

The Threshold Learning Outcome on self-management for the Bachelor of Laws degree: A proposed focus for teaching strategies in the first year law curriculum

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Abstract

The Australian Learning and Teaching Council (ALTC) Discipline Scholars for Law, Professors Sally Kift and Mark Israel, articulated six Threshold Learning Outcomes (TLOs) for the Bachelor of Laws degree as part of the ALTC's 2010 project on Learning and Teaching Academic Standards. One of these TLOs promotes the learning, teaching and assessment of self-management skills in Australian law schools. This paper explores the concept of self-management and how it can be relevantly applied in the first year of legal education. Recent literature from the United States (US) and Australia provides insights into the types of issues facing law students, as well as potential antidotes to these problems. Based on these findings, I argue that designing a pedagogical framework for the first year law curriculum that promotes students' connection with their intrinsic interests, values, motivations and purposes will facilitate student success in terms of their personal well-being, ethical dispositions and academic engagement.

Please cite this article as:

Huggins, A. (2011). The Threshold Learning Outcome on self-management for the Bachelor of Laws degree: A proposed focus for teaching strategies in the first year law curriculum. *The International Journal of the First Year in Higher Education*, 2(2), 23-44. doi: 10.5204/intjfyhe.v2i2.82

This article has been peer reviewed and accepted for publication in *Int J FYHE*. Please see the Editorial Policies under the 'About' section of the Journal website for further information.

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Introduction

A new Threshold Learning Outcome (TLO) for the Bachelor of Laws degree promotes the learning, teaching and assessment of self-management skills in Australian law schools. This paper explores the concept of self-management and its relevance to significant issues currently facing law schools, including students' elevated levels of psychological distress and concern about cultivating students' ethical dispositions and academic engagement. Based on this discussion, I propose a pedagogical framework for the first year law curriculum that promotes students' connection with their intrinsic motives. Such a framework meaningfully directs attention to the types of issues the self-management TLO was designed to address.

The first section of this paper provides background on the new TLO on self-management and examines how self-management has been defined and applied in various contexts. The following section outlines trends in high levels of distress amongst students and practitioners of the law and why teaching self-management skills should be a particular focus in the first year of legal education. The types of factors that have been empirically linked to law students' distress are also relevant to professionalism and academic success. In the final sections of the paper, a framework for teaching self-management in the first year of legal education is proposed, followed by a conclusion and discussion of future research opportunities.

A Threshold Learning Outcome for law on self-management

The Australian government recently established the Tertiary Education Quality and Standards Agency (TEQSA) as an independent quality and regulatory agency tasked with, *inter alia*, overseeing a new standards-based quality assurance framework for Australian higher education providers (Department of Education, Employment and Workplace Relations, 2011). To facilitate the development of discipline-specific academic standards, the Australian government commissioned the Australian Learning and Teaching Council (ALTC) to run aspects of the Learning and Teaching Academic Standards (LTAS) Project. Throughout 2010, discipline scholars across a number of broad subject areas engaged in extensive stakeholder consultation and feedback processes with the aim of developing these discipline-based academic standards, represented by minimum TLOs for graduates. The Law Discipline Scholars are Professors Sally Kift and Mark Israel, who facilitated a process culminating in the development of six broad TLOs for the Bachelor of Laws degree and accompanying *Notes on the TLOs* to provide guidance on their interpretation (Kift, Israel, & Field, 2010).

The TLOs are described in the *Bachelor of Laws learning and teaching academic standards statement* (Kift et al., 2010). Relevantly, TLO 6 on Self-management states that:

Graduates of the Bachelor of Laws will be able to

- a. learn and work independently, and
- b. reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development. (p. 22)

The other TLOs are: (1) Knowledge; (2) Ethics and Professional Responsibility; (3) Thinking Skills; (4) Research Skills; and (5) Communication and Collaboration. There is considerable overlap between the skills required under these ostensibly discrete TLOs (Kift et al., 2010).

In November 2010, the Council of Australian Law Deans (CALD) endorsed the *Standards statement* for the Bachelor of Laws as “an appropriate statement of the Threshold Learning Outcomes that are required of Bachelor of Law graduates from any Australian university” (Kift et al., 2010, p. 7). It is likely that evidence of student achievement of the TLOs will also be required by TEQSA, however the mechanisms for this process remain unclear. Thus, it is timely for law schools to direct attention to developing pedagogical strategies to promote and demonstrate students’ acquisition of the TLOs, including the ability to self-manage.

Kift et al. (2010) state that graduates’ attainment of the TLOs will “most likely be facilitated in a structured and integrated, whole-of-curriculum approach through learning, teaching and assessment” (p. 9). Whilst I agree with the desirability of a whole-of-curriculum approach to self-management, for the purposes of this discussion, I will focus on the importance of imparting these skills in the first year of legal education. As I will outline in the following sections, there is a growing body of evidence to support the proposition that the first year of law school is the most salient time to equip students with self-management skills.

What is self-management?

In light of the possibility that Australian universities may in future be audited on the extent to which they address TLO 6 on self-management as part of the Bachelor of Laws degree, and the opportunity the TLOs provide to build upon the minimum threshold academic standards described to develop best practice, it is pertinent to explore the meaning of self-management and the particular aspects of this concept that should be emphasised in the first year of legal education. Preliminary guidance around this topic can be sourced from existing statements on employability skills and graduate attributes for Australian law students.

In 2002, the Australian Chamber of Commerce and Industry and the Business Council of Australia collaborated to develop an “Employability Skills Framework” identifying eight key employability skills (Department of Education, Science and Training [DEST], 2002). Employability skills are defined as “skills required not only to gain employment, but also to progress within an enterprise so as to achieve one’s potential and contribute successfully to enterprise strategic directions” (p. 3). Self-management is one of the eight employability skills identified under the Framework and is described as “skills that contribute to employee satisfaction and growth” (p. 7). This definition reflects the importance of employees’ motivations, purpose fulfillment and personal development for work performance. More specifically, the Employability Skills Framework’s description of self-management includes:

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- Having a personal vision and goals;
- Evaluating and monitoring own performance;
- Having knowledge and confidence in own ideas and visions;
- Articulating own ideas and visions; and
- Taking responsibility. (p. 9)

This articulation in the Employability Skills Framework provides a useful starting point for developing a conceptualisation of self-management that is tailored to legal education.

Most Australian universities have adopted statements of graduate attributes that substantively replicate the Employability Skills Framework (Kift, 2008, p. 6). Relevant to this discussion, a number of Australian law schools have integrated variations on the self-management concept into their graduate attributes statements. For example, as summarised by Davis, Owen, Coper, Ford and McKeough (2009, p. 127), the graduate attribute statement at the University of Technology Sydney Law School refers to “self and cooperative management,” including “understand[ing] and manag[ing] emotions regarding themselves and others”; its counterpart at La Trobe University Law School describes “commitment to personal and professional self-development”; the University of Western Australia Law School refers to “effective personal skills and competent relational skills”; and Murdoch University Law School makes reference to the “ability to cope with uncertainty and adapt to change.” Key themes emerging from these graduate attribute articulations include emotional intelligence, personal development, communication skills, resilience and self-regulation. Fostering these types of skills in law students aligns with one of the purposes behind TLO 6; as

noted in the *Notes on the TLOs*, the legal profession regards the need for graduates to have “emotional intelligence”—defined as the “ability to perceive, use, understand and manage emotions”—as “critical to professional practice” (Kift et al., 2010, p. 23).

Self-management and law students’ distress

Teaching and assessing self-management skills provides an opportunity for Australian law schools to address and alleviate the high levels of distress experienced by law students; these skills once mastered will also be transferable to graduates’ working lives. Before proceeding with a discussion of strategies for cultivating law students’ self-management capacities, it is helpful to review the literature on law students’ distress and its putative causes. Recent Australian data confirms a trend long-documented in the US regarding the negative impacts of legal education on students’ psychological well-being, evidenced by elevated levels of anxiety, depression and substance abuse. A 2009 study of students at a leading Australian university noted that “law students have the highest proportion of depressive illness amongst university students and ... lawyers have the highest proportion of depression of all the professions” (Tani & Vines, 2009, p. 4). This is supported by a 2009 study by the Brain and Mind Research Institute (BMRI) which found that 35% of law students experience high levels of psychological distress, compared with 18% of medical students and 13% of people aged 18-34 in the general population. These trends continue largely unabated into lawyers’ working lives, with 31% of practicing solicitors and 16.7% of

barristers experiencing high levels of psychological distress, compared with 13% of the general population over 17 years of age (Kelk, Luscombe, Medlow & Hickie, 2009, p. 12). This Australian evidence aligns with the disproportionately high levels of distress that have been documented in American law student samples over multiple decades (e.g., Benjamin, Kaszniak, Sales, & Shanfield, 1986; Dammeyer & Nunez, 1999; Sheldon & Krieger, 2004).

Significantly, extant studies indicate that the negative effects of legal education on law students *begin* in the first year of legal education. Some American research indicates that people who have certain types of personality preferences “self-select into the law” (Daicoff, 2004, p. 51). To address whether the distress experienced by law students is indigenous to the types of students who choose to attend law school, Benjamin et al. (1986, p. 228) examined law students’ psychological well-being before, during and after their formal legal education. They found that pre-law students experienced symptoms of psychological distress within a normal range, whilst students in the first year of law school scored significantly higher on every distress symptom dimension (p. 240). The symptoms of psychological distress measured in this study included “obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation)” (p. 246). The authors noted that, compared with pre-law students, a “sharp increase in feelings of inadequacy and inferiority” occurred in the first six months of law school (p. 243). More recent research by Sheldon and Krieger (2004) similarly demonstrated that at the beginning of law school, law students

had higher than average levels of subjective well-being which had deteriorated precipitously by the end of the first year of law school. In an Australian context, Hall, Townes O’Brien and Tang (2010) have presented preliminary empirical findings indicating that the first year of legal education contributes to, *inter alia*, higher levels of stress and distress, and reduced satisfaction with life amongst law students. The trend in students’ elevated symptoms of psychological distress established in their first year of law school has been shown to continue throughout their law degrees (Benjamin et al., 1986, p. 246; Sheldon & Krieger, 2004, p. 274) and into their early careers as law school graduates (Benjamin et al., 1986, p. 246).

As James (2005, p. 127) notes, despite differences in average student age, course duration¹ and fee levels, there are significant similarities between Australian and US legal education systems, including a predominant focus on doctrinal legal theory and analysis, emphasis on “thinking like a lawyer,” and privileging of academic grades and honours as the chief predictors of subsequent success. It is therefore reasonable to assume that in Australia, as in the US, the first year of law school is a pivotal period in which deleterious psychological processes and patterns develop in some students. A corollary of this is that the first year of law school is also the most opportune time to teach self-management strategies designed to address and ameliorate law student

¹ American legal education is based on a three-year graduate system, indicating that many first year law students in the US will be older than their undergraduate counterparts in Australia, who typically attend law school for four to five years (James, 2005, p. 127).

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distress.² Such strategies would aim to equip students with skills that will support them throughout their law degrees, as well as in their personal and professional lives beyond law school.

There is likely to be a multiplicity of factors that contribute to the steep decline in law student well-being in the first year of law school (Sheldon & Krieger, 2004, p. 80). Although a number of studies have proffered tentative conclusions about what it is about legal education that contributes to students' distress (for an overview see Sheldon & Krieger, 2007, pp. 883-884), there is a relative dearth of literature that empirically links such factors to the observed symptoms. Notable exceptions to this are a US study by Sheldon and Krieger (2004) and an Australian study by Tani and Vines (2009). Although neither of these studies was able to establish direct causal links between aspects of legal education and law students' distress, as elaborated below, Sheldon and Krieger (2004) empirically demonstrated correlations between law students' motivations and values and their subjective well-being, whilst Tani and Vines (2009) established indicative factors in law students' attitudes that may help to explain the high incidence of depression amongst Australian law students.

Sheldon and Krieger's 2004 study correlated declines in subjective well-being in first year law students in two different US universities with changes in both the reasons law students are motivated to pursue their goals and the content of those

goals. The authors measured subjective well-being by using "positive affect, negative affect, life satisfaction, depression and physical symptom scores" (Sheldon & Krieger, 2004, pp. 267-268). They described the "'why' of motivation" as "autonomous versus controlled reasons for acting" and the "'what' of motivation" as whether the goals aspired to were based on intrinsic values such as "emotional intimacy, community contribution, and personal growth" or extrinsic values such as "financial success, appealing appearance, and social popularity" (pp. 268-269). The results in both university samples indicated that by the end of first year law school, students had shifted away from autonomous motivations for pursuing their law school goals, such as personal interest or enjoyment, and placed greater emphasis on extrinsic values including wishing to please and impress others and greater valuing of appearances. Significantly, these changes in law students' motivations and values during the first year of law school correlated with steep declines in self-reported levels of positive affect and life-satisfaction, as well as strong increases in negative affect (pp. 279-280). These findings suggest that supporting and encouraging students' intrinsic motivations and values could be one important focus of a framework for self-management that promotes law students' well-being.

Recent empirical Australian data supports the proposition that law students place a disproportionately high emphasis on extrinsic rather than intrinsic motivations and goals. Tani and Vines (2009) examined data collected from 2,528 students from ten disciplines at the University of New South Wales about "their attitudes to their experience and expectations of their university education" (p. 3). The authors

² Field and Kift (2010) similarly argue that intentional curriculum design in the first year of law school, including supportive assessment and feedback practices, is critical for alleviating law students' distress.

found that relative to students from all other faculties—including from the medical faculty which also offers professional studies with similarly high entrance score requirements, workloads, and prospects for subsequent financial success—students from the law faculty demonstrated a stronger extrinsic orientation. Specifically, law students were, *inter alia*, more likely to have chosen their degree for external reasons, including to please their parents and because of its future career prospects; were less motivated by learning and intrinsically interested in the content of their degree; were more likely to value their university's reputation; and demonstrated a preoccupation with getting high grades (Tani & Vines, 2009, pp. 12-25). The authors suggest that low personal autonomy, strong competitiveness and lack of deep social connectedness are factors that may be linked to the high incidence of depression among law students compared to students from other disciplines. They therefore proposed that legal education strategies that are purposefully designed to support social connectedness and promote autonomy, including increasing students' sense of intrinsic motivations for their studies, may foster resilience in law students and ameliorate their distress (Tani & Vines, 2009, pp. 30-32).

It is important to note that working towards and enjoying external rewards such as high grades, large salaries and other status symbols are not inherently problematic; rather, it is the relative priority an individual places on intrinsic versus extrinsic motives that appears to be pivotal to their satisfaction and well-being. External rewards may be a welcome bonus and recognition of activities performed well, but it is when they become a person's primary reason for acting, at the expense of

their true values and interests, that the negative consequences described above are at greater risk of occurring (Krieger, 2008, pp. 259-260).

Professionalism

The foregoing discussion has outlined factors linked to law students' personal (and later professional) well-being, which relates to part (b) of TLO 6. Professionalism and ethical behaviour are also highly relevant to self-management as described under part (b). As is compellingly argued by Krieger (2005, 2008), people who are intrinsically and authentically motivated will, in addition to being empirically shown to enjoy improved psychological health and life satisfaction, demonstrate greater consistency, congruence and integrity, which are inseparable from professionalism. In other words, people who are motivated to act due to their inherent enjoyment or interest in the activity or because they believe in the purpose of the activity are, due to their internal locus of reference, far more likely to act in ways that are consistent with professional behavior. By contrast, people who make extrinsically motivated choices premised on the hope of external rewards, are likely to be less fulfilled and satisfied in their work, and consequently at risk of a range of negative consequences that accompany dissatisfaction, including unprofessional and unethical behaviour (Krieger, 2005, pp. 428-430). In a similar vein, Montgomery (2008) and Hall et al. (2010) advocate fostering emotional intelligence competencies as integral and essential aspects of law students' nascent professional identities.

Academic engagement

The extant literature reveals that intrinsic values and motivations are also relevant to part (a) of TLO 6, which refers to students' self-management of their learning and work. For example, in a recent Australian study, Larcombe, Nicholson and Malkin (2008, p. 107) found that 88% of high achieving first year law students at the University of Melbourne (those who received a final grade of 80% or above) nominated "interest and aptitude" as a reason for choosing to undertake their law degree, reflecting a positive relationship between intrinsic motivation and academic success. In a national survey of first year students in Australian universities across diverse disciplines, Krause, Hartley, James and McInnis (2005, p. 13) similarly found that two intrinsic motives, namely "studying in a field that really interests me" and "developing my talents and creative abilities," were more likely to be nominated as reasons for their course choice by high achieving students who achieved an overall mark of 70% or higher in their first semester of university. The link between intrinsic motivation and academic achievement has also been repeatedly demonstrated in a range of social psychology studies (for an overview, see Vansteenkiste, Lens & Deci, 2006).

Significantly, as noted by Larcombe et al. (2008, pp. 97, 122), attributes such as interests and attitudes are not fixed character traits and can be fostered and nurtured in all first year law students. The capacity to cultivate internal reasons for acting for previously extrinsically-motivated behaviours is well-supported in the social psychology literature. In relation to academic success, research by Vansteenkiste et al. (2006) has shown that

framing activities in terms of serving the attainment of intrinsic rather than extrinsic goals "promotes deeper processing of the learning material, greater conceptual understanding of it, and both short-term and long-term persistence at relevant learning tasks" (p. 28), which are clear harbingers of academic engagement and achievement. Relating to the previous discussion on professionalism, the potential for law students to internalise norms of professional and ethical behaviour is reflected in a requirement for curriculum content in *The CALD standards for Australian law schools* adopted in late 2009 which states:

In particular, the curriculum seeks to develop ... awareness of and sensitivity to, and, so far as is practicable, internalisation of, the values that underpin the principles of ethical conduct, professional responsibility, and community service (CALD, 2009, para 2.3.3(d)).

Key proponents of Self-Determination Theory (see, e.g., Niemiec, Ryan & Deci, 2010; Ryan & Deci, 2000) describe the process by which extrinsic motivations can be internalised to varying degrees as people synthesise the value of the motive with reference to their other goals and values. Ultimately, extrinsic motivations can be integrated to such an extent that people have a sense of autonomy and volition as they act and also regulate themselves (i.e. self-manage) in the pursuit of those values and goals (Ryan & Deci, 2010). The capacity of law students to shift from emphasising extrinsic to intrinsic values and motivations (and vice versa) is central to the framework for teaching self-management I propose below.

A proposed framework for self-management for the first year law curriculum

The empirical findings in the above studies provide valuable guidance for developing a framework for learning, teaching and assessing self-management. Firstly, such a framework should take into account, and seek to address and mitigate, law students' disproportionately high distress levels. Secondly, self-management strategies that address these issues should be taught in the first year of law school (as well as throughout the law degree) as this is a pivotal juncture in the formative cognitive and emotional experiences of law students. Thirdly, this framework should seek to utilise the findings in the extant literature about the factors linked to (law) student well-being to equip students with the inner resources and understandings to promote greater resilience, coping capacity and self-regulation throughout their law degrees.

Building on the articulation of self-management in the Employability Skills Framework (DEST, 2002), I propose that teaching and assessing self-management in Australian law schools should help students develop skills and understandings that contribute to their well-being, satisfaction and growth, both personally and professionally. A meaningful focus of such a framework could be educating students about the importance of intrinsic goals and autonomous motivations for well-being and success. As Tani and Vines (2009) recommend:

To be robust and resilient lawyers in the profession, it is necessary to develop a sense of autonomy and to have intrinsic motivation for one's actions. In the law school, it may be important to be

explicit about the need for people to have intrinsic motivation and for students to develop this. (p. 31)

Elaborating on this statement, I propose that a self-management framework for the first year law curriculum could include helping students to: *(1) identify and cultivate their intrinsic interests, values, motivations and purposes; and (2) develop skills to manage their emotions and behaviours as they act in accordance with these intrinsic motives.* Based on the findings of the above literature, developing strategies for teaching such understandings and skills in the first year of legal education will be supportive of law students' well-being, professionalism and academic engagement. Moreover, it will provide an added layer of innovation and sophistication to the current foci of legal curricula in Australian universities that supports "life-wide" and long-lasting law student success.

Current pedagogical practices in some US and Australian law schools partially address the issues outlined in this proposed framework. For example, Krieger (2005) and Morin (2000) outline strategies for helping law students cultivate their intrinsic motives, whilst James (2005) and Hall et al. (2010) describe methods for fostering law students' emotional intelligence competencies. This literature provides guidance for developing a comprehensive approach to self-management that is embedded in curriculum design in all Australian law schools, thereby ensuring graduates acquisition of this important learning outcome.

Conclusion and future directions

This paper provided an exploratory discussion on the new TLO 6 on self-management for the Bachelor of Laws degree. It outlined how self-management has been conceptualised in diverse contexts and reviewed recent literature on the potential causes of, and antidotes to, problems affecting law students (and lawyers). On this basis, I argued that a framework that encourages students to stay on track with their intrinsic motives, including learning how to manage their attendant emotional processes, is a desirable focus for teaching self-management in the first year law curriculum.

If such a framework for self-management is to be adopted and implemented, further research into pedagogical strategies that effectively instill the above understandings and skills in first year law students will be required.³ Research into how this proposed framework for self-management can be integrated and extended in the later years of the Bachelor of Laws degree is also warranted.

The teaching of self-management along these lines may involve relevant members of Australian law faculties becoming familiar with new material to impart to their students. This could be a small price to pay to support the mental health and well-being of Australian law students and future lawyers. As the BMRI report notes:

³ This future direction is the subject of the author's PhD research through Queensland University of Technology.

An important precondition for effective work to be done in any institution regarding the psychological distress of its members is that the *institution must take on the mental health of its members as an essential institutional goal.* (Kelk et al., 2009, pp. 43-44; emphasis in original)

By taking active steps to implement a self-management program in the first year of legal education, law schools can simultaneously fulfill the aims of the TLOs and their broader obligations to the well-being of their students and the professionals they will become.

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