

1-1-2007

Thriving in the Legal Academy

Paula Baron
Griffith University

Follow this and additional works at: <https://epublications.bond.edu.au/ler>



Part of the [Legal Education Commons](#)

Recommended Citation

Baron, Paula (2007) "Thriving in the Legal Academy," *Legal Education Review*: Vol. 17 : Iss. 1 , Article 3.
Available at: <https://epublications.bond.edu.au/ler/vol17/iss1/3>

This Article is brought to you by the Faculty of Law at ePublications@bond. It has been accepted for inclusion in Legal Education Review by an authorized administrator of ePublications@bond. For more information, please contact [Bond University's Repository Coordinator](#).

THRIVING IN THE LEGAL ACADEMY

PAULA BARON*

*The workplace is increasingly becoming a place where survival, let alone success, necessitates higher than average performance.*¹

*The university has become 'survivalist, dominated by a sense of the duty to endure rather than to enjoy'.*²

I INTRODUCTION

This paper explores the notion of thriving in the academic workplace in general, and the legal academy in particular. It was prompted by the Career Progression session at the 2007 ALTA conference, entitled 'Ideas and Strategies to Survive and Thrive in the New Environment'.³ Although ideas for surviving the new environment are relatively easy to formulate, the potential for (even the possibility of) thriving is more difficult to articulate. Ways of achieving a better quality of life can be hard to imagine in the current university environment. There is a substantial body of research that finds that academic life in general is highly stressful, with significant implications for health and well-being.⁴

Although much has been written, particularly from the perspective of therapeutic jurisprudence,⁵ on the well-being and emotional health of lawyers, clients and law students, little attention has been paid to law academics. This seems to be a serious gap in the therapeutic jurisprudence enterprise and a somewhat odd one at

* Professor, Griffith Law School, Griffith University. Thanks to Kenneth McKinnon, Waikato University, for his generous and helpful insights on a previous draft of this paper.

¹ Fred Luthans and Carolyn Youssef, 'Emerging Positive Organizational Behaviour' (2007) 33(3) *Journal of Management* 321, 322.

² Anthony Smith and Frank Webster, 'Changing Ideas of the University' in Anthony Smith and Frank Webster (eds), *The Postmodern University? Contested Visions of Higher Education in Society* (1997), 1–14, 5.

³ Australasian Law Teachers Association, Annual Conference, University of Western Australia, Perth, 23–26 September 2007.

⁴ This research is discussed in Part IV below.

⁵ Therapeutic jurisprudence focuses on the law's impact on emotional life and on psychological well-being. A bibliography of therapeutic jurisprudence literature can be found on Bruce Wexler's website for the International Network of Therapeutic Jurisprudence, <<http://www.law.arizona.edu/depts/upr-intj/>> at 22 December 2007.

that. Can we ‘humanise’ legal education⁶ without considering the health and well-being of those who are responsible for it? Can we seek to understand the challenges to well-being amongst members of the legal profession without acknowledging and reflecting upon the similar challenges we face as academics?⁷

This paper seeks to raise awareness of the challenges to, and the potential for, well-being amongst teachers of law. The paper makes three key claims. The first is that there is a significant difference between thriving and surviving and we have tended to focus, in law schools, on the latter. This focus has been the result, in particular, of the structural changes to both the profession and to universities that have occurred over the past fifteen years. The second claim is that, in an environment in which serious reconsideration is being given to the health and well-being of our students and members of the legal profession, it would be beneficial to consider also how we might further the health and well-being of our academics; and lastly, a focus on the concept of thriving might allow us to do that. The paper concludes with some practical suggestions for furthering the well-being of law faculties and the academics who work within them.

II WHAT IS THRIVING?

The terms ‘surviving’ and ‘thriving’ bring to mind very different associations. Surviving might bring to mind the reality television show, with its motto ‘outwit, outplay, outlast’. The etymology of the word ‘survive’ supports that association. The word was originally

⁶ The recent ‘Humanizing Legal Education Symposium’ was held at Washburn University School of Law on 19–21 October 2007. Within the therapeutic jurisprudence mode, it explored topics related to the happiness and well-being of lawyers and law students, but no papers were given on the happiness and well-being of faculty. See further <<http://washburnlaw.edu/humanizinglegaleducation/>> at 22 December 2007. Considerable concern has been raised about the health and well-being of law students. See, in particular, Kennon Sheldon and Lawrence Krieger ‘Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Values, Motivation and Well-Being’ (2004) 22 *Behavioral Science and Law* 261; Lawrence Krieger, ‘Psychological Insights: Why our Students and Graduates Suffer, and What we Might do About it’ (2002) 1 *Journal of the Association of Legal Writing Directors* 259; Lawrence Krieger, ‘Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence’ (2002) 52 *Journal of Legal Education* 112.

⁷ Reports continue to show that members of the legal profession have significant issues relating to health and well-being: Christian Catalano, ‘Depression Hits Lawyers’ *The Age* (Melbourne) 24 April 2007 reporting on a study by beyondblue that found that 15 per cent of lawyers who responded to the survey displayed moderate or severe depression symptoms, a rate two and a half times that of the general population. Over five per cent used alcohol and drugs to deal with the problem: <<http://www.theage.com.au/articles/2007/04/23/1177180567883.html>> at 22 December, 2007. The problem is not confined to lawyers in Australia. See, for instance, Marcia Eason, ‘Lawyers Especially at Risk for Depression, Addiction, Suicide’ (2007) 43 *Tennessee Bar Journal* 3; David Bateson and Tim Hart, ‘Combating Attorney Burnout’ (2007) 64 *Bench and Bar of Minnesota* 22.

applied in the legal inheritance sense, deriving from the Latin *supervivere*, ‘live beyond, live longer than’.⁸ It is only quite recently, from the 1970s, that the word acquired the meaning of ‘one who has a knack for pulling through adversity’.⁹ Survival has rather grim connotations and Darwinian overtones. Picking up on these, one writer has suggested that adaptability and flexibility are central to notions of survival of and within organisations, but these have led to troubling implications — that individuals may be compelled to adapt endlessly, and that the notion that the individual can survive through sheer individual will, can become accepted as the norm.¹⁰ The focus in business (and thus organisational) culture, like the reality television show, is on personal survival and self-interest.¹¹ In reality, however, survival is not something that can be willed or chosen.¹²

‘Thrive’ on the other hand, could bring to mind the fertiliser of the same name, and hence an association with gardens. Thrive, the fertiliser brand, promises ‘balanced foliage growth and flowering and fruiting’. It has connotations of health, flourishing and abundance. The etymology of ‘thrive’ links that word to prosperity, its origins in Old Norse *thrifask*, meaning to grasp.¹³ Unlike survival, thriving has very positive connotations.

There has been relatively little academic literature on the notion of thriving at work and, in fact, there is relatively little knowledge about the ways in which work contexts can enable positive health, well-being and positive functioning.¹⁴ There has been a considerable focus on the potential negative factors of work (such as stress and overload)¹⁵ and it is well known that work and work contexts can have toxic effects on health and well-being.¹⁶ The existing literature

⁸ Henry Watson Fowler and Francis George Fowler (eds), *The Concise Oxford Dictionary* (6th ed) 1964.

⁹ Online Etymology Dictionary <<http://www.etymonline.com/>> at 22 December 2007.

¹⁰ Megan Brown, ‘Survival at Work: Flexibility and Adaptability in American Corporate Culture’ (2003) 17(5) *Cultural Studies* 713.

¹¹ *Ibid* 729.

¹² *Ibid* 730.

¹³ Fowler and Fowler, above n 8. Interestingly, ‘thrift’ originally referred to the ‘fact or condition of thriving’ as well as prosperity and savings. It was only linked to the habit of saving or economy from around 1553: Online Etymology Dictionary, above n 9.

¹⁴ Gretchen Spreitzer, Kathleen Sutcliffe, Jane Dutton, Scott Sonenshein and Adam Grant, ‘A Socially Embedded Model of Thriving at Work’ (2005) 16(5) *Organisation Science* 537, 537.

¹⁵ Some of this material examines the university workplace specifically. See, eg, Nicole Gillespie, Meaghan Walsh, Anthony Winefield, Jagdish Dua and Con Stough, ‘Occupational Stress in Universities: Staff Perceptions of the Causes, Consequences and Moderators of Stress’ (2001) 15(1) *Work and Stress* 53; Arlene Gray Blix, Robert Cruise, Bridgit McBeth Mitchell and Glen Blix, ‘Occupational Stress among University Teachers’ (1994) 36 *Educational Research* 157; Deborah Olsen, ‘Work Satisfaction and Stress in the First and Third Year of Academic Appointment’ (1993) 64 *Journal of Higher Education* 453.

¹⁶ Spreitzer et al, above n 14, 537.

on the ways in which work can contribute positively to well-being; and, in turn, the ways in which the flourishing of individuals can contribute to the well-being and productivity of the organisation, has been described as ‘sparse’.¹⁷

Psychoanalytic and related psychotherapeutic theories¹⁸ maintain that there is a strong link between work, the environment and individual well-being. Indeed, Freud is reputed to have identified what it is that a ‘normal’ person should be able to do well as to love and to work.¹⁹ Two writers from the psychotherapeutic tradition, in particular, have raised ideas that may be considered to be both relevant and helpful in considering the links between well-being and work.

Donald Winnicott, the renowned child psychoanalyst, made a fundamental distinction between the creative life and the compliant life, the creative life being fundamental to individual well-being and, by implication, thriving. Winnicott argued that creativity was essential to the good life: ‘It is creative apperception more than anything else that makes the individual feel that life is worth living’.²⁰ For Winnicott, the creative life depended upon a trusting and relaxed environment and the ability to play. It is doubtful that any university has thought seriously in its strategic planning to provide for the ability of academics to play!²¹ But Winnicott points out that it is ‘in playing, and perhaps only in playing, the child or adult is free to be creative’.²² Winnicott contrasted the creative life with a situation where one’s relationship to external reality is one of compliance, ‘the world and its details being recognised but only as something to be fitted in with or demanding adaptation’.²³ Whilst the creative life is inherently satisfying, compliance brings with it a sense of futility associated with the notion that nothing matters; that life is not worth living. He argued that ‘in a tantalising way’ most people have experienced just enough of creative living to recognise

¹⁷ Ibid 545. See also Luthans and Youssef, above n 1, 321.

¹⁸ An explanation of the distinction between psychoanalytic and psychotherapeutic theories is complex and outside the scope of this paper, but a useful distinction is provided in the foreword by Janice Kaufman to Leonard H Kapelovitz, *To Love and To Work* (1976) xv who describes psychoanalytically oriented psychotherapy as ‘a kind of applied psychoanalysis’, which borrows extensively from psychoanalytic theory and only occasionally from psychoanalytic technique.

¹⁹ Erik Erikson, cited in Kapelovitz, above n 18, vii: Although ‘to love and to work’ is often attributed to Freud, the origins of the quote are difficult to find. The most likely source is considered to be his statement in *Civilization and its Discontents*, that ‘[t]he communal life of human beings had...a two-fold foundation: the compulsion to work, which was created by external necessity, and the power of love...’.

²⁰ Donald Winnicott, *Playing and Reality* (2005) 87.

²¹ Although universities seem unaware of the value of free time in which to ‘play’ with ideas, it remains a matter of priority for the majority of law academics engaged in research.

²² Winnicott, above note 20, 71.

²³ Ibid 86.

that, for most of the time, they are living ‘uncreatively, as if caught up in the creativity of someone else, or of a machine’.²⁴

Thomas Gordon, who collaborated with Carl Rogers, founder of the humanistic psychology movement, extended notions of client-centred therapy or non-directed therapy²⁵ to organisational administration.²⁶ Gordon argued that individuals in groups responded much the same way as clients in therapy:

We could see clearly the strong resistance to change, the initial dependence upon the leader for direction and guidance, the effects of evaluation and diagnosis, the inevitable frustration of group members on their own. We could see also the impact of a permissive atmosphere and the force of the leader’s understanding and consistent acceptance.²⁷

These observations led Gordon to conclude that a certain environment and a particular kind of leadership would be likely to foster the well-being and productivity of the group as a whole. Gordon argued that the environment should be one marked by the opportunity for participation by all the members of the group; that it should facilitate free communication amongst the membership; and that it should provide a non-threatening psychological climate, that is a ‘safe’ atmosphere in which members of the group feel accepted.²⁸ In turn, his model of leadership was one which stressed leadership functions, rather than the person of a particular leader. These functions included conveying warmth and empathy, attending to others, understanding the meaning and intention of members of the group, conveying acceptance and performing what Gordon terms the ‘linking function’, a synthesis of the contribution of all the members of the group and of each group member with the direction of the group as a whole.²⁹

The significance of both writers within the context of this discussion is that they draw a strong correlation between individual well-being and the social environment. In particular, they stress the importance of a ‘safe’ environment. Neither Winnicott nor Gordon uses the term ‘thriving’ explicitly, though it appears to be implicit in their argument.

Recently, however, there has been academic work which focuses very specifically upon the notion of thriving at work. This

²⁴ Ibid 87.

²⁵ That is, the client is not directed by the therapist. Rather, the role of the therapist is to assist the client to explore and understand their feelings so the latter can take responsibility for change and personal growth.

²⁶ Gordon observes that this approach came about not least because of a disjunction between the belief, as a therapist, that one should not direct another’s life, and the fact that as a group leader, one frequently did exactly that: Thomas Gordon, ‘Group-Centred Leadership and Administration’ in Carl R Rogers, *Client-Centred Therapy* (1951) 320.

²⁷ Ibid 322.

²⁸ Ibid 347.

²⁹ Ibid 348–63.

literature arises within what is termed Positive Organizational Scholarship the focus of which is on the ‘generative (life building, capability-enhancing, capacity-creating) dynamics in organisations that contribute to human strengths and virtues, resilience and healing, vitality and thriving’.³⁰ Interestingly, within the therapeutic jurisprudence context, insights from the positive psychology movement have been applied to the well-being of law students,³¹ but the application to the well-being of law teachers has not been explored.

Positive Organizational Scholarship, along with Positive Organizational Behaviour³² and psychological capital (or PsyCap)³³ are research areas which explore positive attributes within the workplace and which have developed from the positive psychology movement.³⁴ These movements seek to enhance our understanding of the ways in which positive states can be facilitated and used to promote the performance of individuals and organisations;³⁵ and to counter the traditional focus upon negative states. A focus on the positive is not without its difficulties and risks: it is not ‘simple, straightforward, or risk free’³⁶ and it may, at least implicitly, encourage blaming the social context within which organisational behaviour takes place.³⁷

³⁰ Jane Dutton, Mary Ann Glynn and Gretchen Spreitzer, ‘Positive Organizational Scholarship’, (Working Paper Series, Michigan Ross School of Business, 2005) <<http://www.bus.umich.edu/Positive/PDF/Dutton-POS-Encyc-of-Career-Devel.pdf>> at 22 December 2007. See also Luthans and Youssef, above n 1, 337, who define Positive Organizational Scholarship as ‘the study of that which is positive, flourishing and life-giving in organizations’.

³¹ Denise Reiebe, ‘Using Positive Psychology to Promote Personal and Professional Well-Being’; and Nancy Levit and Douglas Linder, ‘Mission Happiness or Mission Impossible: Can Law Schools Create Happy Law Students? Should They?’, papers presented at the Humanizing Legal Education Symposium, Kansas, 19–21 October 2007, <<http://washburnlaw.edu/humanizinglegaleducation/>> at 22 December 2007.

³² Positive Organizational Behaviour is ‘the study and application of positively oriented human resource strengths and psychological capacities that can be measured, developed, and effectively managed for performance improvement in today’s workplace’: Fred Luthans, ‘Positive Organizational Behaviour: Developing and Managing Psychological Strengths’ (2002) 16(1) *Academy of Management Executive* 57.

³³ Defined as ‘an individual’s positive psychological state of development that is characterized by: (1) having confidence (self-efficacy) to take on and put in the necessary effort to succeed at challenging tasks; (2) making a positive attribution (optimism) about succeeding now and in the future; (3) persevering toward goals and, when necessary, redirecting paths to goals (hope) in order to succeed; and (4) when beset by problems and adversity, sustaining and bouncing back and even beyond (resiliency) to attain success’: Fred Luthans, Carolyn Youssef and Bruce Avolio, *Psychological Capital: Developing the Human Competitive Edge* (2007) 3.

³⁴ Luthans and Youssef, above n 1, 321. Positive psychology is the study of the conditions that enable individuals, communities and organisations to thrive. See further the Positive Psychology Centre <<http://www.ppc.sas.upenn.edu/>> at 22 December 2007.

³⁵ Ibid 322; Spreitzer et al, above n 14, 537.

³⁶ Luthans and Youssef, above n 1, 323.

³⁷ Ibid.

Further, our notions of positivity and negativity are contingent on cultural values.³⁸ Despite these caveats, Positive Organizational Behaviour, Positive Organizational Scholarship and PsyCap are seen to have the potential for a positive impact on organisations ‘beyond what material resources, classic business models and deficit-oriented approaches can offer’.³⁹

Within the Positive Organizational Scholarship research, thriving is defined as a desirable subjective experience of progress and momentum, marked by two characteristics: first, a sense of learning (greater understanding and knowledge); and secondly, a sense of vitality (aliveness).⁴⁰ Both characteristics need to be present for individuals to thrive. If individuals are learning, but depleted, they are not thriving. Conversely, an individual can feel alive at work from the social interaction, but feel stagnated in their development.⁴¹ Thriving in the Positive Organizational Scholarship literature is opposed to languishing (‘the subjective experience of being stuck, caught in a rut or failing to make progress’)⁴² and differentiated from related concepts of resilience, flourishing, flow, subjective well-being and self-actualisation.⁴³

The theory of thriving is supplemented by narrative descriptions of thriving⁴⁴ which describe being energised, valued, productive, open to challenges and opportunities for personal growth. These narratives emphasise the importance for thriving of learning and accomplishment, personal relationships and certain properties of work: novelty and challenge, for instance; and of the organisation itself, such as its culture and physical surroundings.⁴⁵

A couple of additional important points arise from the research: first, thriving is socially embedded, that is, when individuals are situated in a particular work context, they are more likely to thrive.⁴⁶ To put that another way, work organisations have a significant responsibility for individuals’ growth, development and health.⁴⁷

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Spreitzer et al, above n 14, 537.

⁴¹ Ibid 538.

⁴² Ibid 537.

⁴³ Ibid 538. For the different taxonomies of positive states within the Positive Organizational Scholarship, Positive Organizational Behaviour and PsyCap literature, see Luthans and Youssef, above n 1.

⁴⁴ Scott Sonenshein, Jane Dutton, Adam Grant, Gretchen Spreitzer and Kathleen Sutcliffe, ‘Telling Tales of Thriving: Narrations of Positive Experience at Work’ (Working Paper, Center for Positive Organizational Scholarship, Ross School of Business, University of Michigan, 2005) <http://webuser.bus.umich.edu/spreitze/Telling%20Tales%20of%20Thriving_July181.pdf> at 22 December 2007.

⁴⁵ Gretchen Spreitzer and Kathleen Sutcliffe, ‘Thriving in Organizations’, <<http://webuser.bus.umich.edu/spreitze/06-Nelson%20%20Cooper-Ch06.pdf>> at 22 December 2007. Interestingly, in light of Winnicott’s theory, playfulness was identified as a contributing factor to thriving in the workplace.

⁴⁶ Spreitzer et al, above n 14, 539.

⁴⁷ Ibid 545.

Secondly, individual traits may predispose some individuals to flourish more than others.⁴⁸ Thirdly, thriving is not a dichotomous state, but a continuum where people are more or less learning and energised at any particular time.⁴⁹

III THE DESIRABILITY OF THRIVING

An intuitive response to the topic would suggest that thriving is desirable. It seems obvious from a moral or ethical perspective that law faculties should be optimising staff well-being. The Positive Organizational Scholarship literature supports this intuitive view. From the point of view of the individual, a focus on thriving serves an adaptive function that can help the individual navigate and change so as to promote his or her own development,⁵⁰ and it appears to contribute to positive health outcomes.⁵¹ A focus on individual well-being at work is particularly important given that people are currently devoting increasing amounts of time to this domain of their lives; and they tend to find this domain increasingly attractive relative to their home lives.⁵² The research suggests that promoting well-being at work can have a spill-over effect and contribute to well-being in other aspects of people's lives.⁵³ This may be more likely to occur in the context of academic work, as a previous study has shown that academics appear to experience a high degree of spill-over effect between work and life away from work.⁵⁴

The Positive Organizational Scholarship literature also suggests that organisations can benefit from a focus on the concept of thriving, arguing that the concept can promote flexibility and enable organisations to respond to uncertainty.⁵⁵ This would seem particularly valuable in the current university climate. It can also reduce the costs to the organisation of ill health;⁵⁶ and it can provide an alternative pathway to formal external mechanisms for individual development, such as performance reviews and incentive schemes.⁵⁷ Perhaps most significantly, this focus can enable organisations (and organisational

⁴⁸ Ibid 539.

⁴⁹ Spreitzer and Sutcliffe, above n 45, 76.

⁵⁰ Spreitzer et al, above n 14, 535.

⁵¹ Ibid 537.

⁵² Ibid 538.

⁵³ Spreitzer and Sutcliffe, above n 45, 78.

⁵⁴ Janet Near and Mary Deane Sorcinelli, 'Work and Life away from Work: Predictors of Faculty Satisfaction' (1986) 25(4) *Research in Higher Education* 377. See Michael Plaxton, 'Cownie: *Legal Academics: Culture and Identities*' (2005) *Modern Law Review* 166, who cites Cownie's observation that research and writing are activities that one can do at any time, so that, short of conflicting family commitments, one never has a good reason to stop researching. Research and writing can thus take over an academic's life.

⁵⁵ Spreitzer and Sutcliffe, above n 45, 82–83.

⁵⁶ Ibid.

⁵⁷ Ibid 545.

units) that lack resources to achieve positive outcomes.⁵⁸ Finally, it would appear that thriving is contagious, so one person's flourishing can have a positive impact upon the rest of the group.⁵⁹

What has not been explored, however, is the way in which the focus on the well-being of law academics may potentially contribute to the well-being of law students and, in turn, the legal profession. Given the considerable interest in the well-being of students and lawyers and their clients, it would seem logical that similar concern would be expressed for those who teach law but there has been little attention to the well-being of legal educators. This seems a significant oversight, because, as Plaxton observes, every lawyer must have studied law at some point, and the way lawyers view and practice law is deeply and subtly affected by the way in which law is taught.⁶⁰ Encouraging well-being in our legal academies may be a powerful way of influencing the well-being of our students and ultimately the culture of the legal profession. Given these potential benefits to individuals, to law faculties, to their students and to the profession, the promotion of well-being amongst the legal academy should be a priority. The new environment, however, may be one which presents some serious challenges to this idea.

IV THE NEW ENVIRONMENT: DOES IT HINDER THRIVING?

Much has been said about the significant changes to universities in general and to law schools in particular over the past 15 years. The Australian Law Reform Commission observed that these changes parallel those of the legal profession over the same period. It noted the characteristics of:

rapid growth; moves towards national admission and practice; globalisation; the end of statutory monopolies; the application of competition policy and competitive pressures; the rise of corporate 'mega firms'; the emergence of multi-disciplinary partnerships; increasing calls for public accountability; more demanding clients; and the influence of new information and communication technologies...⁶¹

Legal academics in Australia will be only too familiar with the growth in the number of law schools (a trend that continues)⁶² and a concomitant increase in competition between law schools; the

⁵⁸ Ibid 546.

⁵⁹ Spreitzer and Sutcliffe, above n 45, 78.

⁶⁰ Plaxton, above n 54, 166.

⁶¹ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* Report No 89 (2000) [2.13] <<http://www.austlii.edu.au/au/other/alrc/publications/reports/89/index.html>> at 22 December 2007.

⁶² Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report commissioned by the Australian Universities Teaching Committee (AUTC)* (2003) 3.

significant increase in the number of students studying law;⁶³ the diversification of teaching methods⁶⁴ and types of degrees.⁶⁵ Many of these changes have been driven by government-initiated changes to the tertiary education sector, which have pressured law schools into taking or retaining more students and adopting a stronger legal practice focus and a broader curriculum to cater to a more diverse student body with presumed diversified career intentions.⁶⁶ In turn, government funding of universities over this period has declined, and at the same time, university accountability for the expenditure of public money⁶⁷ has increased. Much analysis of the academy suggests that ‘academic practices, institutions and cultures are being invaded or eroded by ideologies of vocationalism, instrumentalism, performativity and corporate capitalism’.⁶⁸

Over this period of 15 years or so, there have been very considerable changes to the working lives of individual law academics as these pressures have filtered down through the institutions to the individuals who work there.⁶⁹ Some of these changes include:

A Increased Teaching-Related Workloads

The increase in workloads is due to a variety of factors including significant increases in student numbers without a concomitant increase in staff numbers; adoption of continuous assessment practices; semesterisation; increased numbers of graduation ceremonies; the necessity to teach skills as well as content in

⁶³ Ibid: as Johnstone and Vignaendra point out, the development of regional law schools, combined with increased participation have contributed to diversity in student intake in terms of academic background and prior achievement, geographical location, career aspiration, and socio-economic status.

⁶⁴ While lecturing is still common, some schools now offer small group teaching, more class discussion, small group work and other methods aimed at fostering active learning: *ibid* 1. See also Paul O’Shea, ‘The Complete Law School: Avoiding the Production of “Half-Lawyers”’ (2004) 29(6) *Alternative Law Journal* 272, 272 who observes that ‘[t]eaching law has become a complicated business which involves the teaching of doctrine, theory, critique, values and ethics.’

⁶⁵ In contrast to the traditional focus on an LLB and the focus upon legal doctrine, many law schools now offer a wide range of combined degree programs, as well as graduate entry LLB programs. Most now teach legal ethics and legal skills and offer at least one subject in legal theory. Some schools have developed undergraduate law degrees that include professional legal training. O’Shea, *ibid* n 64, 272, argues strongly in favour of this development as necessary to avoid the production of ‘legal mechanics’ or ‘half lawyers’.

⁶⁶ Vivienne Brand, ‘Decline in the Reform of Law Teaching? The Impact of Policy Reforms in Tertiary Education’ (1999) 10(2) *Legal Education Review* 109 cited in Johnstone and Vignaendra, *ibid* n 62, 6.

⁶⁷ Australian Law Reform Commission, *ibid* n 61, 2.90.

⁶⁸ Mary Henkel, ‘Review: Legal Academics: Culture and Identities’ (2005) 30(2) *Studies in Higher Education* 225, 226.

⁶⁹ See also Fiona Cownie, ‘Two Jobs, Two Lives and a Funeral: Legal Academics and Work-Life Balance’ [2004] 5 *Web Journal of Current Legal Issues*: ‘The effects of the changes which have taken place in higher education have undoubtedly been felt at grass-roots level...’

courses; and the tendency to move away from doctrinal scholarship to the comparative, theoretical and sociological exploration of law.⁷⁰ Cownie notes that contemporary academics are essentially carrying two jobs — not in the literal sense, but in the sense that ‘the one job they do involves considerably more productivity and is much more highly regulated’.⁷¹ She also notes that with the changes to technology, administrative support has decreased so that academics are ‘largely self-servicing’ which has also contributed to increased workloads.⁷²

B *Increased Administrative Loads*

This is not only a result of the increase in student numbers but also the result of the significant and ongoing bureaucratisation of universities (and the attendant needs for accountability, outlined above); and the rise in the consumerist ethos of students (see below). This has meant that the paperwork alone (such as new course proposals, course outlines, reading guides, assessment guides and course evaluations) has increased dramatically.⁷³

C *Increased Auditing of all Activities*

Universities have, over the past 15 years, been increasingly held accountable for measurable outcomes:

Increases in competition for scarce resources and a decrease in the public’s trust in higher education practices have resulted in demands for campuses to demonstrate their productivity, effectiveness, and efficiency. Institutions have responded with a variety of data about student enrolment trends, student retention and graduation rates, job and career placement, and faculty workload studies.⁷⁴

In turn, this frenzy of measurement is passed on to individual academics who face a range of accountability measures for all aspects of their performance: teaching evaluations⁷⁵ have become more or

⁷⁰ Plaxton, above n 54, 167, citing Cownie in *Legal Academics: Culture and Identities*.

⁷¹ Cownie, above n 69.

⁷² *Ibid.*

⁷³ As Watt comments, we have all become adept at assembling the bare bones of our law degrees: ‘The module-aims-bone connects to the assessment-bone, the assessment-bone connects to the feedback-bone’: Gary Watt, ‘The Soul of Legal Education’ [2006] 3 *Web Journal of Current Legal Issues* 2.

⁷⁴ Vicki Rosser, Linda Johnsrud and Ronald Heck, ‘Academic Deans and Directors: Assessing Their Effectiveness from Individual and Institutional Perspectives’ (2003) 74 *Journal of Higher Education* 1, 1.

⁷⁵ Concern has also been raised that measurement of teaching quality leads to a focus on the measurable (such as examination results), rather than increased knowledge or the intellectual abilities of students: see further Anthony Bradney, ‘The Quality Assurance Agenda and the Politics of Audit’ (2001) 28 *Journal of Law and Society* 430.

less compulsory; peer reviews are expected at some institutions; and most universities subject academics to annual performance reviews.⁷⁶

D *Increased Research Expectations*

There is intense pressure to produce refereed publications, apply for and win external funding and attract and graduate research higher degree students. This became particularly acute with the approach of the (now postponed) Research Quality Framework (RQF).⁷⁷ Increasingly, a PhD is an entry-level requirement to a career in the legal academy.⁷⁸

E *Increased Expectations Arising from Globalisation*

Workload pressures for academics in some institutions have increased as universities move to offer courses and programs offshore. Globalisation also brings competition as foreign education-providers seek to enter the Australian market and 'e-universities' emerge.⁷⁹ Increasingly, too, academics are expected to have an 'international' research profile, an expectation that can be challenging in law, where many specialised areas tend to be jurisdiction-specific.

F *Increased Expectations of the Service Component of the Academic Workload*

For many years, this part of the workload was treated as relatively nominal in many institutions, with the result that many law academics did rather more than their allocated service component; and some did little or none. There is pressure now to account for the service component.

G *Increasing Competition for Scarce Resources*

Traditional rewards and incentives such as study leave, which were seen as a right are now viewed as a privilege and awarded on a

⁷⁶ Indeed, UK academics cite such increased accountability measures as the most disliked experience of being an academic lawyer: Alexander Kemmerer, 'Inside the Law: A note on Fiona Cownie's *Legal Academics: Culture and Identities*' 5(8) *German Law Journal* 1003, 1008, citing Cownie, 109.

⁷⁷ As Plaxton, above n 54, 167 observes, in relation to the UK research audit, the Research Assessment Exercise (RAE), such audits '[weigh] heavily on the academic's mind, influencing her research choices and strategies'.

⁷⁸ See *ibid* 168 contrasting the traditional notion of academics as former practitioners, with new academics who may not been in legal practice and who thus gain their credibility on postgraduate qualifications and publications, that is, on intellectual authority.

⁷⁹ See further Tony Becher and Paul Trowler, 'Academic Tribes and Territories' (2nd ed, 2001) 2.

competitive basis in many institutions. Promotion has become more restricted and more competitive.

H *Changed Relationship to Students*

Far fewer students today are full-time students as that term was understood fifteen years ago. The vast majority are balancing paid work and university studies. Further, increases in the Higher Education Contribution Scheme (HECS), full-fee paying students and the language of managerialism⁸⁰ have contributed to an increasing 'consumerist' ethos amongst students. This has had, in particular, implications for 'perceptions of responsibility for failure and of what constitutes an appropriate level of study effort'.⁸¹ It also means that students may respond negatively in teaching evaluations because they are of the view that the academic and study expectations of staff are too high.⁸² One writer attributes the changed relationship between teachers and students to the rise of pedagogy in law schools. Noting the etymological origins of the term pedagogy, he observes that in its positive sense, pedagogy refers to a relationship where one party guides the other; in its negative sense, 'pedagogy turns law school tutors into slaves and turns law school students into children; the tutors carry the students on their backs and the students have a free ride'.⁸³

⁸⁰ Ibid 10: 'there is a strong orientation towards the customer and the "market", at least in the language used by managers'.

⁸¹ Trudi Cooper, 'Quality Interventions: Examining the Unintended Effects of Quality Policies on Academic Standards and Staff Stress' (2002) HERDSA 159, 164 <<http://www.ecu.edu.au/conferences/herdsa/main/papers/ref/pdf/CooperT3.pdf>> at 22 December 2007. See also Department of Education Training and Youth Affairs (DETYA), *The Quality of Higher Education* (July 1999, DETYA) 14 <<http://www.dest.gov.au/archive/highered/pubs/quality/overview.htm>> at 22 December 2007.

⁸² Cooper, *ibid* 165. For a rather different view of differing expectations as being generational in nature, see Ronald Paul Hill, 'Managing Across Generations in the 21st Century: Important Lessons from the Ivory Trenches' (2002) *Journal of Management Inquiry* 60.

⁸³ Watt, *above n* 73, 8.

⁸⁴ See further, Association of University Teachers, *Goodwill Under Stress: Morale in UK Universities* (1990) and Gail Kinman, *Occupational Stress and Health Among Lecturers Working in Further and Higher Education* (1998).

⁸⁵ See, eg, Mary Henkel, 'Academic Values and the University as Corporate Enterprise' (1997) 51(2) *Higher Education Quarterly* 134; Sheila Slaughter and Gary Rhoades, *Academic Capitalism and the New Economy: Markets, State and Higher Education* (1997); Simon Marginson and Mark Considine, *The Enterprise University: Power, Governance and Reinvention* (2000); Henry Giroux and Kostas Myrsiades (eds), *Beyond the Corporate University: Culture and Pedagogy in the New Millennium* (2001); Henry Giroux, 'Neoliberalism, Corporate Culture, and the Promise of Higher Education: The University as a Democratic Public Sphere' (2002) 72(4) *Harvard Educational Review* 425; Eric Gould, *The University in a Corporate Culture* (2003); Christopher Newfield, *Ivy and Industry: Business and the Making of the American University* (2003).

I *Increasingly Remote and Autocratic Management Styles in Universities*⁸⁴

Much has been written about the increased corporatisation and bureaucratisation of universities.⁸⁵ This can be a particularly sensitive issue in law schools. The managerialism and corporatism characterising universities at the current time has a number of implications: firstly, management tends to be top-down in nature, though ‘neo-managerialism’ in universities, that is, ‘steering at a distance through devolution of responsibility’ (within strict parameters and with careful monitoring of finance and staff) is also present.⁸⁶ At least one result of this is that there is a tendency to attempt to impose common bureaucratic standards and performance expectations across the university. This however, neglects the fact that ‘differences among disciplines and specialisations are so essential, compelling and inescapable that all performance indicators and bureaucratic measures based on common criteria are “wholly inappropriate”... and doomed to backfire’.⁸⁷ The specialised needs, objectives and constraints of law as a discipline are often overlooked. Further, law programs tend to be cheap to run and demand is high. Law schools often feel that they are used as ‘cash cows’ for universities and that ‘their needs are often ignored by powers-that-be and they do not fare well in resource allocation decisions within universities.’⁸⁸ This can be very demoralising for individual academics. Thirdly, the use of information technologies has allowed management to increase its sphere of control over academics and to remove many of the decisions about the introduction of new technologies in education from them.⁸⁹ On an individual level, academics are in the somewhat curious situation that they consider that they ‘are their own bosses on the job, although they have little influence on the overall institution or educational system’.⁹⁰ For this reason, they ‘experience the same relationship with power and independence as the craft labour movement of previous centuries’.⁹¹ One writer describes academics in the current environment as ‘managed professionals’, subject to ‘an ongoing negotiation of professional autonomy and managerial discretion’.⁹² Managerialism has also added to the academic workload:

⁸⁶ Becher and Trowler, above n 79, 10.

⁸⁷ Burton Clark, ‘Review: Academic Tribes and Territories. Intellectual Enquiry and the Cultures of Disciplines’ (1990) 20(3) *Higher Education* 345, 347.

⁸⁸ Kay Harman, ‘Professional versus Academic Values: Cultural Ambivalence in University Professional Schools in Australia’ (1989) 18(5) *Higher Education* 491, 505. It may be suggested that this has become more of a problem since 1989 as the competition for scarce resources has increased.

⁸⁹ Becher and Trowler, above n 79, 12.

⁹⁰ Carole Kayrooz, ‘Review: Ivy and Industry: Business and the Making of the American University’ (2005) 30(2) *Studies in Higher Education* 227, 228.

⁹¹ *Ibid.*

⁹² Becher and Trowler, above n 79, 10, citing Rhoades.

each individual academic is required to supplement the traditional scholarships of integration, discovery, application and teaching with the ‘scholarships’ of leadership, management, administration and entrepreneurialism.⁹³

The result of these changes has been described as simultaneously intensifying and degrading academic work.⁹⁴ Academics are more likely than in the past to find themselves ‘overextended, underfocused, overstressed, underfunded’.⁹⁵ Much as significant change has characterised universities over the past 15 years, it is obvious that further change is yet to come. In particular, the spectre of the RQF was, until the change of government, present at every university, bringing with it a certain amount of panic amongst management and intense pressure, both explicit and implicit, on staff to ‘perform’. It is unclear how the RQF will ultimately play out, but already it has impacted heavily upon the sector.⁹⁶ At the time of writing, La Trobe University had announced a plan to cut undergraduate courses and require up to half of its academics to avoid research and focus on teaching, with the objective of improving the overall performance of the University.⁹⁷ The same day, the University of Tasmania announced a plan to accelerate its degree structure so that Year 12 students could study university subjects and complete their degree at University in two years. The plan would allow students to accelerate tertiary studies and achieve a doctorate by the time they turn 21.⁹⁸

Of course, the impact of these changes varies from place to place: ‘[a] fine-grained analysis of local characteristics is needed in order to attain an accurate picture of the changes in academic work within the present-day academia.’⁹⁹

Generally speaking, however, these changes, particularly the impact of declining resources and increased student numbers, have attracted considerable pessimism from legal academics. It has been observed that law schools and individual academics working within those schools face ‘unremitting pressure’.¹⁰⁰ Studies show that job

⁹³ Ibid 18. The traditional four scholarships are taken from Ernest Boyer, *Scholarship reconsidered: Priorities for the Professoriate* (1990)

⁹⁴ Becher and Trowler, above n 79, 13.

⁹⁵ Ibid, citing Vest.

⁹⁶ Writing in relation to the RAE in the UK, Cownie observes that academics find the experience ‘intrusive and irksome’, that it has pressured academics into changing the direction of their research and to produce more research output than they think is reasonable: Fiona Cownie, *Legal Academics: Culture and Identities* (2004) 135–41.

⁹⁷ Adam Morton, ‘Radical Plan for Ailing La Trobe’ *The Age* (Melbourne) 25 July 2007, <<http://www.theage.com.au/news/national/radical-plan-for-ailing-la-trobe/2007/07/24/1185043115510.html>> at 22 December 2007.

⁹⁸ David Killick, ‘Uni Heads to the Fast Lane’ *The Mercury* (Hobart) 25 July 2007.

⁹⁹ Oili-Helena Ylijoki, ‘Academic Nostalgia: A Narrative Approach to Academic Work’ (2005) 58(5) *Human Relations* 555. On the need to take local factors into account, see also Fiona Cownie and Anthony Bradney, ‘Gothic Horror? A Response to Margaret Thornton’ (2005) 14(2) *Social and Legal Studies* 277, 278.

¹⁰⁰ Cownie and Bradney, *ibid* 277.

dissatisfaction amongst academic staff has increased significantly¹⁰¹ and that job satisfaction is highest early in an academic career, tending to decline over time.¹⁰² From my own observations, the response to these changes by many individuals has not been positive, with high levels of anxiety, burnout¹⁰³ and depression evidenced, despite the fact that the culture of the legal academy tends to be characterised by a high level of resilience.¹⁰⁴

Research confirms the deleterious impact of the new environment. Traditionally, university teaching was considered a low stress occupation.¹⁰⁵ However, studies show disturbingly¹⁰⁶ high levels of stress amongst university staff¹⁰⁷ in Australia¹⁰⁸ (as in other parts of the world)¹⁰⁹ with a significant proportion of participating staff in one survey reporting debilitating levels of stress.¹¹⁰ One study suggested that distress appears to be highest (and job satisfaction lowest) among those academic staff members who were engaged in both teaching and research, and was attributed to pressure arising from funding cuts to universities, resulting in heavier teaching loads, increased

¹⁰¹ Surveys conducted in 1990 and in 1998 showed that job dissatisfaction had increased over that period from 48 per cent of staff to 73 per cent of staff. Association of University Teachers, above n 84, 84.

¹⁰² Mary Deane Sorcinelli, 'Effective Approaches to New Faculty Development' (1994) 72(5) *Journal of Counselling and Development* 474, 474. Interestingly, this dissatisfaction was in spite of the fact that the respondents described an increased personal comfort with teaching and research. The dissatisfaction was attributed to increasing feelings of a lack of time and balance and resulted in half of the respondents reporting a concomitant decline in health.

¹⁰³ Burnout is characterised by 'emotional exhaustion, depersonalisation and reduced personal accomplishment': Thomas Wright and Douglas Bonett, 'The Contribution of Burnout to Work Performance' (1997) 18 *Journal of Organizational Behaviour* 491, 491.

¹⁰⁴ Kemmerer, above n 76, 1010.

¹⁰⁵ Sally Fisher, *Stress in Academic Life: The Mental Assembly Line* (1994).

¹⁰⁶ Anthony Winefield, 'Stress in Academe: Some Recent Research Findings' in Dianna Kenny, John Carlson, Frank McGuigan and John Sheppard (eds) *Stress and Health: Research and Clinical Applications* (2000) 437–46. Anthony Winefield, Nicole Gillespie, Con Stough, Jagdish Dua, John Hapuarachi and Carolyn Boyd, 'Occupational Stress in Australian University Staff: Results from a National Survey' (2003) 10 *International Journal of Stress Management* 51 suggest that up to 50 per cent of university staff members are at risk of psychological illness from work related stress compared to only 19 per cent of the general population and that academics have higher levels of stress than many other occupations, including prison officers, teachers, transport workers and general university staff.

¹⁰⁷ Many of the stressors identified (such as time pressures, work overload, lack of resources and role overload) are also reported in other forms of employment but others relating to research, publication and teaching, are more job specific: Michelle Tytherleigh, Christine Webb, Cary Cooper and Chris Ricketts, 'Occupational Stress in UK Higher Education Institutions: a Comparative Study of All Staff Categories' (2005) 24(1) *Higher Education Research and Development* 41, 43.

¹⁰⁸ Winefield et al, above n 106.

¹⁰⁹ Ibid; Sally Boyd and Cathy Wylie, *Workload and Stress in New Zealand Universities* (1994); Tytherleigh et al, above n 107. See also Sorcinelli, above n 102 whose longitudinal study conducted in the US revealed a dramatic increase in stress reported by academic staff, from 33 per cent in year one; to 49 per cent in year three; to 71 per cent in year five.

¹¹⁰ Gillespie et al, above n 15, 68.

difficulty in securing research funds and a decline in both facilities and support for academic workers.¹¹¹ Another study identified five major sources of stress: insufficient funding and resources, work overload,¹¹² poor management practice, job insecurity and insufficient recognition and reward.¹¹³ Elsewhere, time pressures, uncertainty, lack of feedback and social support,¹¹⁴ lack of balance between work and personal life¹¹⁵ and unrealistic expectations¹¹⁶ and expectations that are vague, ambiguous or changing¹¹⁷ and lack of personal control in the workplace¹¹⁸ have also been implicated in the high stress levels among university staff. Stress levels are increased, rather than alleviated, by climbing the administrative ladder:

With increasing demands for responsiveness to diverse populations, accountability, public relations and fiscal restraint [schools or faculties] are becoming impossible to manage well, and academics who are trying to run or repair them are getting 'burned out and eased out with astonishing speed'.¹¹⁹

In a study conducted in 1999, more than 50 per cent of university deans in Australia and the US reported above average or excessive stress.¹²⁰

¹¹¹ Anthony Winefield and Richard Jarrett, 'Occupational Stress in University Staff' (2001) 8(4) *International Journal of Stress Management* 1072.

¹¹² Tytherleigh et al, above n 107, 55, note that 38 per cent of academic staff in their study reported working between 41–50 hours in a typical week, and a further 40 per cent reported working at least 51 hours. See also Cooper, above n 81, 166 who observes that university senior managers make increasing demands upon academic staff without assessing whether staff actually have time to perform the task to the required standard. She argues that unrealistic expectations are masked because academic duties are not referenced to available time (academics, as 'professionals' have no working hours as such). See also Cownie and Bradney, above n 99, 283: 'Universities greedily feed on academic time...'

¹¹³ Gillespie et al, above n 15.

¹¹⁴ Liesbeth Adriaenssens, Peggy De Prins and Daniel Vloeberghs, 'Work Experience, Work Stress and HRM at the University' (2006) 17(3) *Management Review* 344. Sorcinelli, above n 102, observes that lack of collegiality and feelings of isolation and lack of support were one of the most salient concerns of early career staff.

¹¹⁵ Sorcinelli, above n 102 notes that work life balance is a very significant problem for early career academics and that, although some studies showed that by year three, academics were taking steps to resolve such conflicts, dissatisfaction with work life balance actually increased over time. See also Cownie, above n 69, who discusses the problem of work/life balance for UK legal academics.

¹¹⁶ Sorcinelli, *ibid* 102.

¹¹⁷ *Ibid*.

¹¹⁸ Raymond Perry, Verena Menec, C Ward Struthers, Frank Hechter, Dieter Schönwetter and Robert Menges, 'Faculty in Transition: A Longitudinal Analysis of the Role of Perceived Control and Type of Institution in Adjustment to Postsecondary Institutions' (1997) 38(5) *Research in Higher Education* 38.

¹¹⁹ Walter Gmelch, Mimi Wolverson and James Sarros, 'The Academic Dean: An Imperiled Species Searching for Balance' (1999) 40(6) *Research in Higher Education* 717, 718. See also Walter Gmelch and John Burns, 'Sources of Stress for Academic Department Chairpersons' (1994) 32(1) *Journal of Educational Administration* 79.

¹²⁰ Gmelch et al, *ibid* 724. Stress factors for deans included attending too many meetings, imposition of excessively high expectations, lack of time to keep current

These high levels of stress impact both professionally and personally. Professionally, they may impact negatively on job performance¹²¹ and, in particular, on the quality of work, interpersonal work relations, commitment to the university and willingness to perform additional tasks.¹²² Interestingly, some two thirds of participants in one study dealt with stress by lowering their standards and self-expectations.¹²³ Personally, the stressors resulted in a range of physical and psychological health problems¹²⁴ and strained family and work relations.¹²⁵ Indeed, two thirds of the staff surveyed in the study conducted across Australian universities, described feelings of anxiety, depression, burnout, anger, irritability, helplessness, being overwhelmed, forgetfulness, frustration and an inability to switch off.¹²⁶

in their field, trying to obtain financial support, poor work/life balance, faculty conflicts and excessive workload. There was, however, a significant difference in the causes of stress between the Australian and the US deans: this was that more US deans saw their role as purely administrative while Australian deans who saw their role as still significantly academic in nature. The research expectation added a significant layer of stress for Australian deans. The study concluded that universities 'ask too much [of their deans] but support too little'. Similar stress factors affecting deans were found in the earlier study by Gmelch and Burns, *ibid* 92.

¹²¹ An interesting study from the US showed that teaching evaluations lead new career academics to teach 'cautiously and defensively' to avoid teaching failure. The study recommended that early career faculty should be shielded from all formal evaluations of teaching for a defined period: Robert Boice, 'New Faculty as Teachers' (1991) 62(2) *Journal of Higher Education* 150.

¹²² Richard Winter and James Sarros, *Corporate Reforms to Australian Universities: Views from the Academic Heartland* (paper presented at the 2nd International Critical Management Studies Conference, University of Manchester and UMIST, Manchester, UK, 11–13 July 2001).

¹²³ Gillespie et al, above n 15, 69. The unrealistic expectations imposed by early career academics upon themselves are discussed by Sorcinelli, above n 102. See also Elizabeth Whitt, "'Hit the Ground Running": Experiences of New Faculty in a School of Education' (1991) *Review of Higher Education* 14(2) 177 who observes that these unrealistic expectations are reinforced by deans and chairs.

¹²⁴ Similar results have been found in the US. Sorcinelli, above n 102 discusses three studies of academic staff, one which showed that ill health was a problem for more than half the respondents, one in which staff reported frequent bouts of fatigue, feelings of failure, marital tensions or frequent illnesses, and a third that showed 83 per cent of new faculty described a 'busyness' that resulted in a range of symptoms such as fatigue, insomnia and anxiety attacks.

¹²⁵ Gillespie et al, above n 15, 65. Winefield et al, above n 106, found that some 87 per cent of academics, compared to 58 per cent of general staff reported conflict between work and home commitments, as well as significantly higher levels of stress relating to that conflict than general staff. This may be because the 'seamlessness between home and job may allow the job to become obtrusive and all-consuming': Mary Deane Sorcinelli and Janet Near, 'Relations Between Work and Life Away from Work among University Faculty' (1989) *Journal of Higher Education* 59.

¹²⁶ Gillespie et al, above n 15, 66.

V ENABLING THRIVING

The combined research paints a very bleak picture of the well-being of academics. The literature on thriving, however, would give us, somewhat surprisingly, some cause for some optimism in this new environment. It also reveals something of the complexity of the factors affecting well-being. Most importantly, the literature suggests that thriving can occur with or without adversity. People can experience learning and vitality without necessarily encountering significant, sustained hardship or challenge.¹²⁷ Conversely, people can flourish even when core needs are not met.¹²⁸ Further, the contextual enablers of thriving are not simply the opposite of factors that exacerbate stress, that is, simply reducing known stressors, such as work overload or job insecurity, will not cultivate well-being¹²⁹ and people can thrive even where stressors are present. Interestingly, empirical evidence seems to support this: one study of university workers who reported long working hours, work overload and lack of support, still claimed a high level of job satisfaction,¹³⁰ another found that 40 per cent of lecturers who reported long working hours and high levels of burnout still found their work motivating, enjoyable and potentially rewarding.¹³¹ This phenomenon appears to be explained by the high levels of intrinsic motivation characteristic of the academic's chosen discipline and his or her research and teaching tasks.¹³² This is not, of course, to condone chronic underfunding or the work overloads experienced in many universities. Rather, it is to point out that these will not, per se, prohibit thriving unless they result in depletion. In summary, the research suggests well-being is possible even in environments marked by external difficulties, as is the current tertiary environment, provided certain conditions are present.

The Positive Organizational Scholarship literature emphasises the importance of particular environmental factors to well-being. These are: the encouragement of decision-making and discretion; broad information sharing; and a climate of trust and respect.¹³³ Decision-making discretion concerns the extent to which an individual is authorised to make decisions that affect his/her own work. Broad information sharing refers to the extent to which information (about unit vision, unit performance, and product/service quality) is

¹²⁷ Spreitzer et al, above n 14, 538.

¹²⁸ Ibid.

¹²⁹ Ibid. Nor will an absence of psychopathology ensure thriving: see Luthans and Youssef, above n 1, 323, 340: they point out it is a mistaken assumption (though one often made) that positive and negative constructs are at extreme ends of a continuum.

¹³⁰ Watts 1991, reported in Gillespie et al, above n 15, 43.

¹³¹ Christine Doyle and Patricia Hind, 'Occupational Stress, Burnout and Job Satisfaction in Female Academics' (1998) 5 *Gender, Work and Organisation* 67.

¹³² Tytherleigh et al, above n 107, 43.

¹³³ Spreitzer et al, above n 14, 540.

communicated widely throughout the organisational unit. A climate of trust and respect refers to the degree to which the work unit encourages feelings of confidence in, and appreciation for, others. These contexts bear a striking similarity to the psychotherapeutic ideas of both Winnicott and Nation, emphasising the importance of volition,¹³⁴ of trust and respect in the environment, of communication and of a rather different view of leadership to conventional rhetoric.¹³⁵ They also accord with the views of university staff as to how stress in the university workplace might be reduced. Staff in the study reported by Gillespie et al made seven recommendations for the reduction of stress. Most required increased resources (more job security, less workload, better reward processes, increased staff numbers and improved facilities and resources) but those that did not were: an increase in staff consultation and transparency of management, improved communication and better management skills. Similarly, a UK study identified the importance of supportive leadership and the ability to influence decision-making as significant positive work factors.¹³⁶

Spreitzer et al go on to explain that these environmental factors encourage what they term ‘agentic behaviours’ that is, behaviours that are both active and purposeful. Specifically, these are task focus, exploration and (the rather awkwardly-phrased) ‘heedful relating’. Task focus refers to ‘the degree to which individuals focus their behaviour on meeting their assigned responsibilities at work’¹³⁷ while ‘heedful relating’ means that individuals look out for one another, ‘subordinating their idiosyncratic intentions to the effective functioning of the system’.¹³⁸ These behaviours create a ‘spiral’ of thriving because they create certain resources — knowledge, positive meaning, positive affect, relations — that, in turn, fuel further well-being.¹³⁹

¹³⁴ ‘People do not thrive at work simply because they are exhorted to do so by a boss or forced to do so by the organizational system. Rather, when people act with volition, they are more likely to be oriented toward growth and to experience vitality’: *ibid* 542.

¹³⁵ It has been observed that organisational discourse for the past century has been preoccupied with notions of leaders and leadership and this focus has resulted in an obsession with the charismatic appeal of individual leaders. This ‘leader as messiah’ vision overlooks the evidence that the conduct of many leaders is rather less than heroic: J Andrew Morris, Celeste Brotheridge and John Urbanski, ‘Bringing Humility to Leadership: Antecedents and Consequences of Leader Humility’ (2005) 58(1) *Human Relations* 1323, 1323. The authors argue for the positive influence of humility in leadership, defining humility as having three distinct dimensions: self awareness, openness and transcendence.

¹³⁶ Tytherleigh et al, above n 107, 43, citing work by Richard Winter and James Sarros, ‘The Academic Work Environment in Australian Universities: A Motivating Place to Work?’ (2002) 21(3) *Higher Education Research and Development* 243.

¹³⁷ Spreitzer et al, note 14, 540.

¹³⁸ *Ibid*.

¹³⁹ *Ibid* 544.

Just as individuals can flourish, so can organisational units, such as law schools. The Positive Organizational Scholarship literature suggests that, like individuals, an organisation or organisational unit thrives when it is both learning and energised — the factors that affect well-being are the same. This collective capability can be used to respond to the demands of an unpredictable world.¹⁴⁰ At the same time, the research suggests that there is a need to distinguish between individual and organisational thriving: in some circumstances, individuals may thrive, but not in a way that helps the organisation and conversely the organisation may prosper but its individual members may not.¹⁴¹

Interestingly, there is some empirical research and some attempts by members of university departments to consider thriving, but primarily in the areas of physics and mathematics.¹⁴² These would appear to largely concur with the Positive Organizational Scholarship literature, particularly in relation to the emphasis upon a shared vision, free and open communication and good interpersonal relationships. There is no available empirical research, however, on the promotion of thriving in law faculties, despite the increased interest in the promotion of well-being amongst law students and the profession.

VI PRACTICAL SUGGESTIONS FOR THRIVING IN THE NEW ENVIRONMENT

In summary, I have argued that the well-being of law academics is important, though hitherto largely neglected in the debate about the health and well-being of law students and the legal profession; that it is currently under challenge from environmental factors; but that research suggests that thriving can be fostered. In practical terms, what are the implications for the legal academy? Some tentative suggestions may be made. As this paper evolved from the ALTA Career Progression session, its recommendations are made particularly with early career academics in mind.

Firstly, early career academics in law need to consider carefully whether they are suited to academic life. The literature is clear that academia in the new environment is a high stress occupation; and that stress levels do not decline for individuals as they progress through

¹⁴⁰ Spreitzer and Sutcliffe, above n 45, 82.

¹⁴¹ See also Luthans and Youssef, above n 1, 337 who note that a group of positive individuals may not necessarily add up to a positive organisation.

¹⁴² See, eg, R Heather MacDonald, 'Characteristics of Thriving Departments and Programs: Insights from the Physics and Mathematics Communities' (2004) <http://gsa.confex.com/gsa/2004AM/finalprogram/abstract_79101.htm> at 22 December 2007; Building Strong Geoscience Departments Workshop, 'Characteristics of A Thriving Geoscience Department' College of William and Mary (2005) <http://ww.aag.org/healthydepartments/ed_project_data/characteristics.pdf> at 22 December 2007.

the academic hierarchy. There is no escaping the fact that academics will be expected to demonstrate their performance in the three areas of research, teaching and service, so pressure will be present. And for those recently entering the academy, it is sobering to realise that the research suggests that their job satisfaction is probably the highest that it will ever be at the beginning of an academic career.

If the new career researcher decides that the academic life in law is what they want, the question is how to thrive. If well-being is linked to learning and vitality, the individual needs to think about how he or she is going to balance workload and work/life balance in such a way that they are not depleted; but are able to progress their career so as to avoid stagnation.¹⁴³ Avoiding depletion, however, is a more difficult task in the current environment. Time management (see below) is an important way of doing this. Of course, if workload is too heavy, then it may be that no time management strategy will help. If this is the case, it may be that the academic in question will need to look for another law faculty in which to thrive.

Different people experience the same career structure in very disparate ways.¹⁴⁴ This seems obvious, but the tendency in universities is to assume everyone will react in the same way to the standard career path. The responses of my colleagues about what enables them to thrive suggest that the concept is, in many ways, quite unique and what people love about the academic life is very personal. For some it is all about research; for others, it is really about teaching; and there are even some for whom administration is appealing. This being the case, individuals need to think about how they might best structure their careers around the aspects of academic work that they enjoy most and which contribute to their vitality. To date, there has been a tendency towards a 'one size fits all' academic workload, but with the approach of the RQF there appeared to be a much greater interest by universities in creating position descriptions that focus upon particular aspects of academic work.

Engaging in the collegial life of the law faculty and, interestingly helping others, seem to promote thriving. It is important to remember that collegiality is a two way street. It is a fine irony that people who often complain about a lack of collegiality tend not, themselves, to be particularly collegial. Historically, law faculties have tended to encourage the development of 'lone wolf' researchers. The RQF, with its focus upon research groups, may have proved an impetus

¹⁴³ On the latter point, the paper presented by Rosalind Croucher, 'What about me? Academic Futures from the Ground Up' at the ALTA Conference, Legal Academic Job Network session in 2006 provides excellent advice on progressing through the academic hierarchy, see <http://www.alta.edu.au/pdf/conference/invited_papers/croucher_r_2006_alta_conference_invited_aper_academic%20futures.pdf> at 22 December 2007.

¹⁴⁴ Karen Dowd and David Kaplan, 'The Career Life of Academics: Boundaried or Boundaryless?' (2005) 58(6) *Human Relations* 699, 701, 719.

to increased collaboration in law schools but it remains to be seen what the change in government will bring. In any event, establishing friendships and collaborative projects, supporting colleagues and being happy for their successes would appear to be important ways of promoting *one's own* thriving, as well as contributing to the thriving of others.¹⁴⁵

Being realistic in expectations seems, on the basis of the available information about stress and about thriving, to be a very important factor, particularly for early career researchers. One needs to find ways to progress in order to avoid stagnation, but trying to do too much too quickly is likely to be depleting, particularly as workload and stress appear to increase rather than decrease as academic staff move up the academic hierarchy.

Time management is essential. The demands of an academic life in law are many and there are only so many hours in a day. Good time management can reduce stress levels, although the effectiveness of time management strategies varies. One study has shown that having a clear sense of career purpose is the most important way of managing time:

[i]f the aim of using time management strategies is to improve performance and reduce stress, people need to learn to identify the purpose in their career, then plan their time accordingly, rather than tidying desks and hanging 'do not disturb' signs on doors.¹⁴⁶

On the basis of Winnicott's theory,¹⁴⁷ and the research on stress discussed above, it would appear that building 'free' time into the schedule (what a colleague of mine used to put in his agenda as 'wild time') is likely to promote creativity and contribute to well-being.

It is important for the individual to consider whether the environment in which they are working is likely to further his or her thriving and that of colleagues. If it does not, it is open to consider ways in which the environment may be changed for the better. If that is not possible, individuals may have to think about moving to an environment that is likely to foster well-being. Moving can also be an excellent way of overcoming stagnation at any point in an academic career (though it tends to be very stressful, so depletion, at least in the short term, may be likely).

¹⁴⁵ Collegiality is a feature of academic work nostalgia narratives. Colleagues often invoke an earlier 'golden age' of collegial faculties. These may or may not have existed. Rather, as Ylijoki, above n 99, 573 observes, the point is that such nostalgia narratives sustain core morals and values of a tradition and represent 'a sort of latent resistance to colonizing, normalizing and standardizing changes' in the corporatised university.

¹⁴⁶ Hugh Kearns and Maria Gardiner, 'Is it Time Well Spent? The Relationship between Time Management Behaviours, Perceived Effectiveness and Work-Related Morale and Distress in a University Context' (2007) 26(2) *Higher Education Research and Development* 235, 235.

¹⁴⁷ Winnicott, above n 20.

For law faculty managers, it seems that there is much in the Positive Organizational Scholarship research that is of value. The literature emphasises the importance of creating a climate in which all staff are able to contribute to decision making in a meaningful and open way (and where they feel safe to do so). It highlights the importance of respect for the individual's sphere of autonomy.¹⁴⁸ It also emphasises the importance of maintaining good information flows. Law faculties vary greatly in the way in which decisions are made and information is distributed. A democratic model is often sacrificed in order to expedite decision-making, particularly in the contemporary environment. The pressures that cause this are understandable, but it is important to maintain as open a faculty as is possible. Faculties also vary greatly in the sense of 'safety' experienced, particularly by women and by junior staff. There has been considerable work done in recent years both by the Australian National Tertiary Education Union (NTEU) and by universities to deal with workplace bullying, and this work has been very valuable, but often the creation of an unsafe environment is more subtle and difficult to deal with than outright bullying. Faculty managers need to be sensitive to this issue. Studies continue to emphasise the importance for all academic staff, but particularly for early career academics, of having a supportive dean.¹⁴⁹ But a supportive dean alone is not enough: a collegial atmosphere, in the sense of an atmosphere where staff members support each other, is also important for thriving. Such a generally supportive faculty tends to be more effective than formal university mentoring schemes in supporting early career staff in law schools.¹⁵⁰

If thriving cannot occur where individuals are depleted, faculty managers need to be alert to depletion amongst their staff and to take steps to intervene to avoid burn-out and stress-related health disorders. Universities have tended in the past to see health and safety issues in terms of physical health and safety but the research on universities, discussed above, shows clearly that the development of mental health disorders is a high risk factor for academic staff. There is a greater awareness of this issue in universities, but largely in relation to student mental health issues. These are certainly important but universities need to be aware of the potential for problems amongst their staff.

¹⁴⁸ This may be particularly important for academics, given that academics cite autonomy as the factor they liked most about academic work: Kemmerer, above n 76, 1008.

¹⁴⁹ See, eg, Sorcinelli, above n 102.

¹⁵⁰ An interesting explanation for why this might be the case is given by Dowd and Kaplan, above n 144, 719 who divide early career academics into different types: 'Conservationists', 'Probationers', 'Connectors' and 'Mavericks'. Each type experiences her or his career in a different way, so that, whereas a Probationer might welcome the imposition of structure in mentoring and development, a Maverick might find such imposition an annoyance.

Law deans and heads of school need to recognise the importance of open time in promoting the thriving of their staff and the faculty as a whole. This may be done through defending traditional forms of research time, such as a research day a week or sabbatical/study leave (which is increasingly seen as a privilege and thus subject to competitive pressures) and by attending carefully to workload. Establishing an equitable workload amongst staff, using one or other of the available models, is standard practice in universities. This is a start but generally there is little questioning of whether the workload expectation generally is too high, particularly in law where we have certain core subjects that must be taught. As has been noted above, the unstructured nature of academic time can mean that overload may be masked.

Maximising the sphere of autonomy for law staff is likely to promote thriving and creativity. In the current environment, it may be salient to keep Winnicott's theory, discussed above, that there is a strong link between creativity and autonomy on the one hand, and depression and compliance on the other, in mind. If this theory is correct, it would suggest that the increasing demands and banality of much bureaucracy that now characterises universities will continue to impact negatively on the creative output and well-being of academic staff.

Promoting professional development in order to further the learning and growth side of the thriving equation may be helpful though many staff question the utility of formal university professional development courses (which may be designed more for the university's needs than those of the staff member and therefore have limited relevance, particularly to law staff). Staff exchanges, visits to other university law schools, and mentoring and assistance from more senior staff with publications and teaching, seem likely to promote thriving, as does fostering the appreciation that early career academics are members of the discipline of law and not just a particular faculty.¹⁵¹

VII CONCLUSIONS

The purpose of this paper has been to raise awareness of the challenges to, and the potential for, well-being amongst teachers of law. There is now a significant body of research that shows that the academic profession is a high stress occupation which has a detrimental effect upon the health and well-being of its members. Recent Positive Organizational Scholarship research that focuses upon the concept of thriving suggests that there may be relatively

¹⁵¹ On this point, see Dowd and Kaplan, above n 144, who describe the benefits to early career academics of seeing themselves as 'boundaryless', that is, as belonging to a discipline, rather than 'boundaried' that is, confined to a particular faculty.

simple steps that we can take to improve the quality of life for law academics. This is not to suggest that there is a ‘magic bullet’ that will resolve the considerable challenges facing the academy; nor is it to deny that, like any other managerialist discourse, there is the potential for the findings of Positive Organizational Scholarship to deteriorate into a sterile exercise.

Rather, the intention of this paper has been to suggest that we need to start taking the well-being of law staff seriously if we are interested in the health and well-being of the legal profession more generally. It would be hard to imagine that a stressed, unhappy and unhealthy academy of law does not impact negatively upon the health and well-being of its students and, thus, ultimately, the profession itself.