

No time to lose: Negative impact on law student wellbeing may begin in year one

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Abstract

Preliminary results of a pilot study of law students suggest that, during the first year of law study, students may experience changes in thinking styles, stress levels, and satisfaction with life. Although further inquiry into the cause of law student distress is necessary, the authors consider certain assumptions underlying the legal curriculum—particularly the conception of a lawyer as adversarial, emotionally detached, and competitive—to be possible sources of the negative impact on student wellbeing. It is suggested that legal educators should re-examine their curricula, particularly their conception of what it means to be a lawyer, and think creatively about ways that law schools may encourage healthier approaches to the study of law.

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Introduction

Research published in 2009 by the Brain and Mind Research Institute (BMRI) suggests that Australian lawyers and law students generally exhibit higher levels of psychological distress and depression than do their peers in the community (Kelk, Luscombe, Medlow, & Hickie, 2009). The BMRI report concluded that law students “exhibit higher levels of psychological distress and depression than do community members of a similar age and sex” (p. 42). The BMRI results are comparable to findings of US studies that have concluded that US law students enter law school with psychological profiles that are similar to the general population, but exit with a greater tendency than their peers to experience anxiety, depression and alcoholism (Benjamin, Kasniak, Sales, & Shanfield, 1986; Daicoff, 1997; McKinney, 2002; Shanfield & Benjamin, 1985; Sheldon & Krieger, 2004). Law school and legal education itself have been identified as factors that can undermine students’ values, ethical behavior and career/life satisfaction. Lawrence Krieger surmises that “when students graduate and enter the profession they are significantly different people from those who arrived to begin law school: they are more depressed, less service-oriented, and more inclined towards undesirable, superficial goals and values” (Krieger, 2005, p. 434).

The conclusions of the BMRI report were unsettling to legal educators across Australia (Hall, 2009). Indeed, the proportion of Australian law students with significantly elevated levels of psychological distress was higher than practicing members of the legal profession, who also showed signs of impaired mental well-being. Partly as a result of the work of the BMRI, we undertook a pilot study to

test student well-being in the context of the Australian National University (ANU) College of Law commencing in October 2009. We wanted to examine whether, how, and when ANU law students suffered similar distress. We also wanted to see if it might be possible to discern effects of legal educational practices in the genesis of student distress.

This paper reports on the preliminary results of a pilot study of first year law students at the ANU College of Law. While the data collected to date is preliminary and not sufficient to draw conclusions about law schools’ causative role in student distress, it does suggest that the first year of legal education may contribute to changes in students’ thinking styles, stress levels, and satisfaction with life. Although these propositions are certainly not proved by the data, the preliminary results are suggestive and consistent with other studies both in Australia and overseas (Krieger, 2008). We conclude that the data suggest that curriculum reform should not wait for the outcome of further long-term studies. The time to engage in curriculum renewal and reform is now.

Methodology and psychometric measures

In order to get a snapshot of student attitudes and well-being, we conducted a time-limited survey of all students (subject to informed and voluntary participation) enrolled in a compulsory first year course. Students completed an anonymous online survey that included demographic information, questions relating to career preferences, reasons for attending law school, and their experience of law school. It also included three psychometric measurement instruments: the Rational-Experiential Inventory (REI; Pacini &

Table 1 *Comparison of experiential and rational processing modes*

Experiential system	Rational system
Holistic	Analytic
Automatic	Intentional
Emotionally-oriented (what feels good)	Logical: reason-oriented (what is sensible)
More rapid processing	Slower processing
More outcome oriented	More process oriented
Self-evidently valid: "Experiencing is believing"	Requires justification via logic and evidence
Behaviour mediated by "vibes" from past events	Behaviour mediated by conscious appraisal of events
Encodes reality in concrete images, metaphors and narratives	Encodes reality in abstract symbols, words and numbers

Epstein, 1999), the twenty-one item version of the Depression Anxiety Stress Scales (DASS-21; Lovibond & Lovibond, 1995), and the Satisfaction with Life Scale (SWLS; Diener, Emmons, Larsen, & Griffin, 1985; Pavot & Diener, 2008). These three measures are commonly used in applied psychological research across different populations and settings and demonstrate very good psychometric properties.¹

The first of the three measures, the REI, is a forty-item questionnaire that asks participants to rate themselves on a series of items that relate to preferences for rational or experiential styles of thinking (Pacini & Epstein, 1999). The REI was developed out of Cognitive-Experiential Self-Theory (CEST), a broad model of human personality that argues that there are two parallel but different ways of

processing information (Epstein, 2003). According to CEST, the experiential system operates based on effortless intuition, whereas the rational system is conscious and deliberative. Table 1, derived from Epstein (2003), outlines the characteristics of the two systems of thinking (see also Evans, 2008; Norris & Epstein, 2011).

It is important to point out that both modes of thought are effective in different ways. The quick and emotion-driven nature of the experiential system in no way makes it "irrational" in the common meaning of the word (Pacini & Epstein, 1999); nor does the rational system imply that this is an unbounded and computationally exhaustive (or exhausting) way of thinking (Pham, 2007; Slovic, 2000). The two modes operate simultaneously, although there are differences in a person's relative preference for one system over the other. The REI measures these differences at a trait level. The Rational scale in the REI relates to an individual's ability and tendency to think logically and analytically, while the Experiential scale relates to a

¹Cronbach's alpha was at least .83 in each of the (sub-)scales in both groups. Higher alpha scores indicate that items within a scale are more internally consistent and therefore that the scale is more reliable.

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person's ability and preference to incorporate intuitive impressions and feelings into their thinking.²

The second measure we employed was the DASS-21 (Lovibond & Lovibond, 1995), which contains three scales designed to measure the number and severity of symptoms indicative of depression, anxiety (specifically somatic and subjective fear-related symptoms) and stress (specifically tension, over-arousal, and difficulty meeting taxing life demands).

Although the DASS-21 has excellent validity with clinical populations, this measure was not used as a diagnostic tool in our study. Instead, it was used based on its ability to recognize the dimensional nature of emotional distress and to report results for subjects experiencing symptoms that are considerable, but perhaps less-than-severe. The DASS-21 was chosen over other brief measures of psychological distress (e.g. the K10 screening instrument used in the BMRI study: Kessler et al., 2002) because it assesses specific symptoms of diagnosable mental disorders in three distinct areas, and it is also supported by strong normative data.

The third measure, the SWLS, is a brief (five question) but well-validated instrument that provides a global measure of subjective satisfaction with life (Diener et al., 1985; Pavot & Diener, 2008). The absence of distress (e.g. in the form of depression, anxiety or stress) does not necessarily imply that the person is happy and has a life that is worth living. As a measure of well-being, rather than distress,

² The REI further divides the Rational and Experiential scales into Ability and Engagement (or Favorability) subscales. However, for the purposes of this study, these subscale-level data were not used.

the SWLS complements the DASS-21 by looking at the positive end of the emotional spectrum.

Participants

Our first survey, conducted in October 2009, involved students who were approaching the completion of their first year of law school (Group 1). Two hundred fourteen students completed the survey. The second survey involved a new group of 174 first year students in their second week of classes in February 2010 (Group 2).³ Thus, our current data relate to two independent cohorts of first year law students—one surveyed at the end of their first year of study in 2009, and the other surveyed at the beginning of their first year in 2010. While further surveys will be conducted at the end of 2010 and into following years, this initial data provides a starting point from which to examine the potential impact of legal education on the formation of professional identity.

Our demographic data showed that the vast majority (more than 80%) of students in both groups of first year law students were between eighteen and nineteen years old. About 20% still lived with their parents. Both groups had more females (Group 1: 58%; Group 2: 64%) than males. Around 80% of students in both groups were enrolled in double degree programs, simultaneously pursuing an undergraduate degree in both law and another field (such

³ In the second survey, we added Gosling, Rentfrow, & Swann's (2003) Ten Item Personality Inventory (TIPI). The TIPI is a brief measure of traits based on the well-established five-factor model of personality (Openness, Conscientiousness, Extraversion, Agreeableness and Emotional Stability).

as Commerce, International Relations, Science, or Arts).

Summary of preliminary results

A total of 389 students completed the online questionnaires across both groups. A small number of substantially incomplete or invalid responses were excluded from the total number of participants. Table 2 shows the results of the DASS-21 in terms of students' distributions on each scale and the frequency and severity of symptoms. As expected, the results indicate that most students' scores fell within the normal category in all three scales.⁴ However, there are also a sizeable number of students who scored in the "moderate" and higher categories, which indicates that the students' score was higher than 87% of persons in the community standardization

sample (Lovibond & Lovibond, 1995).

These figures appear to be higher than the estimates of mental disorders from the 2007 Australian National Survey of Mental Health and Wellbeing. This large-scale and representative survey found that 6.3% of Australian 16-24 year olds met the diagnostic criteria for an affective disorder (including depression) within the past twelve months. In addition, 15.4% of people in the same age group could be diagnosed with an anxiety disorder (Australian Bureau of Statistics, 2007).⁵ Even after accounting for differences in methodologies (brief self-report inventory vs. comprehensive diagnostic interview), there is evidence consistent with the BMRI study that students in both groups were experiencing greater psychological distress compared with other (young) people in the community.

Table 2 *Distribution of DASS-21 scores into symptom frequency/severity categories*

	Depression (%)		Anxiety (%)		Stress (%)	
	Group 1	Group 2	Group 1	Group 2	Group 1	Group 2
Normal	54.9	79.5	61.5	66.3	67.1	78.8
Mild	13.6	8.8	8.0	8.1	12.7	4.7
Moderate	18.8	4.7	14.6	11.6	9.4	10.0
Severe	4.7	2.9	5.2	2.9	7.0	5.3
Extremely Severe	8.0	4.1	10.8	11.0	3.8	1.2
<i>Moderate and above</i>	<i>31.5</i>	<i>11.7</i>	<i>30.6</i>	<i>25.5</i>	<i>20.2</i>	<i>16.5</i>

⁴ Note that the categories refer to the frequency and severity of *symptoms* associated with depression, anxiety or stress relative to the population, rather than referring to the severity of a diagnosable disorder.

⁵ Affective disorders include major depressive disorder, dysthymia and bipolar disorder. Anxiety disorders include panic disorder, agoraphobia, social phobia, generalized anxiety disorder, obsessive-compulsive disorder and post-traumatic stress disorder.

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The apparent differences in the depression scale between Groups 1 and 2 deserve some further attention. This is prefaced by the warning that any inferences about the causes of the differences between the two groups must be made with utmost care, given that the two groups are independent samples tested at different times. Figure 1 shows the results from the DASS-21 in terms of students' average scores on each scale compared with the standardization sample (Henry & Crawford, 2005), rather than by category of severity/frequency.

These results tentatively suggest that there may be different patterns of psychological distress across the groups, rather than a uniform move in the direction of more distress. Although more students scored within the "normal" range of depression in the end-of-year Group 1 (79.5% vs. 54.9%), their mean score was significantly higher—indicating a greater frequency or severity of depressive symptoms—than the students in the start-of-year Group 2 (Group 1 mean = 5.30 vs. Group 2 mean = 2.89).⁶ There also appeared to be a shift from scores which were very similar to the non-clinical community standardization sample in the start-of-year group (except for anxiety, which remained elevated) to scores that were markedly higher in the end-of-year group.

Further follow-up research is needed to explore whether law schools contribute to such changes, and if so, how this takes place. The emergence and presence of these sub-clinical but nevertheless alarming symptoms cannot be ignored.

Results on the SWLS generally mirrored those of the DASS-21. The majority of

⁶ $t(383) = 5.35, p < .001, d = .55, CI_{0.95} = [1.52, 3.30]$.

students had an average, high or very high score (Group 1: 77.46%, mean = 24.42; Group 2: 89.72%, mean = 26.78), indicating that they were on average satisfied with their own lives (Pavot & Diener, 1993). However, there was a sizeable difference in the proportion of students who were *not* satisfied with their lives between the groups (difference = 12.26%), even if the statistically-significant difference in average scores was relatively small (mean difference = 2.36).⁷ Once again, the change in the *distribution* of scores on the SWLS warrants follow-up research with subsequent cohorts of law students.

Turning to the REI, a more rational mode of thinking was consistently associated with a positive *anticipated* experience of law school (for the start-of-year Group 2).⁸ It was also correlated with a positive *actual* experience of law school (for the end-of-year Group 1),⁹ although the strength of the association appears to have attenuated. For instance, students scoring higher on the rationality scale were more likely to believe that they had made a good decision to attend law school, but the extent to which rationality could explain the variability in this evaluation decreased from nearly 17% to around 4%. There was a much smaller and non-significant influence of experientiality on indicators of positive law school experience,¹⁰ suggesting a predisposition towards a rational mode of thought may be a better predictor of law school experience.

⁷ $t(386) = -3.63, p < .001, d = .37, CI_{0.95} = [-3.64, -1.08]$.

⁸ $r = .39, p < .001$.

⁹ $r = .25, p < .001$.

¹⁰ Group 1: $r = .13, p = .06, ns$; Group 2: $r = .09, p = .26, ns$.

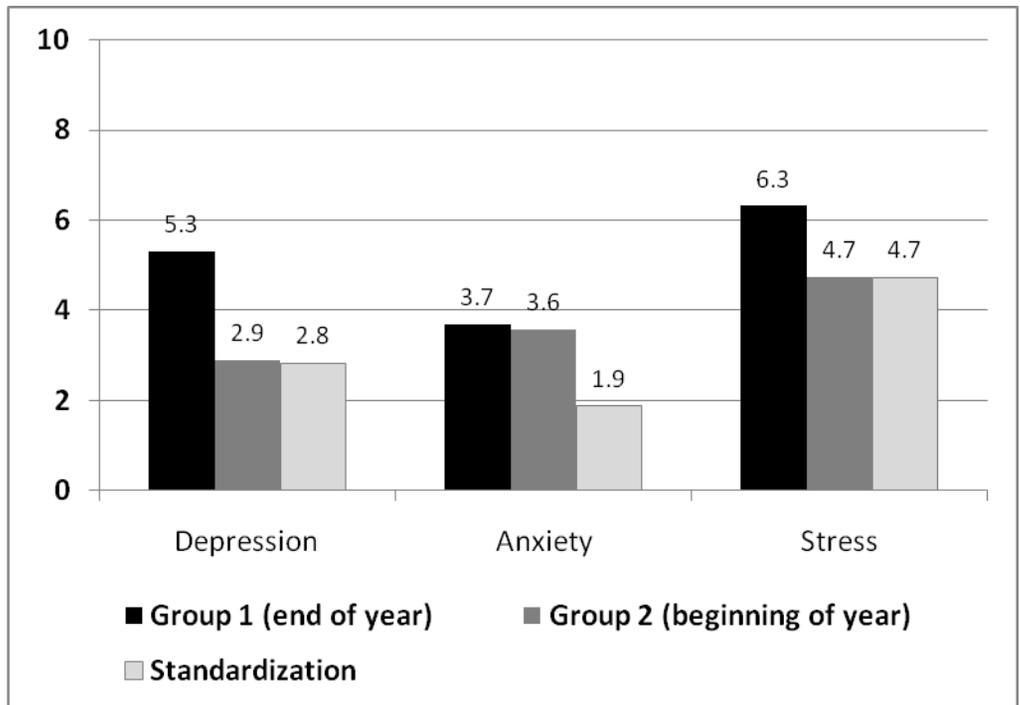


Figure 1 DASS-21 mean scale scores for Group 1, Group 2 and the standardization sample

There were also significant differences in REI rationality and experientiality scores between the two groups, although inferences about what caused these differences cannot easily be made. Rationality was significantly higher in the end-of-year sample (Group 1) than for students entering into law school (mean = 3.78 vs. mean = 3.27)¹¹ and experientiality was significantly lower (mean = 3.28 vs. mean = 3.85).¹²

Is it possible that less than one full year of law school could make students more rationally-minded, distressed and

dissatisfied with life? Unfortunately, the data we have at present are not sufficient to answer these questions. Direct comparisons cannot be made, as the two groups were from different cohorts of students which were studied at different times of the academic year. On the other hand, the data strongly suggests not only that further study is needed, but also that we cannot rule out the hypothesis that the negative impact of legal education begins in the first year—or even before the first year in the selection of future law students and the shaping of their expectations and attitudes.

Discussion

Our pilot study contributes to a growing body of research that indicates that legal

¹¹ $t(384) = 10.03, p < .001, d = 1.02, CI_{0.95} = [.41, .61]$.

¹² $t(384) = -10.49, p < .001, d = -1.08, CI_{0.95} = [-.68, -.46]$.

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education may have a negative impact on law students' well-being. Some of the factors that contribute to law student distress undoubtedly are not unique to the study of law. Other programs, like medicine and engineering, for example, enroll highly intelligent students and teach academically difficult material. These students experience similar stress caused by academic competition, competition for jobs, and loss of their accustomed place at the top of the class (e.g. Chambel & Curral, 2005; Dyrbye & Shanafelt, 2005). However, the particular challenge facing *legal education* is to discover whether there may be factors related to the study of *law* that are uniquely distressing. That is, we must look at the study of law itself and examine how the pedagogy, substance, and approaches used in legal education impact student's self concept, development of professional identity, and well-being. Our pilot study suggests that further inquiry into the cause of law student distress is necessary, and could profitably be directed toward examination of student thinking styles and toward the mismatch between students' anticipated experience of law school and their lived law school experience.

Our preliminary data suggest that we must consider carefully the interaction between a rational thinking style and the culture of law school, especially during the first year. Though our data is insufficient to demonstrate with certainty that a shift in thinking styles occurs or that a shift is necessarily detrimental to student wellbeing, we believe there is sufficient evidence to support the hypothesis that a change towards, or a reinforcement of, rational thinking styles can occur in law school. In our experience, emphasizing the rational mode while neglecting the experiential mode of thinking is consonant

with the approach to law that teachers often refer to as *thinking like a lawyer*. Karl Llewellyn described this process to new law students as follows:

The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking, along with ideas all fuzzed along their edges. You are to acquire ability to think precisely, to analyse coldly, to work within a body of materials that is given, to see, and see only, and manipulate, the machinery of law (Llewellyn, 1960, p. 116).

This description of the first year of law school presents a vivid (and contested) image of what it means to *think like a lawyer*. Although there has been a great deal of discussion and a multi-decade debate about what it means to think like a lawyer (Cramton, 1978; Krannich, Holbrook, & McAdams, 2009; Morris, 2003; Teachout, 1996), the dominant assumptions are that thinking like a lawyer implies qualities of detachment, adversarialism, and neutrality.

In particular, adversarialism pervades nearly every aspect of the legal curriculum, pedagogy, assessment, and extra-curricular activities of legal education. Law students learn legal doctrine primarily by reading the decisions of appellate judges that reflect only a small percentage of the output of a lawyer's work (Flood, 1991). The legal story that is told in appellate decisions is one in which the law emerges as the result of conflict resolved by adjudication. Rules derive from the analysis of the parties' rights. Winners and losers are nominated and wrongs are punished. In courses where appellate decisions are the primary teaching

documents, law is predominantly a story of triumph and loss in the appellate courts. In this model, the task of the lawyer is to serve as an advocate for a client, to maximize the client's position, and to win (Sturm & Guinier, 2007).

The adversarial approach encourages emotional detachment because it discourages students "from grappling with the moral values implicated by a problem" (Sturm & Guinier, 2007, p. 529). In contrast to medical students, whose role in the face of pain and disease is to palliate or cure, law students learn that their role is to carefully dissect events that took place in the past, to apply rules, assign fault, place blame, and decide on punishments or payments. When students are presented with the improbable and horrific case stories they find in appellate decisions, they are not invited to empathize with the litigants, but to treat them as instruments of principle and precedent. In business and property subjects, law students learn to put hope, optimism, and trust aside. The lawyer's task is to anticipate all of the things that might go wrong in a transaction and to draft documents to protect against these future calamities. This brand of *thinking like a lawyer* requires not only dispassionate analysis, but also pessimism and risk aversion. As presented in the traditional legal classroom, the lawyer's role is not to heal anyone or resolve conflict, but to translate human conflict into abstract legal categories, scrutinize situations for hidden risk, and apply dispassionate analysis and adversarial critique to make arguments for any possible resolution (Mertz, 2007). In our view, the conception of a lawyer as adversarial, emotionally detached, and competitive, is a distorted, incomplete, and inadequate model for law study and

practice¹³ that may impact negatively on student wellbeing—beginning in the first year of law school.

Our data also suggest that there may be a significant mismatch between students' expectations and lived experience of law school. While there are many aspects of these expectations that should be explored, we note thinking styles may again be implicated. Most students come to law school believing that they have strong abilities in analytical tasks and reasoning, but those beliefs may be challenged in the context of learning legal reasoning. Students who do not expect this intellectual challenge or who do not respond well to it, may start to doubt their academic abilities, competence, and even choice of profession (Floyd, 2007).

Conclusion

The available evidence suggests that law schools are contributing to student distress and dysfunction. Further empirical study is needed to provide more extensive normative data to interpret the causes of law student distress. Given the urgency and complexity of the issues involved, the collection of data should be done on a longitudinal and cross-institutional basis. Longitudinal data and multi-institutional analysis would not only provide more extensive data for interpretation, but would also allow for the effects of various institutional approaches and interventions to be measured.

Surveying student distress can have additional benefits. The survey process

¹³ The reality of today's practice is that law students are likely to spend more of their time as lawyers engaged in negotiation, deal-making, and mediation than in adversarial litigation.

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may be used to raise student awareness of psychological wellbeing and mental health issues and provide information to students about available support and counselling resources. The survey results also create an opportunity to contact at-risk students through an independent professional. In our study, contact was made by an independent psychologist (with consent through an opt-in process) with students whose survey results suggested the presence of clinically significant psychological symptoms.

Meanwhile, it is not sufficient simply to collect data. Legal educators must begin now to tailor education to the real psychological needs of their students. There is no reason to delay developing a healthier approach to law study that connects with student values, attitudes and ways of thinking. This process of re-envisioning legal education requires legal educators to become aware not only of the factors that increase student distress in all disciplines, but to look particularly at legal education to discover whether there may be factors related to the study of law that are uniquely distressing. Law schools must examine the pedagogy, substance and assumptions underlying law teaching to understand the structures and dynamics that may be contributing to student distress.

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