"for" and "as" (compared with "of") learning'.[127] Good practice approaches in this context involve avoiding the trap of over-assessing;[128] aligning curriculum and assessment;[129] and avoiding replicating the assessment practices we experienced as students: '[Most legal educators] uncritically replicate the learning experiences that they had when students'.[130]

More than 10 years ago Kift exhorted law academics to 'revisit the multiple purposes of assessment' and 'be mindful of various identified assessment "hotspots"'.[131] The hotspots identified by Kift include:

- supporting new students in the discipline to make the transition to tertiary and discipline assessment practices;
- providing students with timely formative feedback on progress in aid of their learning;
- being clear, explicit and consistent about Law's assessment goals, criteria and performance standards;
- assuring constructive alignment and ensuring that our assessment approaches are also valid for increasing complexity of learning outcomes over the course of the degree;
- authenticity in assessment;
- assessing teamwork;
- harnessing the possibilities of online assessment; and
- designing out plagiarism.[132]

In summary, a law curriculum that is SDT-informed will offer choice; respect diverse student perspectives and ensure that rationales are given for decisions. SDT-informed pedagogy involves building a learning community of trusting relationships at law school, and it requires us as legal educators to concern ourselves with providing optimum assessment tasks.

Through Intentional Assessment and Feedback Design in the First Year Law Curriculum' (2010) 1(1) International Journal of the First Year in Higher Education 65. See also, Sally Kift, 'Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development: 'A Legal Education Case Study' Paper Presented at the Australian Association for Research in Education (AARE) Conference, Brisbane, 2002.

[126] William Sullivan and others, *Educating Lawyers: Preparation of the Profession of Law* (John Wiley and Sons, 2007) (the 'Carnegie Report') 163. See also, Kerri-Lee Harris and Richard James, 'Facilitating Reflection on Assessment Policies and Practices: A Planning Framework for Educative Review of Assessment' (2006) 3(2) Studies in Learning, Evaluation, Innovation and Development 23.

[127] Kift, (n 97) 10.

[128] ibid 19.

[129] John Biggs, Aligning Teaching and Assessment to Curriculum (2003) Learning and Teaching Support Network < https://www.heacademy.ac.uk/sites/default/files/resources/id477_aligning_teaching_for_constructing_learning.pdf> accessed 18 June 2020.

[130] Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26 Sydney Law Review 537, 539.

[131] Kift, (n 97) 23.

[132] ibid 23. See also, Kerri-Lee Harris, *Guide for Reviewing Assessment* (University of Melbourne, Centre for the Study of Higher Education (CSHE), 2005) and Centre for the Study of Higher Education (CSHE), *Assessing Learning in Australian Universities: Ideas, Strategies and Resources for Quality in Student Assessment* (University of Melbourne, Centre for the Study of Higher Education (CSHE), 2002).

Conclusion

In this article we have argued that there is an ethical imperative on legal educators to promote student wellbeing. We have supported this assertion by reference to the major ethical perspectives, all of which, we argue, in spite of their different theoretical frameworks, point to the same conclusion. We recognise that this leaves open the question of how to respond to this ethical imperative and explore the risk of allowing an individualising discourse to obscure the neoliberal source that underlies much lawyer and law student distress. We have argued that curriculum reform with wellbeing in mind needs to address the neoliberal context in which law schools operate while ensuring that we do not contribute to student psychological distress through our curriculum content or design, or the manner in which we educate.

To achieve this goal we seek guidance from theories of positive psychology, and, in particular, self-determination theory (SDT), a theory that offers a means of predicting social conditions that promote high quality development and performance. As the SDT scholarship and literature has well established, lawyers and law students can be supported to thrive and maximise their positive motivation, through regular experiences of autonomy, competence and relatedness.[133] SDT therefore gives us an analytical framework within which to design curricula for wellbeing through which it becomes possible to ensure that curriculum content and design are enabling, and learning and assessment processes work to promote student wellbeing and success. Our position is that as legal educators, we are ethically responsible for applying these insights to the diverse circumstances of our students, our programmes and our law schools.

What are the consequences if we fail to act to promote student wellbeing? What are the consequences if we respond fittingly to the ethical imperative to act? On the basis of the evidence we now have globally of the experience of law student psychological distress, it is evident that legal academics have a collective moral responsibility to act. Not only because legal educators owe a duty to students to responsibly design curricular, pedagogical and assessment approaches that support student learning, but also simply because it is the *right thing to do* and we have SDT and curriculum strategies that can help us respond to this ethical challenge. Indeed, in our view the wellbeing curriculum reform project, when taken up by law schools around the world, has the potential to influence the global legal profession, and even broader society, positively.

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[133] Sheldon & Krieger, n. 84.