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## Book Review - Promoting Law Student and Lawyer Well-Being in Australia and Beyond

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# BOOK REVIEW: PROMOTING LAW STUDENT AND LAWYER WELL-BEING IN AUSTRALIA AND BEYOND

MAGDALENE D'SILVA\*

## I INTRODUCTION

*Promoting Law Student and Lawyer Well-Being in Australia and Beyond*<sup>1</sup> is a book on how to alleviate pathological levels of psychological distress ('distress') in people who choose to study law for legal practice ('legal profession'). The book showcases the Australian Wellness For Law Network's normative orthodoxy, that the entire legal academic community must be, or become, responsible for law students' mental health.<sup>2</sup>

Clinical levels of distress are not unique to law students and lawyers: hundreds of millions of people globally are reported to be suffering.<sup>3</sup> Yet this may not support an alliance with a metastasising biomedical psychiatry world-view, that our painful human emotional responses to important though immensely challenging life experiences, however severe and for whatever duration, are biomedical clinical 'mental illnesses,' 'mental health issues,' 'brain diseases' or 'mental disorders'.<sup>4</sup> Nevertheless, the book's premise is that clinical levels of distress are higher in our legal profession than in our other professions and general population. The ensuing orthodoxy seems to be circumstantially based on the deduction that, as such distress appears to manifest during the study of law, law schools must be responsible for alleviating it.<sup>5</sup>

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<sup>1</sup>Rachael Field, James Duffy and Colin James (eds) *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016).

<sup>2</sup> Wendy Larcombe, 'Towards an Integrated, Whole-School Approach to Promoting Law Student Wellbeing' in Rachael Field, James Duffy and Colin James (eds) *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016) 24.

<sup>3</sup> World Health Organisation 'Depression' 13 April 2016 <<http://www.who.int/mediacentre/factsheets/fs369/en/>>.

<sup>4</sup> See, eg, Allen Frances, *Saving Normal: Saving Normal: An Insider's Revolt against Out-of-Control Psychiatric Diagnosis, DSM-5, Big Pharma, and the Medicalization of Ordinary Life* (William Morrow, 2012).

<sup>5</sup> Larcombe above n 2; Field, Duffy and James above n 1, 1-2.

This review is in three parts. The first part critiques the book's arguments across chapters. The second part canvasses biomedical psychiatry's ethical crisis and considers why wellbeing agendas would choose to align with a biomedical psychiatry view that proselytises a belief that law students and lawyers are pathologically distressed. This is important if the alliance eludes our search for proven original causes and solutions that *precede* legal education, such as in our parenting,<sup>6</sup> in our schools, in our economic, political and social spheres, and in (our lack of) divinity. The final part conclusion posits that *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* signals a possible institutional ethical crisis in our legal education. If correct, this review predicts the emergence of a new independent legal ethics agenda, in Australia and beyond.

## II LEGAL EDUCATION'S IN LOCO PARENTIS WELLBEING AGENDA

The pressures of our job prospects are negatively impacting the mental health of law students before we even begin our career. Thirty years ago my parents walked right out of law school with average grades into a great commercial career. It's a completely different reality now.<sup>7</sup>

### A *The Wellbeing Case Based on Psychocentric Survey Data*

The wellbeing orthodoxy in *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* appears to present a nearly closed case, because it rests its core premise on conventional biomedical psychiatry informed surveys, and does not seek to include alternative approaches from critical psychiatry and/or the psychology of divinity, spirituality and religion. These surveys are used to support an orthodoxy that some Australian law students (and lawyers) are disproportionately more pathologically distressed than other people in our population, to the point of being at a clinical risk of 'mental illness'. The ensuing argument is that law schools must be, or become, responsible for alleviating law students' distress (whether or not law schools and law

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<sup>6</sup> See, eg, 'From outside they appeared to be two parents dedicated to doing everything they could to help their children ... But while people took note of the family's successes what somehow went undetected ... was the constant ... abuse of their own daughter' Nick Ralson 'Worst of the worst: Father's years of abuse against athlete daughter revealed' *Sydney Morning Herald* 30 July 2016 <<http://www.smh.com.au/nsw/worst-of-the-worst-fathers-years-of-abuse-against-athlete-daughter-revealed-20160729-gqh28x.html>>.

<sup>7</sup> Online comment posted on 25 May 2016 in response to K Towers 'Law graduates not keeping up with the modern world' *The Australian* 25 May 2016 <<http://www.theaustralian.com.au/higher-education/law-graduates-not-keeping-up-with-the-modern-world/news-story/e2092d31bd445d4418d623b3d16a7537>>.

degree curriculums are the cause).<sup>8</sup> Some chapters do consider alternative causes of law students' distress, which helps to balance some of the book's discussion. However, the paucity of information on valid alternative explanations of distress from fields such as divinity, spirituality and religion<sup>9</sup> indicate that this book's theme is confined to the secular.

This book cites conventional biomedical psychiatry and psychology informed survey results of students in different Australian law schools, as proof that 'it is now well established that law students in Australia experience high rates of psychological distress'<sup>10</sup> as 'the empirical data ... is now robust'.<sup>11</sup> The sub-text of this deduction seems to be that law schools should effectively become responsible for adult law students' mental states,<sup>12</sup> akin to taking the place of their parents (*in loco parentis*).<sup>13</sup> Chapter One, titled 'Valuing Persons and Communities in Doing Wellness for Law', says the focus is 'pathological distress ... associated with mental or psychosocial disability, not just any stress'.<sup>14</sup> This distinction between 'pathological stress' from 'any stress' involves psychocentric subjective opinion,<sup>15</sup> possibly showing a belief in science<sup>16</sup> without scientific evidence to qualify the distinction.<sup>17</sup> Although it has been acknowledged in salient guidelines for Australian law schools, that '[I]ike the US studies, the BMRI Report was unable to identify the precise causes of psychological distress amongst law students

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<sup>8</sup> *Promoting Law Student Well-Being Good Practice Guidelines for Law Schools Council of Australian Law Deans* September 2014, 3 <[http://www.utas.edu.au/data/assets/pdf\\_file/0005/670937/Best-Practice-guidelines.pdf](http://www.utas.edu.au/data/assets/pdf_file/0005/670937/Best-Practice-guidelines.pdf)>.

<sup>9</sup> Empirical research has shown positive implications for adolescent depression as a normative developmental process of functional human faculties in adulthood. See Lisa Miller, *The Spiritual Child: The New Science on Parenting for Health and Lifelong Thriving* (Bluebird Books Pan Macmillan, 2015) 277-278.

<sup>10</sup> Larcombe, above n 2.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> See Frank Furedi, *What's Happened to the University?* (Routledge, 2016) 'The return of *in loco parentis*' 6-9.

<sup>14</sup> Stephen Tang, 'Valuing Persons and Communities in Doing Wellness for Law Well' in Rachael Field, James Duffy and Colin James (eds) *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016) 14.

<sup>15</sup> Jan Nadine Defehr, 'Inventing Mental Health First Aid: The Problem of Psychocentrism' (2016) 10 (1) *Studies in Social Justice* 18.

<sup>16</sup> Consider Miguel Farias, Anna Keiser Newheiser, Guy Kehane, Zoe de Toledo 'Scientific faith: Belief in science increases in the face of stress and existential anxiety' (2013) 49 *Journal of Experimental Social Psychology* 1210.

<sup>17</sup> Consider Bassam Khoury, Ellen J. Langer and Francesco Paganini, 'The DSM; mindful science or mindless power? A critical review' (2014) 5(2) *Frontiers in Psychology* 1; Robert Whitaker, *Anatomy of an Epidemic* (Broadway Paperbacks, 2010); James Davies, *Cracked: Why Psychiatry Is Doing More Harm Than Good* (Icon Books, 2013); Stewart Justman, *The Nocebo Effect: Overdiagnosis and Its Costs* (Palgrave Macmillan, 2015); Robert Whitaker and Lisa Cosgrove, *Psychiatry Under The Influence: Institutional Corruption, Social Injury and Prescriptions for Reform* (Palgrave Macmillan, 2015).

and the profession'<sup>18</sup> and 'that present understandings cannot identify whether it is the law school that generates distress or whether law students possess certain attributes that predispose them to problems during law school',<sup>19</sup> those guidelines cite opinion that 'it is not necessary to be clear about the causes in order to formulate effective strategies'.<sup>20</sup>

Chapter Two, titled 'Towards an Integrated, Whole-School Approach to Promoting Law Student Wellbeing' cites mental health promotion in the World Health Organisation's adoption of the 1986 Ottawa Charter, where health is defined as '...a state of complete physical, mental and social well-being'.<sup>21</sup> This certainty on what constitutes our 'wellbeing' contrasts with British legal scholarship that cautions the ambiguous meaning of 'wellbeing' concurrent with the routine medicalisation of lawyers' distress.<sup>22</sup> This review thus posits that the book's exegesis requires our law schools to alleviate law students' distress symptoms without investigating the causes.<sup>23</sup> Law schools are effectively co-opted to instead become *in loco parentis* for adult law students by 'integrating' law student 'mental health' promotion in 'whole law school' activities *via* the law degree curriculum, law school policies and law school student support initiatives, which include 'ensuring there is a dedicated academic member of staff to counsel ... students unsure about making disclosures regarding mental health'.<sup>24</sup>

### B *Do Parents Play A Role in Law Students' Distress?*

Many parents dream of their children becoming ... lawyers. They imagine a life of monetary stability, respect from society and the security that comes from being involved in a profession. The story that parents tell themselves about lawyers may have lost some of its sheen due to the recent popular press coverage of unemployed

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<sup>18</sup> 'Promoting Law Student Well-Being Good Practice Guidelines for Law Schools, Council of Australian Law Deans, September 2014, 3 <[http://www.utas.edu.au/\\_data/assets/pdf\\_file/0005/670937/Best-Practice-guidelines.pdf](http://www.utas.edu.au/_data/assets/pdf_file/0005/670937/Best-Practice-guidelines.pdf)>.

<sup>19</sup> *Ibid.*

<sup>20</sup> 'Courting the blues: attitudes towards depression in Australian law students and legal practitioners' Norm Kelk, Brain & Mind Research Institute, Tristan Jepson Memorial Foundation, (Sydney, Brain & Mind Research Institute, 2009) quoted in 'Promoting Law Student Well-Being Good Practice Guidelines for Law Schools, Council of Australian Law Deans' above n 18, 4.

<sup>21</sup> Larcombe, above n 2, 25.

<sup>22</sup> Richard Collier, 'Wellbeing in the legal profession: reflections on recent developments or, what do we talk about, when we talk about wellbeing?' (2016) 23(1) *International Journal of the Legal Profession* 41, 55.

<sup>23</sup> For example, emotional repression and inhibition, have been researched in psychosomatic medicine as a precursor to physical disease. See, eg, Harald C. Traue and James W. Pennebaker (eds) *Emotion inhibition and health* (Hogrefe & Huber 1993).

<sup>24</sup> Larcombe, above n 2, 30.

lawyers unable to repay massive law school debts, but I still suspect that most people believe deep down that lawyers are destined to be wealthy.<sup>25</sup>

Chapter Three dissents somewhat by acknowledging that the reasons for law students' distress are 'largely speculative',<sup>26</sup> and that, even after changes are made in law schools and the legal profession, 'the problem persists'.<sup>27</sup> This Chapter gives a Lacanian psychoanalytic explanation for law students' distress which, however, risks dismissing potentially valid law school causation factors that *do* need to be examined, such as competitive law school grading systems that do not translate to legal practice performance,<sup>28</sup> and law graduate oversupply questions.<sup>29</sup> This omission occurs with the citation of US *opinion* that dismisses a causal connection.<sup>30</sup> Chapter Three nonetheless helpfully emphasises that it is not known whether law schools generate their students' distress, or whether law students already possess 'certain attributes that predispose them to problems during law school'.<sup>31</sup>

Chapter Three, though, appears to be at odds with the biomedical psychiatry paradigm upon which the book's overall premise is ostensibly based, when it ingeniously says that under Lacanian theory 'depression is not an illness ... depression is a sign of inner conflict'.<sup>32</sup> The Lacanian rationale is that as children, we subconsciously suppress our own desires by internalising our parents' and culture's perfectionist ideals, expectations and demands – which law schools tend to reinforce.<sup>33</sup> Separately, Singapore psychology

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<sup>25</sup> 'Where Are All The Rich Lawyers?' *The Big Law Investor*, 28 January 2017 <<http://www.biglawinvestor.com/where-are-all-the-rich-lawyers/>>. This website does not identify its author by name.

<sup>26</sup> Paula Baron, 'The Persistence of Distress' in Rachael Field, James Duffy and Colin James (eds) *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016) 37.

<sup>27</sup> *Ibid.*

<sup>28</sup> Deborah Rhode, *The Trouble With Lawyers* (Oxford University Press, 2015) 129, 133. Consider 'Law degree "not a particularly good training" for the law, Supreme Court justice says' *Legal Futures* (12 October 2016) <<http://www.legalfutures.co.uk/latest-news/law-degree-not-particularly-good-training-law-supreme-court-justice-says/>>.

<sup>29</sup> See Frank Carrigan 'Law schools sell graduates down the river' *Australian Financial Review* 8 August 2016 <<http://www.afr.com/business/legal/the-law-schools-of-rapidly-diminishing-returns-20160808-gqnday>>; Margaret Thornton, 'Law student wellbeing: A neo-liberal conundrum' (2016) 58(2) *Australian Universities' Review* 42-50.

<sup>30</sup> Baron above n 26.

<sup>31</sup> *Ibid* 40.

<sup>32</sup> *Ibid* 44. This is where the book's analysis might have benefitted from considering the scientific empirical research in spiritual/transpersonal psychology, which addresses this issue directly. Cf Miller above n 9.

<sup>33</sup> *Ibid* 45. Evidence of competition pressures placed on some Australian school children *before* university seems to be indicated in empirical research by other disciplines. See, eg, Kelsey Munro 'Selective schools drive tutoring industry as students strive to keep up' *Sydney Morning Herald*, 27 January 2017 <<http://www.smh.com.au/national/education/selective-schools-drive-tutoring-industry-as-students-race-to-keep-up-20170126-gtz9ft.html>>.

research of children arguably supports this Chapter's Lacanian explanation of law students' distress by independently finding that intrusive, pushy and controlling parenting in a Singapore society, which values academic excellence causes maladaptive perfectionism to emerge in children, that then leads to anxiety and depression.<sup>34</sup> Lacanian theory is also consistent with the Singapore research by contending that anxiety is not due to a fear of lack, but 'when there is no possibility of lack, when the mother is on his back all the time, specially to wipe his bottom, as a model of the demand'.<sup>35</sup>

Chapter Three's advice for law schools is that law student anxiety 'is a warning sign that law schools need to take seriously',<sup>36</sup> as students may be subject to multiple demands, and to thus help them 'find and pursue their *own* desire ... whether that be ... outside legal practice'.<sup>37</sup> It is unclear how law schools can follow this advice without a conflict of interest, if independent research is not done to explore other potential causes, such as circumstances of law students' childhoods, and/or law graduate oversupply questions if law schools are incentivised to enrol more students<sup>38</sup> and then become *in loco parentis*.<sup>39</sup> The conflict also arises when honest help means supporting students to quit law school altogether, because it was their parents' expectation, not students' *own* desire.

### C *Secularised Mindfulness and Secular Psychology in Legal Profession Wellbeing*

There is a deeper malaise, which is difficult to speak of. In a secular society we feel rather uncomfortable in doing so ... I refer to the void which is left in many lives by the absence of any spiritual construct and by the increasingly general rejection of any spiritual dimension ... In a time when so many fundamentals are questioned ... it is hardly surprising that the ethics of the legal profession should also be doubted...<sup>40</sup>

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<sup>34</sup> See R Y Hong, S M Lee, RY Chng, Y Zhou, FF Tsai, SH Tan 'Developmental Trajectories of Maladaptive Perfectionism in Middle Childhood' (2016) *Journal of Personality* 1, 11; A Tziner, M Tanami 'Examining the Links Between Attachment, Perfectionism, and Job Motivation Potential with Job Engagement and Workaholism' (2013) 29 *Journal of Work and Organizational Psychology* 65-74.

<sup>35</sup> Baron above n 26.

<sup>36</sup> Ibid 45.

<sup>37</sup> Ibid 46.

<sup>38</sup> '...Senator Birmingham ... said a "key part" of his thinking was how to remove incentives for universities to enrol an excessive number of students in profitable courses such as law...' M Knott, 'Simon Birmingham: universities need to stop acting like 'petulant toddlers' and accept change' *Sydney Morning Herald* 12 August 2016 <<http://www.smh.com.au/federal-politics/political-news/simon-birmingham-universities-need-to-stop-acting-like-petulant-toddlers-and-accept-change-20160812-gqraln.html>>.

<sup>39</sup> Furedi, above n 13.

<sup>40</sup> Michael Kirby, *Legal Professional Ethics in Times of Change* (1996) *Australian Bar Review* 170, 182.



Chapters Four and Five, respectively titled ‘Law Student Lifestyle Pressures’ and ‘The Relationship Between Class Participation and Law Students’ Learning, Engagement and Stress’, compare University of New South Wales law student survey data with US and UK law student data to discuss the effect of Socratic teaching styles on law student anxiety. The argument is that ‘assessable class participation’ is better for law students’ ‘wellness’. This contrasts with other research which indicates that studying law is no more stressful than studying other university disciplines.<sup>41</sup> Also, as a tertiary law degree is a prerequisite for admission to practise as a lawyer in Australia, it is perhaps unfortunate that these chapters contain little discussion on whether law school teaching methods and law degree curricula are designed to ensure graduates’ suitability, skills and ethical competency for the rigorous demands of legal practice, and their fulfilment of the paramount duty as officers of the court in the administration of justice.<sup>42</sup>

Chapters Six, Seven and Eight are titled respectively ‘Vitality for Life and Law: Fostering Student Resilience, Empowerment and Well-Being at Law School’, ‘Resilience and Wellbeing Programs’, and ‘Resilient Lawyers’. The chapter titles are self-explanatory. Chapter Eight mirrors chapter Three by raising the question of the role of parents in law students’ distress by citing Attachment Theory, which is a psychoanalytic (rather than biomedical psychiatric) explanation of how distress in adulthood can be determined by the quality of our early attachment relationships during infancy, with our mother,<sup>43</sup> with our other care-givers and in our childhood experiences.<sup>44</sup> Attachment Theory is then curiously sequestered as ‘offering no strategies ... without resorting to psychotherapy’,<sup>45</sup> indicating a latent biomedical psychiatry preference.<sup>46</sup>

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<sup>41</sup> Wendy Larcombe, Sue Finch, Rachel Sore ‘Who’s Distressed? Not Only Law Students: Psychological Distress Levels in University Students Across Diverse Fields of Study’ [2015] 37 *Sydney Law Review* 243.

<sup>42</sup> See *Australian Solicitors Conduct Rules 2011* (24 August 2015) Rule 3.1 <[http://lawcouncil.asn.au/lawcouncil/images/Aus\\_Solicitors\\_Conduct\\_Rules.pdf](http://lawcouncil.asn.au/lawcouncil/images/Aus_Solicitors_Conduct_Rules.pdf)>.

<sup>43</sup> Consider Terri Apter, *Difficult Mothers Understanding and Overcoming Their Power* (W.W. Norton & Company, 2012).

<sup>44</sup> Colin James, ‘Resilient Lawyers Maximising Well-Being in Legal Education and Practice’ in Rachael Field, James Duffy and Colin James (eds) *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016) 108.

<sup>45</sup> *Ibid* 109

<sup>46</sup> Whitaker and Cosgrove above n 17, 9-25.



The virtues of secular mindfulness are also extolled,<sup>47</sup> without specifying its ineffectiveness,<sup>48</sup> its dangers,<sup>49</sup> or possible employer agendas that '[w]ith mindfulness ... you may still choose to work those long hours, but you are getting a lot more work done'.<sup>50</sup> Nor are the national and global economic and political cultures in which Australian law schools operate explicitly factored clearly into the discussion, considering the existence of other Australian research which has questioned the effectiveness of law firm wellbeing initiatives, given legal practice's competitive habitat fuelled by possible law graduate oversupply.<sup>51</sup> These chapters also laud positive psychology theories whilst omitting research which has challenged some of it.<sup>52</sup> Lawyers' ethical resilience is further seen as 'engaging in both cognitive and emotional capacities',<sup>53</sup> without mentioning spirituality.<sup>54</sup>

The next four chapters are titled respectively 'Using Peer Assisted Learning to Develop Resilient and Resourceful Learners', 'On Being, Not Just Thinking Like, A Lawyer: Connections Between Uncertainty, Ignorance and Wellbeing', 'Balance and Context: Law Student Well-Being and Lessons From Positive Psychology' and 'Connecting Law Students to Health and Wellbeing'. Chapter 10 (titled 'On Being, Not Just Thinking Like, a Lawyer') contends that law schools should replace a 'thinking like a lawyer' strategy with a 'being like a lawyer' one, as the former 'tends to inflate the importance of certainty,

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<sup>47</sup> James, above n 44, 112.

<sup>48</sup> Miguel Farias, Catherine Wikholm and Romara Delmonte 'What is mindfulness-based therapy good for?' (2016) 3 *The Lancet* 1012, 1013.

<sup>49</sup> Miguel Farias and Catherine Wikholm, 'Has The Science of Mindfulness Lost its Mind?' *British Journal of Psychology Bulletin* (29 September 2016) 1; Miguel Farias and Catherine Wikholm 'What mindfulness gurus won't tell you: meditation has a dark side' *Health Spectator* 11 March 2016 <<http://health.spectator.co.uk/what-mindfulness-gurus-dont-tell-you-meditation-has-a-dark-side/>>.

<sup>50</sup> Excerpt from a comment that is quoted in John Hilton 'Why mindfulness works wonders' *Australasian Lawyer* 18 February 2016 <://www.australasianlawyer.com.au/news/why-mindfulness-works-wonders-212009.aspx>

<sup>51</sup> Janet Chan 'Conceptualising legal culture and lawyering stress' (2016) 21 (2) *International Journal of the Legal Profession* 213, 229. Consider Guy Standing, *The Corruption of Capitalism*, (Biteback Publishing, 2016) 17 '...robots – or rather their owners – are in control and mass joblessness is coupled with a 'panopticon' state subjecting the proles to intrusive surveillance, medicalised therapy and brain control'.

<sup>52</sup> Nick Brown, Alan Sokal, Harris Friedman, 'The Complex Dynamics of Wishful Thinking: The Critical Positivity Ratio' (December 2013) 68 *American Psychologist* 801; Nick Brown, Alan Sokal, Harris Friedman 'The Persistence of Wishful Thinking' (September 2014) *American Psychologist* 629.

<sup>53</sup> James above n 44, 114.

<sup>54</sup> By contrast see, eg, Michelle Leering, 'Conceptualizing Reflective Practice for Legal Professionals' (2014) 23 (5) *Journal of Law and Social Policy* 83, 99; Peter Gabel 'Critical Legal Studies as a Spiritual Practice' (2009) 36 *Special Issue Pepperdine Law Review* 515; Miguel Farias, Raphael Underwood and Gordon Claridge 'Unusual but sound minds: Mental health indicators in spiritual individuals' (2012) *British Journal of Psychology* 1.

knowledge and an answer-driven worldview'.<sup>55</sup> However, noting Rhode's observation that law school does not teach students to think like lawyers, but to think like law professors,<sup>56</sup> Chapter 10's analysis risks conflating valid research about *certainty within* ourselves as 'human beings' (not as 'lawyer beings') to perpetually learn and grow,<sup>57</sup> with seeking *certainty without* in the external physical world (such as the law) which is inherently uncertain because it constantly changes.<sup>58</sup>

Furthermore, by reframing 'the practice of law as an activity that necessitates an "intolerance of certainty"'<sup>59</sup> Chapter 10 does not reconcile law schools' function to teach the 'rule of law' implicit in which are notions of certainty and predictability.<sup>60</sup> This Chapter might also have the unintended effect of exhorting law schools to replace legal academics with experienced lawyer practitioners<sup>61</sup> (though this might be welcome).

Chapters 13, 14 and 15 are titled 'Contemplative Practice in the Law School: Breaking Barriers to Learning and Resilience', 'Harnessing the Law Curriculum to Promote Law Student Well-Being, Particularly in the First Year of Legal Education' and 'Beyond the Curriculum: The Wellbeing of Law Students Within Their Broader Environment'. Chapter 13 promotes integration of secularly defined contemplative mindfulness meditation practices into law school,<sup>62</sup> whilst not mentioning its dangers<sup>63</sup> or citing criticism of the psychologisation of mindfulness that is stripped of its ethical precepts and spirituality.<sup>64</sup> Chapter 13, which refers to the late Steven Keeva as a 'legal theorist', cites Keeva's view that lawyers need to have 'the *inner* experience of awakened

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<sup>55</sup> Tony Foley and Stephen Tang, 'On Being, Not Just Thinking Like, A Lawyer' in Rachael Field, James Duffy and Colin James (eds) *Promoting Law Student and Lawyer Well-being in Australia and Beyond* (Routledge, 2016) 132.

<sup>56</sup> Rhode above n 28, 129.

<sup>57</sup> Foley and Tang, above n 55, 140. Carol Dweck *Mindset: How You Can Fulfil Your Potential* (Robinson, 2012) 7.

<sup>58</sup> Cf Prue Vines and Patricia Morgan 'Contemplative Practice in Law School's in Rachael Field, James Duffy and Colin James (eds) *Promoting Law Student and Lawyer Well-being in Australia and Beyond* (Routledge, 2016) 173: 'Discourse related to the imbalance in law students' and lawyers' lives, has until recently been focused on lawyers' "outer lives"...' .

<sup>59</sup> Foley and Tang, above n 55, 132.

<sup>60</sup> See, eg, Kem Thompson Frost, 'Predictability in the Law, Prized Yet Not Promoted: A Study in Judicial Priorities' (2015) 67 *Baylor Law Review* 48.

<sup>61</sup> Edmund J Barton *The Glass Half Full: The Decline and Birth of the Legal Profession* (Oxford University Press, 2015) 229.

<sup>62</sup> Vines and Morgan, above n 58, 171-172.

<sup>63</sup> Miguel Farias and Catherine Wikholm above n 49.

<sup>64</sup> Elliot Cohen, 'From the Bodhi Tree, To The Analyst's Couch, Then Into The MRI Scanner: The Psychologisation of Buddhism' (2010) 8 *Annual Review of Critical Psychology* 97.

mindfulness'.<sup>65</sup> (Interestingly, this chapter does not discuss Keeva's seminal book *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*,<sup>66</sup> in which he urges all lawyers to spirituality). These chapters might have been more effective if they at least acknowledged the questions that some psychiatrists are asking about their own discipline, such as:

Is the suppression of spirituality in the West the reason for our struggle and suffering labelled as mental illness? Are we medicated to numb the pain and psychospiritual protest related to the felt wrongness in our modern lives?<sup>67</sup>

#### D *Wellbeing Orthodoxy and Heretical Resistance*

The final chapter, titled 'Dealing With Resistance to Change by Legal Academics,' marshals US opinion that legal academics are "uncomfortable" to confront the issue of law student wellness and prefer to participate in collective denial',<sup>68</sup> and that some will 'oppose all efforts to influence their teaching, including those driven by a desire to promote student wellness'.<sup>69</sup> This chapter cites the survey data referenced in earlier chapters before setting out what reads as being the anticipation and thwarting of future academic resistance to the book's orthodoxy, in a tone that is redolent of a denouncement of heresy. The chapter does this by presenting 'some of the ways in which resistance to teaching reform ... and wellness initiatives ... can be addressed'.<sup>70</sup>

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<sup>65</sup> Vines and Morgan above n 57, 174. Steven Keeva was a former freelance journalist and then assistant managing editor of the *American Bar Association Journal*. At the time of writing, the author was unable to find independent sources to confirm whether or not Mr Keeva was formally educated, trained and/or qualified in law.

<sup>66</sup> (Contemporary Books, 1999).

<sup>67</sup> Kelly Brogan MD 'Spirituality and Mental Illness,' 10 March 2017 <[http://kellybroganmd.com/spirituality-and-mental-illness/?utm\\_source=Kelly+Brogan+MD+Newsletter&utm\\_campaign=7f35c0806b-Spirituality+and+Mental+Illness&utm\\_medium=email&utm\\_term=0\\_d0f977a8c5-7f35c0806b-122423057](http://kellybroganmd.com/spirituality-and-mental-illness/?utm_source=Kelly+Brogan+MD+Newsletter&utm_campaign=7f35c0806b-Spirituality+and+Mental+Illness&utm_medium=email&utm_term=0_d0f977a8c5-7f35c0806b-122423057)>.

<sup>68</sup> Nick James, in Rachel Field, James, Duffy, Colin James (eds) *Promoting Law Student and Lawyer Well-being in Australia and Beyond* (Routledge, 2016) 210.

<sup>69</sup> *Ibid* 208.

<sup>70</sup> *Ibid* 206.

### III INSTITUTIONAL CORRUPTION IN BIOMEDICAL PSYCHIATRY: ETHICAL IMPLICATIONS FOR LEGAL EDUCATION AND LEGAL PROFESSIONS

When you first become a lawyer you're working hard and focusing on hitting your billable targets. Then ... you get a call from a friend asking you to ... lunch, *it makes you feel a bit important to respond* "Sorry, I can't. I'm working on a big client matter...I've got a crazy deadline"<sup>71</sup>

This section briefly explains what some scholars consider to be biomedical psychiatry's ethical crisis. The argument then offered is that biomedical psychiatry's said ethical crisis, has implications for Australian legal education which adopts wellbeing agendas that are influenced by secularised biomedical psychiatric characterisations of our human distress as 'mental health' issues, where Australia's Mental Health Literacy goal is 'for early detection and treatment of mental disorders'.<sup>72</sup> Whilst millions of human beings *are* suffering myriad forms of severe distress, this section cites international research which persuasively indicates that as biomedical psychiatry classifications of mental disorders are apparently not based on accepted objective scientific evidence,<sup>73</sup> characterising our distress as clinical diseases which 'affect the brain ... just like any other illness'<sup>74</sup> may be inaccurate, irrespective of the prevailing orthodoxy in some mental health narratives.<sup>75</sup>

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<sup>71</sup> Anonymous law firm senior partner is quoted in Ilina Rejeva, 'Beth Maclean: Dropping Billable Hour Lets Lawyers Reach Full Potential', 5 August 2016 Legal Trek Blog <<https://legaltrek.com/blog/2016/08/beth-maclean-dropping-billable-hour-lets-lawyers-reach-full-potential/>> (emphasis added).

<sup>72</sup> Jan Nadine Defehr above n 15, 19.

<sup>73</sup> See Davies, above n 17, 21-37. Also consider: '...While DSM has been described as a "Bible" for the field, it is, at best, a dictionary, creating a set of labels and defining each. The strength of each of the editions of DSM has been "reliability" – each edition has ensured that clinicians use the same terms in the same ways. The weakness is its lack of validity. Unlike our definitions of ischemic heart disease, lymphoma, or AIDS, the DSM diagnoses are based on a consensus about clusters of clinical symptoms, not any objective laboratory measure. In the rest of medicine, this would be equivalent to creating diagnostic systems based on the nature of chest pain or the quality of fever...Patients with mental disorders deserve better...' 'Post by Former NIMH Director Thomas Insel: Transforming Diagnosis' National Institute of Mental Health (US) 29 April 2013 <<https://www.nimh.nih.gov/about/directors/thomas-insel/blog/2013/transforming-diagnosis.shtml>>.

<sup>74</sup> Mental Health Australia <<https://mhaustralia.org/resources/frequently-asked-questions/what-mental-illness>>.

<sup>75</sup> See, eg, Mental Health Australia *ibid*. Consider Defehr, above n 15. This issue may have potential implications for acceptance of psychiatry defined health conditions at law. See, eg, Robert Goldney and John Connelly 'A Note on the Delineation of Nervous Shock: Normal Reaction or Recognised Psychiatric Illness?' (2012) 19(4) *Psychiatry, Psychology and the Law* 605.

A *Biomedical Psychiatry's Crisis: Mental Illness Diagnosis Inflation*

'Biomedical psychiatry' is a term used in this review to refer to a dominant and conventional school of psychiatry which 'posits that mental disorders are brain diseases and emphasises a pharmacological approach to target presumed abnormalities'.<sup>76</sup> Conventional biomedical psychiatry follows the American Psychiatry Association's 'Diagnostic and Statistical Manual of Mental Disorders' ('DSM') which has undergone five revisions since the original DSM I in 1952, the latest version being DSM 5. As the DSM is apparently not based on accepted proven scientific research results,<sup>77</sup> mental illness diagnosis does not require objective medical testing, as other illnesses do.<sup>78</sup> This is because the DSM lists the creation of hundreds of mental disorder classifications, which are defined by subjective psychiatrist consensus opinion on clusters of our behaviours and feelings.<sup>79</sup>

Biomedical psychiatry and the DSM are the subject of escalating independent international scrutiny and criticism, which includes: inflated mental illness rates due to DSM's expanding diagnostic criteria coupled with public de-stigmatisation mental illness awareness campaigns;<sup>80</sup> no DSM-listed mental disorder acknowledges social environment life event factors as causative, and no bio-physical test to connect mental illness diagnoses with aetiological processes;<sup>81</sup> and 'Australian consumption of anti-depressants is the second highest in the OECD ... there is a need to assess the appropriateness of prescribing patterns, and the availability of alternative non-pharmaceutical treatments'.<sup>82</sup> Although 85% of anti-depressants are prescribed to patients

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<sup>76</sup> Brett J Deacon, 'The biomedical model of mental disorder: A critical analysis of its validity, utility, and effects on psychotherapy research' (2013) 33 *Clinical Psychology Review* 846-861.

<sup>77</sup> See Davies, above n 17, 21-37.

<sup>78</sup> Ibid 10.

<sup>79</sup> Whitaker and Cosgrove above n 17, 9-25. Davies above n 17. Cf 'Post by Former NIMH Director Thomas Insel: Transforming Diagnosis' National Institute of Mental Health (US)' above n 73. For example, Aspergers Syndrome (which was removed and reclassified in DSM 5) was critiqued as to its existence. See, eg, Harvey Molloy and Latika Vasil 'The Social Construction of Asperger Syndrome: the pathologising of difference?' (2002) 17 (6) *Disability and Society* 659-669.

<sup>80</sup> Sami Timimi, 'No more psychiatric labels: Why formal psychiatric diagnostic systems should be abolished' (2014) 14(3) *International Journal of Clinical and Health Psychology* 208, 212; Robert Whitaker and Lisa Cosgrove, above n 17, 159.

<sup>81</sup> Timimi above n 80, 209.

<sup>82</sup> On second page of: 'Health At A Glance Findings 2015 How Does Australia Compare' (OECD 2015) <<https://www.oecd.org/australia/Health-at-a-Glance-2015-Key-Findings-AUSTRALIA.pdf>>.

by General Practitioners (rather than psychiatrists),<sup>83</sup> they do so using the DSM.<sup>84</sup> Other research reveals that some anti-depressants and anti-psychotics: are no better than placebo pills<sup>85</sup> whilst others are ineffective;<sup>86</sup> might increase the risk of autistic behaviour in children when taken by their mothers during pregnancy;<sup>87</sup> and *raise* suicide risk, particularly in children.<sup>88</sup> At the time of writing, a pharmaceutical company is the target of a future Australian class action, alleging that its anti-depressants harm children.<sup>89</sup> Also, some psychiatrists query whether Bi-Polar and ADHD diagnostics are inflated.<sup>90</sup>

Finally, it is the diagnostic *labelling* of people who experience distress with a ‘mental illness’ (just like any other physical illness) which is said to be the actual cause of social stigma – not the distress itself. This happens because when we are convinced to believe in neurobiological conceptions of mental illness as being ‘genetic’, we are *more* prejudiced as biomedical psychiatry’s disease model effectively draws a (questionable) line that separates between normal and abnormal: us and them.<sup>91</sup>

### B *Institutional Corruption in Biomedical Psychiatry: Ethical Implications for Legal Profession Wellbeing Discourse*

In one sense, the answer to the question why so many lawyers work so much is easy: It’s the money stupid. It begins with law students, who, like most Americans, seem to be more materialistic than they were twenty-five or thirty years ago. In

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<sup>83</sup> Andrew Purcell ‘Antidepressants; how drugs got into Australia’s system’ *Sydney Morning Herald* 10 October 2015 <<http://www.smh.com.au/national/advance-antidepressants-fair-how-drugs-got-into-australias-system-20151006-gk2jjh.html>>.

<sup>84</sup> See, eg, Duncan Wallace and John Cooper ‘Update on the management of post-traumatic stress disorder’ 38 *Australian Prescriber* April 2015, 55-9 <<https://www.nps.org.au/australian-prescriber/articles/update-on-the-management-of-post-traumatic-stress-disorder>>.

<sup>85</sup> Irving Kirsch, ‘Antidepressants and the Placebo Effect’ (2014) 222 (3) *Zeitschrift für Psychologi* 128; Irving Kirsch *The Emperor’s New Drug: Exploding the Antidepressant Myth* (Basic Books, 2009); Joanna Moncrieff, *The Myth of the Medical Cure: A Critique of Psychiatric Drug Treatment* (Palgrave Macmillan, 2008).

<sup>86</sup> Andrea Cipriani, Xinyu Zhou, *et al* ‘Comparative efficacy and tolerability of antidepressants for major depressive disorder in children and adolescents: a network meta-analysis’ (27 August 2016) 388 (10047) *The Lancet* 881-890.

<sup>87</sup> Takoua Boukhris, Odile Sheehy, Laurent Mottron, Anick Bérard, ‘Antidepressant Use During Pregnancy and the Risk of Autism Spectrum Disorder in Children’ (Feb 2016) 170 (2) *JAMA Pediatrics* 117.

<sup>88</sup> See, eg, Jacqui Wise ‘Antidepressants may double risk of suicide and aggression in children, study finds’ (2016) *The British Medical Journal* 1 <<http://www.bmj.com/content/bmj/352/bmj.i545.full.pdf>>.

<sup>89</sup> Bianca Hall ‘GlaxoSmithKline to face class action over anti-depressant used on children’ *Sydney Morning Herald* 11 March 2016 <<http://www.smh.com.au/national/glaxosmithkline-to-face-class-action-over-antidepressant-used-on-children-20160311-gngt7n.html>>.

<sup>90</sup> Joanna Moncrieff ‘The medicalization of “ups and downs”’: The marketing of the new bipolar disorder’ (2014) 0(0) *Transcultural Psychiatry* 1; Whitaker and Cosgrove above n 17, 90, 107.

<sup>91</sup> See Whitaker and Cosgrove above n 17, 170; Timimi above n 80, 11.

1970, 39% of students entering college said that “being well off financially” was either “essential” or “a very important” life goal: in 1993, that figure had almost doubled to 75%”.<sup>92</sup>

This section discusses the research of Whitaker and Cosgrove on the institutional corruption of biomedical psychiatry and then posits its potential implications for wellbeing research that uses a biomedical psychiatry paradigm and associated ‘mental health’ vernacular to inform law student and lawyer wellbeing initiatives. Whitaker and Cosgrove have presented biomedical psychiatry’s failures as an ethics case study of Lessig’s notion of ‘institutional corruption’.<sup>93</sup> Institutional corruption is where systemic, usually legal, practices, are done under ‘economies of influence’ that cause an institution to act in ways that undermine its public mission, its effectiveness, and weaken public trust in it by bending the original mission under normalising behaviours that compromise truth-seeking. Institutional corruption is different to individual corruption, as the problem is not a few corrupt individuals whilst an organisation’s overall integrity remains intact.<sup>94</sup>

Although an institutional corruption framework assumes that individuals in an institution are good people, Whitaker and Cosgrove explain that it is the larger ‘economies of influence’ from the social, political and cultural factors that affect it, which then causes a ‘bad barrel’ problem of corrupting the institution’s whole purpose, not just individual bad apples.<sup>95</sup> In this framework, biomedical psychiatry is said to have invented a corrupt DSM containing inflated mental illness disease constructs, under the influence of guild interests – to remake psychiatry’s image as a medicine discipline, win the turf war with psychoanalytical psychology in the ‘talk therapy market’, and assuage government and private insurers’ perceptions of psychiatry as a financial bottomless pit<sup>96</sup> – by diagnosing distress as a medical illness because ‘insurance is meant to pay for the sick, not the discontented’.<sup>97</sup>

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<sup>92</sup> Patrick J. Schiltz, ‘On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession’ (1999) 52 *Vanderbilt Law Review* 871, 896.

<sup>93</sup> Robert Whitaker and Lisa Cosgrove above n 17, 7.

<sup>94</sup> Robert Whitaker and Lisa Cosgrove above n 17, 6. Lawrence Lessig, ‘Institutional Corruption Defined’ (2013) *Journal of Law and Medicine* 2.

<sup>95</sup> Whitaker and Cosgrove above n 17, 6.

<sup>96</sup> *Ibid* 16-19.

<sup>97</sup> *Ibid* 24.



Institutional corruption may explain the rise of mental illness diagnoses under psychiatry's partnering with the pharmaceutical industry to fund research into biological 'causes'<sup>98</sup> of DSM mental disorders, whilst expanding the DSM's reach to children and our entire society by altering our vision of human normalcy.<sup>99</sup> *Cognitive dissonance* – the dishonesty we are said to commit in order to reconcile the emotional pain of the guilt we experience when our behaviour contradicts our own image of ourselves – may also explain biomedical psychiatry's inability to admit its failures and reform itself.<sup>100</sup>

Secular wellbeing agendas which then adopt biomedical psychiatry's disease-based mental health vernacular to characterise distress in law students and lawyers may not only be inaccurate<sup>101</sup> but endorse, by proxy, the deflection of ethical responsibility for our emotional wellbeing and our own behaviour, whilst downplaying our spiritual wellbeing.<sup>102</sup> This might be occurring whilst mental illness 'anti-stigma campaigns carry the message that psychiatric disorders are brain disorders, and thus not anyone's fault'.<sup>103</sup> As a secular psychocentric worldview of 'mental health' appears to be erasing the wellbeing functions that are fulfilled by divinity, spirituality and religion,<sup>104</sup> is it a coincidence that lawyers are now said to have replaced priests?<sup>105</sup> Furthermore, a

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<sup>98</sup> Note reports in Australia about the discovery of a previously 'unknown' link between poor immune systems and mental health dysfunction (see David Weber 'Groundbreaking study links immune system to mental health' 27 May 2016 *ABC News* <<http://www.abc.net.au/news/2016-05-27/mental-health-study-a-boon-to-patients-immune-system/7455310>>) which may need to be considered alongside prior reports of a similar or the same discovery by others. See, eg, Kelly Brogan, *A Mind Of Your Own: The Truth About Depression and How Women Can Heal Their Bodies to Reclaim Their Lives* (Harper Collins, 2016) 3: 'we owe most of our mental illnesses ... to life style factors and undiagnosed physiological conditions that develop in places far from the brain, such as the gut and thyroid.' See, eg, Alper Evrensel and Mehmet Emin Ceylan, 'The Gut-Brain Axis: The Missing Link in Depression' (2015) 13 (3) *Clinical Psychopharmacology and Neuroscience* 239-244; William Crook MD *The Yeast Connection: A Medical Breakthrough* (Vintage Books, 1986).

<sup>99</sup> Whitaker and Cosgrove above n 17, 159-171.

<sup>100</sup> Whitaker and Cosgrove above n 17, 183-195.

<sup>101</sup> See Christine Parker 'The Moral Panic Over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response?' (2014) 37 (3) *University of New South Wales Law Journal* 1103.

<sup>102</sup> Harvard Divinity School's Chaplaincy Without Borders website states that: 'Available research—most of it about the healthcare sector—shows that chaplaincy positively impacts metrics such as patient satisfaction and length of hospital stay, and makes a particular difference during acute situations like end-of-life care. In corporate settings, chaplaincy has been shown to improve employee morale... Chaplaincy is about care of the spirit and soul...' <<http://hds.harvard.edu/news/2016/10/13/chaplaincy-without-borders#>>. Although the term 'spiritual' is mentioned in Chapter Six it is not elaborated upon; see Judith Marychurch 'Vitality for Life and Law Fostering Student Resilience, Empowerment and Well-Being at Law School' in Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016) 81.

<sup>103</sup> Whitaker and Cosgrove above n 17, 170.

<sup>104</sup> Sarah Goldingay, Paul Dieppe and Miguel Farias '“And the pain just disappeared into insignificance”: The healing response in Lourdes – Performance, psychology and caring' (2014) 26 (3) *International Review of Psychiatry* 315.

<sup>105</sup> See generally, Philip Wood, *The Fall of the Priests and the Rise of the Lawyers* (Hart Publishing, 2016).

secularised wellbeing agenda which adopts a physicalist spiritually devoid paradigm arguably closes off deeper questions we need to explore, such as the role of our parents and families of origin (before law school), and whether there are legal education self-interests that are inconsistent with the public service missions of truth and the administration of justice, that our legal profession is supposed to serve.<sup>106</sup>

Legal education, like biomedical psychiatry, may also be possibly experiencing its own cognitive dissonance, for which a wellbeing agenda that focuses on curriculum designs and softer teaching styles, serves to reconcile a broader institutional corruption of some of legal education's public service missions such as truth and justice.<sup>107</sup> In the same way that legal education wellbeing agendas might, albeit with good intentions, encourage adult students to abdicate responsibility for themselves as law schools effectively become *in loco parentis*,<sup>108</sup> biomedical psychiatry tells us that the solutions for our distress are not within us, but are outside ourselves.<sup>109</sup>

Whitaker and Cosgrove rightly say that this view robs us of our sense of self-agency, as we are not encouraged to examine the context of our lives – what has happened, what might be changed, and radically – when suffering needs to be embraced.<sup>110</sup> In law, the contexts we might be encouraged to honestly and courageously examine include: unethical conduct 'occurring in connection with the practice of law *or occurring otherwise than in connection with the practice of law*';<sup>111</sup> our reasons for studying and practising law in the first place; and whether our reasons were to genuinely serve the public missions of truth and justice, or instead to serve personal (and/or parental) career ambitions of achievement, social mobility, prestige, power and financial self-interest?

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<sup>106</sup>See, eg, Rhode above n 28. Consider Brian Tamanaha *Failing Law Schools* (University of Chicago Press, 2012). Consider generally, Kathy Caprino 'The Crushing Similarities Between Family and Business Dysfunction' *Forbes*, 19 August 2014 <<http://www.forbes.com/sites/kathycaprino/2014/08/19/the-crushing-similarities-between-family-and-business-dysfunction/#7ffe7a4c4055>>.

<sup>107</sup> In the United States for example, everyone is said to be confused about what law school is for. See Benjamin Barton, *Glass Half Full the Decline and Rebirth of the Legal Profession* (Oxford University Press, 2015) 146.

<sup>108</sup> Furedi above n 13. Consider Judith Locke 'Can A Parent Do Too Much for Their Child? An Examination By Parenting Professionals of the Concept of Overparenting' (2012) 22 (2) *Australian Journal of Guidance and Counselling* 249.

<sup>109</sup> Whitaker and Cosgrove above n 17, 169.

<sup>110</sup> Consider Whitaker and Cosgrove above n 17, 167; James Davies, *The Importance of Suffering* (Taylor and Francis, 2012); Jon Jureidini 'Let children cry' (17 November 2014) 201 (10) *Medical Journal of Australia* 612. Cf Miller above n 9.

<sup>111</sup> *Legal Profession Uniform Law* (NSW) No 16a, s 297 (1)(b) (emphasis added).

## IV CONCLUSION

Non-denominational spiritual writer Eckhart Tolle, may have summed up our agliophobia:

Wouldn't it be wonderful if you could spare them from all suffering? No, it wouldn't. They would not evolve as human beings and would remain shallow ... Suffering drives you deeper...Humanity is destined to go beyond suffering, but not in the way the ego thinks. One of the ego's many erroneous assumptions, one of the many deluded thoughts is "I should not have to suffer." Sometimes the thought gets transferred to someone close to you: "My child should not have to suffer."... As long as you resist suffering, it is a slow process.<sup>112</sup>

*Promoting Law Student and Lawyer Well-Being in Australia and Beyond* may be an example of just such a valiant attempt to resist the suffering that we perhaps all need to feel when legal education may have unconsciously deviated from its responsibility to prepare adult law students for the rigorous ethical responsibility that is required for admission as an officer of the court in the administration of justice. This has implications for our legal profession, as the book does not establish clearly whether the public service missions of truth and justice are the goals of its wellbeing proposals. Also, notions that law degrees are now a generalist credential for getting a well-paying job<sup>113</sup> indicate that whatever Australian legal education's mission might have been initially, it may have now shifted.

The ethical capacity for legal education to scrutinise the motives behind its wellbeing initiatives for law students who might be unwittingly seen as higher education 'consumers'<sup>114</sup> is unclear, when the necessary independence for such scrutiny is potentially fettered by economies of influence to become *in loco parentis*, whilst not addressing the actual causes of distress (such as possible law student over enrolment and

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<sup>112</sup> Eckhart Tolle *A New Earth* (Penguin Books, 2005) 102.

<sup>113</sup> Carolyn Evans 'Law degree is still the best bet for a graduate job that pays well' *Australian Financial Review* (11 August 2016) <<http://www.afr.com/opinion/law-school-is-still-the-best-bet-for-a-graduate-job-that-pays-well-20160811-gqpz8n>>.

<sup>114</sup> Geoff Sharrock 'Students aren't customers...or are they?' *The Conversation* 9 May 2013 <<http://theconversation.com/students-arent-customers-or-are-they-13282>>.

oversupply).<sup>115</sup> Unconscious self-preservation interests may then corrupt legal education's public service missions, given that Australian Bachelor of Laws degrees are an accredited academic qualification for admission as an officer of the court in our justice system.<sup>116</sup>

Finally, it remains to be seen whether cognitive dissonance will, as Whitaker and Cosgrove contend may have occurred in psychiatry, prevent legal education from considering pre-law school factors and law graduate over-supply questions as the possible real causes of distress for our law students and lawyers. As Whitaker and Cosgrove have recommended for psychiatry's reform,<sup>117</sup> we may similarly need an independent ethics agenda to reform our legal education (and thereby our legal profession) which involves a broader group of professionals from other disciplines beyond law, such as divinity, spirituality and religion,<sup>118</sup> amongst others. Consequently, *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* makes a valuable contribution by showing the need for a new ethics agenda for legal education.

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<sup>115</sup> Cf Thornton above n 29. It also remains to be seen whether arguments that law schools should become responsible for law students' mental health, will create a new legal duty of care and litigation risk for law schools, noting US law graduates' litigation attempts against American law schools for law graduate unemployment/law school debt? See, eg, Nick Whigman 'Hapless graduates sue their former universities in shockingly high numbers' 25 December 2015, *news.com.au* <<http://www.news.com.au/finance/work/hapless-graduates-sue-their-former-universities-in-shockingly-high-numbers/news-story/6f5a7be7093804775034301bacb07a23>>.

<sup>116</sup> See, eg, *Legal Profession Uniform Admission Rules 2015* Part 2 Rule 5 (1) (a) which states academic qualification prerequisites for legal admission in New South Wales and Victoria that include at least three years' full time study of law in a Legal Profession Admission Board accredited tertiary academic course.

<sup>117</sup> Whitaker and Cosgrove above n 17, 207.

<sup>118</sup> Consider Richard Layard 'Promoting Happiness Ethics: The Greatest Happiness Principle' in John Helliwell, Richard Layard, & Jeffrey Sachs (2016) *World Happiness Report 2016, Update* (Vol. I). New York: Sustainable Development Solutions Network, 51: '...we need a new ethics which incorporates the best values to be found in all religions, but which is equally convincing to people with no religious faith at all'.