

Supporting transition to law school and student well-being: The role of professional legal identity

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Abstract

The empirically established decline in law student well-being during the first year of law school is a red-flagged imprimatur for first year curriculum change. This article suggests that by engaging law students with the concept of a positive professional identity, student engagement and intrinsic motivation will increase because they are working towards a career goal that has meaning and purpose. Law school is a time of professional transformation and the legal academy can take steps to ensure that this transformation is inculcated with positive messages. Literature from the fields of law and psychology is analysed in this article, to explain how a positive conception of the legal profession (and a student's future role within it) can increase a student's psychological well-being – at law school and beyond.

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Introduction

Law school is well recognised as a stressful and rigorous tertiary education experience for students (Kelk, Luscombe, Medlow & Hickie, 2009). Until the groundbreaking work of Kift on first year transition to legal education (Kift, 2009), Australian law schools did little to ease the transition process for first year law students. The content of the legal curriculum and the teaching delivery practices used in legal education have rarely taken account of, or been designed to address, the stressful nature of the legal education process itself.

Since the development of the transition pedagogy, many improvements to the “first year experience” of legal education have been made. Orientation processes are better designed, there is broader recognition of the importance of creating engaging and supportive learning environments, support for the diversity of students is better provided, and assessment processes have improved (Kift, 2009; Kift & Nelson, 2005).

This article builds on the philosophical commitment of the transition pedagogy, with its goal to successfully transition students to the study of law. It is our contention that encouraging first year law students to develop an emergent professional legal identity is an important component of supporting their transition to law school. First, it promotes student engagement and intrinsically motivated learning. Second, it contributes to addressing the high levels of psychological distress that we know law students experience in their first year of legal education (Kelk et al., 2009).

We begin with a justification for increasing student support during the transition period into the first year – law student psychological distress. A brief introduction

to professional identity and identity theory is also provided in the context of the first year of legal education.

Law student psychological distress: A justification for vigilance in supporting transition and well-being for first year law students

Decades of empirical research in American law schools have confirmed that elevated levels of psychological distress, including depression, anxiety and substance abuse, are prevalent amongst law students (Benjamin, Kaszniak, Sales & Shanfield, 1986; Sheldon & Krieger, 2004). Until recently, there was debate about whether the data on American law students' distress was transferable to an Australian context due to “differences in demographics, pedagogy and culture” (Allen & Baron, 2004, p. 286). The publication of the Brain and Mind Research Institute's *Courting the Blues* monograph in 2009 empirically addressed this issue, indicating that more than one-third of Australian law students experience high levels of psychological distress, compared with approximately one-sixth of medical students and 13% of people aged 18-34 in the general population (Kelk et al., 2009, p. 12).

Recent empirical research conducted at a number of individual Australian law schools (Larcombe, Tumbaga, Malkin, Nicholson, & Tokatlidis, 2012; Lester, England, & Antolak-Saper, 2011; Townes O'Brien, Hall & Tang, 2011) independently confirms the trend of heightened distress levels amongst Australian law students. Importantly, a significant body of American and Australian research demonstrates that elevated symptoms of psychological distress begin to appear during the first

year of legal education, as most law students commence law school with average or above average levels of well-being (Benjamin et al., p. 240; Lester et al., p. 48; Townes O'Brien et al., pp. 159-60).

Many possible explanations of the elevated levels of law student distress exist. Susan Daicoff's (2004) research on law students' and lawyers' personality traits suggests that there are certain personality types that are attracted to the study of law. Townes O'Brien et al.'s (2011) recent research at the Australian National University (ANU) indicates that the negative effects of legal education on law students' well-being begin in the first year of law school and may be related to changes in thinking styles as students learn to "think like a lawyer" (p. 165). They summarise a range of further factors that have been identified as potentially contributing to law students' distress:

Previous work has posited that student distress may be related to changes in values and motivation; stress caused by the competitive nature of law school and fear of failure; the loss of academic accolades, which most students received in their previous studies; decline in feelings of efficacy due to lack of feedback relating to mastery of the skills they are learning; or stress and humiliation caused by a variety of typical law school pedagogical methods. (p. 152)

Whilst empirical research that correlates law students' disproportionately high levels of psychological distress with specific aspects of legal education is relatively scarce, the precipitous decline in law students' well-being during the first year of law school appears to be attributable to, or at least aggravated by, something that occurs at law school (Huggins, 2012, p. 2). This has been affirmed by the research of Larcombe et al.

(2012) at the University of Melbourne Law School.

Of concern for the legal profession more broadly is that the trends in law students' distress have been identified by the BMRI study (Kelk et al., 2009) as continuing into lawyers' working lives, with almost one-third of solicitors experiencing high levels of psychological distress. By contrast, less than one-sixth of people over 17 years of age in the general population experience equivalent levels of distress (p. 12). Law student psychological distress is therefore a widespread problem of concern for both legal educators and the legal profession in Australia. It is an issue requiring the careful attention of the Australian legal academy.

The notion of professional identity and its place in the first year of legal education

What is a professional identity? Hall, Townes O'Brien and Tang (2010) affirm that "professional identity is not a static concept" (p. 30). Rather it is a complex matrix of "internalised expectations and behaviours that arise from a role or distinct network of relationships" (Stryker & Burke, 2000, p. 286). For law students, an emergent professional identity includes a conceptualisation of the dominant roles that they will play as lawyers. A student's nascent concept of their legal professional identity is grounded in their self-concept of the role of lawyers, but will also involve the possibility of multiple role identities that are informed by socially constructed interpretations of the lawyer's role (McCall & Simmons, 1978, p. 74). A first year law student's professional identity will therefore be made up of a "constellation of attributes, beliefs, values, motives and experiences" (Ibarra, 1999, pp. 764-765) relating to how they see lawyers, how they

see themselves as lawyers, as well as how they think other people, and society more broadly, see lawyers. These identity roles can range from the fierce warrior advocate for people's rights, to the stoic upholder of the rule of law, to the facilitator of complex transactions, to the resolver of disputes and conflict.

Law school is the place where law students begin what might be said to be their initial authentic encounter with a possible professional identity. Law school is where law students "get real," where the curriculum takes over from TV images and cultural stereotypes, and where students are introduced to the genuine expectations of legal practice. For most students, law school is the first place that they "try to assimilate and replicate observed behaviour that is accepted and rewarded in the legal context" (Hall et al., 2010, p. 33).

If law students can see an authentic sense of who they will be as a lawyer through the law curriculum (and particularly the first year law curriculum), they will transition better to their legal education and have a greater sense of psychological well-being. This is because they will have a sense of personal and professional verification (McCall & Simmons, 1978), a positive self view, a sense of identity salience and a resultant feeling of fit (Stryker & Serpe, 1982). If students do not see their future professional identity in what they are studying from the first year, they are likely to interpret the curriculum as providing them with negative feedback on their self-conceptualisation. As a result they may experience "anger, depression, or emotional distress" (Hall et al., 2010, p. 33). This is because students are engaged, particularly in the first year of law school, in a process of matching their behaviour to expectations made explicit to them. They "shape and reform their identities to be

consistent with the feedback they receive" (p. 33).

A range of literature supports our view that the law school environment and legal education "play a significant role in the development of students' 'professional identities'" (Hall et al., 2010, p. 35). David Hall, for example, argues that "those who are engaged in the study and practice of law embrace and incorporate into their way of being a common set of mental, emotional, and behavioural traits" (Hall, 2005, p. 89). Stryker and Serpe (1994) suggest that a student's academic identity becomes the highest ranking of their identities within the first few months of tertiary study (p. 26). Cassidy and Trew (2001) confirm that "students' personal and professional identities are particularly mutable and adaptable" when they enter university, "and that this is also a time when the salience of identities can change" (pp. 56-57).

Without a true sense of fit at law school, students can experience what has been labeled as an "imposter syndrome" (Lake, 2000). Those who experience this syndrome (and some of the authors of this article have experienced it personally) begin to "feel that everyone in the room knows more than they do or is better educated or capable than they are" (Lake, 2000, p. 1029). Reich's (1976) work in the mid-1970s established that law students "wear a social mask and attempt to make a strong and definite impression on others" (p. 873). It is of particular concern that the pressure to perform successfully, or simply to cope, at law school can reorient students away from their personal values, and towards more superficial rewards and an image-based identity (Krieger, 1999).

The process of professionalisation that takes place at law school is subtle and rarely explicitly acknowledged in the

curriculum. We believe that legal educators will better support transition to law school and law student psychological well-being if they encourage students to “consciously consider fundamental questions about the professional identity they are assuming, and its relationship to their values” (Hall et al., 2011, p. 37). Such action requires a level of curriculum renewal, or at the very least a refresh of the first year of legal education. It also requires legal educators to scrutinise the values and assumptions behind what we teach, as well as the impact that these values and assumptions in our curriculum have on our law students’ lives (p. 38).

Law students bring their own sense of professional legal identity that has developed to the point of their entry into law school and has been influenced by a range of sources. However, “law school is a particularly important time in the formation of students’ academic and professional identities, and the impact of this process is not short term” (Hall et al., 2010, p. 37). In the context of the significance of a sense of professional identity in the first year law curriculum, this article now considers two specific ways in which the development of an emergent professional identity can support students transition to law school and their psychological well-being: first, working to engage students with their learning; and second, harnessing their intrinsic motivations.

Engaging students with an emergent professional identity

First year law student engagement is of critical significance when considering how to support student transition to law school, and how to promote student psychological well-being. When students are engaged with their learning they devote “time,

energy and resources ... to the activities designed to enhance learning at university” (Krause, 2005, p. 3). Engaged students achieve a higher quality of learning, and are more likely to continue with their studies (Tinto, 2009). Engagement is a leading factor in intentional curriculum design to support first year transition (Kift & Field, 2009). An engaging first year curriculum is supportive, integrated and coordinated. Engaged students “are more likely to connect with their discipline, go beyond the minimum prescribed learning requirements, and make connections with broader concepts and experience” (p. 4).

A positive sense of professional legal identity engages students because it provides a constructive outlook for their future careers. Law students will be more inclined to engage with legal education in the present, knowing that they are working towards a future career goal that they value. When first year law students perceive the legal role positively, their engagement and well-being are supported because their studies are informed and contextualised by a sense of purpose for their future professional life (Field & Duffy, 2012a). A student’s affinity with their future legal role creates a sense of belonging and fit, both with the law school promoting that goal and with the legal profession. Engagement, belonging and fit are all critical components of the transition pedagogy and all can be said to promote student well-being (Duffy, Field & Shirley, 2011; Seligman, 2011, p. 16).

Hope theory, a branch of the positive psychology movement, helps to further explain why an emerging sense of positive professional identity can lead to increased student engagement, motivation and well-being. According to Rand and Cheavans (2009), “hope is defined as the perceived ability to produce pathways to achieve

desired goals and to motivate oneself to use those pathways” (p. 323). This definition captures the three elements of Snyder’s cognitive model of hope: goals, pathways and agency. A goal is a mental endpoint or destination that an individual or group is trying to achieve, and can be short-term or long-term. Pathways thinking involves “the production of plausible routes to a goal as well as a sense of confidence in these routes” (Rand, 2009, p. 233). Agency/agentive thinking is “the perceived capacity to initiate and sustain movement along a pathway until the goal is reached” (Rand, 2009, p. 233). Higher hope law students will therefore be motivated and have strong willpower (agentive thinking) to generate a range of strategies (pathways thinking) for achieving a goal (Field & Duffy, 2012a, p. 148). Importantly for the purpose of this article, high hope people tend to experience better mental health, and high hope students have been shown to be more engaged learners who deploy healthy coping strategies in times of academic stress (Snyder et al., 2000, p. 824).

The goal for our law students (which many are willing to assume) is that they become happy, healthy, competent professionals. For those who pursue a career in law, this involves a positive conception of the law profession generally, and a positive conception of the individual’s role within that profession. An important part of our academic role therefore, is to support student generation of strategies to achieve a positive professional identity. This has to be more than a sales pitch from lecturer to student as to why the legal profession is one worth entering. In essence, legal academics need to create the conditions in which a law student can forge their own pathways towards a positive professional identity. The trick is to stimulate these goal-related thoughts and actions within

students, without (well-intentionally) co-opting the process.

At the Queensland University of Technology Law School, Field and Duffy have harnessed the legal curriculum to promote an emergent positive professional identity for law students. The subject LWB150 *Lawyering and Dispute Resolution* has been described elsewhere (Field & Duffy, 2012a, 2012b), but we mention it in this context because it contains a number of strategies to assist students with the formation of their own positive professional identity.

Lawyering and Dispute Resolution has a strong focus on alternative dispute resolution (ADR) and non-adversarial justice because we feel it is important that students are exposed to the wide variety of legal roles and practice as early as possible in the law degree. Currently the first year in Australian law schools privileges the adversarial paradigm of dispute resolution, and gives a misleading impression as to the importance of rights-based, zero-sum, litigation to the resolution of legal disputes. Instruction in ADR and non-adversarial justice provide a pathway to a positive professional identity for those law students who may prefer collaboration and consensus building to argumentation and competition. As Silver notes, there is room enough in the legal profession for “thinkers” and “feelers” (Silver, 1999, 1180-1182) and we should encourage these proclivities, rather than melding our students into rational, pessimistic, risk adverse automatons. In a similar vein, it is worthwhile presenting to students where a law degree can take them. It is a mistake to think that law students are aware of all the career options available to them. Dedicating time in the first year curriculum in lectures/tutorials to this endeavour can help students identify a mode of professional practice (pathway) for which

they feel a sense of affinity and connection (James & Field, 2012).

Given that a legal professional identity is underdeveloped, malleable and potentially misinformed on entry to law school, actually connecting law students with legal practitioners can help students to more accurately engage with the lawyer identity. In *Lawyering and Dispute Resolution* we bring members of the profession into the class-room. This is not a novel approach but it takes time and effort to organise and is not necessarily common practice in first year law classes. The lawyers, barristers or mediators who give guest lectures for us allow themselves to be questioned and interviewed by the entire class about their professional identity and how it was forged. We also harness an assessment task to engage students with members of the profession. We ask students to interview a legal practitioner on different aspects of their role, and then to engage in a reflective practice assessment based on this interview.

These suggestions for engaging students with the concept of professional identity are not pathways to a goal in and of themselves. They are designed as pedagogical trigger points; a conscious attempt to support the pathways thinking of our students so that *they* attempt to create plausible routes to the goal of professional fulfilment and positive professional identity. The next section of this article will consider how the engagement of first year law students with a positive professional identity can affect their motivation and agentic thinking, and consequently, their well-being.

Connecting with intrinsic learning motivations through promoting a professional identity

We noted above that whilst a range of factors have been identified as potentially contributing to law students' distress, legal academics still struggle to fully understand the disproportionately high levels of distress that law students experience. Certainly working to support student engagement by developing an emergent sense of professional legal identity from the first year of legal education holds significant potential to support student transition and well-being. Another possible strategy is to use professional identity to harness the intrinsic motivations of law students.

In the context of legal education, examples of intrinsic rewards include enjoying, or finding interest in, the intellectual simulation of learning and analysing the law, achieving mastery as measured by internal rather than external benchmarks, working collaboratively, and achieving personal growth (Daicoff, 2011; Huggins, 2012, p. 3). By contrast, extrinsic rewards may include a preoccupation with one's weighted average mark, the level of prestige and reputation of the university (Tani & Vines, 2009, pp. 12-25), and a greater emphasis on physical appearance and image (Huggins, 2012, p. 3; Sheldon & Krieger, 2004, p. 281).

There are significant overlaps between the intrinsic and extrinsic rewards of legal education and practice, as well as some notable differences. As Huggins (2012) notes:

Additional potential extrinsic rewards of legal practice include financial affluence, status, power, working for prestigious firms, titles and, in the context of adversarial practice, winning cases. In terms of intrinsic rewards, individuals pursuing traditional legal roles within the adversarial paradigm, may identify with: using one's legal skills to solve clients' problems; the efficient and fair resolution

of disputes; facilitating due process; advocating for - and upholding - individual rights; promoting the rights of the disadvantaged; and helping businesses succeed. Some practitioners might enjoy producing thorough, persuasive and well written legal advice and/or engaging in oral advocacy; find interest in the content of particular areas of the law and working with intelligent people; and/or identify with particular legal causes that align with their beliefs and values. For individuals engaged in various forms of non-adversarial justice, intrinsic values such as enhancing others' emotional well-being and preserving harmonious relationships may be paramount (citations omitted). (p. 4)

The intrinsic and extrinsic rewards of legal practice are similar to the rewards identified for law school. Daicoff (2011) believes that this means that a student's "values need not change from law school to practice" (p. 9). Building on this perspective, it is our view that a student's sense of professional identity (if developed positively from the first year of law school) can support not only their transition *into* law school and their psychological well-being at law school, but also their transition *out* of law school and their psychological well-being as they begin the practice of law.

Unfortunately however, empirical studies in both the US and Australia suggest that currently law students privilege extrinsic rewards over intrinsic rewards, and this tendency is directly linked with the experience of heightened levels of psychological distress (Sheldon & Krieger, 2004; Tani & Vines, 2009). For example, in a comparative study of students from diverse disciplines at the University of NSW, Tani and Vines established that particular aspects of law students' attitudes - namely, a strong extrinsic rewards orientation, "lack of autonomy,

high levels of competitiveness and a lack of social connectedness" (p. 30) - could help explain the high incidence of psychological distress amongst Australian law students compared to their counterparts in other disciplines.

Further, Krieger (2005) argues compellingly that people who are motivated primarily by intrinsic and authentic motivations are, due to their internal locus of reference, more likely to act consistently, congruently, and with integrity (Huggins, 2011, p. 29; Krieger, pp. 429-430). These qualities are inseparable from professional behavior and a positive sense of professional identity (Krieger, pp. 429-430). People who are autonomously motivated and pursue intrinsic values have also repeatedly been shown to enjoy higher levels of psychological wellbeing and life satisfaction. By contrast, people who are largely motivated by extrinsic rewards are at risk of "greater levels of unhappiness and psychopathology" (p. 429). In a professional context, if people are not strongly anchored to their intrinsic values, they are more likely to engage in unprofessional and unethical behavior (p. 430).

The importance of cultivating law students' autonomous and intrinsic motivations cannot be overstated. It is critical to establishing an emergent sense of *positive* professional identity as something that can support both student transition to law school and also student psychological well-being (Huggins, 2011, p. 31). We therefore propose that encouraging students to reflect on the connections between intrinsic rewards, their well-being and their potential future careers should be an explicit component of the first year law school curriculum.

How might this be done? Building on Tani and Vines' (2009) suggestion, we suggest

that Australian legal curricula should foster law students' positive visions—based on personally meaningful intrinsic rewards—of the types of professional roles they will embark on after law school (Huggins, 2012, p. 4; Tani & Vines, 2009, p. 31). This involves cultivating intrinsic motivations which will help to promote law students' professional and ethical propensities and conduct. Identifying and fostering intrinsic motivations and values is highly relevant to the formation of law students' professional identities, and can support student transition to law school as well as their psychological well-being.

Conclusion

This article has put forward two key arguments: We suggest, first, that supporting first year students to develop an emergent sense of a professional identity is a strong way to engage students with their learning at law school; and second, that supporting first year students to develop an emergent sense of a professional identity will support transition and well-being by harnessing intrinsic motivations for law student learning. It is clear that as legal educators we have the potential to positively influence both students at law school and the culture of legal practice. In our view, it is our professional duty to do so.

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