

AUTONOMY SUPPORTIVE CURRICULUM DESIGN: A SALIENT FACTOR IN PROMOTING LAW STUDENTS' WELLBEING

ANNA HUGGINS*

I INTRODUCTION

There is increasing awareness and concern about law students' elevated distress levels amongst members of the Australian legal academy and the broader legal community.¹ Disproportionately high levels of psychological distress, including depression, anxiety, and substance abuse, have been consistently documented in decades of research on American law student samples.² Questions about whether these trends were an American phenomenon, and due to 'differences in demographics, pedagogy and culture'³ may not apply to Australian law students, began to be empirically addressed with the publication of the Brain and Mind Research Institute's *Courting the Blues* monograph in

* Assessment and Curriculum Development Fellow, University of New South Wales Faculty of Law, BInSt/LLB (Hons) (UNSW); Grad Dip Couns (Jansen Newman Institute); Master of Laws (Research) candidate, Queensland University of Technology Faculty of Law.

1 For example, one of the outcomes of Associate Professor Rachael Field's Australian Learning and Teaching Council Fellowship, awarded in 2010, was the creation of the Wellness Network for Law, which is a community of legal academics, law students and members of the profession committed to ameliorating distress and promoting wellbeing in the law: see Tristan Jepson Memorial Foundation, *Wellness Network* (6 December 2011) <<http://www.tjmf.org.au/wellness-network/>>. Within six months of calling for members, more than 50 members of the Australian legal community, the vast majority of whom are law academics, had joined the Wellness Network for Law: Email from Rachael Field to Anna Huggins, 24 August 2012.

2 See, eg, G Andrew H Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers' (1986) 11 *American Bar Foundation Research Journal* 225; Matthew M Dammeyer and Narina Nunez, 'Anxiety and Depression Among Law Students: Current Knowledge and Future Directions' (1999) 23 *Law and Human Behavior* 55; Kennon M Sheldon and Lawrence S Krieger, 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22 *Behavioral Sciences & the Law* 261; Mary E Pritchard and Daniel N McIntosh, 'What Predicts Adjustment Among Law Students? A Longitudinal Panel Study' (2003) 143 *The Journal of Social Psychology* 727.

3 Judy Allen and Paula Baron, 'Buttercup Goes to Law School: Student Wellbeing in Stressed Law Schools' (2004) 29 *Alternative Law Journal* 285, 286.

2009.⁴ Amongst other findings, the comprehensive research in this monograph indicated that more than one-third of the surveyed law students from Australian universities experience high levels of psychological distress.⁵ Recent empirical research at a number of individual Australian law schools reveals similar trends,⁶ suggesting that aspects of the legal education experience may contribute to widespread distress levels amongst law students in Australia, as in the United States.

This article builds on recent Australian⁷ and American⁸ research that utilises Self-Determination Theory ('SDT') in the context of investigating the phenomenon of law students' elevated distress levels. SDT proposes that there are three basic and universal psychological needs – autonomy, competence, and relatedness – the fulfilment of which predicts human thriving.⁹ Whilst acknowledging the relevance and importance of all of these needs, including in the context of legal education,¹⁰ the discussion in this article is specifically concerned with the 'master' need, autonomy.¹¹ First, extant American and Australian empirical literature on law students' distress is analysed through the lens of autonomy, as defined by SDT.¹² It is argued that lack of autonomy appears to contribute to heightened psychological distress levels amongst law

4 Norm Kelk et al, 'Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers' (BMRI Monograph 2009-1, Brain & Mind Research Institute: University of Sydney, January 2009) <<http://www.cald.asn.au/docs/Law%20Report%20Website%20version%204%20May%2009.pdf>>.

5 Ibid 11–12.

6 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 *Legal Education Review* 149; Kath Hall, Molly Townes O'Brien and Stephen Tang, 'Developing a Professional Identity in Law School: A View from Australia' (2010) 4 *Phoenix Law Review* 21; Anthony Lester, Lloyd England and Natalia Antolak-Saper, 'Health and Wellbeing in the First Year: The Law School Experience' (2011) 36 *Alternative Law Journal* 47; Catherine M Leahy et al, 'Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Tertiary Students: Cross-Sectional Study' (2010) 44 *Australian and New Zealand Journal of Psychiatry* 608; Wendy Larcombe et al, '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' (Research Paper No 603, Melbourne Law School, 16 September 2012) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2147547>.

7 Larcombe et al, above n 6.

8 Sheldon and Krieger, 'Undermining Effects on Law Students?', above n 2; 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 *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' (2011) 8 *University of St. Thomas Law Journal* 168.

9 Christopher P Niemiec, Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Relation of Autonomy to Self-Regulatory Processes and Personality Development' in Rick H Hoyle (ed), *Handbook of Personality and Self-Regulation* (Wiley-Blackwell, 2010) 169, 176–7.

10 Sheldon and Krieger, 'Understanding the Negative Effects', above n 8; Larcombe et al, above n 6.

11 Kennon M Sheldon, Geoffrey Williams and Thomas E Joiner, *Self-Determination Theory in the Clinic: Motivating Physical and Mental Health* (Yale University Press, 2003) 19; Krieger, 'The Most Ethical of People', above n 8, 174.

12 See the definition and discussion of autonomy according to SDT in Part II: Theoretical Framework below.

students. Importantly, lack of autonomy is explicitly identified as a factor associated with elevated law student distress levels in a number of recent empirical studies,¹³ and as I will argue, is implicit in the findings of a number of further empirical studies examining law students' experiences.¹⁴ Moreover, as indicated in Tani and Vines' 2009 study of students from ten different disciplines at the University of New South Wales ('UNSW'), relative to students from other faculties, law students are more influenced by external factors than other students, signifying a relative lack of internally endorsed, autonomous decision-making.¹⁵ This is significant as it suggests that not only are elevated distress levels more prevalent amongst law students than other university students,¹⁶ but that lack of autonomy may be more widespread and problematic for law students than for other student populations.

Secondly, the theory of autonomy support, which is part of a broader meta-theory provided by SDT, is employed to provide a framework for considering curriculum design strategies that support law students' autonomy. The theory of autonomy support posits that people thrive when they feel and perceive that others support their autonomy, particularly when there is a situation in which individuals have unequal power.¹⁷ In Part V, this article suggests a range of curricular strategies, informed by the findings of SDT research, that law teachers can implement to support students' autonomy: the provision of meaningful rationales; acknowledgement of perspectives and feelings; use of non-controlling language; choice provision; and nurturing students' inner motivational resources.¹⁸ Findings from the educational psychology literature based on SDT indicate that the implementation of such strategies will not only enhance students' psychological wellbeing, but also facilitate their engagement and

13 See, eg, Sheldon and Krieger, 'Undermining Effects on Law Students?', above n 2; Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (2009) 19 *Legal Education Review* 3; Larcombe et al, above n 6; Pritchard and McIntosh, above n 2; Sheldon and Krieger, 'Understanding the Negative Effects', above n 8.

14 See, eg, Townes O'Brien, Tang and Hall, 'Changing Our Thinking', above n 6; Lani Guinier et al, 'Becoming Gentlemen: Women's Experiences at One Ivy League Law School' (1994) 143 *University of Pennsylvania Law Review* 1; Sandra Janoff, 'The Influence of Legal Education on Moral Reasoning' (1991) 76 *Minnesota Law Review* 193; James M Hedegard, 'The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students' (1979) 4 *American Bar Foundation Research Journal* 791; Elizabeth Mertz, *The Language of Law School: Learning to 'Think Like a Lawyer'* (Oxford University Press, 2007).

15 Tani and Vines, above n 13, 12–25.

16 See, eg, Leahy et al, above n 6.

17 Yu-Lan Su and Johnmarshall Reeve, 'A Meta-Analysis of the Effectiveness of Intervention Programs Designed to Support Autonomy' (2011) 23 *Educational Psychology Review* 159, 159–60.

18 Ibid 161–2.

academic achievement.¹⁹ Thus, although law teachers cannot *give* students a greater sense of autonomy they can nonetheless take practical steps to provide optimal conditions for law students to experience autonomous decision-making and action.²⁰

This article proceeds as follows. Part II provides a theoretical framework and defines the key concepts of autonomy and autonomy support from SDT that underpin the discussion in this article. Part III canvasses research on trends in law students' distress, with an emphasis on recent Australian research. Part IV then analyses empirical research from Australia and the United States ('US') and argues that lack of autonomy may be contributing to law students' elevated distress levels. Building on the preceding discussion regarding the importance of autonomy in law students' experiences of legal education, Part V further elaborates the theoretical underpinnings of autonomy supportive curriculum design from SDT, which informs the discussion of a range of curriculum design strategies that satisfy five empirically-supported interpersonal conditions for autonomy support. Part VI concludes this discussion and suggests opportunities for future research.

II THEORETICAL FRAMEWORK

SDT provides an apt theoretical framework for discussing curricular strategies to promote law students' wellbeing because: (1) it identifies key conditions for personal and professional wellbeing, satisfaction, and growth supported by robust empirical research; and (2) its relevance and applicability to legal education is confirmed by recent American and Australian studies. Informed by decades of empirical research, a central tenet of SDT is that there are three cross-cultural basic psychological needs, the fulfilment of which is required for human wellness and thriving.²¹ In this theory, needs are defined as the '*innate psychological nutriments that are essential for ongoing psychological growth, integrity, and well-being*'.²² The first of these needs is autonomy, the subjective experience that one's behaviour is self-governed, volitional, and congruent with one's true beliefs, values, and interests.²³ In SDT literature,

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- 19 For an overview of this literature see Paula J Manning, 'Use Your Words: Providing Informational Feedback as a Means to Support Self-Determination and Improve Law Student Outlook and Outcomes' (Working Paper, Western State College of Law, 1 October 2011) 3 <<http://ssrn.com/abstract=1967280>>. See also 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, 665, 672.
- 20 Johnmarshall Reeve and Hyungshim Jang, 'What Teachers Say and Do to Support Students' Autonomy During a Learning Activity' (2006) 98 *Journal of Educational Psychology* 209, 210, 217.
- 21 Niemiec, Ryan and Deci, above n 9, 176.
- 22 Edward L Deci and Richard M Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior' (2000) 11 *Psychological Inquiry* 227, 229 (emphasis in original).
- 23 Ibid; Niemiec, Ryan and Deci, above n 9, 176.

autonomy has been defined as ‘endorsing one’s actions at the highest level of reflection’.²⁴ The opposite of autonomy is ‘heteronomy, or the experience of feeling controlled or pressured to think, feel, or behave in certain ways’.²⁵ Autonomy allows for external influences that are self-endorsed and thus can be contrasted with independence, which connotes freedom from the influence of external forces.²⁶ Autonomy can also be thought of as authenticity.²⁷ In describing a study by Sheldon et al from 2001,²⁸ Krieger describes autonomy as including issues of genuineness.²⁹ The autonomy of participants in Sheldon et al’s study was measured by asking whether their choices ‘expressed my true self’ and ‘were based on my true interests and values’.³⁰

The second fundamental psychological need in SDT is competence, which refers to an individual’s ‘experience of effective interactions with the environment’,³¹ and their sense of ability, capability, and mastery in relation to tasks and challenges.³² The third basic need is relatedness, describing the experience of meaningful connections with key others.³³ This includes a sense of being able to rely on and trust others, and/or provide care to others.³⁴ Whilst acknowledging the importance of the fulfilment of all of the basic psychological needs, the discussion in this article will focus on autonomy. This is because, of the three basic psychological needs, autonomy is considered to be the ‘master’ need.³⁵ As Krieger notes:

We may also consider autonomy the most important of the three basic psychological needs, since people must have a well-defined sense of self, feel intimately connected to themselves, and express their core values in daily life in order to function in a consistent way and with a sense of security and grounding.³⁶

Moreover, as will be elaborated upon in Part IV, there is growing empirical support for the idea that autonomy is a salient factor in promoting law students’ wellbeing.

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- 24 Kennon M Sheldon et al, ‘The Independent Effects of Goal Contents and Motives on Well-Being: It’s Both What You Pursue and Why You Pursue It’ (2004) 30 *Personality & Social Psychology Bulletin* 475, 475 (citations omitted).
 - 25 Niemiec, Ryan and Deci, above n 9, 176.
 - 26 Manning, above n 19, 2–3.
 - 27 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, 119; Prue Vines, ‘Working Towards the Resilient Lawyer: Early Law School Strategies’ (UNSW Law Research Paper No 2011-30, UNSW Faculty of Law, 2 July 2011) 5 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1914891>.
 - 28 Kennon Sheldon et al, ‘What is Satisfying About Satisfying Events? Testing 10 Candidate Psychological Needs’ (2001) 80 *Journal of Personality and Social Psychology* 325.
 - 29 Krieger, ‘Institutional Denial’, above n 27, 119.
 - 30 Ibid.
 - 31 Niemiec, Ryan and Deci, above n 9, 176.
 - 32 Krieger, ‘The Most Ethical of People’, above n 8, 172.
 - 33 Niemiec, Ryan and Deci, above n 9, 176; *ibid*.
 - 34 Niemiec, Ryan and Deci, above n 9, 176–7; Ryan and Deci, ‘Self-Determination Theory’, above n 19, 658–9.
 - 35 Sheldon, Williams and Joiner, above n 11, 19.
 - 36 Krieger, ‘The Most Ethical of People’, above n 8, 174.

SDT provides a theoretical and practical fit with legal education research as demonstrated in a number of important American studies. SDT was applied to law student populations in two influential US studies by Sheldon and Krieger in 2004 and 2007;³⁷ as will be discussed further below, the results of both studies indicate that there are empirical correlations between the factors measured in SDT – goals, motivations, values, universal needs, and autonomy supportive environments³⁸ – and law students' wellbeing. It is also currently being employed in a further study of thousands of lawyers in various US states being conducted by Sheldon and Krieger which seeks to examine the factors influencing 'lawyers' values, purposes, satisfaction and emotional health'.³⁹ SDT also informed Manning's recent article on autonomy supportive feedback practices for law school assessment tasks, highlighting its applicability as a theoretical framework for legal education research on curricular innovation.⁴⁰ Recent Australian qualitative research conducted by researchers at Melbourne Law School 'add[s] support' to the findings of existing SDT research on law students' wellbeing from the US by providing evidence of the direct relationship between students' perceptions that their needs for experiences of autonomy, competence and relatedness are not being fulfilled and high levels of self-reported psychological distress.⁴¹

III AUSTRALIAN TRENDS IN LAW STUDENTS' DISTRESS

As indicated above, recent Australian data confirm long-documented trends in the US regarding the negative impacts of legal education on students' psychological wellbeing.⁴² A comprehensive 2009 study by the Brain and Mind Research Institute ('BMRI') provided empirical evidence that Australian law students experience psychological distress and a risk of depression at 'a much higher level than expected ... on all measures used'.⁴³ The law student sample included 741 students from 13 Australian universities; of these, 35.2 per cent experienced high levels of psychological distress, compared with 17.8 per cent of medical students and 13.3 per cent of people aged 18–34 in the general population.⁴⁴ Recent empirical research conducted at a number of individual Australian law schools supports the trend of heightened distress levels amongst

37 See above nn 2 and 8.

38 The 2004 study examined the first of these three factors and the 2007 study included the last two listed factors: Krieger, 'The Most Ethical of People', above n 8, 184.

39 Ibid 187–8.

40 Manning, above n 19. See also Richard M Ryan and Edward L Deci, 'An Overview of Self-Determination Theory: An Organismic Dialectical Perspective' in Edward L Deci and Richard M Ryan (eds) *Handbook of Self-Determination Research* (University of Rochester Press, 2002) 3.

41 Larcombe et al, above n 6, 27.

42 See above n 2.

43 Kelk et al, above n 4, 37.

44 Ibid 12.

law students documented in the BMRI's *Courting the Blues* report,⁴⁵ confirming that Australian law students' distress is widespread. Research conducted by Townes O'Brien, Tang and Hall at the Australian National University ('ANU') analysed survey responses from two groups of first year law students from 2009–10;⁴⁶ the survey results indicate that by the end of the first year of law school, law students experienced 'more symptoms, or greater intensity of symptoms, of depression and stress, compared with both beginning-of-[first]-year students and young Australian adults generally'.⁴⁷ It is concerning that, by the end of the first year, almost one-third of law students indicated they were experiencing 'moderate' to 'extremely severe' symptoms of depression.⁴⁸ The findings of recent research conducted by Larcombe et al at Melbourne Law School ('MLS') similarly found that approximately 30 per cent of students (their sample included both Juris Doctor ('JD') and Bachelor of Laws ('LLB') students across all years of their degree) experienced moderate to extremely severe depression or anxiety.⁴⁹

Both the ANU and MLS studies employed the same research instrument, the short-form version of the Depression, Anxiety and Stress Scales, known as DASS-21.⁵⁰ Recent research conducted at Monash University Law School used the full length DASS, which contains 42 questions rather than 21, and found that by the end of the first year of law school, more than 15 per cent of law students sampled reported symptoms indicative of moderate to severe levels of depression.⁵¹ These results are lower than those reported in the ANU and MLS studies, as well as in the BMRI report, and may reflect positively on a range of curricular and co-curricular initiatives designed to 'act as ... preventative mental health initiatives' that Monash University Law School has implemented in recent years.⁵² By contrast, a recent study of students across various disciplines at the University of Adelaide alarmingly found that 'there were more law and mechanical engineering students classified as psychologically distressed than there were not', with 58 per cent of law students experiencing psychological distress.⁵³ Unlike the ANU, MLS and Monash studies, this research employed the K10 screening instrument,⁵⁴ which was also used in the BMRI's *Courting the*

45 See Townes O'Brien, Tang and Hall, 'Changing Our Thinking', above n 6.

46 Ibid 154.

47 Ibid 161.

48 Ibid 159.

49 Larcombe et al, above n 6, 11. The authors found that lack of autonomy was significantly negatively correlated with high levels of anxiety and stress, although interestingly it was not significantly correlated with depression in this study.

50 Townes O'Brien, Tang and Hall, 'Changing Our Thinking' above n 6, 156; Larcombe et al, above n 6, 7–8.

51 Lester, England and Antolak-Saper, above n 6, 48. The authors also found an increase in self-reported physical health problems such as colds, flus, headaches and muscle tension by the end of the first year, confirming trends identified in Pritchard and McIntosh's study of law students at the University of Denver College of Law: at 48; see also Pritchard and McIntosh, above n 2, 739.

52 Lester, England and Antolak-Saper, above n 6, 47–8.

53 Leahy et al, above n 6, 611, 613.

54 K10 stands for Kessler Measure of Psychological Distress: ibid 609.

Blues report;⁵⁵ differences in the research instruments used may partially account for the variance in results between law schools. Collectively, these recent empirical studies suggest that, despite differences in measured levels of law student distress at various institutions, the trend of elevated distress levels amongst Australian law students is widespread and concerning.⁵⁶

Significantly, both American and Australian research indicates that law students commence law school with average or above average levels of wellbeing, and that it is during the first year of law school that elevated symptoms of psychological distress begin to appear.⁵⁷ Whilst some American research indicates that people who have certain types of personality preferences ‘self-select into the law’,⁵⁸ the above studies indicate that for many students there is something that occurs *at law school* that triggers or aggravates any pre-existing susceptibilities to elevated distress levels. It is concerning that law students’ elevated symptoms of distress developed in their first year of law school continue throughout their law degrees⁵⁹ and into their careers as legal professionals.⁶⁰ As documented in the *Courting the Blues* report, 31 per cent of solicitors experience high levels of psychological distress,⁶¹ a figure that is more than double the rate of 13 per cent for the general population over 17 years of age.⁶² In a similar vein, the results of a 2007 survey of over 7500 Australian professionals found that

55 Kelk et al, above n 4, 10.

56 It is notable that all of the Australian universities that have conducted their own studies on law students’ distress – the Australian National University, Monash University, the University of Adelaide and the University of Melbourne – are Group of 8 universities. Further research is required to determine if similar trends are also occurring in law schools at Australian Technology Network Universities, Innovative Research Universities, metropolitan new generation and regional universities, which vary in terms of, inter alia, geographical locations, student demographics, mission statements and relative emphasis on research and teaching.

57 Benjamin et al, above n 2, 240; Sheldon and Krieger, ‘Undermining Effects on Law Students?’, above n 2; Townes O’Brien, Tang and Hall, ‘Changing our Thinking’, above n 6, 159–60; Lester, England and Antolak-Saper, above n 6, 48; Pritchard and McIntosh, above n 2, 739; Alan Reifman, Daniel McIntosh and Phoebe Ellsworth, ‘Depression and Affect Among Law Students During Law School’ (2001) 2 *Journal of Emotional Abuse* 93, 102.

58 Susan Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (American Psychological Association, 2004) 51. See also Susan Daicoff, ‘Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism’ (1997) 46 *American University Law Review* 1337.

59 Kelk et al, above n 4, 12; Leahy et al, above n 6, 610; Larcombe et al, above n 6, 19; Benjamin et al, above n 2, 246; Sheldon and Krieger, ‘Undermining Effects on Law Students?’, above n 2, 274; Reifman, McIntosh and Ellsworth, above n 57, 98–100; Nancy J Soonpaa, ‘Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students’ (2004) 36 *Connecticut Law Review* 353, 377–8. Indeed, Soonpaa’s study of first, second and third year law students at the Texas Tech University School of Law found that third year students displayed significantly higher stress levels than their first year counterparts: at 377–8.

60 Kelk et al, above n 4, 12; Benjamin et al, above n 2, 246; Colin James, ‘Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education’ (2008) 18 *Legal Education Review* 123, 124–5; Colin James, ‘Seeing Things as We Are. Emotional Intelligence and Clinical Legal Education’ (2005) 8 *International Journal of Clinical Legal Education* 123, 124–6.

61 The proportion of surveyed barristers experiencing psychological distress was significantly lower than that for solicitors at 16.7%: Kelk et al, above n 4, 12.

62 Ibid 12.

‘respondents from the legal professions particularly, were more likely to report moderate to severe symptoms of depression when compared with the total sample’.⁶³ As with law students’ distress, it appears that Australian trends align with the high levels of dissatisfaction, distress, and psychopathology amongst practicing legal professionals documented in a significant body of US literature.⁶⁴ Thus, the deleterious effects of legal education on some law students’ wellbeing appear to be enduring, highlighting the benefits of a preventive approach.

IV LAW STUDENTS’ DISTRESS AND LACK OF AUTONOMY

There is likely to be a multiplicity of factors that contribute to the steep declines in law students’ wellbeing, beginning in the first year of law school.⁶⁵ Watson and Field provide a concise summary of the factors that have been identified in American literature as potentially contributing to law students’ distress:

In United States law schools, blame has been attributed to factors as varied as fierce competition for grades and the singular emphasis on achievement; use of the Socratic method that ‘exalts criticism over imagination’; academic insistence on linear thinking at the expense of student creativity and personal values; and legal formalism ‘associated with a form of education that emphasises doctrines and cases and minimises external factors such as justice, social policy, and politics, [and] imagines law as an autonomous discipline existing apart from all others ... not at all interdisciplinary’. Many of these are encompassed in the phrase ‘thinking like a lawyer’. The ‘controlling and autonomy-denying features of legal education’, excessive workload, very limited staff-student interaction, and unbalanced development of students’ interpersonal skills have also been suggested as causative. Others have pointed to the fostering of certain personality traits that lead to unhappiness, such as defensiveness and pessimism, perfectionism, and a documented decline in intrinsic motivation and contact with social networks over the school year.⁶⁶

Despite some differences, there are sufficient similarities between the US and Australian legal education systems for these concerns to resonate in an Australian context. One difference between the two systems is that legal education in

63 Beaton Consulting, *Annual Professions Survey 2007: Research Summary* (2007) 2. See also Christopher Kendall, *Report of the Ad Hoc Committee on Psychological Distress and Depression in the Legal Profession* (March 2011) The Law Society of Western Australia <<http://www.lawsocietywa.asn.au/visageimages/multimedia/News/Report%20of%20PDD%20Ad%20Hoc%20Ctee%20FINAL%20Public%20Release%2016%20May%202011.pdf>>.

64 Daicoff provides comprehensive overviews of the American literature on lawyer distress and its putative causes: see, eg, Susan Daicoff, ‘Lawyer, Be Thyself: An Empirical Investigation of the Relationship between the Ethic of Care, the Feeling Decisionmaking Preference, and Lawyer Wellbeing’ (2008) 16 *Virginia Journal of Social Policy & the Law* 87; Daicoff, *Lawyer, Know Thyself: A Psychological Analysis*, above n 58, 113–68.

65 Sheldon and Krieger, ‘Undermining Effects on Law Students?’, above n 2, 280.

66 Penelope Watson and Rachael Field, ‘Promoting Student Well-being and Resilience at Law School’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 389, 392–3 (citations omitted). See also the overview provided in Sheldon and Krieger, ‘Understanding the Negative Effects’, above n 8, 883–4.

America is typically offered as a three-year graduate degree and most law schools in Australia offer four to five year undergraduate law degrees, with students often studying another degree simultaneously. Thus, it is important to isolate the impacts of studying law from the impacts of concurrently studying in another discipline; further research at Australian universities to illuminate this issue is warranted. However, this landscape is changing with the increasing offerings of graduate-level JD degrees at Australian law schools.⁶⁷ Similarities between the US and Australian legal education systems include a ‘predominant focus on doctrinal legal theory and analysis, emphasis on “thinking like a lawyer”,⁶⁸ and privileging of academic grades and honours as the chief predictors of subsequent success’.⁶⁹ These similarities suggest that the research findings on law students’ distress are readily transferable across these two jurisdictions.

Whilst intuitively many of Watson and Field’s above listed concerns about the elements of legal education that may contribute to law students’ heightened distress levels ring true, there is a relative paucity of literature that empirically links such factors to the observed symptoms, with some notable exceptions. In this Part, I will focus on studies employing empirical research methodologies that provide insight into the factors contributing to law students’ distress and identify themes emerging from this literature. Although extant research has not established direct causal links between aspects of legal education and law students’ distress, a common thread in much of the extant research appears to be law students’ loss, or perceived loss, of autonomy and authenticity as they progress through their law degrees.⁷⁰ Employing the definition of autonomy outlined in Part II above, this means that some law students may perceive that their actions are not self-governed, volitional, and congruent with their true

67 See, eg, Donna Cooper et al, ‘The Emergence of the JD in the Australian Legal Education Marketplace and its Impact on Academic Standards’ (2011) 21 *Legal Education Review* 23.

68 It should be noted, however, that there has been increasing emphasis on teaching skills in Australian legal curricula in recent decades, motivated in part by the Australian Law Reform Commission’s *Managing Justice* report: Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000). For a discussion of teaching practical legal skills in the American legal education context, see William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007).

69 James, ‘Seeing Things as We Are’, above n 60, 127; 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, 27.

70 Cf Hedegard, above n 14. Hedegard concludes that ‘*Not only did individual law students retain the distinctive temperament qualities they brought to law school, but these qualities may also have become more distinctive while in law school*’: at 862 (emphasis in original). Also, the significance of interpersonal relationships for law students’ wellbeing has been examined in a number of empirical studies, but is beyond the scope of this discussion: see, eg, Lester, England and Antolak-Saper, above n 6, 49; Pritchard and McIntosh, above n 2, 741; Antonia Abbey, Christine Dunkel-Schetter and Philip Brickman, ‘Handling the Stress of Looking for a Job in Law School: The Relationship between Intrinsic Motivation, Internal Attributions, Relations with Others, and Happiness’ (1983) 4 *Basic and Applied Social Psychology* 263, 273–4.

beliefs, values and interests.⁷¹ Krieger comments that, in the process of learning to think like a lawyer, '[l]aw students run the substantial risk of losing contact with aspects of their authentic selves, such as their conscience and underlying values'.⁷² Hess similarly argues that '[f]or some students, "learning to think like a lawyer" means abandoning their ideals, ethical values, and sense of self'.⁷³ This is consonant with Grover's description of 'fragmentation', whereby law students, and particularly those from minority backgrounds,⁷⁴ relinquish 'vital aspects of the self', including their 'spirituality', 'collegiality and capacity for intimacy', 'personal ethics', 'work ethic',⁷⁵ and 'perspective' as they pursue the ideal of becoming a lawyer.⁷⁶ Such fragmentation necessarily comes at a cost to individual law students' 'psychological integration', which underpins emotional and psychological wellbeing.⁷⁷ In a similar vein, the discussion below indicates that a common theme in the empirical research examining factors contributing to law students' distress is a lack of autonomy and authenticity, including alignment with one's intrinsic motivations, values, thinking styles, personality preferences, and morality. In the following discussion, I will canvas research discussing the potentially deleterious impact of legal education on each of these domains.

It should be noted that some law students' subjective experiences of lack of autonomy and authenticity are arguably part of a broader trend in which undergraduate students believe that external forces, rather than their own internal choices, control their lives.⁷⁸ People who do not experience control or mastery over their environment are, in general, 'more likely to be depressed and anxious and cope poorly with stress'.⁷⁹ It is also recognised that psychological wellbeing is a very complex phenomenon and that many interconnected factors contribute

71 See Deci and Ryan, 'The "What" and "Why" of Goal Pursuits' above n 22; Niemiec, Ryan and Deci, above n 9.

72 Krieger, 'Institutional Denial', above n 27, 119.

73 Gerald F Hess, 'Heads and Hearts: The Teaching and Learning Environment in Law School' (2002) 52 *Journal of Legal Education* 75, 79.

74 For further discussion of the particularly deleterious impacts of legal education on the psychological wellbeing of 'women and students of color' in the United States, see Carole Buckner, 'Realizing *Grutter v. Bollinger's* "Compelling Educational Benefits of Diversity" – Transforming Aspirational Rhetoric into Experience' (2004) 72 *University of Missouri at Kansas City Law Review* 877, 892.

75 Grover argues that, in the face of burdensome workloads, law students learn to cut corners by, for example, skim reading, which is a habit that did not characterise their work ethic prior to law school: Susan Grover, 'Personal Integration and Outsider Status as Factors in Law Student Well-Being' (2008) 47 *Washburn Law Journal* 419, 428–9.

76 Ibid 420, 423–30.

77 Ibid 422, citing Krieger, 'Institutional Denial', above n 27, 122. Iijima similarly argues that law school encourages students to sever their 'interconnections', or connections with others, and 'interconnections', or connections with aspects of their 'emotional, spiritual and physical' selves: Ann L Iijima, 'Lessons Learned: Legal Education and Law Student Dysfunction' (1998) 48 *Journal of Legal Education* 524, 529.

78 Sheila Rodriguez, 'Using Feedback Theory to Help Novice Legal Writers Develop Expertise' (2009) 86 *University of Detroit Mercy Law Review* 207, 212, citing Jean M Twenge, *Generation Me: Why Today's Young Americans Are More Confident, Assertive, Entitled – And More Miserable Than Ever Before* (Free Press, 2007) 138.

79 Ibid 212, citing Jean M Twenge, *Generation Me: Why Today's Young Americans Are More Confident, Assertive, Entitled – And More Miserable Than Ever Before* (Free Press, 2007) 157.

to each individual's mental health.⁸⁰ Lack of autonomy and authenticity is not necessarily the sole, or even the main, contributing factor to any individual law student's psychological distress. However, the research discussed below indicates that it is an important variable, a greater understanding of which may meaningfully inform effective curricular strategies that law schools can adopt to ameliorate distress levels and promote wellbeing.

In addition to its relationship to law students' wellbeing, autonomy is also highly relevant to law students' capacities for self-management. A Threshold Learning Outcome ('TLO') on self-management was included as one of six TLOs for the Bachelor of Laws degree articulated as part of the former Australian Learning and Teaching Council's project on Learning and Teaching Academic Standards in 2010.⁸¹ TLO 6: Self-management states that:

Graduates of the Bachelor of Laws will be able to

- a. learn and work independently, and
- b. reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

The TLOs have received broad support from the wider discipline community and have been endorsed by the Council of Australian Law Deans.⁸² It is also likely that they will be drawn upon by the Australian Government's Tertiary Education and Quality Standards Agency ('TEQSA') in their upcoming quality assurance activities,⁸³ although the details of TEQSA's use of the TLOs are yet to be finalised. As argued by Niemiec, Ryan and Deci, a sense of autonomy is integral to effective self-regulatory processes;⁸⁴ similarly, I propose that functioning autonomously in a way that is coherent with one's true values, interests, and beliefs, endorsed at a high level of reflection, both predicts and reflects a sustainable capacity for self-management. The links between autonomy and self-management reinforce the desirability of autonomy supportive practices in legal education.

80 Dammeyer and Nunez, above n 2, 72.

81 Sally Kift, Mark Israel and Rachael Field, 'Learning and Teaching Academic Standards Project: Bachelor of Laws' (Learning and Teaching Academic Standards Statement, Australian Learning & Teaching Council, December 2010) 10 <http://www.olt.gov.au/system/files/resources/altc_standards.LAW_110211_rv2.pdf> ('Standards Statement').

82 In November 2010, the Council of Australian Law Deans endorsed the Standards Statement as 'an appropriate statement of the Threshold Learning Outcomes that are required of Bachelor of Law graduates from any Australian university': *ibid* 7.

83 In a speech made on 2 March 2011, Senator Chris Evans, the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, stated that the outcomes of the Australian Learning and Teaching Council's project on Learning and Teaching Academic Standards will be 'drawn on by TEQSA in the development of new learning and teaching standards which will guide its quality assurance activities': Christopher Evans, 'Keynote Address' (Speech delivered at the Universities Australia Conference, Canberra, 2 March 2011) <<http://ministers.deewr.gov.au/evans/keynote-address-universities-australia-conference-hotel-realm-canberra>>.

84 Niemiec, Ryan and Deci, above n 9, 177–82.

A Changes in Motivations and Values

The extant literature indicates that the motivations and values of many law students shift during the course of their legal education, signalling a potential undermining of students' autonomy and authenticity. Sheldon and Krieger's groundbreaking 2004 study correlated declines in subjective wellbeing in first year law students in two different US universities with changes in both the reasons law students are motivated to pursue their goals and the content of those goals. Their research instruments measured the "why" of motivation' – defined as 'autonomous versus controlled reasons for acting' – and the "what" of motivation' – described as goals aspired to on the basis of intrinsic values such as 'emotional intimacy, community contribution, and personal growth', or extrinsic values such as 'financial success, appealing appearance, and social popularity'.⁸⁵ In relation to the 'why of motivation', the results in both university samples indicated that by the end of first year, students had shifted away from self-determined, autonomous motivations for pursuing their law school goals, such as personal interest or enjoyment, and felt more 'controlled by others' desires and dictates'.⁸⁶ This suggests that many law students begin to disconnect from motivations based on an internal locus of reference during the first year of legal education. Regarding the 'what of motivation', the authors found emphasis on intrinsic goal contents diminished in both first year samples, exemplified by a decline in community service values⁸⁷ and greater valuing of appearances.⁸⁸ Significantly, these changes in law students' motivations and values during the first year of law school correlated with steep declines in self-reported levels of positive affect and life-satisfaction, as well as strong increases in negative affect.⁸⁹ It is also noteworthy that students from one of the law schools evidenced 'less valuing of *all* kinds' by the middle of the second year of legal education,⁹⁰ appearing to support concerns about a "numbing" of values and emotions' as a by-product of learning to think like a lawyer.⁹¹

This study, which has been very influential in informing subsequent discussions and research on law students' wellbeing,⁹² thus highlights three shifts in perspectives that occur during the first 18 months of law school: (1) a shift away from relatively autonomous to more controlled motivations for pursuing

85 Sheldon and Krieger, 'Undermining Effects on Law Students?', above n 2, 268–9.

86 Ibid 273.

87 Declines in law students' interest in pro bono and public interest oriented practice as they progress through their degree have been documented in numerous previous studies. For an overview, see Tamara Walsh, 'Putting Justice Back into Legal Education' (2007) 17(1) *Legal Education Review* 119, 120. At least two studies, including Walsh's, have found that law students' interest in these types of work does not necessarily diminish during their degrees: at 120, 133.

88 Sheldon and Krieger, 'Undermining Effects on Law Students?', above n 2, 281.

89 Ibid 279–80.

90 Ibid 274.

91 Ibid 282.

92 See, eg, the preliminary findings of Allen and Baron's research employing similar research methodologies to determine whether the outcomes identified in Sheldon and Krieger's 2004 study are relevant in an Australian legal education context: Allen and Baron, above n 3, 286.

law school studies;⁹³ (2) a shift away from intrinsic goal contents, and greater privileging of extrinsic aspirations, related to legal education;⁹⁴ and (3) a gradual diminishing of all kinds of valuing.⁹⁵ These shifts are relevant to autonomy and authenticity, which are reflected in the extent to which an individual's choices are internally endorsed. Importantly, dissonance with one's original motivations for studying law, intrinsic/altruistic goal aspirations, and value system may signify a loss of autonomy and authenticity.⁹⁶

Recent empirical Australian research supports the link between law students' autonomy and distress levels. In their 2009 study, Tani and Vines analysed data collected from 2528 students from ten disciplines at the University of New South Wales about their 'attitudes to their experience and expectations of their university education'.⁹⁷ The authors sought to identify specific aspects of law students' attitudes towards their studies that differed from students from other disciplines and may therefore illuminate potential reasons for the elevated levels of psychological distress, including depression, among law students.⁹⁸ The authors found that relative to students from all other faculties – including from the medical faculty which also offers professional studies with similarly high entrance score requirements, workloads, and prospects for subsequent financial success⁹⁹ – students from the law faculty are more influenced by external factors, suggesting a relative lack of autonomy. Amongst other things, law students were more likely to have chosen their degree for external reasons, including to please their parents and because of its future career prospects, and demonstrate a preoccupation with getting high grades.¹⁰⁰ In each of these instances, the emphasis is on an external locus of reference – parents, future employers, and teachers – and may signify a lack of alignment with one's intrinsic interests, values, and preferences (autonomy). The authors also found that law students were more likely to value their university's reputation,¹⁰¹ which could indicate an intrinsic prioritising of the quality and culture of the institution, but in the context of the other responses, seems likely to again reflect a strong emphasis on what future employers may think about them and the value of their degree. Law students were also less motivated by learning and intrinsically interested in the content of their degree than students from other disciplines.¹⁰² Based on these findings, the authors suggest that low personal autonomy, strong competitiveness and lack of deep social connectedness are factors that may be linked to the high incidence of depression among law students. In their conclusion, they state:

93 Sheldon and Krieger, 'Undermining Effects on Law Students?', above n 2, 273.

94 Ibid 281.

95 Ibid 274.

96 See also Lawrence S Krieger, 'Human Nature as a New Guiding Philosophy for Legal Education and the Profession' (2008) 47 *Washburn Law Journal* 247, 273.

97 Tani and Vines, above n 13, 3.

98 Ibid 4.

99 Ibid 8.

100 Ibid 12–25.

101 Ibid.

102 Ibid.

Since lack of autonomy and lack of social connectedness are major risk factors for depression, these are obvious areas for law schools to focus their attention on when designing and conducting legal education.¹⁰³

Although strategies to facilitate social connectedness are beyond the scope of this article, as will be discussed in Part V below, curricular strategies that are purposefully designed to promote autonomy, including by increasing students' intrinsic motivations for their studies, may foster law students' resilience and ameliorate their distress.¹⁰⁴ Recognising that not all students are intrinsically motivated to study law, Part V will also discuss the benefits of 'identified motivation', which relates to activities that an individual may not find particularly interesting or enjoyable, but that they may be able to associate with their core beliefs, values and purposes, thereby imbuing their actions with greater meaning and significance.¹⁰⁵

A recent study by a team of researchers at MLS adds further nuance to the findings of Sheldon and Krieger's and Tani and Vines' studies outlined above.¹⁰⁶ Larcombe, Malkin and Nicholson undertook two surveys of LLB and JD students at MLS in 2007–2008 and 2011, respectively – the first was a 'Studying Law Survey' and the second was a 'Wellbeing Survey'.¹⁰⁷ The authors found that LLB students nominated extrinsic reasons¹⁰⁸ for their course choice more frequently than JD students, suggesting that the findings in Tani and Vines' study may be particularly applicable to LLB cohorts.¹⁰⁹ Significantly, however, Larcombe, Malkin and Nicholson also found that there was a consistent increase in the frequency with which extrinsic reasons for pursuing law studies were nominated by both experienced LLB and JD students, defined as those who had completed at least five law subjects,¹¹⁰ compared with commencing students in both programs.¹¹¹ This supports the findings of Sheldon and Krieger's 2004 study that intrinsic reasons¹¹² for studying law 'becoming increasingly overwhelmed' by extrinsic motivations as students progress through their law degrees.¹¹³ Like both Sheldon and Krieger's and Tani and Vines' studies, Larcombe, Malkin and

103 Ibid 30.

104 Ibid 30–2; Huggins, above n 69, 29.

105 Krieger, 'The Most Ethical of People', above n 8, 173; Niemiec, Ryan and Deci, above n 9, 179–80.

106 Wendy Larcombe, Ian Malkin and Pip Nicholson, 'Law Students' Motivations, Expectations and Levels of Psychological Distress: Evidence of Connections' (2012) forthcoming *Legal Education Review* (copy on file with author).

107 The 'Studying Law Survey' was administered to commencing LLB students at the beginning of Semester 1, 2007, which had a 96 per cent participation rate, and commencing JD students at the beginning of Semester 1, 2008, which had a 97 per cent participation rate. Then, in Semester 2, 2011, a second 'Wellbeing Survey' was administered to both LLB and JD students, which had a 37 per cent participation rate; of these, JD students were over-represented, with more than 40 per cent of each JD year level participating: *ibid* 7–8.

108 Extrinsic reasons for studying law were defined as 'financial', 'professional status', 'parental advice', 'best option available', and 'achieved required marks': *ibid* 9.

109 *Ibid* 13.

110 *Ibid* 6.

111 *Ibid* 13.

112 Intrinsic reasons for studying law were defined as 'social justice', and 'interest and aptitude': *ibid* 9.

113 *Ibid* 13.

Nicholson's data provides further confirmation of the connection between high levels of psychological distress, particularly depression, and students' privileging of extrinsic reasons for studying law, such as parental advice and law being the best option available.¹¹⁴ Moreover, the authors found that students who did not nominate intrinsic motivations for studying law, such as interest and aptitude, were at three times the risk of being severely or extremely depressed.¹¹⁵ This reinforces the proposition that prioritising extrinsic motivations is likely to undermine an individual's subjective experience of autonomy, as well as their psychological wellbeing.

B Changes in Thinking Styles, Decision-Making Preferences, and Morality

Townes O'Brien, Tang and Hall present preliminary empirical findings indicating that the deleterious effects of legal education on law students begin in the first year of law school and may be attributable to changes in thinking styles.¹¹⁶ The authors analysed survey responses from two groups of law students (one group was surveyed at the end of the first year of law school (n = 214) and the second group was surveyed at the beginning (n = 174) and end (n = 81) of the first year of law school) at the ANU from 2009–2010.¹¹⁷ As previously discussed, the results were consistent with prior research indicating that the first year of legal education contributes to, among other things, higher levels of stress and distress amongst law students.¹¹⁸ Significantly, the authors also measured law students' preferences for rational styles of thinking, which are 'conscious and deliberative', versus experiential styles of thinking, which are 'based on effortless intuition'.¹¹⁹ Students from the end of first year sample scored significantly higher on measures of rationality and lower on experientiality than the beginning of first year samples.¹²⁰ The authors comment:

Even though our data is insufficient to demonstrate with certainty that ... a shift [in thinking styles] occurs or that law school plays a causal role, we believe there is sufficient evidence to support the hypothesis that a change towards, or a reinforcement of, rational thinking styles can occur in law school. In our experience, emphasizing the rational mode while neglecting the experiential mode of thinking is consonant with the approach to legal material that law teachers often refer to as *thinking like a lawyer*.¹²¹

114 Ibid 14–15.

115 Ibid 15.

116 Townes O'Brien, Tang and Hall, 'Changing Our Thinking', above n 6; Hall, Townes O'Brien and Tang, 'Developing a Personal Identity in Law School', above n 6.

117 Townes O'Brien, Tang and Hall, 'Changing Our Thinking', above n 6, 154.

118 Ibid 161.

119 Ibid 155; Hall, Townes O'Brien and Tang, 'Developing a Personal Identity in Law School', above n 6, 26.

120 Townes O'Brien, Tang and Hall, 'Changing Our Thinking', above n 6, 165; Hall, Townes O'Brien and Tang, 'Developing a Personal Identity in Law School', above n 6, 31.

121 Hall, Townes O'Brien and Tang, 'Developing a Personal Identity in Law School', above n 6, 39 (emphasis in original).

It is notable that there appears to be a ‘trade-off’ in thinking styles that occurs in the first year, suggesting that ‘for some students the legal educational process leads to an undervaluation or under-use of previously favoured experiential modes of thinking’.¹²² Although the authors do not discuss their results in this way, I suggest that for those students with a natural predisposition towards experiential modes of processing information, a disconnection from this predisposition during the first, and presumably subsequent, years of law school may signify the ‘fragmentation’¹²³ of this aspect of their authentic preferences. The dominant thinking modes that students enter law school with presumably reflect their way of making sense of the world and operating within it. To the extent that law students with a preference for experiential modes of processing information disconnect from this in favour of the rational modes of thinking privileged and rewarded in law schools, their autonomy and authenticity may be compromised.¹²⁴

American research supports the proposition that there is a shift in law students’ thinking styles, decision-making preferences, and morality in the first year of law school. In the early 1990s, Guinier et al found that both male and female students at the University of Pennsylvania Law School reported becoming ‘less emotional’, more objective and conservative, and caring less about others as a result of their legal education.¹²⁵ A 1991 study by Janoff found that individuals who began law school with an ethic of care – a decision-making preference privileging interpersonal harmony and relationships – had, by the end of first year, shifted to a rights orientation – a decision-making preference premised on justice, fairness, and logical analysis of rights and duties.¹²⁶ In the late 1970s, Hedegard found that law students at Brigham Young University became less interested in intellectual, philosophical and introspective inquiry, and scientific abstractions, during the first year of law school.¹²⁷

More recently, a significant empirical study published by Mertz in 2007 recorded and analysed the language used in a full semester of contract law classes at eight different American law schools with diverse teachers and teaching styles.¹²⁸ Mertz found that, in the process of training students to think like lawyers, the learning process linguistically shapes students’ thinking styles and morality. In learning to engage in dispassionate legal analysis and argue issues from multiple viewpoints, Mertz claims that students are compelled to alter their previous sense of conscience, morality, and empathy for human

122 Townes O’Brien, Tang and Hall, ‘Changing our Thinking’, above n 6, 167.

123 Grover, above n 75, 420.

124 In a similar vein, Larcombe, Malkin and Nicholson question whether the authors’ findings indicate that changes in thinking styles have a direct impact on students’ psychological health or whether the impacts stem from changes in students’ values and motivations: Larcombe, Malkin and Nicholson, above n 106, 3–4.

125 Guinier et al, above n 14, 49–50.

126 Janoff, above n 14, 227.

127 Hedegard, above n 14, 835–7.

128 Mertz, above n 14.

suffering.¹²⁹ In relation to autonomy, Mertz describes a profound loss of authenticity.¹³⁰

Law students ... under[go] a quiet process in which their very selves are decentered through and in speech; ... [they] are encouraged to separate inner opinion[] and feelings from the discursively defined legal personae they are learning to embody ... mov[ing] away from emotion, morality, and context as they create new selves anchored in legal discourse.¹³¹

Each of the abovementioned empirical studies highlights changes that may occur for some law students during the course of their legal education. It is worth remembering, however, that the majority of law students do not experience elevated symptoms of psychological distress as a result of studying law, and may not experience the trends outlined above. Notwithstanding this, the extant research documents that a significant number of law students experience changes in, and disconnections from, their autonomous and authentic preferences – the motivations, intrinsic values, thinking styles, decision-making preferences, and morality – that they started law school with. The challenge, it would seem, is for legal educators to continue their traditional enterprise of teaching students to think like lawyers, coupled with an appropriate emphasis on legal skills,¹³² whilst encouraging them to stay connected with other important parts of themselves that make them whole as human beings and may help to insulate them from unnecessary distress.¹³³ It may be necessary to explicitly encourage and promote autonomy, authenticity, and connections with personal and professional values within law schools,¹³⁴ without compromising the teaching of necessary legal content and skills,¹³⁵ as a partial antidote to law students' disproportionately high levels of psychological distress.

C Lack of Autonomy Support

The importance of autonomy to law students' wellbeing is further reinforced by Pritchard and McIntosh's research,¹³⁶ Sheldon and Krieger's 2007 study,¹³⁷

129 Ibid 5–6, 135.

130 Ibid 135–7.

131 Ibid 135.

132 See, eg, above n 68; David Weisbrot, 'What Lawyers Need to Know, What Lawyers Need to Be Able to Do: An Australian Experience' (2002) 1 *Journal of the Association of Legal Writing Directors* 21.

133 As Dvorkin, Himmelstein and Lesnick stated in 1981, '[w]hat is needed is a way of bringing together mastery with aspiration, intellect with experience, rigor with value, pragmatism with idealism, competence and skill with caring and a sense of meaning': Elizabeth Dvorkin, Jack Himmelstein and Howard Lesnick, *Becoming a Lawyer: A Humanistic Perspective on Legal Education and Professionalism* (West Publishing Company, 1981) 3. See also John M Conley, 'Can You Talk Like a Lawyer and Still Think Like a Human Being?: Mertz's The Language of Law School' (2009) 34 *Law & Social Inquiry* 983.

134 Alex Steel and Dominic Fitzsimmons, 'Answering Legal Problem Questions in a Grid Format' in Kathryn Coleman and Adele Flood (eds), *Marking Time – Leading and Managing the Development of Assessment in Higher Education* (Common Grounds Publishing, forthcoming).

135 Krieger, 'Human Nature', above n 96, 286–7.

136 Pritchard and McIntosh, above n 2.

137 Sheldon and Krieger, 'Understanding the Negative Effects', above n 8.

and Larcombe et al's recent research at MLS.¹³⁸ Pritchard and McIntosh found that students who used 'active coping strategies' and 'perceiv[ed] control over stressful events' evidenced relatively high levels of positive affect at the end of the first year of law school.¹³⁹ Both these coping styles are consistent with autonomous and pro-active approaches to stressful situations. Sheldon and Krieger's three-year longitudinal study examined the impact of 'autonomy supportive' versus 'controlling' law school contexts on law students' psychological wellbeing. The authors examined three features of an autonomy supportive legal education environment: (a) a degree of choice provision 'within the constraints of the task and situation'; (b) if no choice is possible, the provision of a meaningful rationale; and (c) taking students' perspectives into account, evidenced by an interest in, and respect for, their viewpoints.¹⁴⁰ Controlling law school environments, by contrast, adopt a top-down approach, denying students opportunities to exercise self-agency.¹⁴¹ Sheldon and Krieger's research found a positive correlation between students' perceptions of autonomy support within their law school, the satisfaction of their psychological needs, and the positive flow-on consequences this has for their 'self-determined career-motivation', subjective wellbeing and academic achievement.¹⁴² In the words of the authors:

These results suggest that, to maximize the learning and emotional adjustments of its [sic] graduates, law schools need to focus on enhancing their students' feelings of autonomy. Why? Because such feelings can have trickle-down effects, predicting changes in students' basic need satisfaction and consequent psychological wellbeing, effects that may also carry forward into the legal career.¹⁴³

Larcombe et al's recent qualitative research at MLS provides Australian evidence regarding law students' perceptions of a lack of perspective taking on the part of some law teachers, and insufficient course flexibility indicating a 'perceived lack of choice provision and/or meaningful rationale'.¹⁴⁴ The authors conclude that there is 'considerable support' for the proposition that many MLS students, including those who are satisfied with studying law, perceive the law school environment to be controlling, rather than autonomy supportive, which has negative ramifications for students' experiences of autonomy, competence, and relatedness, and is also correlated with high levels of self-reported psychological distress.¹⁴⁵ This underscores the importance of a focus on legal curricula and law school cultures in order to address law students' wellbeing.

The discussion of Australian and American research on law students' distress in this Part indicates that shifts in motivations, values, thinking styles, decision-

138 Larcombe et al, above n 6.

139 Pritchard and McIntosh, above n 2, 740.

140 Sheldon and Krieger, 'Understanding the Negative Effects', above n 8, 884.

141 Ibid.

142 Ibid 892.

143 Ibid 894.

144 Larcombe et al, above n 6, 28.

145 Ibid.

making preferences, and morality occur for many students, beginning in the first year of law school. Significantly, these shifts may signify a decline in law students' autonomy and authenticity and appear to be linked with diminished wellbeing.¹⁴⁶ Conversely, encouraging law students to identify, cultivate, and stay connected with the personal motivations, values, thinking styles, decision-making preferences, and moral codes that they came to law school with may promote students' perceptions and experiences of autonomy and authenticity. One concern some legal educators may have in fostering law students' autonomy and authenticity is that, for some students, this may mean *not* becoming lawyers. This is not necessarily problematic and is in line with current trends in which more law students are graduating from Australian universities than there are graduate positions available in legal practice.¹⁴⁷ Anecdotally, approximately half of all Australian law graduates do not go on to practice as legal professionals, and a recent study found that almost two-thirds of graduates were not practicing law within four months of graduation.¹⁴⁸ In an environment in which student retention is a salient issue in Australian universities and law schools,¹⁴⁹ there may also be concern that promoting autonomy and authenticity may have deleterious consequences for students' progression through, and completion of, their studies. This seems inconsistent with current trends in which many students do not go on to practice law, and may not aspire to do so,¹⁵⁰ whilst demand for positions in Australia's law schools remains strong. The widespread perception of the value of the transferable skills in writing, problem solving, analysis, and research that a law degree provides may partially account for this.¹⁵¹ Thus, promoting autonomy and authenticity in law schools may not necessarily impact the number of people who apply to study law, finish their law degrees and/or go on to practice, but it may enhance their psychological wellbeing in the process. In the following Part, I will suggest a range of curricular strategies that are supportive of law students' autonomy and authenticity, which may facilitate their experiences of subjective wellbeing.

V CURRICULUM DESIGN STRATEGIES THAT PROMOTE LAW STUDENTS' AUTONOMY

Articulating a theoretical framework for autonomy supportive practices in educational contexts is beneficial to inform the discussion of legal curricular strategies below. As outlined in Part II above, the theory of autonomy support,

146 Sheldon and Krieger, 'Undermining Effects on Law Students?', above n 2; Townes O'Brien, Hall and Tang, above n 6.

147 Jane Lee, 'Graduates Shun Legal Profession', *The Age* (online), 20 May 2012 <<http://www.theage.com.au/victoria/graduates-shun-legal-profession-20120519-1yxt0.html>>.

148 Ibid.

149 Pauline Collins, Toni Brackin and Caroline Hart, 'Rocky Rhetoric and Hard Reality: The Academic's Dilemma Surrounding Assessment' (2010) 20 *Legal Education Review* 157, 161.

150 Lee, above n 147.

151 Ibid.

which is part of a broader meta-theory provided by SDT, provides a suitable theoretical framework for this purpose. The preceding discussion established that, according to SDT, autonomy can be defined as the subjective experience that one's behaviour is self-governed, volitional, and congruent with one's abiding values, interests, and beliefs, and reflectively self-endorsed.¹⁵² Autonomy support, then, is when one person speaks and acts in ways that enhance another's 'internal perceived locus of causality, volition, and perceived choice during action'.¹⁵³ In an educational context, autonomy support refers to nurturing and enhancing an individual's 'inner endorsement' of their engagement with educational activities.¹⁵⁴ Importantly, whilst teachers cannot *give* their students autonomy, they can cultivate the interpersonal conditions that: (i) provide students with opportunities to exercise their autonomy; and (ii) facilitate students' perceptions of autonomy support.¹⁵⁵

In a recent meta-analysis, Su and Reeve demonstrated empirical support for a number of interpersonal conditions that contribute to subjective perceptions of autonomy support: (1) the provision of meaningful rationales; (2) the acknowledgement of perspectives and feelings; (3) the use non-controlling language; (4) offering choices; and (5) nurturing inner motivational resources.¹⁵⁶ *Providing meaningful rationales* means clearly explaining to an individual why engaging with a task is personally beneficial to them; this is particularly important when no choice is possible.¹⁵⁷ *Acknowledging perspectives and feelings* occurs when people in positions of authority acknowledge and respect the viewpoints and feelings of subordinates.¹⁵⁸ The *use of non-controlling language* describes the way in which meaningful rationales and acknowledgements of perspectives and feelings are communicated. The *offer choices* condition is satisfied when individuals are presented with a number of options, which they are encouraged to choose between, and in situations in which demonstrating initiative is encouraged.¹⁵⁹ Finally, *nurture inner motivational resources* refers to the activation of another's 'interests, intrinsic motivation, autonomy, competence, relatedness, sense of challenge, and intrinsic goals' during engagement with a task.¹⁶⁰ In the following discussion, a range of legal curricular strategies will be analysed through the lens of these five interpersonal conditions for autonomy support.

152 See Deci and Ryan, 'The "What" and "Why" of Goal Pursuits' above n 22; Niemiec, Ryan and Deci, above n 9; Kennon M Sheldon et al, 'The Independent Effects of Goal Contents', above n 24.

153 Su and Reeve, above n 17, 160.

154 Reeve and Jang, above n 20, 210.

155 Ibid.

156 Su and Reeve, above n 17, 162.

157 Edward L Deci et al, 'Facilitating Internalization: The Self-Determination Theory Perspective' (1994) 62 *Journal of Personality* 119, 124; Su and Reeve, above n 17, 161–2.

158 Sheldon and Krieger, 'Understanding the Negative Effects', above n 8, 884; Deci et al, above n 157, 124.

159 Su and Reeve, above n 17, 162. Cf Idit Katz and Avi Assor, 'When Choice Motivates and When It Does Not' (2007) 19 *Educational Psychology Review* 429.

160 Su and Reeve, above n 17, 162 (citations omitted).

The benefits of an autonomy supportive curriculum extend beyond promoting law students' wellbeing. In autonomy supportive environments, law students have opportunities to articulate their viewpoints, make choices for which they take responsibility, and internalise the rationales behind components of their law school experience that are beyond their control; these qualities are integral to self-management and the implementation of the self-management TLO.¹⁶¹ Additionally, autonomy supportive instruction has a number of other advantages, including an increased likelihood that students will be motivated towards deep learning and mastery, facilitating improved engagement, creativity and academic performance.¹⁶² Positive outcomes in terms of law students' wellbeing, self-management capacities, and academic engagement and achievement underscore the salience of promoting students' autonomy, and perceptions of autonomy support, within law school environments.

At least partially in response to the research canvassed above, there is a growing body of literature advocating the importance and desirability of autonomy supportive instruction in legal education.¹⁶³ In the following discussion, I will explore a range of curricular strategies that are supportive of law students' autonomy and authenticity. Kift, Nelson and Clarke define 'curriculum' broadly to include the 'academic and social organizing device' and the 'glue that holds knowledge and the broader student experience together'.¹⁶⁴ While I endorse this conceptualisation of 'curriculum', for the purposes of this article, I will utilise Field and Watson's differentiation between 'curriculum, meaning the formal taught program of study', 'co-curricular, meaning programs explicitly linked with, but not part of, the formal curriculum', and 'pastoral care, covering interventions and support that are not specifically connected to the formal curriculum'.¹⁶⁵ The autonomy supportive curricular strategies I suggest here are relevant to the 'formal taught program of study' in law schools. The inclusion of measures to support law students' wellbeing in the formal curriculum, including through autonomy supportive practices, reinforces to students that their wellbeing matters.¹⁶⁶

It is acknowledged that in contemporary law school environments there are many time and resource constraints that may limit some law teachers' capacities to operate as autonomously and flexibly as they may like, including in relation to

161 Anna Huggins, Sally Kift and Rachael Field, 'Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox' (2011) 21 *Legal Education Review* 183, 201.

162 For an overview of literature on this point see Manning, above n 19, 4 fn 19. See also Ryan and Deci, 'Self-Determination Theory', above n 19, 672.

163 See, eg, Vines, above n 27, 9–10; Tani and Vines, above n 13, 31; Huggins, Kift and Field, above n 161, 200–7; Manning, above n 19, 13; Krieger, 'Human Nature', above n 96, 259–60; Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007) 83–4 <http://law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf>.

164 Sally Kift, Karen Nelson and John Clarke, 'Transition Pedagogy: A Third Generation Approach to FYE – A Case Study of Policy and Practice for the Higher Education Sector' (2010) 1 *International Journal of the First Year in Higher Education* 1, 4 (citations omitted).

165 Watson and Field, above n 66, 394.

166 Krieger, 'Institutional Denial', above n 27, 127.

curricular innovation. As elaborated by Baron, these constraints include, inter alia, increased research expectations, teaching-related workloads, administrative loads, service expectations, and auditing of all activities in recent decades.¹⁶⁷ Whilst a detailed critique of these practices and their implications for law teachers' autonomy and wellbeing are beyond the scope of this article,¹⁶⁸ the following suggestions should be read with this context in mind. It is also recognised that some law teachers, as well as some law students, may see curricular strategies to address law students' distress as beyond the purview of a rigorous legal education preparing students for the realities of legal practice.¹⁶⁹ The academic benefits of autonomy supportive instruction, including improved engagement, creativity, and academic performance,¹⁷⁰ may nonetheless be of interest to these readers.

A Provide Meaningful Rationales

Curriculum design can be used to support student autonomy by clearly articulating what is expected of students in assessment tasks.¹⁷¹ Explicitly articulating the academic 'language, conventions and standards' expected of students in a given assessment task allows students to focus their efforts and learning.¹⁷² Providing students with a criterion-referenced assessment ('CRA') sheet before the assessment is due, when accompanied by 'dialogue' that explicitly explains how these marking criteria will be applied, can alleviate uncertainty and facilitate self-regulated learning.¹⁷³ Explaining the relative importance of the various criteria allows students to appropriately focus their efforts, and encourages them to be 'metacognitive, or reflective, independent learners'.¹⁷⁴ The timely provision of CRAs provides students with opportunities to practice meeting criteria before they are summatively assessed, including through self-assessing their work.¹⁷⁵ Communicating expectations around assessments is autonomy supportive as it provides students with a meaningful

167 Paula Baron, 'Thriving in the Legal Academy' (2007) 17 *Legal Education Review* 27, 35–44.

168 See Baron, above n 167, for a discussion of these types of issues.

169 See generally Kath Hall, 'Do We Really Want To Know? Recognising the Importance of Student Psychological Wellbeing in Australian Law Schools' (2009) 9 *Queensland University of Technology Law and Justice Journal* 1.

170 For an overview of literature on this point see Manning, above n 19, 4 fn 19, and Ryan and Deci, 'Self-Determination Theory', above n 19, 672.

171 Huggins, Kift and Field, above n 161, 203.

172 Ibid; Rachael Field and Sally Kift, 'Addressing the High Levels of Psychological Distress in Law Students Through Intentional Assessment and Feedback Design in the First Year Law Curriculum' (2010) 1 *International Journal of the First Year in Higher Education* 65, 69; Michael Hunter Schwartz, Sophie Sparrow and Gerald F Hess, *Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam* (Carolina Academic Press, 2009) 140.

173 Field and Kift, above n 172, 69; Assessment Standards Knowledge exchange ('ASKe'), *How to Make Your Feedback Work in Three Easy Steps!* (2007) Oxford Brookes University <<http://www.brookes.ac.uk/aske/documents/Make%20FeedbackWork.pdf>>; Huggins, Kift and Field, above n 161, 203; Hunter Schwartz, Sparrow and Hess, above n 172, 91, 158.

174 Hunter Schwartz, Sparrow and Hess, above n 172, 158.

175 Ibid 158–9.

rationale about how they will be assessed, and allows them to self-manage their time and study approaches accordingly.

There is, however, an important caveat here. Too much scaffolding of learning and assessment, and fine-grained, atomised prescriptions in CRAs, can actually subvert the learning process.¹⁷⁶ Such supports may be appropriate in the first year of law school in which students are learning how to study law for the first time, especially as many students have come from highly scaffolded environments at school and through individual coaching. To support students' genuine capacities for autonomy and self-management, it is important that such scaffolds are progressively removed throughout the law degree.¹⁷⁷ Thus, while the provision of detailed CRAs may be a useful pedagogical strategy in the early years of the law degree as students encounter legal analysis and problem solving, legal research and writing and other formative legal skills for the first time, less detailed CRAs may be sufficient and appropriate for later year students who may be expected to have internalised the basic principles of the discipline.¹⁷⁸ As the theory of autonomy support suggests, it is beneficial if the rationale behind the original provision of detailed CRAs and other learning scaffolds, and the learning aims associated with decreasing reliance on such supports as the law degree progresses, are clearly articulated and explained to students. Through the provision of rationales, it may be anticipated that any student stress associated with decreased use of learning scaffolds may be partially defused.

Law teachers' provision of meaningful rationales to students through effective feedback on assessed work also supports student autonomy. In addition to written feedback on individual assignments that 'correct[s] errors, explain[s] technical points, and giv[es] positive encouragement', 'tacit understandings about disciplinary content and academic literacy skills' can be communicated to students either individually or as a class.¹⁷⁹ This can be achieved through discussions of how criteria were applied and exemplar student work, and providing examples of how previous students have acted upon feedback to improve their performance in subsequent assessment tasks.¹⁸⁰ More detailed guidance on autonomy supportive feedback for law assessments that, *inter alia*, provides meaningful rationales and uses non-controlling language, is discussed in section C below.

B Acknowledge Perspectives and Feelings

There are some aspects of the law school experience, including but not limited to high workloads, voluminous readings, complex materials, and multiple assessments due in close proximity, that may not always align with students'

176 Royce Sadler, 'Perils in the Meticulous Specification of Goals and Assessment Criteria' (2007) 14 *Assessment in Education* 387.

177 *Ibid* 390.

178 *Ibid* 391.

179 ASKe, above n 173, 2; Huggins, Kift and Field, above n 161, 204; Hunter Schwartz, Sparrow and Hess, above n 172, 159–60.

180 Huggins, Kift and Field, above n 161, 204.

‘preferences and natural inclinations’.¹⁸¹ When students express feelings such as boredom, disinterest, overwhelm, anxiety, and make comparisons with what other law teachers are asking, saying and doing, some law teachers may react with ‘counter-directives’ and assertions of power that stifle such criticisms, undermining students’ experiences of feeling heard and understood.¹⁸² By contrast, students’ perceptions of autonomy support may be enhanced when they are allowed to express negative affect, and when teachers empathise with their perspectives and welcome such feedback as an opportunity to transform a task from something that students experience as being imposed upon them to one that they willingly engage with as they understand and endorse its relevance to their personal interests and goals.¹⁸³

Curriculum design strategies that demonstrate law teachers’ willingness to consider their students’ perspectives and feelings include involving students in decisions about one or more of the following: optional course content, pace of classes and time devoted to particular topics, assignment types and deadlines, classroom policies including appropriate use of laptops, the range of learning activities to be utilised during classes, and student preferences regarding assessment feedback.¹⁸⁴ Such strategies are also relevant to the fourth interpersonal condition for autonomy support, choice provision, discussed in Part D below. Further, law teachers can solicit students’ opinions via informal, anonymous feedback questionnaires administered during the semester.¹⁸⁵ The design of such feedback sheets can be simple, including, for example, three to five questions that focus on specific aspects of the subject experience, such as ‘instructional technology, simulation exercises, ... course materials’,¹⁸⁶ or new forms of assessment. Such feedback can be collected through administering simple one-page questionnaires with a combination of likert-scale and short response questions, and for large lecture cohorts, using online learning tools such as Survey Monkey. The questions can be framed in a way so that, in addition to any critiques of the lecturer’s teaching practices and the subject’s design, students take responsibility for suggesting strategies that could assist their own learning of, and engagement with, the subject materials. Teaching staff can then report back to students on the main themes identified in subject feedback within one week of its collection, and discuss ‘the adjustments *they and students* can make to improve learning’.¹⁸⁷ An example of this on a larger scale is the UNSW

181 Johnmarshall Reeve, ‘Why Teachers Adopt a Controlling Motivating Style Toward Students and How They Can Become More Autonomy Supportive’ (2009) 44 *Educational Psychologist* 159, 170.

182 Ibid.

183 Ibid.

184 Gerald F Hess, ‘Collaborative Course Design: Not My Course, Not Their Course, But Our Course’ (2008) 47 *Washburn Law Journal* 367, 371.

185 See, eg, Gerald F Hess, ‘Student Involvement in Improving Law Teaching and Learning’ (1998) 67 *University of Missouri at Kansas City Law Review* 343; Thomas A Angelo and K Patricia Cross, *Classroom Assessment Techniques: A Handbook for College Teachers* (Jossey-Bass, 2nd ed, 1993) 330–3; Huggins, Kift and Field, above n 161, 204–5; Hunter Schwartz, Sparrow and Hess, above n 172, 174.

186 Hunter Schwartz, Sparrow and Hess, above n 172, 174.

187 Angelo and Cross, above n 185, 330 (emphasis added).

Law School's recent survey of all LLB and JD students which sought students' perspectives on assessment methods. This project was led by the Associate Dean of Education, Associate Professor Alex Steel, and had a number of aims, including giving students an opportunity to provide feedback to inform the future development of curriculum and assessment as part of the UNSW Law School's current curriculum review.¹⁸⁸ Such practices provide students with an opportunity to articulate their viewpoints, and may strengthen their perceptions of agency and autonomy support in their law school environment.

C Use Non-Controlling Language

The way a law teacher chooses their words when providing feedback can potentially undermine or support students' autonomy. Manning argues that autonomy supportive feedback for law assessments has three key features: (1) it uses 'non-controlling informational language'; (2) it 'provid[es] rationales'; and (3) it 'affirm[s] competency'.¹⁸⁹ The provision of suggestions and reasons, rather than directives, allows students to understand the 'why' of what they are doing and implement feedback with a sense of agency.¹⁹⁰ Ideally, feedback should also be specific to the context, rather than global or personal, and constructive criticism should employ language conveying that shortcomings in students' work are 'fixable with further effort'.¹⁹¹ For example, some law teachers may write comments on students' written assessments such as 'No', 'Why?' and 'Good'.¹⁹² Whilst such practices are understandable given teacher time and resource constraints, 'No' is a controlling directive,¹⁹³ and all three of these examples lack both information about the competencies expected, and a rationale explaining the value of attaining – or, in the case of 'good' work, the value of replicating – such competencies.¹⁹⁴ By contrast, one example of feedback that is non-controlling, provides a rationale and affirms competency is:

The [scope] of the question excluded consideration of this point, which means it wasn't at issue; writing about only what is at issue demonstrates an ability to focus attention on what is important to the questioner, in this case a [law teacher], but in the future a judge or client, making it a useful skill for legal practice.¹⁹⁵

Such feedback is non-controlling as it provides information, allowing the student to evaluate the reasons provided and exercise agency to rectify the issue in the future. The rationale for the feedback is clear as it indicates why focusing on the issues raised in the question is important in both law school assessments and legal practice, which promotes internalisation of the utility of acting on the

188 Alex Steel and Anna Huggins, 'UNSW Law School Student Assessment Survey' (Survey, UNSW Law School, 4 June 2012).

189 Manning, above n 19, 13.

190 Ibid.

191 Ibid 10, 13. See also Corie Rosen, 'Creating the Optimistic Classroom: What Law Schools Can Learn from Attribution Style Effects' (2011) 42 *McGeorge Law Review* 319, 338–40.

192 Manning, above n 19, 13–20.

193 Ibid 14.

194 Ibid 14, 17, 19.

195 Ibid 15.

feedback. Finally, it affirms competency – not by suggesting that this aspect of the student's work has reached a satisfactory standard when it has not – but rather by indicating that the failure to focus on the issues raised by the question is a problematic aspect of the student's work that is 'temporary, specific and fixable'.¹⁹⁶

Manning acknowledges the additional effort involved in providing autonomy supportive feedback and suggests the following practical strategies to minimise teachers' workloads: the use of rubrics and comment keys using non-controlling, informational, and competency based language; cutting and pasting feedback into the 'comment' feature in word processing programs if student work has been submitted electronically; and/or recording oral feedback using a digital voice recorder.¹⁹⁷ Importantly, this style of feedback implicitly recognises that there is a shared responsibility on the behalf of: (1) law teachers to provide feedback that supports student autonomy; and (2) a concomitant responsibility on the behalf of students to reflect and act upon this feedback. Manning argues that the provision of autonomy supportive feedback has the potential to ameliorate the psychological distress many students experience at law school,¹⁹⁸ which aligns with the central thesis of this article.

D Offer Choices

Providing students with a degree of choice in relation to, and input into, curricular design is also supportive of students' autonomy.¹⁹⁹ One of the recommendations of Stuckey et al's influential *Best Practices for Legal Education* report, published in the US in 2007, is '[s]upport[ing] student autonomy'.²⁰⁰ The authors note that:

Law schools and teachers that want to provide autonomy support should ... involve students in curricular and other institutional decisions that affect students; give students as much choice as possible within the constraints of providing effective educational experiences; ... and demonstrate in word, deed, and spirit that the point of view of each student is welcomed and valued.²⁰¹

As noted above, involving students in making decisions in relation to key aspects of their experience in a subject, such as the range of teaching and learning methods employed, types of assessment²⁰² and marking criteria, time devoted to particular topics, and classroom procedures, can enhance students'

196 Ibid 22.

197 Ibid 16–17.

198 Ibid 20.

199 Vines, above n 27, 9–10; Huggins, Kift and Field, above n 161, 202; Hunter Schwartz, Sparrow and Hess, above n 172, 91.

200 Stuckey et al, above n 163, 83–4.

201 Ibid 83.

202 The significance of giving students a choice in relation to assessments within a subject is greater than just facilitating marks maximisation; it may also foster their autonomy, and perceptions of autonomy support, through taking their perspectives into account: Tani and Vines, above n 13, 31; Sheldon and Krieger, 'Understanding the Negative Effects', above n 8, 884.

perceptions of autonomy support.²⁰³ It is recognised that there are inherent constraints in legal education that limit the extent of choice and input students may have, including the requirements of the Priestley 11 core subjects, law teachers' expert knowledge relative to their students, teacher workload and resource constraints, and institutional requirements that subject structures be approved prior to a subject being offered.²⁰⁴ Notwithstanding these limitations, providing students with some choice in relation to key aspects of their legal education experience whenever possible can support their engagement, motivation, and perceptions of autonomy support. Simple examples include allowing students to choose between a range of potential essay and presentation topics, providing students with the opportunity to decide which topics should be the primary focus of revision sessions, and allowing students to 'set the agenda' at the beginning of some classes by identifying the topics from the prescribed readings that require clarification.²⁰⁵

The educational psychology literature applying SDT indicates that choice can be motivating or de-motivating, and that only choices that fulfill certain conditions are supportive of students' autonomy.²⁰⁶ Specifically, motivating choices should be constructed in ways that are 'relevant to students' interests and goals (autonomy support)', provide an optimal balance between number and complexity (competence support), and are supportive and non-threatening for students with collectivist and hierarchical orientations (relatedness).²⁰⁷ For example, it is likely to be counter-productive to provide too much choice in relation to key aspects of a subject's design to first year students, while later year students with a clearer sense of what they would like to do with their law degrees may have the capacity for, and appreciate, greater input and agency in relation to curriculum design.²⁰⁸ This relates to the previous discussion in section A about the decreased reliance on learning scaffolds as students progress through their law degrees.

E Nurture Inner Motivational Resources

Finally, curriculum design strategies can be harnessed to promote law students' connections with their inner motivational resources. SDT research has demonstrated that having intrinsic motivations for acting both predicts and reflects an individual's psychological health and wellbeing.²⁰⁹ Intrinsic motivation is associated with a person's inherent enjoyment and interest in an activity, the pursuance of which stems from an 'internal locus of causality'.²¹⁰ People who are motivated by intrinsic factors are more likely to be focused,

203 Hunter Schwartz, Sparrow and Hess, above n 172, 259.

204 Huggins, Kift and Field, above n 161, 202–3; Vines, above n 27, 9.

205 Hess, 'Collaborative Course Design', above n 184, 376.

206 Katz and Assor, above n 159.

207 Ibid 439.

208 Hess, 'Collaborative Course Design', above n 184, 379–80.

209 Krieger, 'The Most Ethical of People', above n 8, 174; Ryan and Deci, above n 19, 661–5.

210 Ryan and Deci, 'Self-Determination Theory', above n 19, 655.

energetic, and diligent towards their pursuits, and to persevere in the face of setbacks and challenges.²¹¹ The link between intrinsic motivation and academic achievement is well substantiated in the educational psychology literature,²¹² and Australian research has confirmed that intrinsic values and motivations are relevant to students' success at law school.²¹³ There is also a link between intrinsically-motivated behaviour and autonomy: the more a person chooses their primary activities (including studies and career) to align with their intrinsic interests, passions, and core values, the more they will experience autonomy and the benefits associated with the fulfilment of this fundamental psychological need.²¹⁴ In other words, acting in accordance with one's intrinsic motivations promotes a subjective experience of autonomy and agency.

The discussion above relates to a central premise of SDT: human behaviour can be intrinsically motivated by internally-sourced interests, values, and purposes which support thriving, as well as extrinsically motivated by heteronomous interests, norms, pressures, and expectations which, if given undue emphasis, may undermine wellbeing.²¹⁵ Examples of extrinsic motivations include financial success, power/influence, attractive/stylish physical appearances, and popularity/fame. Research has shown that a focus on both intrinsic and extrinsic goals relates positively to the attainment of these goals; significantly, however, attainment of intrinsic aspirations relates positively to psychological health, whilst attainment of extrinsic aspirations relates positively to measures of ill-being.²¹⁶ This is understood to be because attainment of intrinsic goals directly satisfies the basic psychological needs of autonomy, competence, and relatedness.²¹⁷ By contrast, a focus on extrinsic goals is often linked with 'interpersonal comparisons, contingent approval, and acquiring external signs of self-worth', all of which tend to be associated with sub-optimal wellbeing, life satisfaction, and performance.²¹⁸ This is supported by Abbey, Dunkel-Schetter and Brickman's empirical research indicating that law students with intrinsic motivations for pursuing a career in law experience greater overall

211 Krieger, 'The Most Ethical of People', above n 8, 173.

212 For an overview, see Maarten Vansteenkiste, Willy Lens and Edward L Deci, 'Intrinsic Versus Extrinsic Goal Contents in Self-Determination Theory: Another Look at the Quality of Academic Motivation' (2006) 41 *Educational Psychologist* 19.

213 Wendy Larcombe, Pip Nicholson and Ian Malkin, 'Performance in Law School: What Matters in the Beginning?' (2008) 18 *Legal Education Review* 95. The authors found that 88% of high achieving first year law students at the University of Melbourne (those who received a final grade of 80% or above) indicated that 'interest and aptitude' was a primary motivating factor in choosing to undertake their law degree: *ibid* 106–7.

214 Krieger, 'The Most Ethical of People', above n 8, 173.

215 Niemiec, Ryan and Deci, above n 9, 175–7.

216 Christopher P Niemiec, Richard M Ryan and Edward L Deci, 'The Path Taken: Consequences of Attaining Intrinsic and Extrinsic Aspirations in Post-College Life' (2009) 43 *Journal of Research in Personality* 291. See also Sheldon et al, 'What is Satisfying?', above n 28, 326; Sheldon et al, 'The Independent Effects', above n 24, 475; Sheldon and Krieger, 'Undermining Effects on Law Students?', above n 2, 264; Deci and Ryan, above n 22.

217 Krieger, 'The Most Ethical of People', above n 8, 172.

218 Vansteenkiste, Lens and Deci, above n 212, 22–3 (citations omitted); Sheldon et al, 'The Independent Effects', above n 24, 475.

happiness with their lives than students with extrinsic motivations.²¹⁹ It is important to note that extrinsic rewards may be experienced as a welcome reward for effort, and are not inherently detrimental to wellbeing unless they predominate over a person's true values and interests as their primary reason for acting.²²⁰ The relative *priority* that an individual gives to intrinsic versus extrinsic motivations thus strongly influences their satisfaction and wellbeing.²²¹

The extant literature is clear that intrinsic motivations and goals are beneficial to individuals' wellbeing and academic achievement at law school. The intrinsic rewards of studying law might include enjoying the challenge of problem solving, legal scholarship and advocacy,²²² 'setting a personal goal or benchmark and achieving it (not in competition with others)', learning new skills, discovering new interests and passions, deriving satisfaction from producing high quality work, a love of learning, helping others, and enjoying working collaboratively.²²³ Students may also identify and connect with the potential intrinsic rewards of legal practice including 'using one's legal skills to solve a client's problem; the efficient and fair resolution of disputes; facilitating due process; advocating for, and upholding, individual rights; promoting the rights of the disadvantaged; and helping businesses succeed'.²²⁴ Law students interested in pursuing careers in various forms of non-adversarial practice²²⁵ may connect with intrinsic values such as promoting others' psychological and emotional wellbeing, and facilitating the preservation and healing of relationships.²²⁶

Whilst intrinsic motivation is the ideal, the reality is that not all law students are intrinsically motivated to study law,²²⁷ and many students shift from an emphasis on intrinsic to extrinsic motivations as they progress through their law degrees.²²⁸ As previously discussed, data from Tani and Vines' research indicates that law students are, among other things, more likely to have chosen their degree for extrinsic reasons, including family pressures, the university's reputation, and their future career prospects; are less inherently interested in the content of their degree; and place a stronger emphasis on getting high grades, than students from

219 Abbey, Dunkel-Schetter and Brickman, above n 70, 274.

220 Krieger, 'Human Nature', above n 96, 259–60.

221 See, eg, Tim Kasser, 'Personal Aspirations, the "Good Life" and the Law' (2005) 10 *Deakin Law Review* 33.

222 Abbey, Dunkel-Schetter and Brickman, above n 70, 275.

223 Susan Daicoff, *Comprehensive Law Practice: Law as a Healing Profession* (Carolina Academic Press, 2011) 9.

224 Anna Huggins, 'Harnessing Assessment to Cultivate Law Students' Connections with the Intrinsic Rewards of Legal Education and Practice' (Paper presented at the International First Year in Higher Education Conference, Brisbane, 26–29 June 2012); *ibid* 8–9; Susan Daicoff, 'Lawyer Personality Traits and their Relationship to Various Approaches to Lawyering' in Marjorie A Silver (ed), *The Affective Assistance of Counsel: Practicing Law as a Healing Profession* (Carolina Academic Press, 2007) 79, 93.

225 Daicoff, 'Comprehensive Law Practice', above n 223; Michael King et al, *Non-Adversarial Justice* (Federation Press, 2009).

226 Daicoff, 'Lawyer Personality Traits', above n 224, 93.

227 See, eg, Tani and Vines, above n 13; Larcombe, Malkin and Nicholson, above n 106.

228 See, eg, Sheldon and Krieger, 'Undermining Effects on Law Students?', above n 2.

other disciplines.²²⁹ Additionally, not all students will find the study of law generally, or particular law subjects and readings, to be interesting and engaging all of the time. What, then, can be done to activate and promote students' inner motivational resources – their 'interests, intrinsic motivation, autonomy, competence, relatedness, sense of challenge, and intrinsic goals'²³⁰ – in relation to their law studies and future careers? The concept of identified motivation from SDT is relevant here. Identified motivation is linked with activities that an individual may not necessarily intrinsically enjoy or find interesting, but that they associate with their core beliefs and values, facilitating an 'experience of meaning in daily activities'.²³¹ It is recognised that a range of personal and professional duties and obligations can occupy significant proportions of an individual's time, including at law school and in the legal profession; the extent to which people can relate these duties and obligations to personally meaningful criteria thus becomes important.²³² Similarly to intrinsic motivation, identified motivation has been empirically correlated with wellbeing, increased energy, diligence and perseverance in task engagement, and academic achievement.²³³

Law students' motivation and interest may be stimulated by curricular strategies that encourage reflection upon the relevance of what they are learning in law school to their personal and professional lives.²³⁴ This is an appropriate and important focus for legal education, exemplified by the following statement in the influential *Carnegie Report* published in the US in 2007: 'the values that lie at the heart of the apprenticeship of professionalism and purpose also include conceptions of the personal meaning that legal work has for practicing attorneys and their sense of responsibility towards the profession'.²³⁵ An authentic assessment task developed as part of a new elective subject offered to first and later year students at Queensland University of Technology ('QUT') provides one example of innovative practice that aims to develop law students' capacities to link their knowledge, experiences and skills with their emerging professional identities. In its first offering in 2011, the *LWB150: Lawyering and Dispute Resolution* unit developed by Associate Professor Rachael Field and James Duffy at QUT included a reflective practice assessment task focused on students' developing positive professional identities.²³⁶ For this task, students were asked to conduct an interview of approximately 20 minutes with a legal professional practicing in any area of law about 'what being a legal professional means for them'.²³⁷ Students then engaged in 'scholarly and informed reflection using the

229 Tani and Vines, above n 13, 12–25.

230 Su and Reeve, above n 17, 162 (citations omitted).

231 Krieger, 'The Most Ethical of People', above n 8, 173.

232 Niemiec, Ryan and Deci, above n 9, 179–80.

233 Krieger, 'The Most Ethical of People', above n 8, 173.

234 Michael Hunter Schwartz, *Expert Learning for Law Students* (Carolina Academic Press, 2nd ed, 2008) 43.

235 Sullivan et al, above n 68, 132.

236 Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-Being Through a First Year Law Subject' (2012) 12 *Queensland University of Technology Law and Justice Journal* 133, 149.

237 Alternatively, students could watch pre-recorded interviews provided on the Blackboard site: *ibid*.

4Rs reflective method²³⁸ about the extent to which they could relate the interview content to their ‘own skills, experience and knowledge’, and their nascent professional identities.²³⁹ Student evaluations of the unit indicate that this reflective practice task was very well-received and perceived as beneficial;²⁴⁰ further research into the efficacy of this assessment task, including in terms of its impact on student wellbeing, would add weight to the students’ evaluations. From the perspective of SDT, such an assessment task is autonomy supportive as it stimulates students’ interest, intrinsic/identified motivations, and goals in relation to their law studies.²⁴¹ This type of task may also assist students’ autonomous and authentic decision-making in relation to their law studies (for example, choice of electives) and early career decisions by providing insight into the types of career paths that may be an appropriate fit for them.

Facilitating students’ reflection upon the interests, values, and beliefs that informed their decision to attend law school in the first instance²⁴² may also infuse their engagement with law school tasks with greater meaning.²⁴³ This may be particularly relevant for Australia’s growing number of JD students,²⁴⁴ who may have more clearly articulated intrinsic motivations for studying law than their LLB counterparts.²⁴⁵ As the following examples demonstrate, such reflection can be grounded in assessment, reinforcing its value and importance to students. For instance, at the beginning of a subject entitled ‘The Legal Profession’ offered at Walter F George School of Law at Mercer University in the US, students are asked to write two assessments; the first of these is a reflective essay on ‘why they have chosen the law and what they hope to accomplish in their careers’.²⁴⁶ One of the aims of this assessment task is to help students stay connected with their original motivations for attending law school;²⁴⁷ such reflection may help to counter law students’ tendencies to disconnect from autonomous and authentic motivations and values as they progress through their law degrees.²⁴⁸ At the end of the semester, students are required to submit a second reflective essay articulating ‘what they hope to

238 Ibid; see also Peter Wildermuth and Michael Ryan, *Developing Reflective Approaches to Writing (DRAW)* (3 October 2011) Queensland University of Technology <<https://wiki.qut.edu.au/display/draw/Home>>.

239 Rachael Field and James Duffy, ‘LWB 150: Dispute Resolution and Lawyering – Assessment Item 1: Interview and Reflective Activity’ (Queensland University of Technology Faculty of Law, August 2011) (copy on file with author) 3–4; Field and Duffy, ‘Better to Light a Single Candle’, above n 236, 145.

240 Field and Duffy, ‘Better to Light a Single Candle’, above n 236, 150.

241 Su and Reeve, above n 17, 162.

242 Articulating reasons for wanting to study law is also a formal requirement in some law schools’ application processes.

243 Hunter Schwartz, above n 234, 42–3.

244 Cooper et al, above n 67.

245 Larcombe, Malkin and Nicholson, above n 106, 13.

246 Patrick E Longan, ‘Teaching Professionalism’ (2008) 60 *Mercer Law Review* 659, 692. This reflective practice task can also ask students to draw upon their responses to prescribed books reflecting on a life in the law: at 692–3 fn 146.

247 Ibid 693.

248 Sheldon and Krieger, ‘Undermining Effects on Law Students?’, above n 2.

accomplish as lawyers and people in their chosen careers’;²⁴⁹ this essay is intended to be informed by the subject’s content, which includes a strong focus on the importance of a professional identity premised on intrinsic motivations and values.²⁵⁰ Longan reports that many students ‘express that they feel more prepared to deal with the realities of practice because of the lessons they learned in the course’;²⁵¹ further empirical measurement of the efficacy of these assessment practices would strengthen this claim. In terms of facilitating students’ reflections on internally-sourced values, Iijima provides an example of an assessment task at William Mitchell College of Law in the US in which students were asked to ‘write a credo discussing their personal values systems, the source of those values, and how those values will influence their legal careers’.²⁵² Although Iijima does not report outcomes regarding the effectiveness of this assessment strategy, which is an opportunity for future research, such an assessment task aligns with Daicoff’s suggestion that ‘lawyers, as early as law school, would be wise to identify and preserve their own individual “intrinsic values”, as they navigate the challenges of law school and the profession’.²⁵³ Law teachers can explicitly encourage students to reflect upon the interests, values, and beliefs that brought them to law school, including through assessment, thereby nurturing students’ inner motivational resources and contributing to an autonomy supportive legal education environment.

VI CONCLUSION

The incidence of heightened distress levels amongst Australian law students aligns with trends in elevated psychological distress that have been documented in research on American law students over multiple decades. My analysis of extant Australian and American empirical research on law students’ distress indicates that lack of autonomy is an important contributing factor to law students’ elevated distress levels. This underscores the desirability of intentional and strategic approaches to curriculum design to create legal education environments that support law students’ autonomy and authenticity. This article has discussed a range of curricular strategies that law teachers can implement to promote law students’ perceptions and experiences of autonomy support in the law school environment, which may facilitate higher levels of student wellbeing, engagement, and academic achievement.²⁵⁴ Implementing such practices is particularly salient in the current context in which the Australian Government’s regulatory agency for tertiary education, TEQSA, appears likely to adopt the

249 Longan, above n 246, 695.

250 Ibid 691–2.

251 Ibid 695.

252 Iijima, above n 77, 535.

253 Daicoff, ‘*Comprehensive Law Practice*’, above n 223, 8.

254 Sheldon and Krieger, ‘Understanding the Negative Effects’, above n 8, 894.

Threshold Learning Outcomes, including TLO 6 on self-management, for use in its quality assurance activities for Australian law schools.

A number of avenues for future research arise from this discussion. First, although the efficacy of providing meaningful rationales, acknowledging perspectives and feelings, using non-controlling language, offering choices, and nurturing students' inner motivational resources for increasing students' experiences of autonomy support has been well-documented in the educational psychology literature,²⁵⁵ further research into their effectiveness in the context of legal education and legal practice is warranted. In particular, empirical measurement of the efficacy of the proposed curricular strategies in terms of, *inter alia*, law students' engagement and subjective wellbeing before and after the strategies' implementation, would strengthen claims for their widespread adoption in law schools. Secondly, as SDT posits that the fulfilment of the basic psychological needs of autonomy, competence and relatedness is required for individual thriving,²⁵⁶ further research into curricular strategies to enhance students' experiences of competence and relatedness in their law school environment would also be beneficial. Commitment and leadership from law school staff, which may be aided by the availability of additional resources, will be necessary to integrate autonomy supportive strategies throughout legal curricula, yet the evidence suggests that the benefits of an autonomy supportive legal education environment for students, staff, and ultimately the legal profession and the broader community, will be worth this shift in approach.

255 For an overview, see Su and Reeve, above n 17, 160–2.

256 Krieger, 'The Most Ethical of People', above n 8, 171; Sheldon and Krieger, 'Understanding the Negative Effects', above n 8, 844–5.