Developing a Professional Identity in Law School: A View from Australia

Kath Hall, Molly Townes O’Brien and Stephen Tang

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DEVELOPING A PROFESSIONAL IDENTITY IN LAW SCHOOL:
A VIEW FROM AUSTRALIA*

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“The administration of justice would be improved if, instead of thinking only about what we want lawyers to know and what we want them to be able to do, we thought instead about who lawyers should be when they graduate from law school.”1

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I. INTRODUCTION

The experience of law school has a powerful and, perhaps, under-examined impact on the formation of a lawyer’s professional identity. While legal educators tend to focus on imparting doctrinal knowledge and professional skills, the important task of forging a professional identity occurs as an almost-accidental by-product of legal education. Legal educators are frequently unaware of the potent and value-laden lessons they teach through the content, structure, context, assumptions, and pedagogy of legal education. Nevertheless, these lessons affect the construction of professional identities that inform the student’s understanding of the role of lawyers in society and guide their ethical and moral decision-making throughout their careers.

Disturbingly, it appears that legal education’s takeaway messages are not entirely positive. Research conducted over the last three decades in the United States suggests that 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. 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

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2 A study by the Carnegie Foundation for the Advancement of Teaching recently found that legal education neglects the apprenticeship of professional identity in favor of the cognitive apprenticeship. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 27 (2007).
4 Floyd, supra note 1, at 556; see also Molly Townes O’Brien, Facing Down the Gladiators: Addressing the Law School’s Hidden Adversarial Curriculum, MONASH U. L. REV. (forthcoming 2011).
begin law school: they are more depressed, less service-oriented, and more inclined towards undesirable, superficial goals and values.”

Similarly, research conducted recently in Australia by the Brain and Mind Research Institute (“BMRI”) suggests that lawyers and law students exhibit higher levels of psychological distress and depression than do their peers in the community.

The impact of legal education on students’ attitudes and well-being can be powerful and lasting. Recent studies focusing on law student distress suggest that legal education may contribute to changes in student values and motivation. Students may experience decline in feelings of efficacy due to a lack of feedback relating to mastery of the skills they are learning and the stress and humiliation caused by a variety of typical law school pedagogical methods. Students may also experience distress because of the competitive nature of law school, fear of failure, and the loss of the academic accolades which they previously received in their school studies. What should not be lost from these discussions, however, is that the same factors that create distress are often those that inform the creation of a student’s professional identity. The impact of legal education, therefore, is not only on how students think and feel, but also on who they are.

This paper begins in Part II with a report on the preliminary results of a pilot study of first year law students at the Australian National University (“ANU”) College of Law. While the data collected to date is preliminary

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9 McKinney, supra note 5, at 239, 242.
10 Robert P. Schuwerk, The Law Professor as Fiduciary: What Duties Do We Owe to Our Students?, 45 S. Tex. L. Rev. 753, 776-80 (2004) (describing the effects on law students of using the Socratic method, marking on a curve, giving high stakes final exams, etc.).
12 Id.; see also Lawrence Silver, Anxiety and the First Semester of Law School, 4 Wis. L. Rev. 1201, 1202 (1968).
and not sufficient to draw conclusions about law school’s causative role, it does suggest that legal education may contribute to changes in students’ thinking styles, stress levels, and satisfaction with life. Although these propositions are certainly not “proved” by our data, the preliminary results are consistent with other studies both in Australia and overseas.\(^\text{13}\)

In Part III, we explore why the first year of legal education may be important in the formation of a student’s professional identity and how that identity may impact the actions of a lawyer throughout their career. In Part IV, we consider which aspects of legal education may be sending negative messages for the formation of professional identity, focusing specifically on how legal education may encourage adversarialism, emotional detachment and individualism. Finally, in Part V, we express some thoughts about what may be missing from legal education’s current messages. We suggest that empathy and resilience are frequently overlooked and undervalued aspects of the lawyer’s professional identity. The challenge ahead is to re-envision legal education in a way that fosters these qualities.

II. THE PILOT STUDY

A. Background

The conclusions of the 2009 report by the BMRI at the University of Sydney were unsettling to legal educators across Australia.\(^\text{14}\) The report concluded that law students in Australia “exhibit higher levels of psychological distress and depression than do community members of a similar age and sex.”\(^\text{15}\) Indeed, the proportion of Australian law students with significantly elevated levels of psychological distress was higher than practising members of the legal profession who themselves had signs of impaired mental well-being.

Partly as a result of this study, we undertook a pilot study to test student well-being in the context of the 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.

\(^{13}\) See generally Lawrence S. Krieger, Human Nature as a New Guiding Philosophy for Legal Education and the Profession, 47 WASHBURN L.J. 247 (2008) (referring to three in-depth studies focusing on the effects that legal education has on personality).

\(^{14}\) Id.

\(^{15}\) Id. at 42.
B. The Australian Legal Education Context

The ANU College of Law is one of the “Group of Eight” Australian law schools. These law schools are situated in research-intensive universities that have strong national and international reputations. They are commonly thought of as the “top tier” of Australian legal education, and entry is very competitive. In contrast to the United States (“U.S.”), where law is typically a graduate degree, students in Australia usually enter law school directly from high school. Their law degree is an undergraduate degree, an LL.B, which typically takes five years to complete (when combined with another degree, which is the case for most law students). A typical graduate of an LL.B program then proceeds to take a six-month full-time practical legal training course, which, if successfully completed, qualifies them for admission to legal practice.

In addition to having a younger entering cohort, Australian law schools are different from most U.S. law schools in some fairly significant ways. At the ANU, first year law classes do not typically employ a Socratic or even a modified-Socratic format. Students enroll in a combination of large lectures with as many as 350 other students, and small group tutorial sessions with about twenty students. In their first semester, they take a course in Torts (similar to the typical U.S. course) and a course called Foundations of Australian Law. The Foundations course surveys the Australian legal system, legal history, sources of law, the doctrine of precedent and statutory interpretation, and provides students with instruction and assessment in legal writing and research. In their second semester, law students take a course in Contracts (also similar in content to a U.S. course) and a course on Lawyers, Justice and Ethics which considers the roles of lawyers in society, access to justice and the ethical duties of a legal practitioner.

C. 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”), the twenty-one item version of the Depression Anxiety Stress Scale (“DASS-21”), and the Satisfaction with Life Scale (“SWLS”). These three measures are commonly used in applied psychological research.
across different populations and settings and demonstrate very good psychometric properties.\textsuperscript{16}

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.\textsuperscript{17} The REI arose out of Seymour Epstein’s Cognitive-Experiential Self-Theory (“CEST”), a broad model of human personality that argues that there are two parallel but different ways of processing information.\textsuperscript{18} According to CEST, the experiential system operates based on effortless intuition, whereas the rational system is conscious and deliberative. Table 1 outlines the characteristics of the two systems of thinking.\textsuperscript{19}

Table 1
Comparison of Experiential and Rational Processing Modes\textsuperscript{20}

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

\textsuperscript{16} Cronbach’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.

\textsuperscript{17} Rosemary Pacini & Seymour Epstein, \textit{The Relation of Rational and Experiential Information Processing Styles to Personality, Basic Beliefs, and the Ratio-Bias Phenomenon}, 76 J. PERSONALITY & SOC. PSYCHOL. 972, 982-87 (1999).


\textsuperscript{20} Derived from Epstein, \textit{supra} note 18.
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; nor does the rational system imply that this is an unbounded and computationally exhaustive (or exhausting) way of thinking.\textsuperscript{21}

The two modes operate simultaneously, although there are differences in a person’s relative preference for one system over the other. The REI is designed to measure 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 person’s ability and preference to incorporate intuitive impressions and feelings into their thinking.\textsuperscript{22}

The second measure we employed was the DASS-21, 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).\textsuperscript{23}

Although the DASS-21 has excellent validity with clinical populations, this measure was not used as a diagnostic tool in our study, but 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.\textsuperscript{24} The DASS-21 was chosen over other brief measures of psychological distress (e.g. the K10 screening instrument used in the BMRI study)\textsuperscript{25} 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


\textsuperscript{22} 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.


\textsuperscript{24} For an overview of the DASS and its uses, see http://www2.psy.unsw.edu.au/Groups/Dass/over.htm last visited 10/1/2010.

\textsuperscript{25} R. C. Kessler, Kessler’s 10 Psychological Distress Scale (Harvard Medical School 1996); see also Kelk, supra note 7, at 10.
satisfaction with life. As a measure of well-being, rather than distress, the SWLS complements the DASS-21 by looking at the positive end of the emotional spectrum. The absence of distress (e.g. in the form in depression, anxiety or stress) does not necessarily imply that the person is happy and has a life that is worth living.

D. Participants

Our first survey was conducted in October 2009 and 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). Thus, our current data relates 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. Whilst further surveys will be conducted at the end of 2010 and into following years, we consider that 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 as Commerce, International Relations, Science, or Arts).

E. 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.

26 Edward Diener et al., The Satisfaction with Life Scale, 49 J. PERSONALITY ASSESSMENT 71 (1985).
28 In the second survey, we added the Ten Item Personality Inventory ("TIPI"). S. D. Gosling et al., A very brief measure of the Big-Five personality domains, 3 J. Res. PERSONALITY 504, 528 (2003). 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).
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. 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.

Table 2
Distribution of DASS-21 Scores Into Symptom Frequency/Severity Categories

<table>
<thead>
<tr>
<th></th>
<th>Depression (%)</th>
<th>Anxiety (%)</th>
<th>Stress (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Group 1</td>
<td>Group 2</td>
<td>Group 1</td>
</tr>
<tr>
<td>Normal</td>
<td>54.9</td>
<td>79.5</td>
<td>61.5</td>
</tr>
<tr>
<td>Mild</td>
<td>13.6</td>
<td>8.8</td>
<td>8.0</td>
</tr>
<tr>
<td>Moderate</td>
<td>18.8</td>
<td>4.7</td>
<td>14.6</td>
</tr>
<tr>
<td>Severe</td>
<td>4.7</td>
<td>2.9</td>
<td>5.2</td>
</tr>
<tr>
<td>Extremely Severe</td>
<td>8.0</td>
<td>4.1</td>
<td>10.8</td>
</tr>
<tr>
<td>Moderate and above</td>
<td>31.5</td>
<td>11.7</td>
<td>30.6</td>
</tr>
</tbody>
</table>

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. Even

29 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.
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.

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, rather than by category of severity/frequency.

Figure 1
DASS-21 Mean Scale Scores for Group 1, Group 2 and the Standardization Sample

Anxiety disorders include panic disorder, agoraphobia, social phobia, generalised anxiety disorder, obsessive-compulsive disorder and post-traumatic stress disorder.

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 end-of-year Group 1 (mean = 10.59 vs. mean = 5.78). There also appeared to be a shift from scores which were very similar with 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 school contributes to these changes, and if so, how this takes place. The emergence and presence of these sub-clinical but nevertheless distressing symptoms cannot be ignored.

Results on the SWLS generally mirrored those of the DASS-21. The majority of 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. 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). 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). It was also correlated with a positive actual experience of law school (for the end-of-year Group 1), 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 influence of experientiality on indicators of law school experience, suggesting a predisposition towards a rational mode of thought may be a better predictor of law school experience and well-being.

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There were also significant differences in REI rationality and experientiality scores between the two groups. 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) and experientiality was significantly lower (mean 3.28 vs. mean = 3.85),\(^{34}\) but the current methodology does not yet permit drawing a conclusion that one year of law school contributed to this difference.

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 is not sufficient to answer these questions. The groups involved were comprised of different samples of students, studied at different times of the year without controlling for a variety of variables. On the other hand, the data strongly suggests not only that further study is needed, but also that it is possible that the negative impact of legal education begins in the first year—or even before this in the selection of future law students and the shaping of their expectations and attitudes.

If this is true, then law schools should not wait until long-term studies are complete to examine their impact on law students. In particular, if there is connection between these sorts of factors and the long-term formation of a professional identity, then issues related to the content, structure, context, assumptions, and pedagogy of legal education need to be considered now.

### III. The Formation of Professional Identity

Professional identity is not a static concept. To identity theorists, identities represent a set of internalised expectations and behaviours that arise from a role or distinct network of relationships.\(^{35}\) People are seen to have multiple identities that result from the dominant roles they adopt in life.\(^{36}\) These identities can include ones such as student, daughter, lawyer, father, or friend. A person’s identities are also tied to their self-concept. As Sets and Burke note, “our self-concept is based on our observations of ourselves, our inference about who we are based on how others act toward us, our wishes and desires, and our evaluations of ourselves.”\(^{37}\)

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\(^{34}\) The probability that these (or more extreme) patterns of results would have been found if there were actually no differences between the two groups is less than 0.1%.


Professional identity is understood to include the constellation of beliefs, values, and motives by which people define themselves in a professional role. A person’s professional identity is formed partly by reference to the socially constructed meaning of a role and partly by how those meanings are interpreted by the person. When a particular identity is activated in a situation, the internalized meanings and expectations associated with that identity can act as a standard upon which a person bases their behaviour. If that standard matches the behaviour required in the situation and the person receives positive feedback, self-verification occurs. If the standard does not match the situational perception and negative feedback results, anger, depression, or emotional distress can follow.

Research confirms that the desire for self-verification continues throughout life and is a major source of motivation for human behaviour. As individuals learn to match their behaviour to situational expectations, they shape and reform their identities to be consistent with the feedback they receive. It is therefore easy to understand how law school could partly be a training ground for the situational expectations of legal practice. Law students try to assimilate and replicate observed behaviour that is accepted and rewarded in the legal context. Research indicates that most often this includes competitive, aggressive, leadership-oriented, socially confident, and ambitious behaviour.

As Hall notes, the process of adopting these characteristics can happen subtly throughout law school.

Those who are engaged in the study and practice of law embrace and incorporate into their way of being a common set of mental, emotional, and behavioural traits. These patterns are instilled into law students through the structure and value systems of legal education, and they are reinforced when the students become lawyers by the structure, customs and patterns of the legal profession. Those who embrace these qualities and traits are rewarded, and those who deviate from them can often pay a high price. So embracing and developing [the lawyer]

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40 McCALL & SIMMONS, *supra* note 36, at ___.
41 Id.
42 See Daicoff, *supra* note 5 at, 1372.
personality becomes a constant goal and a consistent defining process for those who want to become lawyers.\footnote{David Hall, The Spiritual Revitalization of the Legal Profession: A Search for Sacred Rivers 89 (2005).}

Such a process of “professionalization” is predictable and adaptive in the context of a new learning environment such as law school. As Swann indicated in his early writings on identity theory, one reason that people remain alert to role expectations is to enable them to better understand and predict the responses of others, and to know how to act towards them.\footnote{W. B. Swann, Jr., Identity Negotiation: Where Two Roads Meet, J. Personality & Soc. Psychol. 1038, 1039 (1987).} Allowing one’s identity to develop in new situations enables individuals to “fit in” and reduce discomfort associated with being perceived as an outsider to the group.\footnote{See generally W. B. Swann, Jr., Self-Verification: Bringing Social Reality into Harmony with the Self, in Psychological Perspectives on the Self 33, (J. Suls & A. G. Greenwald eds., 1983); W.B. Swann, Jr. & J. Bosson, Identity negotiation: A Theory of Self and Social Interaction, in Handbook of Personality Psychology: Theory and Research I (O. John et al. eds., 2008).} However, self-verification research also shows that there can be differences in the way self-verification occurs, depending on whether a person has a positive or a negative self-view.\footnote{Swann, supra note 44, at 1040.} Research suggests that people with a positive self-view are more likely to seek out evidence that confirms that they can meet circumstantial expectations and develop their personal and professional strengths accordingly. In contrast, people with a negative self-view are more likely to focus on evidence that suggests that they are unlikely to meet situational expectations and can end up focusing more on the aspects of themselves that are not likely to “fit in.” As a result, highly competitive and demanding environments such as law school, where most people are high achievers and appear confident, can bring out self-doubts and a fear of failure in students prone to developing a negative self-view.

These findings are also consistent with research on identity theory which suggests that individuals non-consciously “rank” their identities.\footnote{McCall & Simmons, supra note 36, at 74.} Research strongly supports the link between identity salience and preferential modes of behaviour.\footnote{See generally Sheldon Stryker & R. T. Serpe, Commitment, Identity Salience and Role Behaviour: A Theory and Research Example, in Personality, Roles and Social Behavior (W. Ickes & E. S. Knowles eds., 1982); P. L. Callero, Role Identity Salience, 48 Soc. Psychol. Q., 203 (1985).} McCall and Simmons consider that...
ranking is influenced by the degree to which a person relates to others from a particular identity, is committed to that identity, and receives extrinsic and intrinsic rewards related to that role identity.\textsuperscript{49} The more prominent a role identity, the more likely it is to be activated in a variety of situations and to become part of a person’s fundamental self-concept and image.\textsuperscript{50} Such theories also suggest that once a person adopts a salient identity they are more likely to display identity cues based on appearance, behaviour, and possessions that are associated with that identity.\textsuperscript{51} Whilst such behavior can make social recognition easier, it can also lead to preferring relationships and social environments that reinforce the dominant identity.

Various literatures suggest that law school and legal education play a significant role in the development of students’ professional identities.\textsuperscript{52} Critical legal scholars have long argued that, because legal education assumes that most law students will become lawyers, it privileges the image of the lawyer above all else.\textsuperscript{53} Kennedy argues that studying law involves the “cultural and ideological development” of students in a context that inculcates them with images of elite members of the legal profession.\textsuperscript{54} Thornton maintains that legal education presents students with a “norm” of the lawyer which is of a middle-class, heterosexual, able-bodied, politically conservative male.\textsuperscript{55} Klare considers that law school encourages the formation of a professional identity that is passive, unreflective, and conservative on issues of social justice and law reform.\textsuperscript{56}

The research on law student well-being also argues that law school and legal education can affect a student’s personal identity and values. Krieger has argued that the intense pressures and competitive success norms of law

\textsuperscript{49} Sets & Burke, supra note 37, at 11.
\textsuperscript{50} Id.
\textsuperscript{51} Swann, supra note 44, at 1040.
\textsuperscript{52} See generally S. Halpern, On the Politics and Pathology of Legal Education (Or, Whatever Happened to That Blindfolded Lady with the Scales), 32 J. LEGAL EDUC. 383 (1982); R. Granfield, Legal Education as Corporate Ideology: Student Adjustment to the Law School Experience, 1 SOC. F. 514 (1986).
\textsuperscript{55} THORNTON, supra note 53, at 81.
school can reorient students away from their personal values, and towards more superficial rewards and an image-based identity. Floyd suggests that law school incorporates recurring negative experiences, including immersion in a highly competitive environment, increasing feelings of failure and inadequacy, focus on short-term goals, devaluation of emotional matters, and a sense of isolation and loss of purpose, creating higher rates of unhappiness in students both during law school and throughout their careers.

Furthermore, researchers argue that law school teaches students to separate out their personal and professional selves. Reich, for example, suggests that there can be a significant difference between a law student’s outward image and their internal persona. His research of first year law students found that whilst the students consistently scored high on scales for aggressive, persuasive, socially competent, self-seeking, intelligent, outspoken, and competitive behaviour, they similarly scored low on wellbeing and confidence. This led Reich to question whether, despite their external appearance, many law students did not see themselves as the polished, aggressive, or successful person that they indicated on the surface. He concluded that:

Law students . . . wear a social mask and attempt to make a strong and definite impression on others; they act and react in great measure on the basis of the social role which they have adopted and which they feel is expected of them by society. While they publically project strength, activity and

59 *See* Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity* 555, 558 (2007) (stating that law school creates compartmentalization between personal and professional identities within the student); Daisy Hurst Floyd, *We Can Do More*, 60 J. LEGAL EDUC. 129 (2010).
61 *Id.*
62 *Id.*
enthusiasm, their private personality is one of awkwardness, defensiveness, and nervousness.\textsuperscript{63}

Reich also suggested that working as a lawyer could exacerbate the conflict between a person’s external image and their internal persona by providing a socially desirable role that could conceal inner feelings of inadequacy and insecurity.\textsuperscript{64} This conclusion fits with suggestions made by Lake that there may be an “imposter syndrome” prevalent in law students, where they feel that everyone in the room knows more than they do or is better educated or capable than they are.\textsuperscript{65} Lake suggests that this can also continue into practice where lawyers can experience situations in which they are keenly aware of the limits of their competence, whilst at the same time being subject to high behavioural expectations and pressures.\textsuperscript{66}

IV. LAW SCHOOL AND PROFESSIONAL IDENTITY

“The lawyer’s professional identity is shaped in part by the boundaries we adhere to in deciding what is appropriate and inappropriate to legal education.”\textsuperscript{67}

Significant identity changes can accompany the life changes, role changes, and/or changes in stable relationships that entry into law school generally brings.\textsuperscript{68} This is not to suggest that the changes in law students’ identities occur as a result of a unilateral process where conformity is imposed upon students. Rather, as Ibarra recognizes, socialization and identity modification is “a negotiated adaptation by which people strive to improve the fit between themselves and their . . . environment.”\textsuperscript{69} However, as Dvorkin, Himmelstein, and Lesnick also note, legal education can involve “[a] subtle process of professionalization occur[ring] during law school without being addressed or even acknowledged.”\textsuperscript{70} Students can fail to consciously consider fundamental questions about the professional

\textsuperscript{63} Id. at 873-74.
\textsuperscript{64} Id.; see also Daicoff, supra note 5, at 1375.
\textsuperscript{65} Peter F. Lake, When Fear Knocks: The Myths and Realities of Law School, 29 Stetson L. Rev. 1015, 1029 (1999-2000).
\textsuperscript{66} Id.
\textsuperscript{67} E. Dvorkin et al., Becoming a Lawyer: A Humanistic Perspective on Legal Education and Professionalism 1 (1981).
\textsuperscript{68} See generally Sheldon Stryker & Benjamin Cummings, Symbolic Interactionism: A Social Structural Version (Menlo Park, 1980).
\textsuperscript{69} Ibarra, supra note 38, at 765.
\textsuperscript{70} Dvorkin, supra note 67, at 1.
identity they are assuming, and its relationship to their values. Law teachers may similarly fail to scrutinise the values, assumptions, and the impact of their programs on law students’ future lives.

Research confirms that students’ personal and professional identities are particularly mutable and adaptable on entering college, and that this is also a time when the salience of identities can change. Stryker and Serpe’s research on the identity salience of college freshmen suggests that within the first few months of college, a student’s academic identity becomes the highest ranking of their identities. Although research by Cassidy and Trew suggests that the salience of this identity is generally based on a student’s progress throughout high school, Stryker and Serpe’s research shows that early into college, the most common identity used by students to introduce and define themselves is their academic identity. These results are supported by Stryker’s earlier work that demonstrates that a person’s commitment to a particular identity is increased by the number of people to whom they are connected by having that identity and the depth or intensity of those connections.

One could expect that a law student, who is constantly surrounded by large numbers of other law students and probably cares about what those students think of them, might experience a deepening of their commitment to their academic and legal identities.

Yet it is also important to remember that law students are not baby ducks! They do not enter law school ready to be imprinted with a new identity. By the time they enter law school, their personal identities have been developing for eighteen (or so) years, and they bring with them their own experiences of the legal profession. Some have relatives who are lawyers, while others have had powerful experiences with lawyers and the legal system through family law, criminal justice, or civil litigation. All of them have had exposure to popular culture’s stereotypes about lawyers.

71 Clare Cassidy & Karen Trew, Assessing Identity Change: A Longitudinal Study of the Transition from School to College, 4 GROUP PROCESSES AND INTERGROUP REL. 49, 56-57 (2001); see also Ibarra, supra note 38, at 765.


73 Cassidy & Trew, supra note 71, at 56-57.

74 Stryker & Serpe, supra note 72, at 26. Note that students involved in this research were not tested on work related identities–our data indicate that almost 40% of law students were already in employment at the start of their university studies.

75 Stryker & Cummings, supra note 68, at ___.

76 Michael Asimow, Popular Culture and the Adversary System, 40 LOY. L.A. L. REV. 653, 669 (2007) (“People are influenced by the popular culture they consume. . . .”).
Nevertheless, law school is a particularly important time in the formation of students’ academic and professional identities, and the impact of this process is not short term. In particular, commitment to a dominant identity can lead to the formation of cognitive schemas that regulate the long-term processing of self-related information based on that identity. These schemas function as a framework that organise information and enable quick, often non-reflective, decision-making. In this sense, cognitive schemas can be the bend in the twig that shapes the tree. As Floyd notes, the lessons law students learn in law school impact them for the remainder of their careers. It therefore follows that as legal educators, we must raise our consciousness about the implicit and explicit messages we send to our students about who they will become. We must ask ourselves—*in what direction does legal education bend the twig?*

**A. Thinking like a lawyer**

As set out above in Part I(E), our preliminary data suggests that we cannot rule out the possibility of a shift towards rational thinking styles by students during their first year of studying law. Even though our data is insufficient to demonstrate with certainty that such a shift occurs or that law school plays a causal role, 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, the emphasis of the rational mode while neglecting the experiential mode of thinking is consonant with the approach to legal material law 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

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77 STRYKER & CUMMINGS, supra note 68, at 581.
78 Alexander Pope wrote, “*Tis education forms the common mind; Just as the twig is bent the tree’s inclined.*” Alexander Pope, *Epistle I to Lord Cobham, Of the Knowledge and Characters of Men* § XLI (Chiswick ed., C. Whittingham, College House 1822 ed. 1733).
79 Floyd, supra note 1, at 562.
80 See Seymour Epstein et al., *Individual Difference in Intuitive-Experiential and Analytical-Rational Thinking Styles*, 71 J. PERSONALITY & SOC. PSYCHOL. ___ (1996); see also Pacini & Epstein, supra note 17, at ___. 
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.81

This description of the first year of law school presents a vivid (and
contested) image of what it means to think like a lawyer. While there has
been a great deal of discussion and a multi-decade debate about this
concept,82 the underlying assumptions are that this thinking process
influences law students’ skills and their concept of professional identity. If
we know what it means to think like a lawyer, it is because we know what it
means to be a lawyer; we understand the lawyer’s role and their
professional identity in a practical sense. Most commonly, this implies
qualities of detachment, adversarialism, and neutrality. Regardless of
whether a focus on these concepts is accurate, it reflects much of what legal
educators assume to be the role of legal education.83

In particular, adversarialism pervades nearly every aspect of the
curriculum, pedagogy, assessment, and extra-curricular activities of legal
education. In Australia, as in the U.S., 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.84 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.
The task of the lawyer is to serve as an advocate for a client, to maximize
the client’s position, and to win.85 As Mertz notes: “There is a core

81 Stephen Wizner, Is Learning to “Think Like a Lawyer” Enough?, 17 YALE L. & POL’Y
AND ITS STUDY 116 (1960)).
82 See generally Roger C. Cramton, The Ordinary Religion of the Law School Classroom,
29 J. LEGAL EDUC. 247 (1978); Robert J. Morris, Not Thinking Like a Non-Lawyer:
Imlications of “Recognition” for Legal Education, 53 J. LEGAL EDUC. 267 (2003); Peter
R. Teachout, Uneasy Burden: What it Really Means to Learn to Think Like a Lawyer, 47
MERCER L. REV. 543 (1996); Jess M. Krannich et al., Beyond “Thinking Like a Lawyer” and
the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education, 86
83 Susan Sturm & Lani Guinier, The Law School Matrix: Reforming Legal Education in a
Culture of Competition and Conformity, 60 VAND. L. REV. 515, 528-31 (2007) (describing
the adversary frame for legal education).
85 Sturm & Guinier, supra note 83, at 527.
approach to the world and to human conflict that is perpetuated through U.S. legal language. This core legal vision of the world and of human conflict tends to focus on form, authority, and legal-linguistic contexts rather than on content, morality, and social contexts.”

Thus, while 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, the law school bias toward adversarial processes will have shaped their concept of what it means to be a lawyer. Indeed, another research project being conducted at the ANU College of Law documents the transition between law student and legal practitioner. It suggests that the transition often involves a prolonged period of identity (re-)formation and correction of mistaken expectations and attitudes instilled through the formal legal education process.

Significantly, it is argued that the adversarial approach “discourages students from grappling with the moral values implicated by a problem.” Being prepared to marshal arguments for either side of a conflict requires dispassionate analysis and emotional detachment. In contrast, the cases often presented to students require them to immerse themselves in some of the messiest, most emotionally intensive, value-laden problems that people encounter. Law students do not study routine divorces, crimes, or accidents, but are often confronted with challenging facts and unpleasant and shocking human circumstances. In tort law, for example, students do not study concepts of legal causation by exploring common accidents and their effects. When a boat slips from its mooring in a tort case, it does not simply crash into another boat. It drifts, crashes into another boat, which crashes into a bridge, which collapses, blocks a river, and causes a flood.

Similarly, in the world of the law student, a child does not simply climb into an open man-hole, they kick over a paraffin lamp on their way out and are burnt in the resulting explosion.

Students studying criminal law do not spend time reading uncomplicated cases of homicide; rather, they study a homicide involving starving survivors and their cannibalism of a shipmate. Even in other more mundane subjects, such as procedure or evidence, students may

87 Vivien Holmes et al., Learning to Lawyer - Empirical insights into new lawyers in small to medium law practice ___ (2010).
88 Sturm & Guinier, supra note 83, at 529.
89 Kinsman Transit Company v. City of Buffalo, 388 F.2d 821 (2d Cir. 1968).
91 The Queen v. Dudley and Stephens, (1884) 14 Q.B.D. 273 (Eng.).
confront cases involving rape of children, beatings, axe murderers, and bodies tied to heavy objects and sunk in a river. The *garden variety* crime or conflict does not find its way into the law school classroom, and legal problems with routine or easy solutions are generally not considered. Instead, students are fed a steady diet of difficult, challenging, and borderline cases in which the facts and reasoning are often complicated and unclear.

What can also make the study of difficult cases particularly challenging for law students is that the lawyer’s role in relation to these human tragedies is often negative or unclear. 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 empathise 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, as it will be presented that 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 advocate and to win. Moreover, students learn that a lawyer’s role is not to advance his own values. Australian students are taught very early on in law school that the “cab rank” rule requires barristers to take on and advocate for the legal rights of any client, without regard to the popularity or morality of the client’s goals or past. The law student learns that a lawyer is not necessarily an agent

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93 Cramton, *supra* note 82, at 254-55.
94 *Id.*
96 AINSLIE LAMB & JOHN LITTRICH, LAWYERS IN AUSTRALIA 213 (2007).
for good, but an agent for the client.\textsuperscript{97} A lawyer must not have their own agenda, as the agenda belongs to the client only.\textsuperscript{98}

Legal education therefore pushes the student 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.\textsuperscript{99} As Silver notes: “By the time one graduates from law school the skills that have been validated rarely include emotional, empathetic intelligence. To reason, to analyze, to distinguish, to draw analogies, to speak and write well—these are the qualities of the successful law graduate.”\textsuperscript{100}

\section*{B. Individualism}

Law school can also encourage students to approach the world alone. Floyd argues that law students are influenced early on in their degree by messages that to do well in law school means getting high results, winning prizes, and securing prestigious summer jobs (or clerkships).\textsuperscript{101} However, in most law schools these \textit{successes} can only be achieved by students acting alone. The competitive environment of law school isolates students from their peers and from academics. Students learn to succeed at someone else’s expense, rather than through collaboration, teamwork, or asking for assistance.\textsuperscript{102}

Similarly, McKinney considers one of the most fundamental ways in which students’ self-beliefs are challenged in law school is in relation to their past academic successes.\textsuperscript{103} Whilst most students come to law school believing that they have strong abilities in analytical tasks and reasoning, in the first year those beliefs can be challenged in the context of learning legal reasoning.\textsuperscript{104} For students who do not expect this intellectual challenge or who do not respond well to it, they can start to doubt their academic abilities, competence, and even choice of profession.\textsuperscript{105}

Research also suggests that a focus on individualism is not necessarily a healthy attribute for students. Whilst a low level of anxiety has been shown

\begin{footnotesize}
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\item\textsuperscript{97} Id. at 214
\item\textsuperscript{98} Id.
\item\textsuperscript{99} MERTZ. supra note 86, at 214.
\item\textsuperscript{100} Marjorie A. Silver, \textit{Emotional Intelligence and Legal Education, 5 Psy chol. Pub. Pol’y & L.} 1173, 1174 (1999).
\item\textsuperscript{101} Floyd, \textit{supra} note 1, at 562.
\item\textsuperscript{102} Id.
\item\textsuperscript{103} McKinney, \textit{supra} note 5, at 247.
\item\textsuperscript{104} Id. at 13.
\item\textsuperscript{105} Floyd, \textit{supra} note 1, at 562.
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to facilitate learning,\textsuperscript{106} for many law students it can create feelings of inadequacy, of needing to live up to their own best performances, and of isolation. Pryor argues that because many law students are over-achievers and perfectionists they easily adapt to thinking primarily in terms of external successes, such as high marks and prestigious jobs.\textsuperscript{107} However, these same factors have been shown to be a major cause of student anxiety, depression, illness, and suicide.\textsuperscript{108} For example, research conducted in New South Wales suggests that high school students who commit suicide are often not the ones who have been struggling at school or have learning difficulties: they are instead the over-achievers.\textsuperscript{109} For some students the twin pressures of an overwhelming pressure to succeed and an intense fear of failure can create extreme anxiety, depression, and self-doubt, leading to suicide.\textsuperscript{110} As Silver writes:

We value academic achievement in our culture, and yet it is such a small part of what ultimately determines success in life. If we work hard in school and get good grades—grades measured largely by short-answer standardized tests—we get into a good [law school]... If we work hard in law school and get more good grades, we have access to many employment opportunities. But will we be good lawyers?\textsuperscript{111}

And will we be happy?

V. ASPECTS OF PROFESSIONAL IDENTITY TO BE ENCOURAGED IN LAW SCHOOL

The idea of the adversarial, emotionally detached, competitive, and individualistic lawyer that we have described above presents a distorted,

\textsuperscript{107} Lisa Pryor, The Pinstriped Prison: How Overachievers Get Trapped in Corporate Jobs They Hate\textunderscore (2008).
\textsuperscript{108} Id.
\textsuperscript{110} To view a memorial for a high achieving law student from Sydney, see the work done by the Tristan Jepson Memorial Foundation at http://www.tjmf.org.au/.
\textsuperscript{111} Silver, supra note 100, at 1179.
incomplete, and inadequate model for law study and practice.\textsuperscript{112} Contemporary legal educators, faced with evidence that law schools are contributing to distress and dysfunction, are actively seeking to re-envision and re-invent legal education in ways that expand the conception of the role of the lawyer.\textsuperscript{113} This process of re-envisioning legal education requires legal educators to become aware not only of the structures and dynamics that may be contributing to distress, but also to think actively and creatively about ways in which law school may encourage healthier and more flexible lawyer identities.

\textbf{A. Empathy}

The problem with legal education’s dominant focus on rationality is that it places disproportionate weight on one aspect of an individual’s identity—the cognitive.\textsuperscript{114} According to Floyd:

\begin{quote}
In legal education we create lawyers who believe that their role in the administration of justice is almost entirely cognitive and that their own ethical values are irrelevant or improper to bring to the arena of justice. . . . We create lawyers who are incomplete as professionals, and who therefore treat their clients as incomplete human beings.\textsuperscript{115}
\end{quote}

In this context we consider that it is particularly important that law students retain their ability to empathize.\textsuperscript{116} Henderson defines empathy as including the capacity to perceive others as having goals, interests, and affects to which we can relate, engaging in the imaginative experience of another and being willing to feel any distress response that accompanies that experience.\textsuperscript{117} Margulies defines empathy as “imagining the mutuality and

\begin{footnotes}
\textsuperscript{114} Floyd, supra note 1, at 557.
\textsuperscript{115} Id. at 558.
\end{footnotes}
difference reflected in someone else's standpoint.” It has been argued that law school can cause students to block or inhibit empathetic responses because of its disregard for emotions and focus on abstract legal reasoning. Massaro, for example, asserts that “[t]he popular image of lawyers is that we are committed to formal rationality. We are trained to cabin ‘empathetic’ responses and remain steadfast in our commitment to legal principles despite emotional dissonance.” Watson, a psychiatrist who worked within a law faculty, similarly noted that traditional methods of legal education lead to “an ablation of emotional awareness.” He concluded that: “[L]aw school education explicitly shapes the character development of law students in certain ways which are detrimental to efficient professional performance. . . . The principal characterological development change is to become ‘unemotional.’”

More recently Silver and Montgomery have argued that emotional intelligence is a necessary trait for any successful lawyer. Silver defines emotional intelligence as the by-product of experiential thinking styles that result in “an attitude that acknowledges the legitimacy of emotions and their relevance to our actions, interactions and decisions.” Montgomery describes emotional intelligence as a series of competencies or abilities involving emotion that include self-awareness of emotions, awareness of the emotions of others, empathetic understanding of emotions, and the ability to self-regulate a person’s own emotional behaviour and to influence the behaviour of others. Goleman considers that “academic intelligence offers virtually no preparation for the turmoil—or opportunity—life’s vicissitudes bring . . . . Emotional life is a domain that, as surely as math or reading, can be handled with greater or lesser skill, and requires its unique set of competencies.”

118 Peter Margulies, Re-Framing Empathy in Clinical Legal Education, 5 CLINICAL L. REV. 605, 605 (1999).
120 Massaro, supra note 116, at 2103.
122 Id. at 131.
124 Silver, supra note 100, at 1178.
125 Montgomery, supra note 123, at 342.
If emotional ablation and detachment were essential to legal practice, it might be arguable that legal education would have an obligation to encourage it. But the reverse appears to be true. In legal practice, “[h]uman concern and understanding must complement abstract principles.”127 Of course, the ability to be emotionally detached in some situations can be very valuable to lawyers,128 but the value of empathy in legal practice is frequently overlooked or underestimated. Empathy may play an important role in the development of lawyer-client relationships, in informing decisions, and in providing sustaining motivation for practice.129 Lawyers who are able to empathise not only with their own clients, but also with opposing parties, judges and juries are likely to have greater understanding and insight into both the problems and potential solutions to conflict.130 There is therefore a strong link between effective advocacy and empathetic lawyering. As Floyd points out, “[t]he best lawyers understand and take account of the emotional and moral aspects of their clients’ lives in helping them resolve legal problems.”131 Furthermore, empathy can be relevant to lawyers’ capacity to make ethical decisions. The strongest existing evidence for an affective-based model of ethical judgment appears to be when a person can empathize with and simultaneously experience the emotional reactions of the person in distress.132 As Batson notes, “[t]he presence of affective reactions . . . appears to be the critical determinant of moral action, and its absence the critical determinant of immoral action.”133 In the context of legal education, to the extent that students are encouraged to engage in legal reasoning without consideration of moral judgments, or to ignore their own beliefs and set aside their own empathy for the people they read about in legal cases, they are being encouraged to create a professional identity without empathy. To counter this possibility, legal education need not teach empathy, per se. Students come to law school already equipped with the ability to empathise. The task of the legal educator, therefore, is to prevent legal education from banishing empathy.

129 Ogletree, supra note 127, at 1271.
130 Id. See also Carrie Menkel-Meadow, Toward Another View of Legal Negotiation: The Structure of Problem Solving, 31 UCLA L. REV. 754 (1984).
131 Floyd, supra note 1, at 556.
133 See BATSON, supra note 132, at ____.
from the students’ professional identities, and to encourage students to develop their empathic skills in ways that will sustain and enhance their future lives in practice. It has been suggested that clinical legal education is an ideal venue for working with students to develop their empathic skills. Floyd also suggests teaching law students communication skills, the impact of cultural and personality differences in human interaction, the psychology of conflict, coping with fear, and making mistakes and surviving them as important ways to maintain a strong capacity for emotional intelligence. All of these methods hold promise for encouraging the formation of a strong empathetic professional identity.

B. Resilience

If empathy is important to the development of students’ professional identities, so is resilience. For most students, the experience of studying law is stressful and challenging as is the later practice of law. Yet resilience research suggests that growing through such challenges can create stronger more capable individuals, and that it is engaging in this process rather than the extent of the risk factors that is most powerful for change. In particular, current research in resilience considers it to be a “self-righting” capacity that most individuals have for healthy growth and development, even in the face of challenges. Saleebey notes that “[a]ll that this natural developmental process requires to produce good developmental outcomes is a protective or nurturing environment in which people—young and old—can meet their inborn developmental needs to be safe, to love and belong, to be respected, to have challenges, to achieve a sense of control, and to have hope.”

Research also considers that particular environments can challenge a person’s ability to meet their basic needs and therefore be experienced as adverse and risky. Masten and Reed note in the context of children that “[t]he findings on resilience suggest that the greatest threats . . . are those adversities that undermine the basic protective system for development.” Furthermore Werner and Smith write: “The life stories of resilient youngsters . . . teach us that competence, confidence, and caring can

134 Ogletree, supra note 127.
135 Floyd, supra note 59.
136 See, e.g., E. Werner & R. Smith, JOURNEYS FROM CHILDHOOD TO MIDLIFE: RISK, RESILIENCE AND RECOVERY (2001).
flourish, even under adverse circumstances, if [they] encounter persons who provide them with the secure basis for the development of trust, autonomy, and initiative."

It is now well accepted that positive environments offer individuals caring relationships, high expectation messages and opportunities for participation and contribution.\textsuperscript{139} Whilst most of the research done in this area has involved at-risk children and youths, the findings have also been found to be relevant to students moving through high school and in medical school.\textsuperscript{141} In particular, one longitudinal, nationwide, and comparative six-year study of medical students in Norway considered the relationship between life satisfaction and resilience.\textsuperscript{142} It identified a subgroup of students with stable high levels of life satisfaction and compared that group to other students with fluctuating levels of life satisfaction on the basis of personality, perceived stress, and coping strategies. What it found was that the stable students differed with respect to both perceived stress and coping abilities. The students who scored low on the Perceived Medical School Stress ("PMSS") questionnaire generally demonstrated "predicted stable high life satisfaction, even when susceptible personality traits were controlled for."\textsuperscript{143} In other words, students in this group perceived medical school as less stressful and as interfering less with their social and personal life than did students with fluctuating levels of life satisfaction. This led the researchers to suggest that students’ ability to spend time and energy on other domains of their life while still attending to the demands of study was crucial to stable high life satisfaction. They also noted that this finding was supported by previous studies which have shown that socializing tended to decrease in medical school, that inadequate social activity was linked to impaired psychological health, and that leisure activities were important in reducing stress in medical school.\textsuperscript{144} As a result, they concluded that medical schools should encourage students to maintain their outside interests and leisure activities, and to make sufficient time for friends and recreation.

\textsuperscript{139} \textbf{Werner & Smith, supra} note 136, at ____.

\textsuperscript{140} \textit{See} Glenn E. Richardson, \textit{The Metatheory of Resilience and Resiliency}, 58 J. CLINICAL PSYCHOL. (2002).


\textsuperscript{142} Kari Kjeldstadli et al., \textit{Life Satisfaction and Resilience in Medical School-A Six-Year Longitudinal, Nationwide and Comparative Study}, 6 B.M. C. MED. EDUC. 48 (2006).

\textsuperscript{143} \textit{Id.} at 54.

\textsuperscript{144} \textit{Id.} at 55.
A focus on resilience is therefore consistent with assisting students to deal with the stresses and challenges of law school. To foster resilience in law students, we need to create a law school environment that offers caring relationships, high expectation messages, and opportunities for participation and contribution. We also need to encourage students to maintain their outside interests, leisure activities and friendships. Furthermore, we need to let students know that struggling with law school, making mistakes, or feeling anxious about study are not signs of inability or incompetence, and assist them by sending clear and positive messages about what is expected of them and why. Finally, we must consider how to provide opportunities for students to form relationships with faculty and staff that are marked by availability, positive regard, and an acknowledgement of the person and their strengths.  

VI. CONCLUSION

Faced with evidence from our pilot study that law students may begin to experience increased distress and depression in the first year of law school, we—like an increasing number of law teachers at other law schools—are casting a concerned eye to our programs and curricula and asking ourselves, “What are we doing that might harm our students and how can we stop doing it?” 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, enrol 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. However, the particular challenge facing legal education is to examine the teaching of the discipline 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 approach of legal education impact student’s self concept and well-being.

In this paper, we have begun this task by exploring the formation of professional identity in law school. Lesnick wrote that “[i]t is not possible to talk or think about questions of lawyering without one’s thoughts or statements reflecting a set of answers to the questions of identity.”

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145 SLEEVEY, supra note 137, at 200-03.
146 See generally Sheldon & Krieger, supra note 5; Krieger, supra note 13.
147 Schuwerk, supra note 10, at 758.
making decisions about legal content, materials, and pedagogy, legal educators (often unconsciously) adopt and communicate assumptions about professional identity that are outmoded, incomplete, and inappropriate for the students’ futures as legal professionals. Law school offers a conception of the lawyer identity as impoverished by legal education’s over-emphasis on adversarialism, detached analysis, and competitive individualism. Each of these factors may contribute to undermining students’ sense of values, their feelings of power and competence, and their general sense of well-being. Furthermore, law students’ exposure to this inadequate formulation of professional identity comes at a critically important time in the formation of their identity, a time when we, as educators, ought to be particularly sensitive to the messages we send.

Law schools have a powerful and robust culture. The adversarial and competitive subtexts of legal teaching are deeply embedded. Nevertheless, we believe that legal educators may bring balance to the distorting effects of a poor conception of the legal professional by encouraging key aspects of identity, such as empathy, that are currently under-emphasised in legal education. Finally, by improving the ways in which the law school environment fosters resilience in law students, we can hope that legal educators will contribute to their students’ current and future well-being and to the revitalisation of the profession.

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149 See Menkel-Meadow, supra note 95, at 809.