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Legal wellbeing pedagogy: a new model for promoting wellbeing in law schools

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Abstract

This paper introduces a new pedagogical model for law schools, the Legal Wellbeing Pedagogy. It draws upon Positive Psychology, namely Self-Determination Theory and its Basic Psychological Needs sub-theory, as its theoretical basis. Synthesising these theories with existing international research into legal education enables them to be adapted to meet the specific requirements of the discipline of law. Based on this theoretical grounding, the focus of Legal Wellness Pedagogy spans cognitive, experiential and affective engagement with learning and teaching in legal education. It provides a clear framework for the integration of challenge and growth, independence and meaning, and collaboration and connection into the law degree. It also highlights the role of empathy, reflection and values and ethics as key inter-connecting concepts to promote a holistic approach to wellbeing. Overall, this paper sets out a theoretically grounded model which is focused upon promoting positive wellbeing for both staff and students, reimaging the legal curriculum as a vehicle to facilitate thriving and flourishing in an evidence-based and sustainable manner.

Keywords: legal education, wellbeing, pedagogy, learning and teaching, self-determination theory.

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Introduction

This article introduces a new pedagogical model for law schools, the Legal Wellbeing Pedagogy ('LWP'), which is focused upon promoting positive wellbeing for both staff and students. The model is grounded within Self-Determination Theory ('SDT'), a meta-theory of Positive Psychology with a strong empirical research evidence-base.[1] The model draws, in particular, upon the unifying sub-theory of Basic Psychological Needs and the promotion of autonomous self-regulation.[2] The existing studies on law student wellbeing, and the wider psychological and pedagogical literature, both within and external to legal education, are synthesised to provide a theoretically-grounded model which moves away from identifying and rectifying specific problems, and instead reimagines the legal curriculum as a vehicle to facilitate thriving and flourishing in an evidence-based, sustainable, and holistic manner.

The majority of the literature synthesised in the article is drawn from the law degree as delivered in the common law context, in particular, the United Kingdom ('UK'). However, it also acknowledges the valuable work on legal education being done across Europe and beyond.[3] Some of the specific norms of common law legal education are examined, for example, its traditional

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[1] For detailed overviews of SDT see Richard M. Ryan & Edward L. Deci, 'Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being'(2000) 55(1) Am Psychol 68; Edward L. Deci & Richard M. Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior' (2000) 11 Psychol Inq 227; Richard M. Ryan & Edward L. Deci, 'Overview of Self-Determination Theory: An Organismic Dialectical Perspective' in Edward L. Deci & Richard M. Ryan (eds) *Handbook of Self-Determination Research* 3-33 (, 2002); Martin E. P. Seligman & Mihaly Csikszentmihalyi, 'Positive Psychology: An Introduction' (2000) 55(1) Am Psychol 5; Claude-Hélène Mayer & Elisabeth Vanderheiden, 'Contemporary Positive Psychology Perspectives and Future Directions' (2020) 32(7-8) Int'l Rev Psychiatry 537.

[2] Maarten Vansteenkiste et al., The Development of the Five Mini-Theories of Self-Determination Theory: An Historical Overview, Emerging Trends, and Future Directions, in THE DECADE AHEAD: THEORETICAL PERSPECTIVES ON MOTIVATION AND ACHIEVEMENT 105 (T. C. Urdan & S. A. Karabenick eds., 2010); Richard M. Ryan & Edward L. Deci, *Self-Determination Theory: Basic Psychological Needs* in MOTIVATION, DEVELOPMENT, AND WELLBEING (2017).

[3] See, for example, Sanja Manchevska & Jasmina Pluncevic-Gligoroska, The Prevalence of High Anxiety and Substance Use in University Students in the Republic of Macedonia, 35(2) PRILOZI 67 (2014); Nadja Rabkow et al., Facing the Truth: A Report on the Mental Health Situation of German Law Students, 71 INT'L. J. LAW & PSYCHIATRY 101599 (2020); Melanie Walker & Christopher Rawson, Forming Lawyers Who Can Contribute to Equitable Access to Justice in South Africa, 30 INT'L J. CLINICAL LEGAL EDUC. 97 (2023).

emphasis on adversarialism.[4] However, it is anticipated that the LWP also translates into other legal education settings (including civil law systems), across a range of jurisdictions, due to its rigorous theoretical grounding.

Within common law jurisdictions, there is an ever-increasing body of literature which highlights the wellbeing issues that law students most commonly experience. In the USA, as early as 1976, Taylor referred to a range of anecdotal evidence, theoretical exposition and popular debate creating longstanding 'uneasy feelings about the psychological, emotional, and moral effects of legal training'.[5] Since then, a range of USA-based empirical research has highlighted the detrimental impacts that studying law can have upon individuals. For example, Sheldon and Krieger's seminal studies, applying SDT, have identified a decline in law students' subjective wellbeing, self-determination (capacity to act autonomously) and intrinsic values across their studies.[6] In Australia, interest in law student (and lawyer) wellbeing was galvanised by the tragic suicide of young lawyer, Tristan Jepson. The work of the then Tristan Jepson Memorial Foundation (now the Minds Count Foundation) includes funding the first large-scale empirical study in Australia on this topic conducted by the Brain and Mind Research Institute (BMRI) at the University of Sydney and published in 2009.[7] That study found that the participating law students experienced higher levels of psychological distress and depression than those of the general population. This result has been

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[4] Molly Townes O'Brien, Facing Down the Gladiators: Addressing Law School's Hidden Adversarial Curriculum, 37(1) MONASH U. L. REV. 43 (2011).

[5] James B. Taylor, *Law School Stress and the Deformation Professionnelle*, 27 J. LEGAL EDUC. 251, 251 (1976).

[6] Kenneth M. Sheldon & Larry S. Krieger, Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being, 22 BEHAV. SCI. & L. 261 (2004); Kenneth M. Sheldon & Larry S. Krieger, Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Study of Self-Determination Theory, 33 PERS. & SOC. PSYCHOL. BULL. 883 (2007). See also, Kenneth M. Sheldon & Larry S. Krieger, Walking the Talk: Value Importance, Value Enactment, and Well-Being, 38(5) MOTIV. EMOT. 609 (2014).

[7] Norm Kelk et al., COURTING THE BLUES: ATTITUDES TOWARDS DEPRESSION IN AUSTRALIAN LAW STUDENTS AND LAWYERS (Brain & Mind Research Institute, 2009).

reflected in subsequent Australian studies.[8] While the literature is more limited within Canada, New Zealand and the UK, the available scholarship generally reflects the themes identified in other jurisdictions.[9]

It should also be noted that there have been a number of calls for legal educators to take a proactive role to promote better wellbeing within the legal profession by adopting aspects of psychosocial education. For example, the Canadian *National Study on the Psychological Health Determinants of Legal Professionals in Canada* recommends that law schools support wellbeing in the profession by ensuring 'a better theory-practice balance' in the curriculum, developing 'key skills', including 'wellbeing skills' and by engaging in psycho-social education around healthy lifestyles, mental health and help-seeking.[10] While the literature on legal educators (herein also referred to as 'staff') and wellbeing is less well-developed globally, the limited evidence

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[8] Kelk et al., id. (note 7). For other examples, see Massimilliano Tani & Prue Vines, *Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?*, 19(1) LEGAL EDUC. REV. (2009); 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*, 35 SYDNEY L. REV. 407 (2013); Natalie K. Skead & Shane L. Rogers, *Do Law Students Stand Apart from Other University Students in Their Quest for Mental Health? A Comparative Study on Wellbeing and Associated Behaviours in Law and Psychology Students*, 42 INT'L. J. L. & PSYCHIATRY 81 (2015); Natalie K. Skead et al., *The Role of Place, People, and Perception in Law Student Well-Being*, 73 INT'L. J. L. & PSYCHIATRY 101631 (2020).

[9] For Canada, see Mary E. Pritchard & Daniel N. McIntosh, What Predicts Adjustment Among Law Students? A Longitudinal Panel Study, 143(6) J. SOC. PSYCHOL. 727 (2003); Maureen F. Fitzgerald, Rite of Passage: The Impact of Teaching Methods on First Year Law Students, 42(1) L. TEACH. 60 (2008); Valerie Sotardi et al., Influences on Students' Interest in a Legal Career, Satisfaction with Law School, & Psychological Distress: Trends in New Zealand, 56(1) L. TEACH. 67 (2022); Lynne Taylor et al., The Making of Aotearoa/New Zealand Lawyers: A Longitudinal Study of Law Students and Law Graduates, 57(3) L. TEACH. 309 (2023); Emma Jones, Rajvinder Samra & Mathijs Lucassen, The World at Their Fingertips? The Mental Wellbeing of Online Distance-Based Law Students, 53(1) L. TEACH. 49 (2019); Elisa G. Lewis & Jacqueline M. Cardwell, A Comparative Study of Mental Health and Wellbeing Among UK Students on Professional Degree Programmes, 43(9) J. FUR. & HIGH. EDUC. 1226 (2019).

[10] Nathalie Cadieux et al., RESEARCH REPORT (FINAL VERSION): TOWARDS A HEALTHY AND SUSTAINABLE PRACTICE OF LAW IN CANADA: NATIONAL STUDY ON THE HEALTH AND WELLBEING DETERMINANTS OF LEGAL PROFESSIONALS IN CANADA, PHASE I (2020-2022), Université de Sherbrooke, Busi. Sch. 359-62 (2022).

available also points to issues with poor wellbeing and levels of self-determination.[11]

The scholarly literature to-date clearly indicates that the causes of such sustained wellbeing concerns within law schools are multi-factorial. However, a majority of work indicates that a number of the issues are discipline specific to law as a result of the academically demanding, competitive and isolating environment of legal education, the erosion of intrinsic values, and the rigid focus upon 'thinking like a lawyer'.[12] Rather than relying upon pastoral institution initiatives, such as counselling services for students and employee assistance programs for staff, there is a clear need for law schools to address these issues.

Actively promoting student and staff wellbeing in law schools also accords with two key trends within the work on wellbeing in tertiary education more broadly. First, there is an increasing emphasis upon the need for a holistic, whole-of-institution approach to wellbeing in higher education contexts. For example, the UK University Mental Health Charter states that 'we want all universities to adopt a whole-university approach to mental health' defining this approach as including 'adequately resourced, effective and accessible mental health services and proactive interventions … an environment and culture that reduces poor mental health, as well as supporting good mental health, and facilitating staff and students to develop insight, understanding and skills to manage and maintain their own wellbeing'.[13] In the USA, drawing on nearly ten years of student data from the Healthy Minds Study, Lipson et al

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[11] See, Mary Heath et al, Learning to Feel Like a Lawyer: Law Teachers, Sessional Teaching and Emotional Labour in Legal Education, 26(3) GRIFFITH L. REV. 430 (2017); Clare J. Wilson & Caroline Strevens, Perceptions of Psychological Well-Being in UK Law Academics, 52(3) L. TEACH. 335 (2018); Colin James et al, Student Wellbeing Through Teacher Wellbeing: A Study with Law Teachers in the UK and Australia, 10(3) STUDENT SUCCESS 76 (2019); WELLBEING IN THE LEGAL ACADEMY (Caroline Strevens & Emma Jones eds., 2023).

[12] Sheldon & Krieger, *supra* note 6; Tani & Vine, *supra* note 8; Skead & Rogers, *supra* note 8; Colin James, *Lawyers' Wellbeing and Professional Legal Education,* 42(1) L. TEACH. 85 (2008); c.f. Wendy Larcombe et al, *Who's Distressed?: Not Only Law Students: Psychological Distress Levels in University Students Across Diverse Fields of Study,* 37(2) THE SYD. L. REV. 243 (2015). See also, Molly Townes O'Brien, Stephen Tang & Kath Hall, *Changing our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum*, 21(1/2) LEGAL ED. REV. 149 (2011).

[13] Gareth Hughes & Leigh Spanner, THE UNIVERSITY MENTAL HEALTH CHARTER, Leeds, Student Minds (2019).

have argued that 'there remains an urgent need for research on how campus systems and structures shape student mental health'.[14] The findings of the body of work on law student wellbeing to date, create an imperative for law schools to examine their practices, procedures and policies in depth.

Second (and related to the first key trend) there is an increasing focus upon embedding wellbeing within the law school curriculum.[15] This focus challenges traditional dichotomies within tertiary education separating the pastoral from the intellectual, acknowledging the complex inter-play between the two.[16] A focus upon embedding wellbeing within the law school curriculum requires law schools to address the design, delivery and development of their curriculum to address the range of discipline-specific issues which have been identified as negatively impacting upon student (and staff) wellbeing. However, this article argues for a more radical new approach. It proposes that there can and should be a pedagogical model for legal education which not only ameliorates negative impacts, but in fact promotes positive change and flourishing. In sketching out the framework of the LWP, the article provides a model which acknowledges, but also challenges, the existing norms of many forms of legal education. In doing so, the article provides legal education providers with a sound theoretical and practical basis from which to review and develop their existing curriculum.

Part 1 of the article explores the notion of 'wellbeing' and introduces the key tenets and principles of SDT as the theoretical underpinning for the LWP. Part 2 describes and explains the framework of the LWP itself in detail. Part 3 then uses two common elements of the contemporary law school curriculum, namely the law of obligations (contracts and torts) and clinical legal education ('CLE'), to explore how the LWP could be integrated into, and positively influence, the student learning experience (and the staff teaching experience) of these subjects. These examples are designed to demonstrate the breadth and

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[14] Sarah Ketchen et al., Trends in College Student Mental Health and Help-Seeking by Race/Ethnicity: Findings from the National Healthy Minds Study, 2013–2021, 306 J. AFFECT. DISORD. 138, 145 (2022).

[15] Rachael Field, PROMOTING LAW STUDENT WELL-BEING THROUGH THE CURRICULUM. Office for Learning and Teaching (2014); Debra S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools,* 77 MD. L. REV. 649 (2017).

[16] Mary Helen Immordino-Yang, *EMOTIONS, LEARNING, AND THE BRAIN: EXPLORING THE EDUCATIONAL IMPLICATIONS OF AFFECTIVE NEUROSCIENCE (*2016).

flexibility of the LWP, showing that it has relevance to all subjects in the law degree (and it potentially also has relevance beyond legal education in other disciplines). The article's conclusion looks to the future to emphasize the opportunities the LWP provides as we enter the second quarter of the twenty-first century.

Wellbeing and SDT

This Part begins by briefly explaining the term 'wellbeing' as it is used in the LWP. We then argue that SDT provides a robust conceptual and theoretical framework for justifying the LWP as a critical element of contemporary legal education internationally. In considering SDT and its centrality to the efficacy of the LWP, key factors and conditions are identified for personal and professional wellbeing, satisfaction and growth, thus reaffirming the relevance of SDT itself to contemporary legal education.

Understanding wellbeing

The term 'wellbeing' is ubiquitous in today's society, with a myriad of definitions and interpretations available.[17] However, there are two commonly acknowledged traditions which form the basis of contemporary Western approaches to wellbeing, namely, the *hedonic* and *eudaimonic* traditions. The *hedonic* tradition focuses upon 'happiness' in the form of 'pleasure attainment and pain avoidance'.[18] The *eudaimonic* tradition draws upon the work of Aristotle and refers to '…the blossoming of capacities and individual potential as a route to achieving full psychological functioning'.[19] A number of commentators have identified overlaps and synergies between these two

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[17] See, for example, Alex C. Michalos & Daniel Weijers, *Western Historical Traditions of Well-Being* in THE PURSUIT OF HUMAN WELL-BEING: THE UNTOLD GLOBAL HISTORY 31-57 (Richard J. Estes & M. Joseph Sirgy eds., 2017); Carol D. Ryff et al, *Eudaimonic and Hedonic Well-Being* in MEASURING WELL-BEING 92-135 (Tyler VanderWeele et al eds., 2021). See also, Jonathan Crowe, *What is Wellness? The Role of Human Values*, 45(4) ALT. L. J. (2020) 261; Oscar H Kawamata, *Legal Education, Wellness and Buddhism: A Student's Response to Crowe*, 48(1) ALT. L. J. (2023) 67; Jonathan Crowe, *Defining Wellness in Legal Education: A Reply to Kawamata*, 48(2) ALT. L. J. (2023) 140.

[18] Richard M. Ryan & Edward L. Deci, On Happiness and Human Potentials: A Review of Research on Hedonic and Eudaimonic Well-Being, 52(1) ANNU. REV. PSYCHOL. 141, 141 (2001).

[19] Carlos Friere et al, Eudaimonic Well-Being and Coping with Stress in University Students: The Mediating/Moderating Role of Self-Efficacy, 16(1) INT. J. ENVIRON. RES. PUB. HEALTH 48 (2019).

traditions, whilst others have proposed new formulations.[20] As a discipline, Positive Psychology largely focuses upon the *eudaimonic* tradition, for example, Seligman's PERMA theory draws on this tradition emphasising the importance of Positive emotion, Engagement, Relationships, Meaning, and Accomplishment.[21] SDT has also been clearly linked to the *eudaimonic* tradition of wellbeing in a series of papers by Ryan and others.[22] Ryan and Martela, for example, identify three key ways in which SDT mirrors Aristotelian notions of *eudaimonia*, including encouraging the pursuit of intrinsic goals, promotion of autonomy and fostering of self-reflection and awareness.[23] These core concepts are linked in SDT's key unifying sub-theory of Basic Psychological Needs which identifies the satisfaction of three basic psychological needs - autonomy, competence, and relatedness - as key to individual *eudaimonic* wellbeing.[24] The Basic Psychological Needs sub-theory therefore forms the core theoretical underpinning of the LWP's central premises.

Core concepts in SDT

Overall, SDT, as a meta-theory, includes six sub-theories relating to human motivation and behaviour. These six sub-theories are: Cognitive Evaluation Theory, Organismic Integration Theory, Causality Orientations Theory, Basic Psychological Needs Theory, Goal Content Theory and Relationships

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[20] Luke Wayne Henderson & Tess Knight, *Integrating the Hedonic and Eudaimonic Perspectives to More Comprehensively Understand Wellbeing and Pathways to Wellbeing,* 2(3) INT. J. WELLBEING 196 (2012); Mart G. Pancheva et al, An Integrated Look at Well-Being: Topological Clustering of Combinations and Correlates of Hedonia and Eudaimonia, 22 J. HAPPINESS STUD. 2275 (2021); Ryff et al supra note 17.

[21] Eranda Jayawickreme et al, *The Engine of Well-Being,* 16(4) REV. GEN. PSYCHOL. 327, 334 (2012).

[22] Richard M. Ryan et al, What Humans Need: Flourishing in Aristotelian Philosophy and Self-Determination Theory in *THE BEST WITHIN US: POSITIVE PSYCHOLOGY PERSPECTIVES ON EUDAIMONIA* American Psychological Association 57–75 (A. S. Waterman ed., 2013).

[23] Richard M. Ryan & Frank Martela, EUDAIMONIA AS A WAY OF LIVING: CONNECTING ARISTOTLE WITH SELF-DETERMINATION THEORY in HANDBOOK OF EUDAIMONIC WELL-BEING 109-122 (Joar Vittersø ed., 2016).

[24] Frank Martela & Kennon M. Sheldon, Clarifying the Concept of Well-Being: Psychological Need Satisfaction as the Common Core Connecting Eudaimonic and Subjective Well-Being, 23(4) REV. GEN. PSYCHOL. 458 (2019); Frank Martela et al, Needs and Well-Being Across Europe: Basic Psychological Needs are Closely Connected with Well-Being, Meaning, and Symptoms of Depression in 27 European Countries, 14(5) SOC. PSYCHOL. PERS. SCI. 501 (2023).

Motivation Theory.[25] A brief overview of these sub-theories, all of which are interrelated, follows to contextualise the later focus on Basic Psychological Needs theory.

First, the sub-theory of Cognitive Evaluation Theory is concerned with the factors that enable or hinder an individual's intrinsic motivations.[26] Intrinsic motivation relates to engagement in activities for which there is a genuine interest and from which legitimate enjoyment is derived.[27] According to Cognitive Evaluation Theory, 'interest' is understood as an individual's attraction towards a particular activity, and 'enjoyment' is understood to be 'a by-product of full immersion in an activity.'[28] Activities involving interest and enjoyment can be contrasted with hedonic activities pursued for self-interested reasons that are characterised, for example, by instantaneous gratification.[29]

Cognitive Evaluation Theory asserts that autonomy supportive, controlling or amotivating environments all impact a person's intrinsic motivation differently.[30] When enjoyment and interest are integrated into lived environments through, for example, 'rewards, interpersonal controls, and ego-involvements'[31] and when the basic psychological needs of autonomy, competence and relatedness (discussed further below) are satisfied, intrinsic motivation is likely to be supported because these things 'form the energetic

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[25] Richard M. Ryan & Maarten Vansteenkiste, *Self-Determination Theory: Metatheory, Methods and Meaning* in THE OXFORD HANDBOOK OF SELF-DETERMINATION THEORY (Richard M. Ryan ed., 2023) 12-20.

[26] Vansteenkiste et al, *supra* note 2, 107.

[27] Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior* in HANDBOOK OF PERSONALITY: THEORY AND RESEARCH 654, 660-1 (Oliver P. John, et al eds., 3rd ed, 2008). Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225 (2012-2013).

[28] Vansteenkiste et al, *supra* note 2, 107.

[29] Vansteenkiste et al, *supra* note 2, 107.

[30] The terms 'amotivating' and 'amotivated' refer to a lack or absence of motivation, experienced by individuals as viewing their behaviour as outside their own control and failing to link their conduct to possible outcomes. See for example, Lisa Legault et al, *Why Do High School Students Lack Motivation in the Classroom? Toward an Understanding of Academic Amotivation and the Role of Social Support,* 98(3) J. EDUC. PSYCHOL. 567, 568 (2006).

[31] Centre for Self-Determination Theory, SELF-DETERMINATION THEORY: AN APPROACH TO HUMAN MOTIVATION AND PERSONALITY (2013) <http://www.selfdeterminationtheory.org/theory> accessed 27 Sep 2024.

basis for the development and maintenance' of intrinsic motivation.[32] A logical deduction that informs the conceptualisation of the LWP, is that the promotion of law students' subjective experiences of enjoyment and interest, as well as the creation of learning environments that satisfy autonomy, competence, and relatedness, are likely to positively support intrinsic motivation for the study of law. The whole LWP framework is designed to support student learning success in this way.

The second sub-theory of SDT is Organismic Integration Theory. This theory examines the 'properties, determinants and consequences' of extrinsic motivation.[33] Extrinsic motivations are reasons for acting that are primarily predicated on external recognition. They are typically a means to an end.[34] According to this theory, when interest and enjoyment (as conceptualised in Cognitive Evaluation Theory) are not present, then extrinsic motivations may hold an important role in terms of achieving a range of socially important tasks.[35]

A core tenet of Organismic Integration Theory is that extrinsic motivations can be internalised to varying degrees, but predominantly work most positively when they are experienced autonomously.[36] That is, the extent to which individuals are able to connect duties and obligations that arise in their life to personally meaningful criteria impacts their capacity to cultivate internal reasons for acting.[37] Importantly, autonomous extrinsic motivation has been found to produce the same high levels of engagement and performance that intrinsic motivation can produce.[38] This sub-theory informs strategies in the LWP aimed at supporting the autonomy, volition and self-regulation of law students who lack intrinsic motivation for studying law.[39]

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[32] Edward L. Deci et al, *Need Satisfaction and the Self-Regulation of Learning,* 8(3) LEARN. INDIVID. DIFFER. 165 (1996); Vansteenkiste et al, *supra* note 2, 108-9.

[33] Deci et al, *supra* note 32.

[34] Deci et al, *supra* note 32.

[35] Vansteenkiste et al, *supra* note 2, 112-3.

[36] Ryan & Deci, *supra* note 27, 661-5.

[37] Aaron Black & Edward L. Deci, The Effects of Student Self-Regulation and Instructor Autonomy Support on Learning in a College-Level Natural Science Course: A Self-Determination Theory Perspective, 84(6) SCI. EDUC. 740 (2000); Johnmarshall Reeve et al, Self-determination Theory: A Dialectical Framework For Understanding Socio-Cultural Influences on Student Motivation in BIG THEORIES REVISITED 31-60 (Dennis M. McInerney & Shawn Van Etten eds., 2004).

[38] Manning, *supra* note 27, 236.

[39] Ryan & Deci, *supra* note 1.

Causality Orientations Theory is the third sub-theory of SDT. This theory seeks to explain individual personality preferences for, and tendencies to orient towards, autonomy supportive, controlling or amotivating environments.[40] The theory identifies three types of causality orientation: 'autonomy orientation in which persons act out of interest in and valuing of what is occurring; the control orientation in which the focus is on rewards, gains, and approval; and the impersonal or amotivated orientation caused by anxiety concerning competence'.[41] The relevance of this sub-theory to the LWP is that it informs approaches in curriculum design that encourage students to develop an autonomy orientation and manage control and amotivated orientations.

Fourth, Goal Content Theory asserts that psychological wellbeing is impacted differently by intrinsic and extrinsic goals.[42] Intrinsic goals, which include personal growth, meaningful relationships, community contribution and physical health, are associated with higher levels of psychological wellness and adjustment because they promote an '*inward* orientation' which is supportive of the fulfilment of the needs of autonomy, competence, and relatedness.[43] Extrinsic goals, such as attractive appearances, financial affluence, and fame, are associated with lower levels of psychological wellness and adjustment, because they promote an '*outward* orientation' that distracts time and energy away from the fulfilment of basic needs.[44] The link between intrinsic goals and autonomous motivation means that the SDT-informed LWP model will work as a needs-supportive framework by guiding the design of the curriculum in ways that support law students to prioritise intrinsic over extrinsic goals.[45]

Fifth, Basic Psychological Needs Theory is arguably the most important of SDT's sub-theories because it operates as a 'unifying principle' for the meta-theory.[46] Basic Psychological Needs Theory relates to understanding how satisfying the fundamental human needs of autonomy, competence, and

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[40] Richard M. Ryan & Edward L. Deci, Overview of Self-Determination Theory: An Organismic Dialectical Perspective in HANDBOOK OF SELF DETERMINATION RESEARCH 665 (Edward L. Deci & Richard M. Ryan eds., 2002).
[41] Deci et al, *supra* note 32.
[42] Deci et al, *supra* note 32.
[43] Vansteenkiste et al, *supra* note 2, 145-7
[44] Vansteenkiste et al, *supra* note 2, 145-7
[45] Sheldon & Krieger (2004), *supra* note 6.
[46] Vansteenkiste et al, *supra* note 2, 131; Deci et al, *supra* note 32.

relatedness supports psychological wellbeing and success.[47] It defines 'needs' as the 'innate psychological nutriments that are essential for ongoing psychological growth, integrity, and well-being'.[48] The notion of 'thriving' denotes a 'positive life experience' which is characterised by, amongst other things, positive affect and mood, satisfaction with life and a sense of meaning and purpose, once again mirroring notions of *eudaimonic* wellbeing.[49]

The term 'autonomy' refers to an individual's subjective experience that their behaviour is self-governed, volitional and congruent with their true beliefs, values, and interests.[50] It has been described as the 'master need' of the three needs.[51] As Krieger notes:

> Autonomy can be considered '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.[52]

Autonomy has been described variously as the opposite of heteronomy (which is 'the experience of feeling controlled or pressured to think, feel, or behave in certain ways');[53] as being analogous to authenticity,[54] integrity[55] and genuineness;[56] and as 'endorsing one's actions at the highest level of

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[47] Ryan & Deci, *supra* note 27, 656–659, 666–669.

[48] Deci & Ryan (2000), *supra* note 1, 229.

[49] Lawrence S. Krieger, The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation, 8(2) U. ST. THOMAS 168 (2011).

[50] Christopher Niemiec, Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Relation of Autonomy to Self-Regulatory Processes and Personality Development* in HANDBOOK OF PERSONALITY AND SELF-REGULATION 169, 176 (Rick Hoyle ed., 2010).

[51] Kennon M. Sheldon et al, SELF-DETERMINATION THEORY IN THE CLINIC: MOTIVATING PHYSICAL AND MENTAL HEALTH (2003) 19.

[52] Krieger, *supra* note 49, 174.

[53] Niemiec et al, *supra* note 50, 176.

[54] Lawrence S. Krieger, Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence, 52(1/2) J. LEGAL EDUC. 112, 119 (2002).

[55] Kennon M. Sheldon et al, What is Satisfying About Satisfying Events? Testing 10 Candidate Psychological Needs, 80(2) J. PERS. SOC. PSYCHOL. 325, 328 (2001).

[56] Krieger, *supra* note 54, 119.

reflection'.[57] Autonomy is different to independence because independence indicates freedom from the influence of external forces, whereas autonomy accommodates external influences that are self-endorsed.[58] A sense of autonomy is integral to effective self-regulatory processes.[59]

Competence is the second basic need identified in Basic Psychological Needs Theory. 'Competence' refers to an individual's sense of ability, capability, and mastery in relation to tasks and challenges[60] as well as encompassing the 'experience of effective interactions with the environment'.[61] Competence is fundamental to important law student characteristics, such as the ability to 'learn and work independently' and to engage in 'personal and professional development'.[62]

Relatedness is the third basic need within Basic Psychological Needs Theory and involves an individual's experience of meaningful and reciprocal connections with others who are important to them.[63] This includes an ability to rely on and trust others, and/or provide care for others.[64] The basic need of relatedness highlights that *how* the law is taught at law school is as important as, if not more important than, *what* is taught at law school.[65] The LWP acknowledges this, for example, with approaches and techniques that support rapport building and student engagement.

Whilst the three premises of Basic Psychological Needs Theory are all important, the LWP gives particularly detailed attention to how intentional curriculum design in legal education can enact a wellbeing-focussed approach

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[57] 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, 30(4) PERS. SOC. PSYCHOL. BULL. 475, 475 (2004).
[58] Manning, *supra* note 27, 229.
[59] Niemiec et al, *supra* note 50.
[60] Krieger, *supra* note 49, 172.
[61] Krieger, *supra* note 49, 176.
[62] Sally Kift, Mark Israel & Rachael Field, LEARNING AND TEACHING ACADEMIC STANDARDS PROJECT BACHELOR OF LAWS LEARNING AND TEACHING ACADEMIC STANDARDS STATEMENT DECEMBER 2010, ALTC <
https://cald.asn.au/wp-content/uploads/2024/04/LLB-
TLOsKiftetalLTASStandardsStatement2010-TLOs-LLB2.pdf> accessed 27 Sep 2024,
TLO 6: Self-Management.
[63] Niemiec et al, *supra* note 50, 176; Krieger, *supra* note 49, 172.
[64] Niemiec et al, *supra* note 50 , 177; Ryan & Deci, *supra* note 27, 658-659.
[65] James B. Levy, As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher, 58(1) ME. L. REV. 50 (2006).

by supporting students' autonomous self-regulation. SDT research has consistently evidenced that autonomous self-regulation supports 'engagement and optimal learning in educational contexts.'[66] This approach involves supporting students' needs for autonomy, competence and relatedness and harnessing students' intrinsic motivations and goals, as well as assisting students to achieve self-determined extrinsic motivation. Such autonomy support is a positive way in which SDT can inform the enactment of the LWP, assisting students to develop 'foundations in personal maturity' which in turn provide deep and sustained foundations for student learning success and personal and professional wellbeing.[67] The LWP also reflects the notion that autonomy needs are satisfied in 'autonomy-supportive' (as opposed to 'controlling' environments), the need for competence is supported in 'well-structured' (as opposed to 'chaotic and demeaning') environments, and the need for relatedness is supported in 'warm and responsive' (as opposed to 'cold and neglectful') environments.[68]

The SDT literature tells us that when students perceive that their basic psychological needs for autonomy, competence, and relatedness are being satisfied, they are more likely to experience wellbeing, autonomous self-regulation, learning success and thriving.[69] As Niemiec and Ryan have said, 'when students' basic psychological needs for autonomy, competence, and relatedness are supported in the classroom, they are more likely to internalize their motivation to learn and to be more autonomously engaged in their studies'.[70]

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[66] Christopher P. Niemiec & Richard M. Ryan, *Autonomy, Competence, and Relatedness in the Classroom: Applying Self-Determination Theory to Educational Practice,* 7(2) THEORY RES. EDUC. 133, 133 (2009); Anna Huggins, IMPLEMENTING THE SELF-MANAGEMENT THRESHOLD LEARNING OUTCOME IN AUSTRALIAN LEGAL CURRICULA: INSIGHTS FROM SELF-DETERMINATION THEORY, Master of Laws Thesis (Queensland University of Technology, 2013); Anna Huggins, *Autonomy Supportive Curriculum Design: A Salient Factor in Promoting Law Students' Wellbeing* 35(3) UNSW. L. J. 683 (2012); Rachael Field, James Duffy & Anna Huggins, *Teaching Independent Learning Skills in the First Year: A Positive Psychology Strategy for Promoting Law Student Well-Being,* 8(2) J. LEARN. DES. 1 (2015).

[67] Krieger, *supra* note 49, 170.

[68] Vansteenkiste et al, *supra* note 2, 131-132.

[69] Niemiec & Ryan, *supra* note 66, 133; Ryan & Deci, *supra* note 26, 656–659, 666–669.

[70] Niemiec & Ryan, *supra* note 66, 139.

The most recent, sixth, addition to SDT's sub-theories is Relationships Motivation Theory.[71] This theory emphasizes the inter-connected nature of relatedness and autonomy, arguing that autonomously entering into and developing close relationships, and being given autonomy-support through such relationships, is vital to wellbeing.[72] This emphasizes, once again, the importance of the basic psychological needs being met to achieve psychological wellbeing.

SDT as the basis of the LWP

SDT's suitability as a theoretical framework for the LWP is confirmed, first, by examples of relevant recent applications of SDT in legal education research and, second, by SDT's connections with ethics and professionalism.

In relation to the recent applications of SDT in legal education research , a number of important studies of law students in Australia and the USA establish SDT as a fitting theoretical framework for understanding law student psychological ill-health and for designing law curricula that support and promote law student wellbeing.[73] The results of Sheldon and Krieger's aforementioned studies on the wellbeing of law students in the USA in 2004 and 2007 indicate that empirical correlations exist between the factors measured in SDT – goals, motivations, values, universal needs, and autonomy supportive environments – and law student wellbeing. Sheldon and Krieger have subsequently applied SDT in a study of thousands of lawyers in various US states which examined the factors influencing legal professionals' values, purposes, satisfaction and emotional health.[74] Manning also used SDT in analysing possible curricular innovation with autonomy supportive feedback practices for law school assessment tasks.[75]

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[71] Richard M. Ryan & Edward L. Deci, SELF-DETERMINATION THEORY: BASIC PSYCHOLOGICAL NEEDS IN MOTIVATION, DEVELOPMENT, AND WELLNESS (2017).

[72] Ryan & Deci, *supra* note 71, Chapter 12.

[73] Sheldon & Krieger, *supra* note 6 (2004); Sheldon & Krieger, *supra* note 6 (2007); Krieger *supra* note 49; Manning, *supra* note 27; Tani & Vines, *supra* note 8; Wendy Larcombe et al, *Law Students' Motivations, Expectations and Levels of Psychological Distress: Evidence of Connections*, 22(1) LEG. EDUC. REV. 21 (2012).

[74] Lawrence S. Krieger & Kennon M. Sheldon, What Makes Lawyers Happy: A Data-Driven Prescription to Redefine Professional Success, 83(2) GEO. WASH. L. REV. 554 (2015).

[75] Manning, *supra* note 27.

In 2009, Tani and Vines surveyed 2,528 students across ten disciplines at the University of New South Wales in Australia about their 'attitudes to their experience and expectations of their university education'.[76] The authors found that, relative to students from all other disciplines, law students were more influenced to choose law by external factors, such as pleasing their parents and future career and income prospects,[77] suggesting relatively low personal autonomy, and strong competitiveness. On this basis Tani and Vines argued that law schools should focus on autonomy and connectedness-support in the design and implementation of legal education.[78]

Larcombe et al's 2012 study at the University of Melbourne Law School in Australia (MLS) affirms that there is a 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.[79] Larcombe et al undertook two surveys of LLB and JD students at MLS in 2007–2008 and 2011.[80] Their data confirmed 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.[81] The authors found that students who did not nominate intrinsic motivations for studying law, such as interest and aptitude, were three times more likely to be severely or extremely depressed.[82] Although the majority of such studies have been conducted in the USA and Australia, SDT has also been used in a UK research project on law student wellbeing, with largely similar findings.[83]

In relation to the second justification of SDT's suitability (its connections with ethics and professionalism), Krieger has established that wellbeing, thriving and autonomous self-regulation are connected with professionalism and ethical behaviour. As Krieger asserts, intrinsically and authentically motivated people

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[76] Tani & Vines, supra note 8, 3.
[77] Tani & Vines, *supra* note 8, 12, 25.
[78] Tani & Vines, *supra* note 8, 30.
[79] Larcombe et al, *supra* note 73, 27.
[80] Larcombe et al, *supra* note 73, 76-7.
[81] Larcombe et al, *supra* note 73, 86.
[82] Larcombe et al, *supra* note 73, 86.
[83] Emma Jones et al, The World at their Fingertips? The Mental Wellbeing of Online Distance-Based Law Students, 53(1) L. TEACH. 49 (2019); Emma Jones et al, Key Challenges and Opportunities Around Wellbeing for Distance Learning Students: The Online Law School Experience, 38(2) OPEN LEARNING: THE JOURNAL OF OPEN, DISTANCE AND E-LEARNING 117 (2023).

not only enjoy improved psychological health and life satisfaction, they also demonstrate greater consistency, congruence and integrity, which are integrally linked with professionalism.[84] In other words, intrinsic motivations are more likely to be associated with professionalism, while extrinsic motivations are more likely to be associated with unethical behaviour and a lack of professionalism.[85]

The above studies are typical in focusing largely upon the negative impacts experienced by students when aspects of SDT are not satisfied within law schools. The focus has been on questions such as 'are law students more susceptible to poor mental health and wellbeing issues than other student populations?' and 'what factors make law students susceptible to such issues?'. The findings in relation to such questions tend then to generate a set of recommendations around how to ameliorate the negative impacts upon law students. Such studies are important and have greatly raised awareness and understanding of the law school experience and its impacts upon students (and, also in some instances, staff).[86] The studies clearly tell us that there is a problem and indicate some ways in which that problem can be addressed.

At the same time, within the wider literature on wellbeing in law schools, there have also been calls for legal education to ensure that law students not only survive, but also thrive.[87] While this goal can (and has been) phrased in different ways, it encompasses a clear aim to support law students to flourish and experience positive impacts from their studies. In other words, the goal is to achieve wellbeing within the *eudaimonic* sense of the word in a way which corresponds with both Positive Psychology generally, and SDT in particular.[88] Focussing on students thriving encompasses the provision of a meaningful

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[84] Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness,* 11(2) CLINICAL L. REV. 425, 425 (2005); Krieger, *supra* n.52.

[85] Krieger, *supra* note 84, 428-430.

[86] Caroline Strevens et al, An Analysis of Studies on the Wellbeing of Law Teachers in the UK and Australia in 2020 Using the Lens of Seven Psychosocial Hazards of Academic Work in WELLBEING AND THE LEGAL ACADEMY 21-38 (Caroline Strevens & Emma Jones eds., 2023).

[87] Paula Baron, *Thriving in the Legal Academy,* 17(1/2) LEG. EDUC. REV. 27 (2007).

[88] Noël Williams et al, *The Impact of Positive Psychology on Higher Education,* 5(1) WM. & MARY ED. REV. (2018) 12; Frank Martela & Kennon M. Sheldon, *Clarifying the Concept of Well-Being: Psychological Need Satisfaction as the Common Core Connecting Eudaimonic and Subjective Well-Being,* 23(4) REV. GEN. PSYCH. 458 (2019).

learning experience at law school that will allow students to grow and develop in healthy ways.

We pause here to mention that this focus is outside the perpetual debate about the ends of legal education as liberal or vocational (or some form of hybrid).[89] A student undertaking a law degree which concentrates largely upon lawyering skills and preparation for practice will require active attention to their wellbeing just as much as a law student whose degree functions more as a liberal arts subject. The means of achieving wellbeing may, in part, be different depending on the context. For example, in the context of focussing on preparation for practice, the emphasis may be more on fostering a healthy understanding of professional identity,[90] whilst in contexts where the law degree is seen as more of a liberal arts education, the emphasis may be more about ensuring that students' active scholarly engagement with the construction of discipline-specific knowledge does not inculcate unhealthy concepts of reason and rationality.[91] However, this article focuses upon a pedagogic approach which can encompass a range of different visions for the role and purpose of legal education. This is to reflect that law schools, their staff and their students are likely to have a variety of aims and approaches. The constant within the LWP model is to achieve such visions in a way that intentionally promotes and supports positive wellbeing.

The Elements of LWP

This part discusses each element of the LWP model in turn, providing a rationale for their inclusion in the LWP model, together with an explanation of their possible applications. The core elements are shown visually in Figure 1.

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[89] For example, see John Hodgson, *Response: From Gavotte to Techno–But the Dance Goes On* in PERSPECTIVES ON LEGAL EDUCATION 196-206 (Chris Ashford, Nigel Duncan & Jessica Guth eds., 2015); William Twining, *Rethinking Legal Education,* 52(3) L. TEACH. 241 (2018).

[90] Rachael M. Field et al, LAWYERING AND POSITIVE PROFESSIONAL IDENTITIES (2nd ed. 2020).

[91] Emma Jones, EMOTIONS IN THE LAW SCHOOL: TRANSFORMING LEGAL EDUCATION THROUGH THE PASSIONS (2019).

Figure 1 – An outline of the LWP model

Circle of cognitive engagement

Circle of experiential engagement

Sphere of development:
Challenge and growth
- Developing legal knowledge and understanding
- Building skills and abilities
- Identifying and responding to potentially harmful approaches and norms
- Developing and applying individual criteria for success

Inter-connecting concept:
Values and ethics

Sphere of development:
Independence and meaning
- Identifying and understanding personal values
- Creating a personal legal identity
- Developing self-esteem and self-efficacy
- Being authentic

Staff and students

Inter-connecting concept:
Empathy

Inter-connecting concept:
Reflection

Sphere of development:
Connection and collaboration
- Reaching out for support
- Creating and fostering personal connections
- Collaborating well with others
- Contributing positively to the law school community

Circle of affective engagement

The centre of the LWP model

Law students and legal educators are at the conceptual centre of the LWP model, as indicated in Figure 1. A distinction has sometimes been drawn between 'teacher-centred' and 'student-centred' forms of education and

learning in a way that implies oppositionality and mutual incompatibility.[92] This binary perspective, when applied to wellbeing in higher education, ignores the integrated ways in which student wellbeing impacts upon educators and educator wellbeing impacts upon students. The two are inseparable and therefore it is vital that the LWP acknowledges both.[93] For example, dealing with a student who is facing challenging and/or traumatic circumstances can detrimentally impact an educator's wellbeing or, conversely, lead to a sense of reward or fulfilment where it results in a feeling of competence or relatedness.[94] For a student, having an educator who seems unenthusiastic or unhappy may lead to them feeling uncomfortable and detached from the subject they are learning. Conversely, an educator engaging positively with the principles and models of wellbeing can benefit from such knowledge in terms of their own wellbeing, as well as being able to enhance the learning experience of their students.[95]

This means that the references in Part I to promoting and supporting thriving and flourishing are intended to encompass the wellbeing of both students and staff. The challenge is to identify the specific point at which the needs and interests of both in terms of wellbeing are appropriately balanced and calibrated to avoid harmful impacts on either and to maximise benefits. This is certainly not easy. For example, spending time to understand and implement the LWP has an implication for staff in terms of both time and mental labour. These extra demands could potentially be detrimental to wellbeing. At the same time, the potential long-term benefits for students and staff are valuable, even necessary.

There is no single or simple solution to achieving the necessary balance. Rather, it is likely that individual law schools will have to engage with a continuous form of balancing act in terms of workload and wellbeing. The

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[92] Glynis Cousin, Neither Teacher-Centred nor Student-Centred: Threshold Concepts and Research Partnerships, 2 J. LEARNING DEV. HIGHER ED. 1759 (2010).

[93] Liz Brewster et al, *Look After the Staff and They Would Look After the Students' Cultures of Wellbeing and Mental Health in the University Setting,* 46(4) J. FURTHER & HIGHER ED. 548 (2022).

[94] Gareth Hughes et al, STUDENT MENTAL HEALTH: THE ROLE AND EXPERIENCES OF ACADEMICS. Student Minds < https://wwwstudentminds.org.uk/theroleofanacademic.html> accessed 24 Sep 2024 (2018).

[95] Nikki Bromberger, *Enhancing Law Student Learning – The Nurturing Teacher,* 20(1/2) LEGAL ED. REV. 45 (2010); Karen Aldrup et al, *Does Basic Need Satisfaction Mediate the Link Between Stress Exposure and Well-Being? A Diary Study Among Beginning Teachers,* 50 LEARN INSTR 21 (2017).

extent to which a balance is achieved will depend upon a number of diverse factors, including the level of resources which a law school is able and willing to channel into the work required to implement the LWP's pedagogic model. This, of course, will be a decision much influenced by the wider institutional setting in which the law school is situated. The literature on mental health services and support within universities notes that there is a need for 'effective, scalable interventions that are attractive to students'[96] and suggests that students are seeking:

> … a proactive and preventative mental health culture at university that would facilitate early identification and supportive pastoral staff–student relationships, alongside structural changes to existing academic, social, and financial risks to the mental health and well-being of the whole student community.[97]

However, there is also evidence that the marketized neoliberal environment of contemporary Western universities is one which can militate against the development of such a culture. The marketized, metric-driven environment in which students pay high tuition fees and face a highly competitive job marketplace imposes additional pressures upon the wellbeing of both students and staff.[98] There is also a continued tendency to individualise wellbeing issues, wrongly characterising poor wellbeing as a form of weakness or a demonstration of poor personal resilience or lack of effort.[99]

Despite such institutional constraints, individual legal educators, may be able to integrate parts of the model within the specific context of a law school and institution. This is not a case of 'all or nothing', the LWP or aspects of it, can be enacted and implemented in a gradual, incremental way if that is what the situation requires. Whilst the ideal is to have a sense of engagement and

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[96] June S. L. Brown, *Student Mental Health: Some Answers and More Questions,* 27(3) J. Ment. Health 193, 196 (2018).

[97] Michael Priestley et al, *Perspectives on Improving Mental Health Support Services at University*, 22 COUNS PSYCHOTHER RES. 1 (2022). This study was conducted in the UK context. For a global discussion, see Jason Bantjes et al, *Public Health Approaches to Promoting University Students' Mental Health: A Global Perspective,* 24(12) CURR. PSYCHIATRY REP. 809 (2022).

[98] Margaret Thornton, *Law Student Wellbeing: A Neoliberal Conundrum,* 58(2) AUST. UNIV. REV. 42 (2016).

[99] Louise J. Lawrence, REFIGURING UNIVERSITIES IN AN AGE OF NEOLIBERALISM: CREATING COMPASSIONATE CAMPUSES (2021).

ownership at all levels of a law school and beyond, there can be merit in taking smaller steps which validate the worth of the model to others as it develops incrementally. As Mahoney and Thelen state, '[g]radual changes can be of great significance in their own right; and gradually unfolding changes may be hugely consequential as causes of other outcomes'.[100]

Part of an incremental process for the development and acceptance of the LWP is likely to be challenging a focus on the short-term reform of legal education and encouraging a focus on sustainable long-term change. For example, time and resources spent on embedding wellbeing into the curriculum now could potentially lead to less retroactive responses to individual student problems being required at a later stage. An approach to wellbeing which proactively raises awareness and understanding and encourages engagement throughout the program could lead to fewer issues being left unidentified until a crisis arises.

Circles of intellectual engagement

The outlines of the three interlocking circles on the LWP model in Figure 1 represent the three forms of engagement which, we argue, are key to learning and teaching in law: cognitive engagement, experiential engagement and affective engagement. It should be noted at this point that all three 'types' of engagement are viewed as a form of intellectual endeavour. It is not the case that we are equating 'cognitive engagement' with academic pursuits and the others with less-intellectual aspects of legal education. What we are doing is challenging some of the traditional notions of what, within the legal academy, is sometimes characterised as 'intellectual', arguing that it has become both narrow and rigid in scope.

Perhaps the easiest target in terms of traditional notions of legal education is that of the doctrinal approach to law, with its focus on abstracting, analysing and applying key legal rules and principles. This has been heavily critiqued for its lack of acknowledgment of potential biases and subjectivities, its binary nature and lack of nuance, and its de-prioritisation of wider societal and

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[100] James Mahoney & Kathleen Thelen, *A Theory of Gradual Institutional Change* in EXPLAINING INSTITUTIONAL CHANGE. AMBIGUITY, AGENCY AND POWER 3 (J. Mahoney & K. Thelen eds., 2010).

contextual factors.[101] Indeed, there is evidence that much law teaching, even if avowedly doctrinal in nature, now avoids a purely doctrinal focus to waylay some of this criticism.[102] However, other approaches to legal education often demonstrate a similar rigidity when substituting their own definition of what constitutes the 'intellectual' study of law. For example, many proponents of liberal legal education reject or disregard the role of the affective domain within learning.[103]

It is worth noting here that we have not sought to distinguish between knowledge and skills within the LWP model. This is a deliberate choice, reflecting the reality of the need for law students to synthesise both knowledge and skills in their learning of law and legal practice. Without knowledge, there is nothing to apply the skills to. Without skills, learning is reduced to a behaviouristic form of memorising and regurgitating knowledge. In contrast, we subscribe to the opinion that more successful learning can be achieved when students 'learn by doing' and are 'actively involved in the discovery process'.[104] This could be seen as implying a sole focus on experiential forms of learning. However, at its broadest this form of doing can involve actions such as writing a summary of a judgment or completing a multiple-choice quiz on a legal topic.

Cognitive engagement

The left-hand circle of the LWP model diagram, that of 'cognitive engagement, fits most clearly into traditional notions of legal education. It encompasses the type of abilities and activities commonly associated with the cognitive domain section of Bloom et al's 'Taxonomy of Educational Objectives'.[105] This taxonomy captures a hierarchical approach to levels of thinking, from

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[101] For example, see Foluke Adebisi, *Should We Rethink the Purposes of the Law School? A Case for Decolonial Thought in Legal Pedagogy,* 2(3) AMIC. CURIAE 428 (2021).

[102] Vincent Kazmierski, *How Much "Law" in Legal Studies? Approaches to Teaching Legal Research and Doctrinal Analysis in a Legal Studies Program,* 29(3) CAN. J. LAW SOC. 297 (2014).

[103] Emma Jones, Incorporating an Affective Framework into Liberal Legal Education to Achieve the Development of a 'Better Person' and 'Good Citizen', 4(1) EUR. J. LEG. EDUC. 27 (2023).

[104] George M. Slavich & Philip G. Zimbardo, *Transformational Teaching: Theoretical Underpinnings, Basic Principles, and Core Methods,* 24 EDUC. PSYCHOL. REV. 569, 575 (2012).

[105] Benjamin S. Bloom et al, TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS. VOL. HANDBOOK I: COGNITIVE DOMAIN (1957).

knowledge and understanding through to synthesis and evaluation.[106] In the context of legal education, it is likely to cover aspects such as reading textbooks, journal articles and case judgments, taking notes, analysing legal rules and principles, applying them to scenarios and writing answers to essays and problem-style questions which critically analyse, discuss and evaluate specific propositions and problems. The taxonomy encompasses largely transmissional forms of delivery, such as lectures, as well as other modes of learning and teaching.[107] For example, in a law of obligations module, students may be introduced, via a lecture and textbook reading, to the doctrine of consideration within contract law. They may then be asked to apply the fundamental principles to legal scenarios. In a further lecture, or via journal articles, they may then move on to consider more challenging notions such as the principles surrounding past consideration and part payment of debts. They may then be required to answer an essay question asking them to discuss, critically analyse or critically evaluate a statement about the importance or role of consideration in the law of obligations.

Experiential engagement

The right-hand circle of the LWP model diagram, that of 'experiential engagement', is based on the idea of experiential learning. Experiential learning is commonly associated with the work of theorists such as Dewey[108] and Kolb.[109] It emphasizes and celebrates the role of practical experiences and applications of knowledge within learning, both curricular and extra-curricular.[110] That is not to say that an individual can wholly rely on their own experiences, there is a need for those experiences to be informed by knowledge and reflected upon to ensure that a subjective experience does not lead to biases and errors in judgement.[111] However, for the purposes of this model, the key is the way in which experiential learning acknowledges the validity and relevance of an individual's experiences and integrates them into learning. Although cognitive engagement will inevitably be shaped by such experiences,

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[106] Bloom et al, *supra* note 105.

[107] Alison Bone, *The Twenty-First Century Law Student,* 43(3) L. TEACH. 222 (2009).

[108] John Dewey, EXPERIENCE AND EDUCATION (1938).

[109] David A. Kolb, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT (2014).

[110] Jay Roberts, From the Editor: The Possibilities and Limitations of Experiential Learning Research in Higher Education, 41(2) J. EXP. EDUC. 3 (2018).

[111] Thomas Howard Morris, Experiential Learning - A Systematic Review and Revision of Kolb's Model, 28(2) INTERACT. LEARN. ENVIRON. 1064 (2020).

experiential engagement tends to leave such influences implicit or even ignore them. By including experiential engagement as a circle, our intention is to recognise that rejecting or disregarding such influences is inadequate, mirroring the aforementioned critiques of the doctrinal approach. Portraying knowledge as objective and not acknowledging the role of individual experience, can lead to both valuable experience-based insights and biases and subjectivities being ignored, disregarding the reality of the positionality of both staff and students.[112]

Within the context of existing approaches to legal education, it is clinical legal education (CLE) which appears to be the most common form of experiential engagement. Often CLE involves students interacting with real-world legal issues and real-life clients (or at least simulations of realistic scenarios) and then spending time reflecting on their experience. This has become increasingly recognised as a valuable part of legal education, with growing arguments for CLE to be 'mainstreamed' within law degrees.[113] The circle representing experiential engagement encompasses CLE, as well as experiential engagements within more traditional 'classroom' settings. However, it also represents the importance of experience more broadly. Namely, the notion of individuals being able to draw upon and voice their own experiences within all learning and teaching settings (with due acknowledgment of the unpaid labour this could potentially generate), and the need to explore the collective experiences of cohorts, groups and teams within legal education.

Affective engagement

The final circle, at the bottom of the LWP model diagram, represents affective engagement. This is perhaps the least-explored element of learning and teaching within legal education. The term 'affect' has been interpreted in numerous ways and can be viewed as separate from emotions.[114] However, for the purpose of the LWP model, the word 'affective' is used to encompass feelings, preferences, motivations, values and emotions. This broad definition

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[112] Donald Nicolson, *Legal Education, Ethics and Access to Justice: Forging Warriors for Justice in a Neo-Liberal World,* 22(1) INT'L J. LEGAL PROF. 51 (2015).

[113] Amy M. Brett, Melissa L. Smith & William G. Huitt, *Overview of the Affective Domain* in BECOMING A BRILLIANT STAR: TWELVE CORE IDEAS SUPPORTING HOLISTIC EDUCATION (83-104) (William G. Huitt ed., 2003).

[114] Lisa Feldman Barrett, HOW EMOTIONS ARE MADE: THE SECRET LIFE OF THE BRAIN (2018).

aligns with previous attempts to capture the contours of the word 'affective' within education. For example, Bloom's lesser-used taxonomy of the affective domain refers to the ways in which students begin to attach a value to knowledge, to enable them to synthesise such information into their worldview.[115]

It is arguably the role of emotions, which are key within this circle, to shape the ways in which information is retained and processed thus influencing reasoning, judgement and decision-making.[116] There is a bi-directional relationship between emotions and learning. That is, students' emotions will impact upon their learning, at the same time their learning impacts upon their emotions.[117] For example, one student may have been offered a vacation placement on a particular day, leading to them feeling happy, enthusiastic and engaged in their seminars. Conversely, another student may find the subject-matter of a particular case they are required to read upsetting and distressing, leading to them struggling to concentrate and finding the rest of the day challenging in terms of engaging with their learning.

Spheres of development

Each of the 'circles of engagement' in the LWP model contains a 'sphere of development'. For example, the circle of 'cognitive engagement' includes the sphere of 'challenge and growth'. It is important to emphasize that this is not meant to imply each sphere belongs solely within one circle of engagement. However, each sphere is situated within the circle where there is the greatest affinity. There will inevitably be some overlap and blurring and this should be seen as a positive aspect of the model, as we are avoiding trying to impose any form of 'one size fits all' representation of the LWP.

Challenge and growth

The notion of 'challenge and growth' is captured within the circle titled 'cognitive engagement' and relates to the idea of competence within SDT. As

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[115] David R. Krathwohl, Benjamin S. Bloom & Bertram B. Masia, TAXONOMY OF EDUCATIONAL OBJECTIVES. HANDBOOK II: AFFECTIVE DOMAIN (1956).
[116] Mary Helen Immordino Yang, EMOTIONS, LEARNING, AND THE BRAIN: EXPLORING THE EDUCATIONAL IMPLICATIONS OF AFFECTIVE NEUROSCIENCE (2015).
[117] Bromberger, *supra* note 95.

described previously, competence involves being able to act effectively.[118] In terms of legal studies, this is likely to involve students being able to complete their learning and assessments in an effective manner. What is meant by 'effective' in this context? We suggest that it refers to students being able to reach their full academic potential in a healthy manner – that is, in a way which does not impact detrimentally upon their mental health and wellbeing. This sphere of development seeks to identify and explore key elements involved in achieving this goal.

Developing legal knowledge and understanding

For law students, attaining legal knowledge and understanding will include being able to grasp potentially challenging legal topics and concepts, and being able to synthesise information and progress to analysing and evaluating it. In other words, the types of cognitive task discussed earlier when we explained the notion of 'cognitive engagement'.

It is important for the model to explicitly emphasize the role of 'challenge and growth' in cognitive engagement. One of the criticisms commonly levelled to critique the perceived 'therapeutic' or 'affective' turn of higher education is that it involves in some way infantilising students and 'diminishing the curriculum'.[119] The argument is that such an approach to higher education often focuses on building students' self-esteem by removing their sense of personal responsibility – 'encouraging the belief that many people are vulnerable, not very resilient and preoccupied with their self-esteem'.[120] This approach is viewed as reducing students' levels of autonomy because they become reliant on the support available and fail to develop their capacity for independent learning. It is argued that the richness of the curriculum is diminished or impoverished as a result of universities prioritising conformity and safety over challenge and uncertainty.[121]

By their very nature, the concepts of challenge and growth involve some level of development. They require a student to move outside their 'comfort zone'.

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[118] Krieger, *supra* note 49.
[119] Kathryn Ecclestone & Dennis Hayes, THE DANGEROUS RISE OF THERAPEUTIC EDUCATION (2009).
[120] Kathryn Ecclestone, *Learning or Therapy? The Demoralisation of Education,* 52(2) BR. J. EDUC. STUD. 112 (2004) 119.
[121] Frank Furedi, WHAT'S HAPPENED TO THE UNIVERSITY?: A SOCIOLOGICAL EXPLORATION OF ITS INFANTILISATION (2017).

This can feel stressful and provoke a sense of anxiety. However, evidence from neuroscience suggests that, within limits, such a response can assist with the learning process. This is not to suggest at all that chronic stress and anxiety is good for students. Indeed, we know that a sustained experience of stress can be highly detrimental - both personally and academically.[122] However, moderate levels of stress are acknowledged as necessary for motivation. Without any sense of stress we would have no incentive to get out of bed in the morning. Therefore, there is a level of stress (sometimes termed as 'challenge' or 'eustress') which is actually beneficial for individuals.[123]

The key for legal educators is to stretch and challenge students sufficiently for them to experience this optimal level of arousal and subsequent motivation, whilst at the same time avoiding generating negative experiences of chronic stress and anxiety. This balancing act can never be a perfect science – tolerance to stress will vary between individuals and will also be affected by a wide range of environmental factors. For example, a student who is struggling financially and is sharing cramped, noisy accommodation is understandably likely to have lower levels of resilience than a financially secure student living in a calm flat with dedicated study space and excellent facilities. The realities of higher education mean that individual students will have to navigate differing experiences. However, there are techniques that can help students with judging the right or optimal level of stress for them to experience motivation. For example, staff can support students in differentiating between 'essential' and 'additional' reading, encourage them to ask clarifying questions about the relevant marking rubric criteria, and signpost available wellbeing resources on lecture slides.

Building skills and abilities

A second aspect of 'challenge and growth' concerns individual students being able to recognise and develop their skills and abilities. Even within the academic sphere, this will encompass not only specific legal skills (such as reading and interpreting a case judgment) but also generic academic skills (such as note-taking and essay writing). Skill building by students also requires

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[122] Immordino Yang, *supra* note 116; Adele Bergin & Kenneth Pakenham, *Law Student Stress: Relationships Between Academic Demands, Social Isolation, Career Pressure, Study/Life Imbalance and Adjustment Outcomes in Law Students,* 22(3) PSYCH. PSYCHOL. LAW 388 (2015).

[123] Chris Gibbons, *Stress, Eustress and the National Student Survey,* 21(2) PSYCHOL. TEACH. REV. 86 (2015).

them (with the help of their educators) to appreciate the transferable nature of many of these skills within the law degree, between courses, and into diverse post-legal education professional contexts. For example, when reading a case judgment, students are developing skills of reading large quantities of complex text and extracting key information in a way that translates to tackling journal articles and books and dealing with detailed problem scenarios in examinations. When breaking down and examining a legal principle given in such a case, students are developing the type of analytical skills which can be applied across diverse areas of the law, in other disciplines, in empirical research and within professional workplaces.

Such an emphasis on skills and abilities within the LWP framework recognises that genuine cognitive engagement requires more than simply retaining and regurgitating legal information. It necessitates a form of active learning which in turn demands the developments of relevant skills and abilities. These 'metacognitive' skills enable students not only to understand their learning and thinking processes, but also then to utilise this understanding to regulate these processes in ways which optimise learning.[124] Given their importance, it is crucial that students are encouraged to also draw upon such skills to ensure they approach their studies in psychologically and emotionally healthy ways, factoring these considerations into the regulation of their learning and thinking processes. For example, a student reflecting upon their approach to formative feedback could also consider the psychological and emotional impact of the critique and how to regulate their responses to positive and negative feedback in future.

Traditionally, there are skillsets that have been under-valued or even ignored in legal education, in particular those involving so-called 'soft skills'.[125] These are skills which are less easy to categorise and master, often involving an affective element, such as empathy and emotional literacy.[126] The term 'soft skills' can be critiqued as diminishing the value of these vital skills which are

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[124] Cheryl B. Preston, Penée Wood Stewart & Louise R. Moulding, *Teaching Thinking Like a Lawyer: Metacognition and Law Students,* BYU. L. REV. 1053 (2014); Jennifer A. Gundlach & Jessica R. Santangelo, *Understanding the Metacognitive 'Space' and its Implications for Law Students' Learning,* 50(4) HOFSTRA L. REV. 3 (2022).

[125] Jessica Guth, *The Past and Future of Legal Skills Teaching* in KEY DIRECTIONS IN LEGAL EDUCATION: NATIONAL AND INTERNATIONAL PERSPECTIVES (Emma Jones & Fiona Cownie eds., 2020).

[126] Aspasia I. Tsaoussi, *Using Soft Skills Courses to Inspire Law Teachers: A New Methodology for a More Humanistic Legal Education,* 54(1) L. TEACH. 1 (2020).

essential across study and the workplace – indeed in life generally. The social and communication skills involved in collaboration and group work provide an example of such skills. These skills are necessary, for example, in preparing for a group presentation or moot. A lack of such skills can negatively impact the wellbeing of students who undertake these activities.[127] There is also the important ability to self-care.[128] For law students, this involves having healthy habits in place around nutrition and sleep, managing and organising their time, building in time for rest and relaxation and generally studying in a mentally, emotionally and physically healthy manner.

Identifying and responding to potentially harmful approaches and norms

The reference to self-care leads into the next element of 'challenge and growth', which is the need to be able to identify potentially harmful norms and approaches. This could be represented by a student who does not engage in self-care but instead spends a week prior to an assessment attempting to work twenty hours a day, snacking on junk food and caffeine-filled drinks and dropping all contact with friends and families to focus upon passing their assignment.

However, this element of the LWP framework also refers to some of the more insidiously, but no less potentially harmful, norms within legal studies which are shaped by the perceived culture and expectations of law. One key example within the UK (which is also found in many other countries including Australia) is a high level of academic competitiveness, including the notion that only a honours law degree has any real value.[129] Competitiveness at law school is fuelled, amongst other things, by the high demand for legal jobs and the recruitment requirements of many law firms that require a high class honours degree for successful applicants. Such an approach also perpetuates a rigid focus upon a traditional legal career route as the ultimate goal of law students and fails to acknowledge the wider value of a law degree and the

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[127] Emma Jones et al, *Student Wellbeing and Assessment in Higher Education: The Balancing Act,* 46(3) ASSESS. EVAL. HIGH. EDUC. 438 (2021).
[128] Christine E. Doucet, *Law Student, Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self-Care,* 23 J.L. & SOC. POL'Y. 136 (2014).
[129] See, in the US-context, Kreiger & Sheldon (2004), *supra* note 6. See also, Helen M Stallman, *A Qualitative Evaluation of Perceptions of the Role of Competition in the Success and Distress of Law Students,* 31(6) HIGH. EDUC. RES. DEV. (2012) 891-904.

potential for an extensive variety of careers both within the legal profession as well as external to law.

Another, often related, approach is one driven by a sense of perfectionism and a strong desire to achieve and be successful.[130] Of course, striving to do your best can be beneficial in legal studies. Aiming for success suggests a form of intrinsic (or at least internalised) motivation and can lead to high quality work and a sense of achievement. However, if a focus on being successful becomes too rigid it can also be detrimental to both wellbeing and the quality of study. It can lead to students setting themselves unattainable goals, ignoring smaller accomplishments, and internalising a sense of failure if they do not meet their self-imposed standards. This in turn can impact negatively on motivation and wellbeing and eventually lead to a student disengaging with their studies.[131]

The reference to 'responding to' such potentially harmful approaches and norms is important. It is possible for a student to be aware that their approach or a perspective they hold is unhealthy, but they may consciously or unconsciously opt to retain it. As legal educators, we can certainly encourage students to reflect upon such notions and approaches, we can suggest alternatives and model healthy behaviours. However, we cannot force students to change their behaviours and indeed many commentators would argue it is not part of our role to do so.[132] Therefore, we argue it is necessary to accept that we cannot compel students to embrace 'challenge and growth', but we can encourage students to make conscious and informed responses and choices.

Developing and applying individual criteria for success

The final element of 'challenge and growth' identified within the model requires each individual student to be able to develop and apply their own individual criteria for success. In other words, the type of intrinsic goals envisaged by Goal Content Theory.[133] This element suggests a student has the intellectual maturity and abilities of self-examination to critique external

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[130] Susan S. Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism,* 46(5) AM. U.L. REV. 1337 (1997).
[131] Bromberger, *supra* note 95.
[132] Anthony Bradney, CONVERSATIONS, CHOICES AND CHANCES: THE LIBERAL LAW SCHOOL IN THE TWENTY-FIRST CENTURY (2003); Stanley Fish, SAVE THE WORLD ON YOUR OWN TIME (2008).
[133] Edward L. Deci & Richard M. Ryan, INTRINSIC MOTIVATION AND SELF-DETERMINATION IN HUMAN BEHAVIOR (2013).

standards of success (such as the aforementioned honours law degree classification) and to decide whether or not these standards will be adopted as their own personal criteria. For example, in terms of academic success, a student may prioritise their experience of CLE over their study of traditional academic legal subjects. A student may seek to obtain a higher grade in a particular module because it aligns with their interests or future career plans. The key is that in doing so they have made a conscious and informed choice.

In some cases, a student may make the decision to prioritise their wellbeing over their grades, for example, limiting their study time to ensure they have time to engage with friends or to recover from a past trauma. They could choose to take time out, such as a leave of absence, or consider transferring programs or universities.

University study has close links to wider life choices, including career choices and destinations and geographic mobilities.[134] Therefore, it is probable that a law student will apply a similar critical lens to other aspects of their life, including work and personal aspects. For students with an interest in joining the legal profession, this is arguably particularly critical as it is well-documented that many legal professionals feel that, having 'succeeded' in obtaining a legal career, to step away, change direction or simply quit would constitute a form of personal failure.[135] Equipping students with the competence to devise and apply their own criteria could ameliorate the impacts of their exposure to potentially harmful cultural and structural norms within law.

Independence and meaning

The notions of 'independence and meaning' are captured in the LWP model within the circle of engagement titled 'experiential engagement'. Experiential engagement relates to the concept of autonomy within SDT. As described previously, autonomy involves an individual having the sense of being in control of their own fortunes – being able to make their own choices, decisions and judgements. As Ryan and Deci describe it, autonomy incapsulates '… a

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[134] See, in the UK-context, Walter W. McMahon & Moses Oketch, *Education's Effects on Individual Life Chances and on Development: An Overview,* 61(1) BR. J. EDUC. STUD. 79 (2013).

[135] Emma Jones et al, MENTAL HEALTH AND WELLBEING IN THE LEGAL PROFESSION (2020).

sense of initiative and ownership in one's actions'.[136] Within the law school context, autonomy support requires the creation of a learning environment in which students have a sense of freedom and independence, and an ability to appreciate the meaningful nature of their studies.

The structure of higher education, typically comprising standardised formats of programs, a reliance on learning outcomes, and detailed marking rubrics and assessment criteria,[137] together with the requirements imposed by legal regulators in a number of jurisdictions, may seem to militate against the notion of autonomy. However, there are still various ways to promote autonomy, even within these confines. For example, including students in the process of setting learning outcomes, allowing students to devise their own assessment and facilitating independent learning, as well as explicitly providing students with a meaningful rationale where choice is not possible. It is important that autonomy-supportive actions are done in a scaffolded, reassuring manner.[138] This sphere of development seeks to identify and explore key elements involved in achieving the goals of independence and meaning, thus promoting positive wellbeing.

Identifying and understanding personal values

The term 'personal values' refers to an individual's fundamental beliefs and attitudes which may (or will) influence their behaviours and choices.[139] Despite being traditionally overlooked within legal education, in recent years there has been a growth of interest in the role values play and their relationship with law student wellbeing.[140] As core influences upon an individual, it is necessary for a student to be able to identify and understand their personal values if they are to be able to achieve autonomy. For example, a student who remains strictly

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[136] Richard M. Ryan & Edward L. Deci, Intrinsic and Extrinsic Motivation from a Self-Determination Theory Perspective: Definitions, Theory, Practices, and Future Directions, 61 CONTEMP. EDUC. PSYCHOL. 101860 (2020), 101860.

[137] Bone, *supra* note 107.

[138] Niemiec & Ryan, supra note 66, 139; Anna Huggins, Autonomy Supportive Curriculum Design: A Salient Factor in Promoting Law Students' Wellbeing, 35(3) UNSW. L.J. 683 (2012).

[139] Kellum A. Gamage, D. M. S. C. P. K. Dehideniya & Sakunthala Ekanayake, *The Role of Personal Values in Learning Approaches and Student Achievements,* 11(7) BEHAV. SCI. 102 (2021).

[140] Vivian Holmes et al, *Practising Professionalism: Observations from an Empirical Study of New Australian Lawyers,* 15(1) LEG. ETH. 29 (2012); Graham Ferris, USES OF VALUES IN LEGAL EDUCATION, Intersentia, (2014).

adherent to the values of their parents without questioning this allegiance will simply apply those values even if offered situations where they could make different, equally valid choices. This could include deciding to study law and pursue a legal career, despite having a stronger interest in another discipline. Similarly, personal values are key to providing meaning. For example, if a student believes strongly in social justice, they are likely to be engaged with legal topics which align with that value (such as family law).

Therefore, for a student to be independent and understand what has meaning to them, they need to be cognisant of their personal values. Without this awareness, they are more likely to conform to dominant values and norms within their environment (such as needing to obtain a high-class honours degree or having to revise 24/7) without being equipped to discern whether these things are congruent with their own personal beliefs. Identifying and understanding personal values aligns with the Goal Content Theory aspect of SDT which emphasizes the link between intrinsic goals and autonomous motivation.[141] Understanding, and following, their own values will enable students to formulate goals which are congruent with those values and stimulate motivation to achieve those goals.

<u>Creating a personal legal identity</u>

Once a student has identified their personal values, those values form a part of their wider identity as a law student and (potentially) as a legal professional going forward. We have chosen to term this as a 'legal' rather than 'professional' identity here to avoid an assumption that all students' identity formation is predicated upon a desire to enter the legal profession, and to recognise the problematic connotations of current professional identity formation within law.[142] There is evidence that, at present, both the process of legal education and the process of entering the legal profession can contribute to the formation of a form of professional identity which is potentially harmful to wellbeing.[143] This harm relates partly to traditional forms of professional identity within the legal profession which function to exclude so-called 'outsiders', often on the grounds of class, gender and ethnicity, but it also

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[141] Deci & Ryan, *supra* note 133.

[142] Aric Short, *Putting the Lawyer First: Framing Well-Being in Law as an Ethical Dilemma,* 75(5) MERCER L. REV. 1409 (2023); Jones et al, *supra* note135, Chapter 2.

[143] For example, see Kathryne M. Young, Understanding the Social and Cognitive Process in Law School that Creates Unhealthy Lawyers, 89(6) FORDHAM L. REV. 2575 (2020).

relates to the ways in which forms of exclusion have frequently been reproduced within contemporary characterisations of law.[144] To succeed, aspiring legal professionals may think that they have to adopt a professional identity which conflicts with their personal identity, leading to a potentially harmful sense of dissonance.[145] There is also evidence that part of a 'typical' professional identity within law is the need for individuals to portray themselves as strong and invulnerable to enable them to succeed, resulting in the perception of wellbeing issues as a form of weakness and vulnerability.[146] Such an attitude perpetuates shame and stigma in response to mental health and wellbeing issues and negatively influences help-seeking behaviours amongst law students and legal professionals alike.[147]

In contrast, forming a positive legal identity, one which prioritises wellbeing and enables personal values to be operationalised, will have long-term benefits.[148] Such an identity can have a protective function in enabling law students (and lawyers) to withstand potentially harmful norms and influences within the law. It can also lead to such individuals modelling healthy behaviours relating to wellbeing in a way that encourages their peers to do the same, challenging stigma, encouraging inclusive communities and acting as a lever for wider cultural change. Once again, links with Goal Content Theory become apparent, allowing for a congruence between values, goals and identity.[149]

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[144] For example, see Hilary Sommerlad, 'A Pit to Put Women In": Professionalism, Work Intensification, Sexualisation and Work–Life Balance in the Legal Profession in England and Wales, 23(1) INT'L J. LEGAL PROF. 61 (2016); Lydia Bleasdale & Andrew Francis, Great Expectations: Millennial Lawyers and the Structures of Contemporary Legal Practice, 40(3) J. LEG. STUD. 376 (2020); Swethaa S. Ballakrishnen, Rethinking Inclusion: Ideal Minorities, Inclusion Cultures, and Identity Capitals in the Legal Profession, 48(4) L. & SOC. INQUIRY 1157 (2023).

[145] Hilary Sommerlad, *Researching and Theorizing the Processes of Professional Identity Formation,* 34(2) J. L. SOC. 190 (2007).

[146] Jones et al, *supra* note 135.

[147] Joan Bibelhausen, Katherine M. Bender & Rachael Barrett, *Reducing the Stigma: The Deadly Effect of Untreated Mental Illness and New Strategies for Changing Outcomes in Law Students,* 41(3) WM. MITCHELL L. REV. 918 (2015).

[148] Rachael M. Field, James Duffy & Anna Huggins, LAWYERING AND POSITIVE PROFESSIONAL IDENTITIES (2nd ed., 2020).

[149] Deci & Ryan, *supra* note 133.

Developing self-esteem and self-efficacy

Drawing on a firm foundation of personal values and a positive legal identity equips students with the tools to develop a healthy and stable sense of self-esteem – or in other words, a positive view of themselves and their value.[150] The importance of self-esteem within education generally has been widely debated.[151] However, there is a strong argument that a form of 'justified domain-specific self-esteem', is valuable.[152] Supporting the development of self-esteem in law students requires legal educators to assist students to:

1.   set themselves worthwhile… goals…

2.   estimate their achievements correctly, and

3.   experience proper satisfaction with their achievements.[153]

While self-esteem is generally important to both wellbeing and academic learning in terms of both confidence and motivation, in relation to law students, its inclusion also has several specific benefits. One of these benefits is its potential to challenge 'imposter syndrome' or 'imposter phenomenon'. This syndrome involves an unjustified 'internal feeling of distrust in one's own abilities and accomplishments along with the fear of being exposed as an "imposter"'.[154] Such feelings can be particularly strong for law students whose voices are less well-represented in law, as, for example, is the case for Indigenous law students in Australia.[155] Developing a positive sense of self-esteem can ameliorate this sense of being an imposter by providing an individual with a realistic and accurate perception of their own worth.

Another benefit of promoting self-esteem relates to the connections that exist between these notions and resilience. The term 'resilience' is frequently used in narratives around wellbeing within law, particularly in relation to the legal profession. The term has been criticised as a way of individualising wellbeing

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[150] Matt Ferkany, *The Educational Importance of Self-Esteem,* 42(1) J. PHILOS. EDUC. 119 (2008).

[151] Ecclestone & Hayes, *supra* note 119.

[152] Kristján Kristjánsson, *Justified Self-Esteem,* 41(2) J. PHILOS. EDUC. 247 (2007), 247.

[153] Kristjánsson, *supra* note 152, 258

[154] Janet Thompson Jackson, *Wellbeing and Law: Reforming Legal Education to Support Student Wellbeing* 65(1) HOW. L.J. 45 (2021), 79.

[155] Melanie Schwartz, *Retaining our Best: Imposter Syndrome, Cultural Safety, Complex Lives and Indigenous Student Experiences of Law School,* 28(2) LEGAL ED. REV. 1 (2018).

issues, placing the onus on individual students to improve their resilience, rather than focusing on addressing the underlying cultural and structural issues within the profession that impact negatively upon mental health.[156] At the same time, the importance of being able to adapt to, and recover from, challenges and setbacks is valuable for both law students and lawyers. For example, a student receiving a lower grade than expected on an assignment will need the ability to reflect on their feedback and to motivate themselves to draw upon this experience to prepare subsequent assignments. Therefore, the inclusion of self-esteem recognises that this is a powerful tool in fostering resilience, without skewing the model to potentially harmful misapplications of the notion of resilience.[157]

Self-esteem is key to law students in terms of self-worth, but a sense of self-efficacy is also vital.[158] Self-efficacy refers to an individual's sense of being able to 'produce and to regulate events in their lives'.[159] It aligns well with Dweck's notion of a 'growth mindset' which posits that students perform better when they view their intellectual capacity as something which can be developed, rather than as 'fixed' and unchanging.[160] Where law students do not experience a sense of self-efficacy, they are less well-equipped to navigate academic challenges and may abandon their efforts, due to a lack of effort and persistence.[161] Higher levels of self-efficacy promote the adoption of adaptive coping strategies and better wellbeing, whereas lower levels can be predictors of increased depression and anxiety.[162]

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[156] Richard Collier, *Wellbeing in the Legal Profession: Reflections on Recent Developments (Or, What Do We Talk About, When We Talk About Wellbeing?),* 23(1) INT'L J. LEGAL PROF. 41 (2016).

[157] David Miller & Brigid Daniel, *Competent to Cope, Worthy of Happiness? How the Duality of Self-Esteem Can Inform a Resilience-Based Classroom Environment,* 28(5) SCH. PSYCHOL. INT. 605 (2007).

[158] Leah M Christensen, *Enhancing Law School Success: A Study of Goal Orientations, Academic Achievement and the Declining Self-Efficacy of Our Law Students,* 33 L. & PSYCHOL. REV. 57 (2009).

[159] Albert Bandura, *Self-Efficacy Mechanism in Human Agency,* 37(2) AM. PSYCHOL. 122 (1982), 122.

[160] Carol Dweck, *Carol Dweck Revisits the Growth Mindset,* 35(5) EDUC. WEEK 20 (2015).

[161] Jason S. Palmer, *The Millennials are Coming: Improving Self-Efficacy in Law Students Through Universal Design in Learning,* 63(3) CLEV. ST. L. REV. 675 (2014).

[162] Carlos Freire et al, *Eudaimonic Well-Being and Coping with Stress in University Students: The Mediating/Moderating Role of Self-Efficacy,* 16(1) INT'L. J. ENVIRON. RES. PUB. HEALTH 48.

Being authentic

To be authentic is to feel and act in a manner which is congruent with your personal values.[163] Authenticity suggests being your own person, having the ability to be independent and to understand what you find meaningful and why. For a law student, this can take many forms, from choosing modules of study which align with their personal beliefs, to challenging materials they find inappropriate or biased, to deciding upon a career path which reflects their convictions most closely.

It should be noted that there can be pitfalls with the notion of authenticity – as it can be used as a way to demand emotional labour from individuals.[164] This is reflected in the neo-liberal notion of 'bringing your whole self to work'.[165] We cannot require a student to 'bring their whole self' to the classroom or campus if that is framed as requiring them to share experiences for the benefit of others, involving them in the type of unpaid labour referred to previously. Therefore, as educators we have a responsibility to ensure that authenticity is encouraged but not exploited, including by demonstrating how and when to set such boundaries. Doing so will enable students to retain their authenticity in a manner which is healthy whilst avoiding forms of cognitive dissonance.

Connection and collaboration

Connection and collaboration are captured within the circle titled 'affective engagement'. They are associated with the notion of relatedness within SDT. As described earlier, relatedness involves a sense of belonging – '… the desire to feel connected to others - to love and care, and to be loved and cared for'.[166] This description clearly demonstrates the relevance of affect to relatedness – it is the experience of specific emotions and feelings which lead to a sense of belonging and a positive experience of connection and collaboration. This circle acknowledges that '… learning is embedded in the emotional life of learners, a relational experience that gives rise to identification with peers,

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[163] Mikko Salmela, *What is Emotional Authenticity?*, 35(3) J. THEORY SOC. BEHAV. 209 (2005); Charles Guignon, *Authenticity*, 3(2) PHILOS. COMPASS 277 (2008), 278; David W. Lehman et al, *Authenticity,* 13(1) ACAD. MANAG. ANN. 1 (2019), 1.
[164] Arlie Russell Hochschild, THE MANAGED HEART: THE COMMERCIALIZATION OF HUMAN FEELING (1983).
[165] Lehman et al, *supra* note 163, 5.
[166] Ryan & Deci (2000), *supra* note 1, 231.

tutors and the subject discipline'.[167] This sphere of development seeks to identify and explore key elements involved in achieving the embedding of learning in students' emotional lives.

Reaching out for support

At a basic level, for connections to be possible, it is usually necessary for individual students to be able to reach out. In the context of legal studies, this is likely to involve a student explaining to people in student support roles what help and support they need and why. Reaching out in this way might involve a student contacting their tutor or module convenor, a fellow student or central university support services for assistance and support. The assistance requested could be specifically about academic support with issues like essay writing, finding, reading and understanding journal articles or clarifying understanding of a specific legal concept. It could be about broader issues with both academic and pastoral implications, such as time management and diary organisation. It could also be about managing a specific wellbeing-related issue such as a bereavement in the family.

The process of reaching out requires a student to be able to identify and voice their need for connection and support. It therefore requires a sense of psychological safety which allows them to feel secure in doing this.[168] For example, if a student feels that reaching out for academic support with an assessment task may lessen a tutor's opinion of them and, in turn, may have a negative impact upon the evaluation of the student's work, the student could be less likely to reach out for assistance. Consequences such as these emphasize the need for academic staff to foster inclusive and safe learning environments.[169]

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[167] Mark Murphy & Tony Brown, *Learning as Relational: Intersubjectivity and Pedagogy in Higher Education,* 31(5) INT. J. LIFELONG EDUC. 643 (2012), 645.

[168] Amy C. Edmondson & Zhike Lei, *Psychological Safety: The History, Renaissance, and Future of an Interpersonal Construct,* 1(1) ANNU. REV. ORGAN. PSYCHOL. ORGAN. BEHAV. 23 (2014).

[169] Adelaide H. McClintock, Tyra L. Fainstad & Joshua Jauregui, *Creating Psychological Safety in the Learning Environment: Straightforward Answers to a Longstanding Challenge,* 96(11S) ACAD. MED. S208 (2021).

Creating and fostering personal connections

The notion of reaching out for help relates to getting assistance with managing quite specific issues or situations. However, on a broader level, creating general connections is also important for wellbeing. For law students, a lack of social connectedness has been identified as a contributor to lower levels of wellbeing and higher levels of mental health problems.[170] The competitive nature of law, with students striving to attain one of a limited number of roles within the legal profession, can lead to a disregard for connectedness. Students may focus on their academic success at the expense of time and communication with family, friends and others which can lead to a sense of isolation and a lack of support networks, detrimentally impacting upon wellbeing. A clear indication of the importance of such connectedness became evident during the Covid-19 global pandemic when the 'online pivot' that was required within higher education across many countries led to students experiencing a lack of relatedness, leading to negative psychological impacts.[171]

For legal educators, there is a need to encourage connection within learning and teaching. Fostering connection between law students in learning and teaching environments can take many forms, from a whole module revolving around a piece of groupwork, to smaller adjustments within individual lectures and seminars. For example, holding an informal 'meet the team' event at the start of a module, having 'pauses' within lectures where students can discuss a question or topic with their neighbours, and allowing time in seminars for interaction and discussion. Ensuring students have your contact details, know how and when they can contact you and what to expect in terms of wait times for responses is also an important part of this. Facilitating connections can also be about fostering a wider sense of community within the law school, for example, via staff-student social events and inclusive student societies.

Connections between students can arise via groupwork, however, this is not always the case. Fostering connectedness can also be about one-to-one connections, such as via a mentoring or 'buddy' scheme or through the

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[170] Tani & Vines, *supra* note 8; Bergin & Pakenham, *supra* note 122; Michael Fay & Yvonne Skipper, *'I Was Able to Ask for Help When I Became Stressed Rather Than Sitting Alone and Struggling': Psychology and Law Students' Views of the Impact of Identity and Community on Mental Wellbeing,* 56(1) L. TEACH. 20 (2022).

[171] For example, see Timon Elmer, Keiron Mepham & Christoph Stadtfeld, *Students Under Lockdown: Comparisons of Students' Social Networks and Mental Health Before and During the COVID-19 Crisis in Switzerland,* 15(7) PLOS ONE e0236337 (2020).

allocation of a 'personal tutor' to each student (this is standard practice within the UK but is not, for example, in Australia or the USA). Individual connections such as these can provide valuable academic support, allowing more open dialogue and a sense of relationality which promotes both psychological safety, self-recognition and understanding and self-confidence.[172]

<u>Collaborating well with others</u>

The notion of collaborating well with others is one that could refer to groupwork situations or one-to-one engagements. The importance of such collaboration is widely recognised within legal education (for example, in the UK Quality Assurance Agency's Subject Benchmark Statement for Law and in Australia in the Threshold Learning Outcomes for Law).[173] Recognition of the importance of collaboration at law school is partly due to the recognition of its importance within the legal profession, both in terms of working in teams and as a vital element in forms of non-judicial dispute resolution.[174] It is also partly due to the relevance of collaboration in all areas of life, from non-legal careers to voluntary roles and interacting with family and friends.

However, positive collaboration requires enacting and managing a challenging blend of interpersonal skills which have not traditionally been emphasized or explicitly taught within the law curriculum.[175] Achieving positive collaboration can also present specific challenges for neurodivergent students or for students who have a diagnosed mental health condition (such as social anxiety). There is therefore a need for legal educators to explicitly acknowledge and address issues with collaboration by specifically teaching collaborative methods and techniques through a 'wellbeing' lens.[176] This can range from asking teams in group work settings to set 'ground rules' and draw up a 'constitution' or group contract; to including specific exercises to promote 'bonding' and thinking carefully about the allocation of students to groups; to evaluating the physical

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[172] Murphy & Brown, *supra* note 167.

[173] Quality Assurance Agency, SUBJECT BENCHMARK STATEMENT LAW (March 2023) <https://www.qaa.ac.uk/docs/qaa/sbs/sbs-law-23.pdf?sfvrsn=c271a881_6> accessed 4 Oct 2024, section 3.4; Kift et al, *supra* note 62.

[174] Anne Ardagh & Guy Cumes, *The Legal Profession Post-ADR: From Mediation to Collaborative Law,* 18(4) AUST DR. J. 205 (2007); Greg Rooney, *The Value of Mediator Soft Skills to Modern Commercial Practice,* 6(1) J. MEDIATION APPL. CONFL. ANAL. 781 (2019).

[175] Guth, *supra* note125.

[176] Jones et al, *supra* note 127.

spaces and layouts being used as to their efficacy for collaborative learning contexts; to implementing forms of problem-based learning. More broadly, legal educators need to consider how they are scaffolding collaboration, both across a module and across a program and ensure that they are equipping students to work together in healthy and effective ways.

Contributing positively to the law school community

Connection and collaboration are integral aspects of living, working and studying within communities (and within society more generally). In the context of legal education, there is a growing body of work which emphasizes the need for law students to be equipped to contribute to such communities and society generally in positive and constructive ways. For example, Nicolson argues that legal education should foster 'activists for justice',[177] whilst Brownsword refers to 'intelligent participation in the politico-legal life of the community'.[178] Similarly, Burridge and Webb refer to 'rational participants in the life of the community' whilst highlighting some of the complexities which emerge when trying to identify whether the focus should be on developing students as 'better people' or 'good citizens' and what each of those aspirations might entail.[179] In this context, significant questions arise in relation to whether legal educators should seek to instil specific values (such as a commitment to social justice), or instead equip students to make reasoned choices and take responsibility for those decisions, whatever they may be.[180] Rather than attempt to be prescriptive about such notions, the LWP model focuses instead upon the students' experience of community within the law school, as a community of practice that includes both students and staff.

We suggest that within the law school, when considering notions of community and citizenship through a 'wellbeing' lens, it is possible for legal educators to identify certain values and qualities which will enhance student (and staff) wellbeing. These include inclusivity, respect and empathy - in essence, the counter-values and qualities to those which have been identified as pervasive

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[177] Donald Nicolson, *Legal Education, Ethics and Access to Justice: Forging Warriors for Justice in a Neo-Liberal World,* 22(1) INT'L. J. LEGAL PROF. 51 (2015), 64.

[178] Roger Brownsword, *Law Schools for Lawyers, Citizens, and People* in THE LAW SCHOOL - GLOBAL ISSUES, LOCAL QUESTIONS (Fiona Cownie ed., 1999), 29.

[179] Roger Burridge & Julian Webb, *The Values of Common Law Legal Education Reprised,* 42(3) L. TEACH. 263 (2008), 264.

[180] Anthony Bradney, *Elite Values in Twenty-First Century, United Kingdom Law Schools,* 42(3) L. TEACH. 291 (2008).

and potentially harmful within legal education and the legal profession, such as the level of competitiveness, the individualistic and adversarial modes of thinking and the disregard for the affective domain.[181] Achieving a positive shift in focus requires legal educators to discern, unpack and challenge the hidden messages and norms within the law curriculum and actively seek to instil different viewpoints. There may be variations in these between law schools and jurisdictions.

Some members of the legal academy might, of course, argue that doing so will not prepare law students for entry to the legal profession, where the realities of legal practice can be harsh and uncompromising.[182] However, even if it were to be accepted that a law degree should focus upon vocational preparation, there is a strong argument that the legal profession of the future requires a different set of skills and competencies which are best served by different approaches to legal education.[183] Fostering emotional resilience and preparedness for working life should not be equated with a particular response to a difficult and detrimental law school experience. Instead, fostering emotional resilience should be considered through the lens of supporting students to thrive and develop in a way which enables them to contribute positively to the law school community.

Fostering emotional resilience is, in turn, likely to equip law students to be better citizens in society more broadly. Such resilience is associated with the skills, attitudes and actions that facilitate communities which are psychologically and emotionally healthy for individuals and for the wider group as a whole. It also gives students the tools to critically reflect upon notions of community and citizenship. For legal educators, supporting the development of notions of community and citizenship requires a two-part approach. First, law teachers must act as role models by demonstrating healthy behaviours within the law school community setting and by devising teaching approaches which actively foster the creation of community.[184] Second, law

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[181] For example, see Townes O'Brien, *supra* note 4.
[182] Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession,* 44(1) CAL. W. L. REV. 219 (2007); Jones et al, *supra* note 135.
[183] Susan S. Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law,* 52(3) SANTA CLARA L. REV. 795 (2012).
[184] Ann Juergens, *Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching,* 11(2) CLINICAL L. REV. 413 (2004).

teachers must ensure the curriculum includes open dialogue around notions of citizenship and the types of decisions and choices that positive responses to the duties and obligations of citizenship can entail. On a micro-level, psychologically attuned interventions can be used to promote psychological safety and to facilitate a sense of belonging.[185]

Inter-connecting concepts

The LWP model has three inter-connecting concepts – 'values and ethics', 'reflection' and 'empathy'. Each of these are positioned between the two 'circles of engagement' where they are arguably most relevant within legal education. However, they also inter-connect on occasion with the remaining 'circle of engagement'. As such, it is likely that, to some extent at least, the LWP requires that the three inter-connecting concepts will be inter-woven across the curriculum and throughout the pedagogical approaches adopted.

However, part of the value of locating each inter-connecting concept at specific points within the LWP model diagram is to ensure that they are not simply inter-woven in a way that is opaque or invisible to students (or staff). Instead, there is a need to both synthesise and integrate relevant topics, but also to explicitly explore each of these concepts as important parts of the curriculum in their own right. It is important that this is done in a way which enhances recognition of their presence and value and equips students with the vocabulary to discuss, explore and apply these concepts fully, challenging law schools' traditional focus on language which can be narrow and rigid.[186]

Values and ethics

The inter-connecting concept of 'values and ethics' sits between 'challenge and growth' and 'independence and meaning' because it acts as a key concept in both. Values are explicitly referred to under 'independence and meaning' as the foundation of a student becoming independent and understanding what has meaning to them. Values are also integral to the other elements of this circle of engagement. A student cannot develop their own views, ideas and opinions and

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[185] Victor D. Quintanilla & Sam Erman, *Mindsets in Legal Education,* 69(2) J. LEGAL EDUC. 412 (2020).
[186] Deborah L. Rhode, *Ethics by the Pervasive Method,* 42(1) J. LEGAL EDUC. 31 (1992); Elizabeth Mertz, THE LANGUAGE OF LAW SCHOOL: LEARNING TO 'THINK LIKE A LAWYER' (2007).

identify what is meaningful to them unless they understand the underpinning values and ethics involved.

In relation to 'challenge and growth' there are several ways in which 'values and ethics' interact with them. One of these is in a purely intellectual sense. The study of law requires students to consider the myriad ethical issues which arise within the discipline of law. For example, should the death penalty be applied in criminal cases? Where should the balance lie between freedom of expression and privacy? Should freedom of contract be prioritised over consumer protection? Can judges be replaced by robots? There is also an increasing emphasis upon professional ethics as part of vocational legal education and training, with students being required to have a sound knowledge and understanding of the type of ethical dilemmas which may arise within practice.[187]

Another interaction between 'values and ethics' and 'challenge and growth' is more implicit. It focuses on the sometimes hidden or obscured role of values and ethics within law. This relates to the interaction between law and the political and philosophical domains, and the ways in which laws are influenced by (and can also influence) societal values and ethics. For example, the evolution of laws around sexuality in many jurisdictions over the past one hundred years. Examining these interactions assists students in understanding not just substantive legal topics, but also the importance of values and ethics and their relevance at both individual and societal levels.[188]

Reflection

The inter-connecting concept of 'reflection' sits between 'independence and meaning' and 'connection and collaboration'. The importance of reflection is perhaps most immediately obvious in relation to 'experiential engagement', with Kolb's experiential learning cycle requiring individuals to reflect upon an experience before using that reflection to learn from it and adjust their behaviour or reactions to similar experiences accordingly.[189] However, reflection is also important with regard to 'affective engagement'. To be able

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[187] For a range of discussions on ethics in legal education see Michael Robertson et al, THE ETHICS PROJECT IN LEGAL EDUCATION (2011).

[188] For example see Rosemary Hunter, Clare McGlynn & Erika Rackley (eds.), FEMINIST JUDGMENTS: FROM THEORY TO PRACTICE (2010); THE QUEER JUDGMENTS PROJECT < https://www.queerjudgments.org/> accessed 14 Oct 2024.

[189] Kolb, *supra* note 109.

to identify, understand, interpret and incorporate emotions and affect within a student's studies (and life more broadly), it is necessary for them to reflect upon affective experiences and learn from them.[190] Reflective practice is required in both situations of experiential and affective engagement. In other words, reflective practice is a positive cognitive process that can be used by law students to support their learning and life success at law school through strategically and thoughtfully identifying gaps between existing knowledge, skills and attitudes, and those aspects of knowledge, skills and attitudes that they want to gain.

The importance of reflection within higher education learning and teaching more generally is well-established, leading to its use in a wide variety of ways.[191] There has also been an increasing acknowledgment of the importance of reflection within legal education, often stemming from work done in CLE and a desire to develop law students' professional attributes.[192] For example, Roebuck et al incorporated reflection with their first-year undergraduate law students as both a learning activity and a means of assessment. This was done with the aims of enhancing students' written communication skills and scaffolding their development of 'critical literacy skills'.[193] Reflective practice enables law students to engage more fully and deeply with topics, increasing their intrinsic motivation.[194] It equips them with the tools to think about broader issues within law (and, indeed, the very place of law in society). It also enables them to ascertain and explore their own values and ethics (as required by 'independence and meaning' discussed above) and their place within the community (as required by 'connection and collaboration' also discussed above). Reflective practice also has links to 'challenge and growth', facilitating

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[190] Gobinder Singh Gill, *The Nature of Reflective Practice and Emotional Intelligence in Tutorial Settings,* 3(1) J. EDUC. & LEARN. 86 (2014).

[191] Laura Van Beveren et al, *We All Reflect, But Why? A Systematic Review of the Purposes of Reflection in Higher Education in Social and Behavioral Sciences,* 24(1) EDUC. RES. REV. (2018).

[192] Michele M. Leering, *Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism,* 95(1) CAN. B. REV. 47 (2017). See also, Michele M. Leering, *Conceptualizing Reflective Practice for Legal Professionals*, J. L. & SOC. POL'Y 23 (2014); Michele M. Leering, *Perils, Pitfalls and Possibilities: Introducing Reflective Practice Effectively in Legal Education*, 53(4) L. TEACH. 431 (2019).

[193] Joanne Roebuck, Lisa Westcott & Dominique Thiriet, *Reflective Narratives: A Useful Learning Activity and Assessment for First Year Law Students*, 41(1) L. TEACH. 37 (2007), 40.

[194] Deci & Ryan (2000), *supra* note 1.

insights into skills and abilities (not least of which is the importance of self-care).

There is also an important role for reflection within learning and teaching for educators themselves. For example, Spencer discusses her changes in approach to more introverted students following her reflection upon their experience.[195]

There are many different types and models of reflection which legal educators can draw upon (see, for example, Schön's seminal approach).[196] There are also many different ways in which reflection can be incorporated into the legal curriculum, from individual portfolios to group reflection in activities, to reflection prompted by a reading or a film or other source material. However, the key is to ensure that reflection is not treated as the 'poorer relation' of more traditional forms of learning and teaching tasks, with its importance being emphasized throughout programs of legal studies.

Empathy

The concept of empathy can be defined in many different ways, but it involves both cognitive and affective elements. In other words, empathy not only involves putting yourself in someone else's shoes by thinking about how they would feel (sometimes referred to as cognitive perspective-taking), it is also about experiencing an affective response to someone else's plight.[197] In some ways, the common notion associated with empathy of 'putting yourself in someone else's shoes' is misleading, because a key component of empathy is the continued understanding that it is not 'your' experience, instead, you are imagining the thoughts, emotions and experiences of another.[198]

In the LWP model, empathy sits between 'connection and collaboration' and 'challenge and growth'. Empathy is linked to 'connection and collaboration' because of its affective elements, without which it can become a passive,

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[195] Rachel Spencer, *'Hell is Other People': Rethinking the Socratic Method for Quiet Law Students,* 56(1) L. TEACH. 90 (2022).

[196] Donald A. Schön, THE REFLECTIVE PRACTITIONER. HOW PROFESSIONALS THINK IN ACTION (1991).

[197] Amy Coplan, *Understanding Empathy: Its Features and Effects* in EMPATHY: PHILOSOPHICAL AND PSYCHOLOGICAL PERSPECTIVES (Amy Coplan & Peter Goldie eds., 2011).

[198] Coplan, *supra* note 197.

instrumental activity.[199] It relates to 'challenge and growth' because of its cognitive aspects, which separate it from more basic forms of emotional contagion and sympathy. Without a cognitive element it is not possible to retain a sense of separation from the experience of another which characterizes empathy. By combining both cognitive and affective elements, fostering empathy can form a type of bridge or pathway between the two, demonstrating their wider links and inter-connectedness.[200]

There is evidence that empathy can be taught and learnt as a set of skills.[201] Indeed, empathy forms a well-established part of medical education and there have been increasing efforts to integrate it into legal education. For example, Rosenberg, in the US context, discusses the success of a course titled 'Interpersonal Dynamics for Lawyers' designed to develop students' empathy. The development of students' empathy in that course involved the use of frequent small group work, where strict boundaries were set around confidentiality to promote open communication and encourage facilitators to model appropriate behaviours. Rosenberg also notes that his original motivation for introducing this class was to assist students in achieving their own goals through the use of affective behaviours, such as empathy, demonstrating the link to 'challenge and growth'.[202]

As with reflection, there has been a tendency for the introduction of empathy into law school programs to focus upon CLE and professional skills. However, again, reflection also has a much wider value, for example, in encouraging students to challenge potentially damaging forms of adversarialism, foster co-operation and have greater insight into the experiences of others (such as the

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[199] Peter Margulies, *Reframing Empathy in Clinical Legal Education,* 5(2) CLIN. L. REV. 605 (1999); Jennifer Gerarda Brown, *Deeply Contacting the Inner World of Another: Practicing Empathy in Values-Based Negotiation Role Plays,* 39 WASH. U.J.L. & POL'Y 189 (2012).

[200] Chalen Westaby & Emma Jones, *Empathy: An Essential Element of Legal Practice or 'Never the Twain Shall Meet'?,* 25(1) INT'L J. LEGAL PROF. 107 (2018).

[201] Rajvinder Samra & Emma Jones, *Fostering Empathy in Clinical Teaching and Learning Environments: A Unified Approach,* 6(1) AUST. J. CLIN. EDUC. 1 (2019).

[202] Joshua D. Rosenberg, *Teaching Empathy in Law School,* 36(3) U.S.F.L. REV. 621 (2002); see also Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the 'Heart' of Lawyering,* 87(1) NEB. L. REV. 1 (2008); Amy Lawton, Kathryn Saban & Sadie Whittam, *Do We Want a Human First, and a Lawyer Second? Developing Law Student Empathy Through Clinical Legal Education,* 29(1) INT'L J. CLIN. LEGAL EDUC. 4 (2022).

parties in existing case law).[203] That is not to suggest that greater empathy will necessarily lead to a more compassionate response – as Nussbaum points out, the best torturers need to have empathy with their victims to know how to cause maximum suffering.[204] However, it does give law students the opportunity for greater insight into the consequences of their actions and has been characterised by some commentators as necessary to inspire compassion.[205]

Applying LWP

This part offers two brief examples of how the LWP can be applied in practice by legal academics in law schools. To do so, it explores how LWP can be integrated into, and positively influence, learning and teaching approaches in both the law of obligations and CLE.

LWP and the law of obligations

The teaching of the law of obligations provides an example of how the LWP model can be integrated into a well-established subject area. To address the 'circle of cognitive engagement' and the 'challenge and growth' sphere of development, it is possible to include relevant content which intentionally explores issues relating to wellbeing, equipping students with an understanding of its relevance in all aspects of life and society, and providing them with appropriate vocabulary and insights. For example, the topic of non-pecuniary losses in contract or of damages for pain, suffering and loss of amenity in tort can be used to discuss notions around quality of life, personal and societal values and financial security.[206] It is also important to provide students with explicit advice on healthy ways of studying and preparing for assessments. This could include adding lecture content giving advice, putting activities into seminars, or adding additional content online. One example of this could be giving students guidance and support on dealing with sensitive content prior to discussing cases on personal injury and medical negligence.

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[203] John Deigh, *Empathy, Justice and Jurisprudence,* 49(s1) SOUTH. J. PHILOS. 49, 73 (2011).

[204] Martha Nussbaum, *Reply to Amnon Reichman,* 56(2) J. LEGAL EDUC. 320 (2006).

[205] Martin L. Hoffman, EMPATHY AND MORAL DEVELOPMENT: IMPLICATIONS FOR CARING AND JUSTICE (2000).

[206] Emma Jones, *Integrating Wellbeing into the Law School Curriculum* in HOW TO OFFER EFFECTIVE WELLBEING SUPPORT TO LAW STUDENTS (Lydia Bleasdale ed., 2024)).

With regard to integrating the 'circle of experiential engagement' and the 'independence and meaning' sphere of development, the law of obligations could offer opportunities for students to consider the legal identity of those who work in legal practice areas relating to contracts and tort, considering the professional identity implications and relating these to students' own beliefs and values. For example, examining the notion that corporate lawyers have a high status within the profession, considering what 'success' looks like in that context and exploring whether students ascribe to that definition. Such an approach also builds upon the initiatives suggested above in relation to topics such as non-pecuniary loss.

Whilst the circle of affective engagement and the 'connection and collaboration' sphere of influence may seem particularly challenging in a subject such as the law of obligations which often appears highly doctrinal in nature, there are still ample opportunities to incorporate these aspects. One way to do this could be to explore the notion of 'relational contract theory', which represents long-term contractual relationships (such as employment contracts) as being based on shared values such as trust and respect in addition to the legal formalities.[207] Such an exploratory approach could lead to wider debates around notions such as 'good faith' and the values enshrined within contemporary contract law. Another potential approach is to devise group tasks within seminars, from working together on a problem scenario to simulating a contractual negotiation or collaborating on a presentation of a core doctrinal issue.

While the introduction of new content and styles of delivery into a course can be challenging for educators, it can also provide them with opportunities for growth and development across all aspects of the LWP model. Engaging with new ideas and concepts, if part of an appropriate workload and supported by the wider law school, can foster autonomous motivation and therefore flourishing.[208]

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[207] Ian R. Macneil, *Relational Contract Theory: Challenges and Queries,* 94(3) NW. U.L. REV. 877 (1999), 877; see also Hugh Collins, *Is a Relational Contract a Legal Concept?* in CONTRACT IN COMMERCIAL LAW (Simone Degeling, James Edelman & James Goudkamp eds., 2016).

[208] Robert H. Stupnisky et al, Faculty Members' Motivation for Teaching and Best Practices: Testing a Model Based on Self-Determination Theory Across Institution Types, 53 CONTEMP. EDUC. PSYCHOL. 15 (2018).

The 'inter-connecting concepts' of values and ethics, reflection and empathy are all also relevant in the law of obligations. Contracts are 'one of the basic building blocks of our social and economic life'.[209] Tort law illuminates what and who is protected by private law, illustrating the priorities of society and its legal system.[210] As such, the value system underpinning tort law is heavily intertwined with wider societal values and ethics. This value system provides an effective starting point for developing individual student self-awareness and reflection on such issues. Reflection could also include explicit consideration of both the content involved in the course and the emergence and development of relevant skills, such as critical thinking. The rich case law that makes up the law of obligations can also be used to foster greater empathy. While cases focused upon personal injury are perhaps the most obvious mechanism to explore the experience of claimants, many seemingly innocuous cases involving other forms of damage can also be used in this way, from a family home being so badly damaged as to be uninhabitable,[211] to an employee removed from their post in a humiliating fashion.[212]

LWP and CLE

There are many variations of CLE and this has resulted in a variety of definitions.[213] Consistent features include: addressing a societal issue experienced by an individual or a collection of individuals; working in teams to develop practical and professional skills; collaboration with the local community; and highlighting the need for change in order to improve access to justice. Most commonly, clinics involve staff supervisors and students working with clients on a pro bono basis. Some clinics are situated within the curriculum and are assessed, and others are mixed or entirely voluntary. The majority of clinics seek to provide legal advice to private individuals or community groups,

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[209] Hanoch Dagan, *Two Visions of Contract*, 119(6) MICH. L. REV. 1247 (2020), 1247.
[210] Gregory C. Keating, *Form and Substance in the 'Private Law' of Torts*, 14(1) J. TORT L. 45 (2021).
[211] See the English case of *Murphy v Brentwood District Council* [1991] 1 AC 398.
[212] See the English case of *Addis v Gramophone Co Ltd* [*1909*] AC 488.
[213] See Omar Madhloom & Hugh McFaul (eds.), THINKING ABOUT CLINICAL LEGAL EDUCATION: PHILOSOPHICAL AND THEORETICAL PERSPECTIVES (2021).

but there is a growth in business law clinics that seek to advise fledgling enterprises, and also in social policy clinics.[214]

Such clinics form an obvious experiential learning environment. One where past experience is brought to the fore and examined, forming the basis of further learning. Within the 'circle of experiential engagement', the sphere of development focused upon 'independence and meaning' is crucial. Students observe human nature in live client clinics and are able to compare their own selves and social context with that of their clients. CLE students should be encouraged to reflect on their CLE work, recognising what they have learned about their own identities, personal values and self-confidence; in other words, the development of their autonomy.[215] Whether assessed or not, the clinic environment provides supervisory staff with the opportunity to hold conversations in a safe and constructive manner to enable students to understand concepts ranging far beyond the relevant legal issues per se. These conversations can be used as a teaching tool to enhance meta-cognitive skills, advance learning, assist students to identify their personal values and goals, and help them to understand their own motivations or lack of interest.

In terms of the 'circle of cognitive engagement' and the 'challenge and growth' sphere of development, students must be supported by staff through the client's matter by clear protocols – for example, to check that the relevant legal issue has been correctly identified and defined, the research has been appropriately targeted and applied, and the oral and written communication of the advice to the client is accurate. The provision of legal advice to the public requires supervision of the clinic by a practitioner with a practising certificate. The focus is not upon 'throwing the student in at the deep end' but rather upon

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[214] For example, see Frank S. Bloch (ed.), THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (2010). For recent developments in CLE that compare the UK and the US see Richard Grimes, *Experiential Learning and Legal Education – The Role of the Clinic in UK Law Schools* in KEY DIRECTIONS IN LEGAL EDUCATION: NATIONAL AND INTERNATIONAL PERSPECTIVES (Emma Jones & Fiona Cownie eds., 2020) and Seán Arthurs, *Clinical Legal Education in The United States: Emerging Trends, Challenges and Opportunities* in KEY DIRECTIONS IN LEGAL EDUCATION: NATIONAL AND INTERNATIONAL PERSPECTIVES (Emma Jones & Fiona Cownie eds., 2020). For a discussion of policy clinics see Rachel Dunn, Lyndsey Bengtsson & Siobhan McConnell, *The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students*, 27(2) INT'L J. CLINICAL LEGAL EDUC. 68 (2020).
[215] Anna Cody, Reflection and Clinical Legal Education: How Do Students Learn About Their Ethical Duty to Contribute Towards Justice, 23(1-2) LEG. ETH. (2020).

promoting the students' gradual and incremental development of competence. Achieving this requires the design of a CLE program to intentionally manage the balance between meeting necessary deadlines and over-work. Providing opportunities for students to master new skills and take on new responsibilities with appropriate support can ensure that the experience of stress in clinical contexts falls within healthy boundaries.[216]

CLE also provides a learning context where students can acquire greater competence in self-care. Most clinics offer a form of debriefing where students and staff share their daily clinic experience in a safe and confidential space. The opportunity to speak freely about thoughts, emotions and behaviour provides an opportunity to develop the ability to share concepts not usually discussed in the black letter classroom. Thus, CLE can explicitly provide a framework for discussions about self-care. This safe space also provides a chance to address the harmful level of competitiveness which can be found in law schools.[217] Students in clinic often work in teams. The time that students spend together in clinic and the shared aim of supporting the client can support the development of a non-competitive environment. This can be mismanaged if the CLE program focuses upon aspects such as the highest number of clients seen, the most damages recovered, or the longest hours worked. Instead, there is a need to purposefully model collaborative behaviours and establish healthy ground rules for teamwork, using explicit reference to the LWP model's tenets to minimise potentially maladaptive practices.

The 'circle of affective engagement' is of relevance as CLE has the propensity to evoke strong emotions in students, especially anxiety in the early stages, when faced with live client interviews with the unexpected dialogue that inevitably forms part of that experience. Thus, many CLE educators integrate opportunities to discuss emotions to a greater extent than in other legal learning environments. The 'connection and collaboration' sphere of development emphasizes how these emotional experiences interact with both teamwork and client interactions in CLE settings. The work of students in clinic is almost universally undertaken in teams with each team being allocated a staff supervisor. The broad nature of the legal issues presented by clients results in staff and students meeting new problems weekly, with flexible collaboration required between students, and between staff and students. The practicality of

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[216] Hans Selye, THE STRESS OF LIFE (1956).
[217] Townes O'Brien, *supra* note 4, 4.

this process can be enhanced by the express understanding and acknowledgement of the LWP model. Creating strong connections fosters a sense of belonging, encourages support seeking and counterbalances competitiveness.[218] Supervisors can use the 'connection and collaboration' sphere of development to address the blend of skills needed to work together successfully.[219] This close way of working can also explicitly raise students' awareness of being part of a clinic community and highlight values that enhance wellbeing such as inclusivity, respect and empathy.

Although this discussion of the LWP model has focused largely upon students, staff can also benefit directly from the application of the model in the CLE setting. For example, fostering 'independence and meaning' by designing the program in a manner which facilitates staff's sense of choice and ability to act in accordance with personal values. This could include aspects such as processes that enable staff to make decisions about which clients to accept, and which and how many students to work with. These forms of engagement with program design and development could also assist in promoting 'challenge and growth' amongst staff, for example, by encouraging them to explore new practice areas and undertake regular Continuing Professional Development training. As CLE educators may have transitioned to law school from legal practice, rather than coming via traditional academic routes, fostering 'connection and collaboration' could involve intentionally providing opportunities for connection with the wider law school faculty, for example, through reading groups, shared research and scholarship opportunities and organised sessions to disseminate good practice in working with students.

The 'inter-connecting concepts' of values and ethics, reflection and empathy can all also be developed within CLE, for both students and staff. The importance of reflection has already been highlighted. It is arguable that empathy is key to both working with clients and supervising such work, to enable an in-depth insight into the experience of clients, their needs and wants and to be able to facilitate the effective provision of advice.[220] Values and ethics also permeate CLE work, for example from formal Codes of Conduct which bind supervisors to the ethos and culture which permeates the individual CLE

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[218] Fay & Skipper, *supra* note 170.
[219] Guth, *supra* note 125, section 1.
[220] Westaby & Jones, *supra* note 200.

setting. This all provides rich material to explore and implement the LWP model.

Conclusion

This article introduced a model for a novel pedagogy in legal education, the LWP, designed to purposefully promote thriving and flourishing within law schools. It has set out the aspects of the LWP model to explain why each element has been included, and why it is important. In doing so, the article presents a theoretical framework for the practical implementation of the LWP into core aspects of legal education. The article has given two brief examples applying the LWP model to both a substantive legal topic (law of obligations) and to CLE, to demonstrate the breadth of the model's potential integration into the law curriculum. Overall, the implementation of the LWP model can broadly take two forms. First, for existing curricula and programs, a review can be undertaken using the LWP model to identify both strengths and weaknesses and implement evidence-based and sustainable change. Second, the LWP model can form an integral part of the planning for new curricula and educational initiatives, providing a foundational model upon which the detail can be developed. Such detail will vary between modules, programs and institutions. However, situating wellbeing at the centre will enable the design of initiatives to promote the thriving and flourishing of both students and staff through intentional, wellbeing-focused curriculum initiatives which meet students' basic psychological needs and support students' autonomous self-regulation without compromising the wellbeing of staff.