

## Subjective Well-Being and the Law

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### Abstract:

This chapter analyzes legal implications of subjective well-being (SWB) research. Law can and should learn much from SWB research because the law can and should care about people's SWB. An incomplete list of legal doctrinal and subject areas in which law professors have applied SWB research includes administrative law, alternative dispute resolution, business law, civil procedure, conflict resolution, contracts, constitutional law, corporate law, criminal law, development law, employment discrimination law, family law, immigration law, international law, negotiations, legal ethics, securities law, securities litigation and enforcement, tax law, tort law, and trusts and estates. Some legal scholars have repeated or contributed to existing concerns, debates, and disagreements among non-law scholars about how to measure SWB. For example, some law professors continue to assume that SWB is one-dimensional, despite the large amount of empirical psychological research finding that SWB is multi-dimensional and has distinct components. Some law professors also continue to ignore the conceptual difficulties with aggregation, interpersonal comparisons, and intertemporal comparisons of multi-dimensional SWB measures. In addition, law often requires societies to make contested normative value-judgments over which there lacks consensus. Some law professors and policy makers advocate using SWB metrics to evaluate legal policies, procedures, and regulations. Others argue that hedonic adaptation implies legal interventions have little, long-run SWB impact. This argument ignores short-run impacts which might be irreversible or have spillover effects, including changing individual preferences and social norms. The unique history and current sociology of the American legal academy has resulted in American legal scholarship applying SWB research focusing perhaps unexpectedly primarily on legal education and law practice. Perhaps quite surprisingly, at least to SWB researchers, is that law professors have applied SWB research most, and by a quite far margin, to analyze how to utilize SWB evidence-based research to sustainably improve the alarmingly, perennially, and persistently negative SWB of many law students and lawyers.

**Keywords:** Law, Legal Scholarship, Law Professors, Legal Education, Law Practice

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The United States Declaration of Independence stated in 1776 that a self-evident truth is that people have the right to pursue happiness. It is notable the statement is a right of pursuing happiness instead of a guarantee of achieving happiness (Schubert, 2012). Some American law professors have applied SWB research to analyze legal rules and institutions. A partial inventory of the areas in legal doctrine where law professors have written articles based upon SWB research includes administrative law, alternative dispute resolution, business law, civil procedure, conflict resolution, contracts, constitutional law, corporate law, criminal law, development law, employment discrimination law, family law, immigration law, international law, negotiations, legal ethics, securities law, securities litigation and enforcement, tax law, tort law, and trusts and estates. This is not and should not be a surprising collection of legal topics because SWB research findings are relevant, for both descriptive and prescriptive reasons, to law. Part of legal scholarship describes how law impacts human behavior. Another part of legal scholarship considers how to design socially optimal legal rules and institutions. The notion of social optimality requires a benchmark by which to measure and evaluate alternative legal arrangements. SWB is one such yardstick. More precisely, SWB is a dashboard or portfolio of metrics, including life satisfaction, positive affect, negative affect, and time use (Brulé & Maggino, 2017; Krueger, 2009; Wheatley, 2017).

There are also anticipated, experienced, and remembered SWB measures (Kahneman, 2013; Huang, 2014).

A natural area of legal scholarship based on SWB research is to analyze whether and if so, then how law can foster economic development and growth. A common belief and folk theory is that acquiring sufficient wealth causes happiness. People, countries, and the media therefore often use wealth as an imperfect proxy for happiness. The numerous difficulties and problems with measuring countries' well-being using traditional economic indicators as Gross Domestic Product (GDP), or even Net Economic Welfare (NEW), are well-known to economists (Fleurbaey, 2013; Jones & Klenow, 2016) and others, including an oft-cited speech that Robert F. Kennedy (1968) famously made about some of the shortcomings GDP has in measuring what matters.

In the Report by the Commission on the Measurement of Economic Performance and Social Progress, that President Nicolas Sarkozy of France commissioned, 2001 economics Nobel laureate Joseph Stiglitz, 1998 economics Nobel laureate Amartya Sen, French economist Jean Paul Fitoussi, and other leading economists (Stiglitz, Sen, & Fitoussi, 2010) advocated measuring social progress by SWB in place of the more traditional GDP. Many countries, cities, and communities have adopted SWB measures to inform policy decision-making. Anti-fracking ordinances, regional or city planning, environmental impact regulations, land use restrictions, open space laws, water use limitations, and zoning laws are just some examples where simply changing the criteria of policy evaluation from unfettered economic development and growth to SWB measures has drastic implications. As 1972 economics Nobel laureate Kenneth Arrow observed in discussing the importance of organizational agendas (1973, p. 47), placing full employment on the United States federal government's agenda, which the Full Employment Act of 1946 accomplished, had real, albeit slow, social and policy consequences.

Many legal doctrinal areas have this common structure: law can change people's incentives to take certain relevant actions. Law can provide negative incentives, such as fines, imprisonment, penalties, or taxes. Law can provide positive incentives, such as monopolies, rents, subsidies, or tax deductions. In business law, relevant actions include choice of business organization, partnership dissolution, and partnership formation. In corporate law, relevant actions include acquisitions, appropriation of corporate opportunities by a company's directors and officers, corporate oversight, incorporation, mergers, and self-dealing of a company's directors and officers. In contract law, relevant actions include breach of and reliance on a contract. In civil procedure, relevant actions include the decisions to file, drop, continue, and settle lawsuits. In criminal law, relevant actions include crime commission and crime prevention. In family law, relevant actions include marriage, divorce, and having children. In immigration law, relevant actions include legal immigration, illegal immigration, and immigration enforcement. In international law, relevant actions include agreeing to and breaking accords, conventions, and treaties. In legal ethics, relevant actions include awareness, care, record-keeping, and social media use. In negotiations, relevant actions include offers and counteroffers. In property law, relevant actions include acquisition, development, innovation, investment, pollution, and upkeep. In securities law, relevant actions include disclosures, insider trading, and securities fraud. In tax law, relevant actions include compliance, fraud, and reports about income, expenses, or profits. In tort (accident) law, relevant actions include care, precaution, and activity levels. In trusts and estates, relevant actions include bequests and charitable donations.

Much of legal analysis determines how civil liability and criminal penalties can achieve socially optimal magnitudes of relevant actions. Socially optimal monetary civil liability damages or criminal penalties involve wealth reallocations to achieve socially optimal compensation, deterrence, and risk allocation (Cooter, 1991). Such legal analysis hinges crucially on the notion of social optimality employed. Wealth or more generally economic and financial metrics of social optimality are only proxies of what people ultimately care about (Oswald, 1997). After all, money has instrumental, not intrinsic, value. Most economists view money to have three functions: a medium of exchange, a store of value, and a unit of account. Some anthropologists, communication scholars, marketing scholars, philosophers, political scientists, psychologists, and sociologists view money to be much more in the sense of signals or symbols expressing beliefs, class, connection, emotions, family, friendship, gratitude, hope, identity, intimacy, meaning, morals, power, relationships, security, sentiments, status, success, and trust (Bandelj, Wherry, & Zelizer, 2017; Zelizer, 2017). People, popular culture, and the media often conflate and confuse money with SWB.

Changing the meaning of socially optimality to include or be SWB rather than some other more traditional normative criteria such as wealth can dramatically change the design of legal rules and institutions (Huang, 2010) and in the regulation of risk (Huang, 2008a). For example, current tax law is based upon optimal tax theory, which utilizes a neoclassical welfare economics approach to assess and evaluate policy (Kaplow, 2010). A key assumption of neoclassical welfare economics is that people exhibit declining marginal utility of income. Modern American income tax law and arguments for progressive taxation are premised on that assumption. There is empirical evidence that some individuals experience

increasing marginal utility of income, which would lead a tax policy based on welfare economics analysis to redistribute income from poor to rich people (Lawsky, 2011). If tax analysis replaces the criterion of maximizing social welfare, defined to be some weighted sum of individual welfare, with the criterion of maximizing experienced SWB, then SWB research supports progressive taxation policies that redistribute income from rich to poor people, because a study by psychologists of 54 countries found progressive taxation is associated with higher SWB (Oishi, Schimmack, & Diener, 2012).

In business law areas, such as corporate law and securities regulation, for example, metrics used to evaluate the social desirability of economic outcomes and legal interventions include corporate stock market value and shareholder wealth. Huang (2005a, 2005b, 2008b, 2011) examines other possible metrics for evaluating business law and securities regulations, including career satisfaction, consumer confidence, economic stress, financial anxiety, investor exuberance, market moods, meaning at work, shareholder empowerment and participation, trust in financial markets, and work-life balance. People's financial health and mental health are interrelated and influence each other. Economist Graham (2017) draws on research linking inequality and SWB to show how a growing prosperity gap leads to gaps in people's aspirations, beliefs, hopes, and optimism. Poverty has emotional costs in terms of depression, despair, desperation, hopelessness, misery, insecurity, and stress.

Blumenthal and Huang (2009) propose and advocate the notion of positive paternalism to foster more positive individual and social outcomes based on applying insights from positive psychology. For example, governments can help people learn and develop their signature strengths so that individuals can seek and craft work to be more fulfilling and view that work to be a calling instead of a career or job (Huang, 2008c; Wrzesniewski, McCauley, Rozin, & Schwartz, 1997). If light paternalism is analogous to therapy that corrects for and remediates cognitive and emotional disturbances that detract from individual SWB (Loewenstein & Haisley, 2008), then positive paternalism is analogous to positive therapy (Leffert, 2017) that improves decision-making capabilities or processes via helpful thinking styles that raise individual SWB. Positive paternalism is related to policies that boost people's competencies to exercise agency by making choices (Grune-Yanoff & Hertwig, 2016; Hertwig & Grune-Yanoff, 2017). Both positive paternalism and boosts empower people to make better decisions (Huang, 2015b).

A famous area of SWB research concerns hedonic adaptation (Brickman & Campbell, 1971). Natural applications to law of SWB research about hedonic adaptation include analysis of civil lawsuit settlements (Huang, 2008d; Swedloff, 2008), economic development (Clark, 2012), emotional paternalism (Blumenthal, 2005, 2007), roles of decision versus experience utility in public policy (Loewenstein and Ubel 2008), and tort damages for pain and suffering (Swedloff & Huang, 2010). The debate over the legal relevance and significance of hedonic adaptation is ultimately a disagreement over three sets of issues. First, reasonable people differ over whether SWB is the only thing people and society care about and should care about (Etzioni, 2016; Swedloff, 2014). Second, the robustness of hedonic adaptation varies across contexts and individual demographic variables, such as age, ethnicity, and gender. Third, the distributive, ethical, and normative implications of hedonic adaptation are complex and unresolved.

Another legal area where SWB research about hedonic adaptation has relevance is employment discrimination damages (Moss & Huang, 2009). A psychological theory of affective adaptation due to Timothy Wilson and Daniel Gilbert posits that people attend to unexplained events, react to them and if they can explain them, adapt emotionally to and attend less to them (Wilson & Gilbert, 2008). People who lose their jobs due to illegal discrimination are less likely to adapt to such losses than people who lose their jobs for non-discriminatory causes because illegal discrimination is illegitimate, invidious, and results from animosity and hatred. A legal implication of this, other happiness research, and the endowment effect is that courts should award higher damages for illegal firing of a long-term employee than for illegal failure to hire.

The strand of SWB research that has had the most impact in areas of law has been that about mindfulness and the legal areas that have most whole-heartedly adopted SWB research about mindfulness are those of conflict resolution: negotiations, meditations, and alternative dispute resolution (Huang, 2018a; Riskin, 2002, 2010, 2012; Riskin & Wohl, 2015). Although practicing mindfulness can apply to every area of law (and life), law professors and lawyers practicing in the areas of conflict resolution have been at the forefront of applying the insights from SWB research about mindfulness. Why this has been the case is unclear. Perhaps one reason is that conflict resolution is emotionally charged and mindfulness about emotions can be seen to be a form of emotional intelligence.

Many law professors, law students, and lawyers view much of legal education and law practice as being analytical, cognitive, and logical, instead of also being affective, emotional, and psychological (Robbennolt & Sternlight, 2012). Many law professors, law students, and lawyers often use the phrase "thinking like a lawyer" to describe the goal of legal education. Rarely do law professors, law students,

and lawyers talk about feeling like a lawyer or feelings in general. Yet many in the public view and many clients view (even their own) lawyers as being aloof, arrogant, robotic, uncaring, and unfeeling. Huang and Rosen (2015) borrow the popular culture metaphor of a zombie apocalypse to describe what happens to many American law students in law schools and lawyers in practice. Many law professors are coming to realize the competitive advantage and importance that emotional intelligence in the form of empathy, compassion, emotional regulation, and mindfulness offers lawyers in their professional development (Austin & Durr, 2016; Fruehwald, 2015; Kiser, 2017; Linder & Levit, 2014; Martin, 2014).

Practicing mindfulness in the form of developing and exercising self-compassion may increase attorney SWB and gender diversity (Mangan, 2016). Mindfulness has now become pervasive in legal education and law practice (Huang, 2015a, 2016, 2017, 2018b; Martin, forthcoming). To fully appreciate why this has become so, it helps to better understand the unique history and current sociology of American law, legal scholarship, law professors, and the legal academy. Although American law professors, law students, and lawyers know much of this information only all too well, professors who do not teach in law schools are likely to find the next section surprising, if not shocking, because law schools differ so much culturally and structurally from other parts of universities, including economics, psychology, and marketing departments which are the academic homes of many SWB researchers. The next section also partially explains what parts of SWB research law professors, law students, and lawyers find most fascinating and useful.

## **Law, Legal Scholarship, and Law Professors**

Law is often a blunt and crude instrument of social policy. Societies design and enforce laws to achieve hopefully legitimate and worthy ends. Legal scholars approach the study of law from various perspectives. For example, an economics approach to law may view law as creating incentives to avoid anti-social behavior through a menu of civil liabilities and criminal penalties. An expressive approach to law may view law as being aspirational in changing social norms, expressing shared value-judgments, and fostering pro-social individual preferences. An approach to law as instruments or levers implies some criterion or set of criteria to assess how well the law is doing. Neoclassical economic approaches to law use the criterion of Pareto efficiency (Calabresi, 1991) or Kaldor-Hicks efficiency (Hicks, 1939; Kaldor, 1939) to evaluate legal interventions. Modern legal theory and legal education has become infused with the language of microeconomics and finance, including these concepts: adverse selection, compliance, cost-benefit analysis, deterrence, discounted present value, diversification, efficiency, error costs, expected value, externalities, incentives, informational efficiency, insolvency, internalization, moral hazard, network externalities, opportunity costs, public bad, public good, risk allocation, risk aversion, social welfare, standardization, tradeoffs, transactions costs, and utility.

Because happiness and SWB are related to, although distinct from, the notions of utility and welfare in modern economics (Benjamin et al. 2014a, 2014b), SWB offers a potential alternative framework to evaluate how well the law is doing. Utilizing SWB as a legal metric requires the balancing of simplicity against validity. For better or worse, the gatekeepers to policy are often economists and lawyers. SWB researchers can influence economists through happiness economics. SWB researchers can influence lawyers through happiness law and economics. Some legal scholars view SWB research as providing a different and more realistic foundation than neoclassical economics for performing legal analysis. The question some legal scholars analyze is whether a particular legal policy, procedure, or rule increases a measure or a (weighted) set of measures of SWB. How to weigh distinct components of SWB is a concern and something over which reasonable people can disagree.

Some legal scholars have reargued the debates over whether SWB is a one-dimensional or multi-dimensional measure. Empirical research finds that SWB is multi-dimensional and includes evaluative, experienced, and eudaimonic aspects of well-being (Stone & Mackie, 2013). The multiple dimensions of SWB also raise the issues of incompleteness and intransitivity of making comparisons based upon SWB. There also are all too familiar political economy concerns that policy makers have multiple opportunities and powerful incentives to cherry pick and manipulate SWB measures (Frey & Gallus, 2013).

Because of the particular path-dependent history of American legal scholarship, some legal scholars are suspicious that SWB is just economists' old notion of utility or welfare dressed in psychological garb. It is helpful to briefly review the history of American legal scholarship. The former dean of Yale Law School, Anthony T. Kronman (1993, p. 167), expressed his opinion that law and economics has been the intellectual movement with the greatest influence on American academic law in last twenty-five years of the twentieth century. Today's dominant "law and economics" movement started with the work of economics Nobel laureates Ronald Coase and Gary Becker, Henry Manne, Guido Calabresi, and Richard Posner. Economic analysis of law has now become a routine part of jurisprudence,

judicial opinions, and law school classes. In spite of, or perhaps because of, the influence of law and economics, there have been and remain today many criticisms of the law and economics approach and movement. Critics point out how “classical” law and economics pays little attention to human rights, distributive justice, and the importance of situations in shaping human choice and behavior. More recent incarnations or versions of law and economics incorporate considerations about cognition, fairness, and contexts by drawing upon research from anthropology, neuroscience, psychology, and sociology. These newer developments in economic analysis of law apply insights from behavioral economics, game theory, neuroeconomics, and socio-economics. Behavioral economics and its application to law, known as behavioral law and economics, are currently very popular analytical tools among many legal scholars.

The above historical backdrop explains why some law professors think of SWB research, particularly happiness economics, as just more of the same old law and economics. For these law professors, the small difference is that happiness economics, instead of neoclassical economics, has now become the analytical tool for evaluating legal rules and institutions. Some law professors view allusions to happiness to be merely a way to make look modern Jeremy Bentham’s (1749/1948) old moral philosophy of utilitarianism. Some law professors are understandably suspicious and wary of articles and popular trade books that include the word “happiness” in their titles with scant discussion about positive psychology or SWB in their books.

The above historical backdrop also explains why some other law professors view SWB research in the form of hedonic psychology or positive psychology as challenging the prevailing law and economics orthodoxy because of SWB research focusing on people’s anticipated, experienced, and remembered SWB as opposed to neoclassical economics’ revealed preference theory, which assumes people have unobservable preference orderings, which their observed choices reveal. For these law professors, SWB research differs fundamentally and radically from behavioral economics. While behavioral economics finds that many people have cognitive biases and utilize heuristics, SWB research finds that people may not choose what maximizes their SWB (Benjamin et al., 2012) and people having high SWB may be satisficing, instead of maximizing any objective function (Schwartz et al., 2002). These law professors view SWB research to have pervasive and far-reaching legal policy implications, such as advocating for changes in (tax) law and policies to reduce American consumerism (Ritzer, 2013) and materialism (Kasser, 2003).

It is also helpful to briefly review the sociology of American legal scholarship. Most American law professors have a professional degree, namely the doctor of jurisprudence or juris doctor (J.D. or JD). Most American law professors do not have a Ph.D. These two facts mean that most American law professors have neither the knowledge involved with nor experience of writing a Ph.D. dissertation. These twin facts also mean that most American law professors lack Ph.D.-level expertise in economics, psychology, or any other discipline. Finally, most American law professors have little, if any, training in probability and statistics. In fact, many American law professors, law students, and lawyers lack much numeracy (Cheng, 2014; Milot, 2013; Obama, 2011), though some law students have a surprisingly high amount of mathematics skills (Rowell & Bregant, 2014). The significance of the above observations is that many American law professors, law students, and lawyers are unable to directly evaluate the validity of empirical and experimental SWB research. Certainly, most American law professors, law students, and lawyers are consumers, not producers, of SWB research.

Most American law professors publish exclusively in American law reviews, which are not peer-refereed. Instead, second-year and third-year law students decide which of the many article submissions they receive to publish. American law professors make simultaneous and multiple article submissions. Upon acceptance, American law professors typically try to trade up their accepted article to a higher-ranked law review. American law schools have a flagship or general law review in addition to several other legal subject matter specialized law reviews. There are several rankings of law reviews that generally track the U.S. News & World Report ranking of law schools. Most law reviews also do not require anonymous submissions.

Many American law professors often engage in over-claiming of the scholarly contributions of their law review articles. Some law professors are notorious for repeatedly publishing multiple, yet only slightly different, versions of essentially the same article. Because law reviews are mostly, if not exclusively, run by law students, there is little institutional memory. There are two submission cycles or seasons, one in mid-February after new law student editorial boards have been chosen and the other in mid-August when law students return from their summer jobs. Law reviews typically publish a couple of issues per annual volume with each issue consisting of a couple of articles. For those slots, most law reviews will typically receive several thousand submissions because simultaneously submitting the same article to multiple law reviews is the norm. Many law review editors have neither the desire, interest, motivation, time, or training to read, let alone carefully and thoughtfully, that many unsolicited manuscripts, each

approximately 25,000 words or 50 double-spaced pages. Law review editors often choose which articles to publish based on a catchy, pithy title and the first several pages of a manuscript. Some law review editors use the name, affiliation, and past publications of authors as imperfect proxies of quality. Many authors claim their article is the first and only one to address an undertheorized important legal topic. A recent law review article provides a parody and satire of law review articles generally (Schlag, 2017).

This publication system perversely selects for publication many law review articles that are grandiose, overly complex, and verbose. There is often a disproportionate number of law review articles that draw upon interdisciplinary and multi-disciplinary research because such law review articles are more complicated, impressive, and interesting than the traditional legal analysis of judicial opinions and statutes. The above sociology of the legal academy partially explains what law review articles law student law review editors chose to publish. As to why law professors publish, there are many reasons, including feeling pride, getting tenure, influencing policy, being invited to scholarly conferences, and experiencing joy (Anaya, 2017).

## **Improving Legal Education Based on SWB Research**

There is currently a well-known crisis in legal education on many levels (Lewinbuk, 2015, pp. 5-7; Tamanaha, 2012). Since 2011, there have been historic lows in the number of American law school applicants, students, graduates, and jobs that involve law practice or require the professional J.D. degree (Bernstine, 2014). Legal education commentators and observers disagree over whether these changes are cyclical or structural and temporary or permanent. An area of justifiable interest to law students and law professors is legal education reform. Some other law school stakeholders, such as law school alumni, administrators, and law student wellness specialists, also have understandable incentives to advocate for legal education reform.

The portrayal of American legal education in popular culture is and has been usually very negative with many films and television programs featuring a cruel, inquisitorial version of the so-called Socratic method of teaching in which law professors continually and unsympathetically question law students into submission, crying, and/or throwing up (Papke et al., 2012b). Even prior to the current legal education crisis, some law school administrators engaged in dishonest and fraudulent actions to get a higher position in the highly influential and very competitive annual law school rankings the magazine U.S. News & World Report publishes each spring (Huang, 2012).

Although most students entering American law school have slightly higher SWB than the population average, by the end of the first semester of law school, many law students report statistically significant lower SWB and mental health, with little recovery during law school or afterwards (Sheldon & Krieger, 2004, 2007). A 2014 SWB study (Organ, Jaffe, & Bender, 2016) surveyed over 11,000 law students at fifteen law schools and found that 37% screened positive for anxiety, 17% screened positive for depression, 53% drank enough to become drunk at least once in the prior thirty days, 43% binge drank at least once in the prior two weeks, 22% binge drank more than two times in the prior two weeks, and 14% in the prior year used prescription drugs without a prescription. Sadly, the survey also found that over 60% expressed concern that seeking help is a potential threat to bar admission or finding a job, about 23% sought help for mental health problems, and only 4% of students had sought help for alcohol and drug problems. These disturbing statistics may not even reveal the depths of the SWB crisis among American law students because of underreporting and self-delusion.

Undoubtedly, many American law students are suffering mentally and emotionally throughout their time in law school. To cope temporarily with precipitous declines in SWB, many law students are developing bad and unsustainable strategies of drinking alcohol and self-medicating (Austin, 2013, 2015) instead of learning to eat healthily (Austin, 2017). Many factors can account for the sharp drop in SWB in the first semester of law school, including an exclusive focus on analytical and critical thinking, amorality or value-neutrality of legal analysis, the mandatory, competitive, and hierarchical grading curve of many law schools with required means, medians, or distributions (Heffernan, 2014), a dominant language of law school (Mertz, 2007), or a shift from such intrinsic values as learning, helping others, and public interest to such extrinsic values as class ranking, grades, and starting salaries (Peterson, 2014).

What is clear is that a SWB crisis exists in American legal education. Because unhappy students are likely to become unhappy lawyers, a SWB crisis also exists in American law practice, as the next section discusses. A nationwide task force (with representation from the American Bar Association, Association of Professional Responsibility Lawyers, National Conference of Chief Justices, National Conference of Bar Examiners, and National Organization of Bar Counsel) issued a 73-page report detailing changes that bar associations, judges, lawyer assistance programs, law schools, legal employers, and regulators each can undertake to promote SWB in legal education and law practice (National Task Force on

Lawyer Well-Being, 2017). Many of the recommendations of that report are based on positive psychology research, including examples in Appendix B of that report discussing possible topics to teach law students about how to sustainably increase SWB.

Law schools can increase law student SWB in many ways, including enabling law students to make better academic and career choices based on a more realistic vision of the realities of lawyers' professional lives, teaching students about different attribution styles (Felder, 2014; Rosen, 2011), and not fostering learned helplessness (Levit & Linder, 2010). A law professor and his daughter, who earned a master's degree in applied positive psychology, co-authored an important article about how and what legal educators can learn from positive psychology to slow the current epidemic of law student depression (Peterson & Peterson, 2009).

A new field of study, positive legal education, (Austin, forthcoming; Huang, Brafford, Austin, & Knudson, 2018) proposes to apply research from positive psychology and positive education to transform American legal education focusing on law students' SWB. This project intends to analyze whether: (1) current American legal education adversely alters brain structure and function; (2) current American legal education impairs character development, compassion, and ethical decision-making; and (3) neuroscience and positive psychology-based interventions can mitigate the harmful effects of current American legal education. Ultimately, this project aims to develop sustainable positive legal education interventions that cultivate and foster character development, compassion, and ethical decision-making by American law students.

This project will be a longitudinal, multi-year study of law students that includes the collection of spit samples to test for cortisol levels and the neuroimaging of law students in August, December, and May of the first year of law school to test for structural and functional brain changes. This project also plans to conduct brain scans while law students make decisions in ethical dilemmas and play economic trust games (Huang, 2009) to determine if current American legal training encourages unethical behavior (Huang, 2013) and impairs the quality of decision-making, as well as during memory tasks to discover whether current American legal education harms law students' memory (Austin, 2013). The team plans to investigate whether such positive psychology interventions as mindfulness or compassion meditation can change law students' brain functioning, brain structure, and charitable donation behavior, as is the case for a study involving non-law students (Ashar et al., 2016). The project also plans to investigate if teaching other SWB interventions enhances law school academic performance, similar to related research about improvements on standardized tests (Adler & Seligman, 2016).

## **Improving Law Practice Based on SWB Research**

The practice of law in America today is less of the noble profession it once was and more of a competitive, cutthroat, and pressure-filled business, like many other former professions, such as accounting, advertising, and medicine. Automation, outsourcing, and rapid technological upheaval are only happening at ever increasing rates. While there is no shortage of lawyers for those who can afford the best legal representation that money can buy, there is and has been a chronic shortage of lawyers for people who cannot afford to hire lawyers to vindicate their legal and human rights (Bok, 1983).

Many clients are unsatisfied with many aspects of law practice, including the billable hour system of compensation. Many law firm junior associates are unhappy about work-life balance. Many law firm partners are disillusioned by the unrelenting stresses of the business of law practice. Many in the general public see lawyers as well-paid corporate lackeys and parasites profiting off of others' misfortune and miseries. Lawyers have many external public relations issues and internal quality-of-life problems. Lawyers are often portrayed as flawed humans, if not outright villains, in movies (Asimow, 2000) and popular culture (Papke et al., 2012a). Lawyer jokes are ubiquitous and seemingly never-ending (Galanter, 2005).

Many lawyers are prone to poor mental and physical health, alcoholism, anxiety, depression, drug abuse, suicide, and unhappiness (Brafford, 2014, 2017). A 2016 study found that 20% of attorneys abused alcohol and about 30% had symptoms of depression (Krill, Johnson, & Albert, 2016). Despite these and many other depressing statistics about lawyer SWB (Krieger & Sheldon, 2015), there is hope for change for the better at both the level of individual attorneys and the level of legal organizations (Brafford 2014, 2017; Huang & Swedloff, 2008).

Individual attorneys can employ many positive psychology strategies to boost their SWB. One such strategy is to cultivating optimism as part of a larger strategy to boost an attorney's "psychological capital" or "PsyCap," a positive mental capacity, which is akin to what is colloquially called mental toughness. PsyCap consists of these four psychological resources: hope, optimism, resilience and self-efficacy

(Gruman & Saks, 2013; Knudson, 2015; Luthans, Youssef, & Avolio, 2006). Empirical research reveals significant positive links among PsyCap and engagement, job performance, and job satisfaction and negative links with anxiety, stress, and turnover (De Waal & Pienaar, 2013; Gruman & Saks, 2013). Other positive psychology evidence-based strategies that individual attorneys can easily incorporate into their daily lives include acts of kindness, gratitude activities, and savoring (Lyubomirsky, 2007). These activities can help boost positive emotions, and in turn resilience and SWB.

Brafford (2014, 2017) offers a carefully designed, detailed blueprint for how law firms can become positive organizations. Brafford (2014, 2017) makes a compelling business case for why positive law firms are likely to enjoy competitive advantages: 1) higher profitability, 2) desirable, extra-financial business outcomes, and 3) successfully recruiting and retaining Millennials. Brafford (2014, 2017) proposes creating a law firm SWB index with metrics for lawyers, staff, clients, law firms, and communities. Such an index would be a welcome counterpoint and supplement for the currently dominant and well-known profits-per-partner metric. Widespread adoption of a law firm SWB index would facilitate comparisons across law firms and encourage law firms to raise their SWB index scores to attract like-minded talent and clients.

## Some Concluding Thoughts

SWB research can and should inform law. Humans make laws, which means that humans can change laws. Laws differ across countries at any one point in time. Laws differ across time in any one country. People today are often shocked by some of the past laws in their country or other countries. Examples abound involving laws that discriminated against people solely because of their age, ethnicity, gender, sexual orientation, race, and religion. Because laws come and go, there is hope laws that decrease SWB will be overturned and laws that increase SWB will stand the test of time. There is no guarantee of course that will happen at all or quickly. Laws have their own inertia. Laws can thus be quite sticky.

This chapter has considered only some of the vast and growing body of legal scholarship based on SWB research. Merely replacing economic notions of efficiency and metrics of welfare by SWB has potentially radical implications for the optimal design of legal rules and institutions. For better or worse, currently most of the legal applications of SWB research are devoted to improving legal education and law practice. To those outside of the legal academy and legal profession, such a focus may seem to be self-absorbed and self-indulgent. Non-lawyers can legitimately ask why not study the SWB of psychologists, economists, educators, adolescents, nurses, veterinarians, and many others?

There are, at least, twelve responses that come to mind. First, researchers can and should analyze the SWB of all people. Second, researchers can and should analyze the SWB of all professions. Third, and more on point, dramatic, rapid, and permanent declines in the SWB of law students can interfere with the legal education of those students. Fourth, dramatic, rapid, and permanent declines in the SWB of law students can interfere with the legal education of their peers. Fifth, and even more importantly, lawyers with low SWB are less effective advocates for their clients. Sixth, and also importantly, lawyers today are often powerful leaders in many societies. Seventh, and also significantly, lawyers can collaborate with non-lawyers to address many of the critical domestic and international problems facing humanity, including climate change, inequality, injustice, poverty, and prejudice. Eighth and perhaps most importantly, lawyers can make a difference to individual and societal SWB in societies under the rule of law. Ninth, lawyers who have high SWB have the power to do good and help those who cannot help themselves. Tenth and conversely, lawyers who have low SWB have the power to do harm and hurt those who cannot help themselves. Eleventh, because lawyers are gatekeepers to policy making in America, lawyers who have high SWB can improve the quality of U.S. policy making. Twelfth and conversely, lawyers who have low SWB can impair the quality of U.S. policy making.

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