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**'Love Law, Love Life': Neo-Liberalism, Wellbeing and Gender in the Legal Profession - The Case of Law School.**

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## ‘Love Law, Love Life’:

# Neo-Liberalism, Wellbeing and Gender in the Legal Profession - The Case of Law School<sup>1</sup>

The state of academia must reflect broader social processes: since globalization ultimately affects everything, it stands to reason that the knowledge economy will also be altered. The reduction of state funding to universities and the general move to a corporate profit culture are other relevant forces. Surprisingly there has been little attempt to document systematically either the extent or the shape of these changes in the way universities work, or to consider what kinds of impact they might be having on staff, students or knowledge - one of the things universities supposedly exist for.<sup>2</sup>

The context in which professional legal ethics operate is a crucial factor in evaluating the choices confronting lawyers and the pressures that may influence how these ethical dilemmas are resolved.<sup>3</sup>

## INTRODUCTION

Diverse aspects of contemporary social life have been addressed within the now vast interdisciplinary literature on neoliberalism. This work has explored the historical, ideological and political consequences of the institution of neoliberal policies across nation states.<sup>4</sup> Over the past decade or so a growing body of scholarship has sought to interrogate

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<sup>1</sup> This title is adapted from ‘Resilience and Wellbeing: Resources for the Legal Profession’ available at [www.gls.com.au/For\\_the\\_profession/Love\\_Law\\_Live\\_Life](http://www.gls.com.au/For_the_profession/Love_Law_Live_Life) (accessed 12 December 2013). See also in the UK Jonathan Rayner ‘Staff Wellbeing: Fit For Purpose?’ *Law Society Gazette* 2 September 2013

<sup>2</sup> Ann Oakley, ‘Foreword’ in Alison Brooks and Ann Mackinnon (eds.) *Gender and the Restructured University* (Buckingham: SRHE/Open University Press, 2001) xii.

<sup>3</sup> Andrew Francis, ‘Legal ethics, the marketplace and the fragmentation of legal professionalism’ (2005) 12(2) *International Journal of the Legal Profession* 173, 173.

<sup>4</sup> This is a vast body of scholarship. For an introduction and overview see, for example, Stuart Hall, Doreen Massey and Michael Rustin (eds) *After Neoliberalism: The Kilburn Manifesto* (London, Lawrence and Wishart, 2013), available at [www.lwbooks.co.uk/journals/soundings/manifesto.html](http://www.lwbooks.co.uk/journals/soundings/manifesto.html) (accessed 15 November 2013); David Harvey *A Brief History of Neoliberalism* (Oxford: Oxford University Press 2007); Alfredo Saad-Filho and Daniel Johnston *Neoliberalism: A Critical Reader* (London, Pluto 2004); Noam Chomsky *Profit Over People: Neoliberalism and the Global Order* (New York, Seven Stories, 1998); Manfred B. Steger and Ravi K. Roy *Neoliberalism: A Very Short Introduction* (Oxford, Oxford University Press 2010); Henry A Giroux, ‘The Terror of Neoliberalism: Rethinking the Significance of Cultural Politics’ (2005) 32(1) *College Literature* 1-19;

what these changes have meant for universities;<sup>5</sup> and in recent years the field of legal studies has turned, more specifically, to the changing nature of the university law school, legal education and implications of these shifts for the legal profession. It has done so in the context of a seeming neoliberal political and economic hegemony (see below) in which the marketization of universities (and with it their law schools) has gathered apace. As Margaret Thornton has observed:

While the idea of the university as a community of scholars engaged in the dispassionate pursuit of truth may never have accorded precisely with the reality, any semblance of the idea now seems to have gone forever as the market assumes center-stage and governments seek to deploy universities for instrumental ends. Inevitably, the transformation has profound ramifications for the legal academy – what gets taught and how it is taught, and the relationship between the institution, academics and students.<sup>6</sup>

Building on scholarship on university law schools<sup>7</sup> and the political economy of socio-legal studies<sup>8</sup> this recent literature is interpreting the effects of neoliberal driven changes on legal

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Henry A. Giroux (2008) 'Against the Terror of Neo-liberalism: Politics Beyond the Age of Greed' (Boulder, Paradigm Publishers, 2008); Henry A. Giroux *The Terror of Neo-liberalism: Authoritarianism and the Eclipse of Democracy* (Boulder, Paradigm Publishers, 2004). Recurring themes in this work include the privatization of the public sphere and (in the UK context) dismantling of the welfare state; the commercialization and commodification of diverse aspects of everyday life; the militarizing of public space and, the concern of this article, the corporatization of higher education.

<sup>5</sup> On law see Margaret Thornton, *Privatizing the Public University: The Case of Law* (London, Glasshouse, 2012). For a flavour of this work more generally see, in the UK context, Andrew McGettigan, *The Great University Gamble, Money, Markets and the Future of Higher Education* (London Pluto, 2013); Roger Brown and Helen Carasso, *Everything for Sale? The Marketization of UK Higher Education*, (London, Routledge/SHRE 2013); Stefan Collini *What are Universities For?* (London Penguin 2012). Note also Dave Hill and Ravi Kumar (eds) *Global Neoliberalism and Education and Its Consequences* (London Taylor and Francis 2009); C. C. Morphew, P. D. Eckel (eds) *Privatizing the Public University: Perspectives from Across the Academy* (Baltimore, Johns Hopkins University Press 2009); Marcia Texler Segal, Vasilikie Demos and Catherine White Berheide (eds), *Gender Transformation in the Academy* (Bingley, Emerald 2014); Jan Currie, Bev Thiele and Patricia Harris *Gendered Universities in Globalized Economies: Power, Careers and Sacrifices* (Lexington: Maryland, 2002); Jan Currie and J. Newson (eds.) *Universities and Globalization* (London: Sage, 1998); Alison Brooks and Ann Mackinnon (eds.) *Gender and the Restructured University* (Buckingham: SRHE/Open University Press, 2001); Val Gillies and Helen Lucey (eds), *Power, Knowledge and the Academy: The Institutional is Political* (London: Palgrave Macmillan 2007); Shelia Slaughter and Larry Leslie *Academic Capitalism: Politics, Policies and the Entrepreneurial University* (Baltimore: Johns Hopkins University Press, 1997); Simon Cooper, John Hinkson and Geoff Sharp (eds.), *Scholars and Entrepreneurs: The Universities in Crisis* (Melbourne: Arena Publications, 1992); Simon Marginson and Mark Considine, *The Enterprise University: Power, Governance and Reinvention in Australia* (Cambridge: Cambridge University Press, 2000).

<sup>6</sup> Thornton *Ibid.*, 2, emphasis omitted.

<sup>7</sup> For example Fiona Cownie, *Legal Academics: Culture and Identities* (Oxford, Hart, 2004); Anthony Bradney *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Oxford, Hart 2003); W.L. Twining *Blackstone's Tower: The English Law School* (London: Sweet and Maxwell, 1994); W.L. Twining, *Law in Context: Enlarging a Discipline* (Oxford, Clarendon Press, 1997); Richard Collier, 'The Liberal Law School, The Restructured University and the Paradox of Socio-Legal Studies' (2005) 68 (3) *Modern Law Review* 475; Anthony Bradney and Fiona Cownie 'Transformative Visions of Legal Education', 1998 25 *Journal of Law and Society* 1; Peter Birks (ed.) *Pressing Problems in the Law: What Are Law Schools For?* (Oxford: Oxford University Press, 1996).

education in rather different ways.<sup>9</sup> Nonetheless, and noting the dangers of generalising across jurisdictions, there appears broad agreement within this international scholarship that powerful connections exist between the shifting cultures and practices of the legal academy and the development of the legal discipline; and that changes in these relations, in turn, have consequences not just for legal academics and law students but also for the legal profession, reshaping ideas about the scope, purpose and content of legal education and, with it, the nature of ‘everyday’ (legal) academic life.<sup>10</sup>

What has all this to do with legal ethics, gender and university law schools? This article explores an aspect of this debate that has tended to be neglected thus far; the relationship between the neoliberal corporatization of universities, gender and questions of wellbeing in law. The argument is structured around three sections. The first explores the broader interconnections between neoliberalism, wellbeing and university law schools via an engagement with two more specific issues; discussion of the meaning of wellbeing in this context and how this issue is being addressed in the contemporary legal profession; and a consideration of changes that have taken place in universities that, it is argued, have served to reshape understandings of both the academic subject and (legal) academic labour. This first section concludes by outlining counter-arguments, a reading that would question the view that (a) there do exist particular problems in this area in relation to wellbeing and (b) that these developments should then be seen as problematic in terms of understanding the relationship between gender and equality in law.

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<sup>8</sup> See Phil Thomas ‘Socio-Legal Studies: The Case of Disappearing Fleas and Bustards’ in P. Thomas (ed *Socio-Legal Studies* (London, Cavendish, 1997); Paddy Hillyard, ‘Invoking Indignation: Reflection on Future Directions of Socio-Legal Studies’ (2002) 29 (4) *Journal of Law and Society* 645; Alan Hunt ‘Governing the Socio-Legal Project: Or what Do Research Councils Do?’ (1994) 21 *Journal of Law and Society* 522. These debates have had particular resonance in the related field of criminology: Paddy Hillyard et.al. ‘Leaving a ‘Stain upon the Silence’: Contemporary Criminology and the Politics of Dissent’, (2004) 44 *British Journal of Criminology* 369; Roger Walters, ‘New Modes of Governance and the Commodification of Criminological Knowledge’, (2003) 12 (1) *Social and Legal Studies* 5.

<sup>9</sup> Contrast can be made, for example, with the readings of Bradney and Cownie n 7 and Thornton n 5; see further Margaret Thornton, ‘The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy’ (2001) 8(1) *International Journal of the Legal Profession* 37; Margaret Thornton ‘Among the Ruins: Law in the Neo-Liberal Academy’ (2001) 20 *Windsor Yearbook of Access to Justice* 3; Margaret Thornton, ‘Technocentrism and the Law School’ (1998) 36(2) *Osgoode Hall Law Journal* 369; Margaret Thornton, ‘Gothic Horror in the Legal Academy’ (2005) 14 *Social and Legal Studies* 267.

<sup>10</sup> See further discussion in Cownie n 7, Thornton n 5. In drawing on work from different countries what follows, in focusing on England Wales primarily, does not seek to mask differences in practice between law schools, which are of course diverse and must be approached within the context of specific educational/legal systems and cultures.

The second section shifts focus and presents a very different reading to the above. Focusing precisely on gendered dimensions of these shifts, it charts themes that research suggests have significant implications for understanding equality in the legal profession, both in relation to law schools and law firms as gendered organisations.<sup>11</sup> The final section attempts, by way of concluding remarks, to ‘pull together’ these apparently disparate themes and concerns considering in what way, within this wider context of marketization, the rapidly evolving debate around wellbeing in law can itself be seen as raising potentially significant questions about legal ethics, values and the place and purpose of legal education and research. These changes associated with the neo-liberal corporatization of universities, it will be argued, are themselves on closer examination interconnected with a complex re-gendering of social relations in ways that have implications for understanding contemporary debates around equality and diversity in law.

Undoubtedly, these topics, at first sight, appear marginal to the traditional terrain of legal ethics. Yet on closer examination, I argue, they have a pressing resonance for contemporary discussion of legal values and practices.<sup>12</sup> This debate about wellbeing in law is itself, I argue, on closer examination, inextricably linked with concerns about equality and diversity in the legal profession and the intersections of gender, race and class in law.<sup>13</sup> It has profound implications for understanding how the practice of law might itself be made more intelligible via a closer engagement with the ‘inner mind’ of those who ‘live’ or ‘inhabit’ it.<sup>14</sup>

Finally, by way of introduction, what follows does not seek to rehearse or replay familiar arguments around structural and cultural change in the legal profession.<sup>15</sup> Nor does it

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<sup>11</sup> Joan Acker, ‘Hierarchies, Jobs, Bodies: A Theory of Gendered Organization’ (1990) 4(2) *Gender and Society* 139.

<sup>12</sup> See further discussion in Donald Nicolson and Julian Webb, ‘Public rules and private values: fractured profession(alism)s and institutional ethics’ (2005) 12(2) *International Journal of the Legal Profession* 165-172.

<sup>13</sup> For an excellent overview of these interconnections and this research base see further Hilary Sommerlad, Lisa Webley, Liz Duff, Daniel Muzio and Jennifer Tomlinson *Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and individual Choices* (London Legal Services Board/University of Westminster 2010).

<sup>14</sup> See for example *Well-Being and the Practice of Law*, [www.ppc.sas.upenn.edu/wellbeinglawsyllabusbowling2012.pdf](http://www.ppc.sas.upenn.edu/wellbeinglawsyllabusbowling2012.pdf) (accessed 15 November 2013); Margaret Thornton ‘Inhabiting The Neoliberal University’ (2013) 38(2) *Alternative Law Journal* 72 available at [www.altlj.org/news-and-views/opinion/543-inhabiting-the-neoliberal-university](http://www.altlj.org/news-and-views/opinion/543-inhabiting-the-neoliberal-university) (accessed 5 December 2013).

<sup>15</sup> See, for example, discussion in John Flood, ‘Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice’ (1996) 3 *International Journal of the Legal profession* 169; Andrew Boon, John Flood and Julian Webb, ‘Postmodern Profession: The Fragmentation of Legal Education’

consider, more generally, political and policy developments in relation to the future of legal education, issues well-documented elsewhere.<sup>16</sup> It seeks, rather, to draw on bodies of scholarship commonly seen as unrelated in a study of under-explored gendered dimensions of these processes of cultural change in law. The time is highly propitious to look more closely at the concerns raised by the growing interdisciplinary literature on neo-liberalism and wellbeing in law. To begin it is necessary, in the following section, to locate these debates within two wider contexts; first, developments around wellbeing in the legal profession and, second, scholarship on neo-liberalism and the university law school. I shall then conclude this section by outlining a note of caution in approaching wellbeing in law, before proceeding in section two to explore these gendered dimensions of this debate.

## SETTING THE SCENE: WELLBEING, NEOLIBERALISM AND THE LAW SCHOOL

### Wellbeing and the Legal Profession

Law school is a stressful environment in my experience. However it wasn't until I studied Legal Ethics that I became aware that mental ill-health was rife among law students and in the profession ... awareness-raising that begins at law school (and not only in Legal Ethics) is the logical first step.<sup>17</sup>

The issue of 'wellbeing' has moved increasingly centre stage across jurisdictions within a wide range of debates relating to economic, cultural and political change associated with neoliberalism (see below).<sup>18</sup> In terms of the development of public health policies and political and cultural perceptions of health problems, for example, within the UK as elsewhere, a heightened concern with wellbeing is reflected in contemporary debates around the focus of health service provision; in the legal frameworks that govern workplace health and safety and responsibilities of employers that arise; in the plethora of books and research reports on the topic of wellbeing; in a 'step-change' in the activities and profile of concerned

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(2005) 32(3) *Journal of Law and Society* 473. The extent to which these shifts are redrawing ideas of legal 'professionalism' are considered below.

<sup>16</sup> Recently, and notably, in relation to the *Legal Education and Training Review: Setting Standards: The future of legal services education and training regulation in England and Wales* (London, LETR 2013).

<sup>17</sup> Nicholas Coxon, (2012) 'Seeking the Brighter side of pessimism: Mental Wellbeing in the Law' *Young Lawyers Journal* 18, available at <http://www.liv.asn.au/PDF/younglawyers/PublicationsResources/Seeking-the-brighter-side-of-pessimism---mental-we> (accessed 18 December 2013).

<sup>18</sup> See generally for example NHS Wellbeing Self Assessment, [www.nhs.uk/Tools/Pages/Wellbeing-self-assessment.aspx](http://www.nhs.uk/Tools/Pages/Wellbeing-self-assessment.aspx) (accessed 12 December 2013); Office for National Statistics: Measuring National Wellbeing, [www.ons.gov.uk/ons/guide-method/user-guidance/well-being/index.html](http://www.ons.gov.uk/ons/guide-method/user-guidance/well-being/index.html), (accessed 5 December 2013).

organisations;<sup>19</sup> and, more generally, in an increasingly culturally visible and politically resonant conversation about wellbeing in society and how it relates to neoliberal driven changes in the workplace, in culture and in the fabric of our personal lives.<sup>20</sup> Albeit the concept itself remains often ill-defined, and is deeply contested,<sup>21</sup> in the way it has come to embrace a range of questions about the social dimensions of psychological and physical health in society, including in the workplace, wellbeing appears increasingly a ‘hot politics’ across a wide range of policy and disciplinary fields.

This is the backdrop against which the legal profession has itself begun to pay increasing attention in recent years to the issue of wellbeing in law.<sup>22</sup> It has done so, importantly, cognisant of a body of international research that suggests significant problems can exist in this area for many legal professionals.<sup>23</sup> In a now considerable literature concerned with the

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<sup>19</sup> For example, MIND [www.mind.org.uk/](http://www.mind.org.uk/) (accessed 15 December 2013); Anxiety UK, [www.anxietyuk.org.uk/](http://www.anxietyuk.org.uk/), (accessed 15 December 2013); Time to Change, [www.time-to-change.org.uk/](http://www.time-to-change.org.uk/) (accessed 8 January 2014), each of which, while addressing general and specific mental health issues, engage in discussion of how positive wellbeing might be promoted.

<sup>20</sup> Carol Smart, *Personal Life* (Cambridge Polity 2007).

<sup>21</sup> See Rayner n 1. This ‘wellbeing turn’ in law, for example, may itself be positioned as terms of the ‘business case for equality’ model in ways that side-step questions about legal cultures and values: see further below. In relation to depression, meanwhile, note Allan V Horwitz and Jerome C Wakefield, *The Loss of Sadness: How Psychiatry Transformed Normal Sorrow into Depressive Disorder*, Oxford OUP 2007).

<sup>22</sup> There have, for example been various organisational attempts recently in the profession and in specific law firms to promote wellbeing and mental/physical health awareness amongst lawyers; to reconsider at both national and local levels the nature of legal working cultures and conditions; and to encourage greater support for those staff who do face difficulties. Of particular note in the UK is the charity *LawCare*, “an advisory and support service designed to help lawyers, their immediate families and their staff to deal with issues such as stress, depression, addiction, eating disorders and related emotional difficulties” [www.lawcare.org.uk/](http://www.lawcare.org.uk/) (accessed 20 December 2013). Several firms (such as Herbert Smith Freehills, Freshfields Bruckhaus Deringer, Hill Dickinson and Shoosmiths) have recently established dedicated wellbeing programmes for staff: see further Rayner n 1. The Law Society, in 2013, sought to appoint a Policy Officer with specific responsibility for Social Mobility and Wellbeing: [www.lawsociety.org.uk/careers/law-society-vacancies/policy-officer-social-mobility-wellbeing-091213/](http://www.lawsociety.org.uk/careers/law-society-vacancies/policy-officer-social-mobility-wellbeing-091213/) (accessed 5 January 2014); see further Jessica Pryce-Jones, ‘Impact of wellbeing on performance’ *The Law Society Gazette* 18 February 2013; Gerry Kearns, ‘Ensuring staff wellbeing is a commercial necessity’ *The Law Society Gazette* 9 September 2013. *Legal Futures*, ‘Stress Pushing Lawyers towards Clinical Depression and Other Mental Health Issues’ [www.legalfutures.co.uk/latest-news/stress-pushing-lawyers-towards-clinical-depression-mental-illnesses-says-survey](http://www.legalfutures.co.uk/latest-news/stress-pushing-lawyers-towards-clinical-depression-mental-illnesses-says-survey) (accessed 20 December 2013); *Lawyers Defence Group*: [www.lawyersdefencegroup.org.uk/depression-the-hidden-hazard-2/](http://www.lawyersdefencegroup.org.uk/depression-the-hidden-hazard-2/) (accessed 8 January 2014); *Wellness Network for Law*, <http://wellnessforlaw.com/> (accessed 8 January 2014). Note also the QUT *Wellness for Law Forum* 2014, papers available at <http://wellnessforlaw.com/2014/03/2014-forum-materials/> (accessed 16 April 2014)

<sup>23</sup> Research suggests wellbeing is a serious issue affecting the contemporary legal profession. Health issues associated with poor well-being in the law, in particular in relation to depression, anxiety and stress, are the subject of numerous research reports: see below and, in the UK, *Health and Wellbeing: The Law Society’s PC Holder Survey* 2012 (London, Law Society, 2012); Lawcare, *Initial Results of Lawcare’s Stress in the Legal profession Survey*, available at [www.lawsocot.org.uk/media/534264/microsoft%20word%20-%20initial%20results%20of%20lawcare's%20stress%20in%20the%20legal%20profession%20survey.pdf](http://www.lawsocot.org.uk/media/534264/microsoft%20word%20-%20initial%20results%20of%20lawcare's%20stress%20in%20the%20legal%20profession%20survey.pdf)

‘unhappy lawyer’,<sup>24</sup> much of which had initially derived from the United States and emerged from the late 1980s onwards,<sup>25</sup> several related themes recur. Research across jurisdictions points, for example, to a higher incidence of depressive symptoms amongst lawyers and law students more generally compared with national populations and other professions;<sup>26</sup> the high propensity of legal professionals, and City workers especially, to use alcohol or other drugs to reduce or manage symptomatology associated with poor wellbeing;<sup>27</sup> and, of particular relevance to law schools, the correlation between aspects of conventional legal education and practical training programs in law and future life problems in this area. Work has considered how, for example, law students are (or are not) encouraged in the development of personal and interpersonal skills in their legal education in ways that might promote self-reflexivity, communication, self-awareness and capacity to manage later anxiety and stress at moments at particular moments in the life course.<sup>28</sup> The dominant tradition of legal education, and

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(accessed 29 December 2013); see generally, for context, Pascoe Pleasance, Nigel Balmer and Richard Moorhead, *A Time for Change: Solicitor's Firms in England and Wales* (London, Law Society, Legal Services Board, Ministry of Justice 2012).

<sup>24</sup> For example, Martin E.P. Seligman, Paul R. Verkuil and Terry Kang ‘Why Lawyers are Unhappy’ (2005) 10 (1) *Deakin Law Review* 49; John Hagan and Fiona Kay (2007) ‘Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice’ (2007) 41 *Law & Society Review* 51; Patrick Schiltz ‘On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession’ (1999) 52 *Vanderbilt Law Review* 871; Will Hardy, *The Unhappy Lawyers* (2008), available at <http://willhardy.com.au/legal-essays/unhappy-lawyers/detail/> (accessed 18 November 2013); Sharon Medlow, Norm Kelk and Ian Hickie, ‘Depression and the Law: Experiences of Australian Barristers and Solicitors’ (2011) 33 *Sydney Law Review* 771; Terry Harrell ‘Depression and the Legal Profession’ (2001) 23(4) *Indiana Trial Lawyers Association Quarterly Journal*, available at [www.in.gov/judiciary/ijlap/2340.htm](http://www.in.gov/judiciary/ijlap/2340.htm) (accessed 15 December 2013); Sofia Lind (2011) ‘Stress and the City - the charity on call for struggling legal professionals’ *Legal Week*, September 2011: [www.legalweek.com/legalweek/analysis/2107223/stress-city-charity-struggling-legal-professionals](http://www.legalweek.com/legalweek/analysis/2107223/stress-city-charity-struggling-legal-professionals) (accessed 3 January 2014); Melanie Naylor ‘Depression in lawyers’ (2004) 31 (9) *Brief* 12-4; Julie Lewis ‘Parents speak out about the law and depression’ (2007) 45(7) *Law Society Journal* 24-5.

<sup>25</sup> For example, studies such as Stephen Shanfield, G. Andrew, H. Benjamin et al, ‘Psychiatric Distress in Law Students’ (1985) 35 *Journal of Legal Education* 65; G. Andrew et al ‘The Role of Legal Education in Producing Psychological Distress among Law Students and Lawyers’ (1996) 11 *American Bar Foundation Research Journal* 225; Connie J.A Beck, B. Sales and G.A.H. Benjamin, ‘Lawyer Distress: Alcohol Related Problems and other Concerns Among a Sample of Practising Lawyers’ (1996) *Journal of Law and Health* 1; G.A. Benjamin, E. Darling and B. Sales, ‘The Prevalence of Depression, Alcohol Abuse and Cocaine Abuse Among United States Lawyers’ (1990) 13 *International Journal of Law and Psychology* 233; see further, for an excellent discussion of these issues, Paula Baron, ‘A Dangerous Cult: Response to ‘The Effect of the Market on Legal Education’ (2013) 23(2) *Legal Education Review* 273.

<sup>26</sup> In addition to work cited above, and for a general overview of this research base, see Norm Kelk, Georgina Luscombe, Sharon Medlow and Ian Hickie, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers* (Sydney, Brain and Mind Research Institute/University of Sydney, 2009):

<sup>27</sup> Above n 25.

<sup>28</sup> It has been argued, for example, that lawyer wellbeing may itself be improved by changes in the way the academy teaches the LLB; “such changes would involve a shift from the adversarial individualistic doctrinal focus of the traditional law degree, to embracing appropriate dispute resolution, students’ emotional intelligence and resilience, and the ‘soft’ skills called for in the ‘real’ world of work”: Kate Galloway and Peter Jones, ‘Guarding our identities: The dilemma of transformation in the legal academy’ (2014) 14(1) *QUT Law Review* 15-26. See further, for example, discussion Molly Townes O’Brien, ‘Connecting Law Student Wellbeing to Social Justice, Problem Solving and Human Emotions’ (2014) 14(1) *QUT Law Review* 52-62, highlighting law

development of cognitive skills of ‘thinking like a lawyer’, of ‘knowing the law’, it has been argued, may stand in an uneasy relationship to the everyday demands of professional legal practice.

The argument, importantly, is not that lawyers are genetically predisposed to poor wellbeing or depression, whatever the cohort attributes of those who enter the law (see below). Rather, it is argued, there may be something *about* the culture of law, legal education and legal professional practice that exacerbates problems in this area. In the context of a profession that has undergone profound structural and cultural change over recent decades, and which faces considerable uncertainty in terms of the future,<sup>29</sup> problems and concerns around poor wellbeing in law have been tracked to three particular features of legal education, training and legal practice.

First, attention has been paid to certain environmental factors in legal practice, such as well-documented concerns around poor work-life balance, frequent long hours and ‘work-aholism’ (especially in large commercial ‘City’ firms), job insecurity, cultures of ‘presenteeism’, career dissatisfaction, high pressure/high stakes environments, lack of autonomy and wider issues around the structure and organisation of work;<sup>30</sup> second, the increasingly hyper-competitive and business-like nature of law is seen to have implications for experiences of

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student perceptions that law school made them more rational, objectifying, analytical, logical, isolated, insecure and intolerant; WaitroseLaw Blog, ‘Does the way that lawyers are encouraged to think and work make them vulnerable to depression?’, available at <http://www.legalcheek.com/2013/09/does-the-way-that-lawyers-are-encouraged-to-think-and-work-make-them-vulnerable-to-depression/> (accessed 14 April 2014), discussing the reported suicide of City Lawyer David Latham: John Simpson, ‘Stressed lawyer took his own life over fear of blunder’ *The Times* 13 September 2013; Colin G. James (2008) ‘Lawyers’ Wellbeing and Professional Legal Education’ (2008) 42(1) *The Law Teacher: The International Journal of Legal Education* 85; Molly Townes O’Brien, Stephen Tang and Kath Hall, ‘Changing Our Thinking: Empirical Research on Law Students Well-being: Thinking Styles and the Law Curriculum’ (2011) 21 (2) *Legal Education Review* 149; Stephen Tang and Anneka Ferguson, ‘The Possibility of Wellbeing: Preliminary Results from surveys of Australian Professional Legal Education Students’ (2014) 14(1) *QUT Law Review* 27-51; Roger E. Schechter, ‘Changing Law Schools to Make Less Nasty Lawyers’ (1996) 10(2) *Georgetown Journal of Legal Ethics* 367; Kennon M. Sheldon and Lawrence S. Krieger ‘Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being’ (2004) 22 *Behavioral Sciences and the Law* 261; Massimiliano Tani and Prue Vines, ‘Law Students’ Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?’ (2009) *University of New South Wales Law Review* 51; James J.A. Alfini and Joseph N. Van Vooren ‘Is there a solution to the problem of lawyer stress? The law school perspective’ (1995) *Journal of Law and Health*. 61; Jennifer Jolly-Ryan, (2009) ‘Promoting Mental Health in Law School: What Law Students can do for law students to help them become happy, mentally healthy lawyers’ successful lawyers’ 48 *U. Louisville Law Review* 95.

<sup>29</sup> See further Richard Susskind *Tomorrow’s Lawyers: An Introduction to Your Future* (OUP Oxford 2013); Richard Susskind *The End of Lawyers? Rethinking the Nature of Legal Services* (OUP Oxford 2010). Contrast Brian Z. Tamahana, *Failing Law Schools* (Chicago, University of Chicago Press 2012).

<sup>30</sup> Working Families (2008) *Legal Lives: Retaining Talent through a Balanced Culture* London: Addleshaw Goddard (henceforth ‘Legal Lives ...’)

social connectedness and professionalism, exacerbated in the context of an intensively competitive credentialization process which, set within a user-pays system of education, has heightened concerns around an individual's potential 'fear of failure' and the consequences (both financial and psychological) of pursuing a professional education in law (see further below);<sup>31</sup> and third, what has been termed the 'pessimistic' orientation of law marked by particular tendencies linked to the innate disposition of those who enter law and nature of legal employment itself; towards, for example, a cognitive distortion, 'worst case' and 'catastrophizing' mentality amongst lawyers which runs alongside, importantly, competitive and perfectionist personalities.<sup>32</sup> The emerging picture, in short, is of a profession facing particular and pressing, if often unspoken, problems, if not a coming crisis, in terms of issues of job satisfaction, health and wellbeing.

These issues are now widely recognised as having, beyond their personal consequences for individuals concerned, significant financial and other implications for law firms themselves within an increasingly fragmented and competitive global marketplace for legal services.<sup>33</sup> Thus, whether couched in terms of promoting awareness of mental-health issues for lawyers and positive well-being in the legal workplace via diverse strategies,<sup>34</sup> the need for individuals to 'speak out' about such issues<sup>35</sup> or else via the establishment of professional-related bodies and specific initiatives seeking to address these questions,<sup>36</sup> wellbeing in law

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<sup>31</sup> See further discussion below. Note also, in different ways, for example, themes within Scott Turow, *One L: The Turbulent True Story of a Year at Harvard Law School* (New York, Grand Central, 1997); and, in a different context, Peter Goodrich, *Reading the Law* (Oxford, Blackwell, 1986); Bradney, n 7.

<sup>32</sup> I am grateful to Helen Rhoades for this point. See further work cited n 28.

<sup>33</sup> Rayner n 1.

<sup>34</sup> *Ibid.* There has been a particular focus, in particular, on questions of mindfulness; Joel Orenstein, 'Mindfulness and the law – a different approach to sustainable and effective lawyering' (2014) 14(1) *QUT Law Review* 106-109; Stephanie West Allan, 'A Better You: Becoming a More Mindful Lawyer' available at <http://www.dbadocket.org/work-life-balance/a-better-you-becoming-a-mindful-lawyer/?sf22671065=1> Accessed 15 April 2014.

<sup>35</sup> For example Jane Lee (2013) 'Judge tells of depression struggle in bid to help many in legal circles' *The Age* September 14, 2013: "I just thought [in a] typical Australian male situation: 'Pull up your socks, kick yourself in the backside, you'll be right, don't tell anyone anything. It's a sign of weakness. Just battle through and you'll turn a corner' - which is nonsense. Your family can tell when there's something wrong": <http://m.theage.com.au/victoria/judge-tells-of-depression-struggle-in-bid-to-help-many-in-legal-circles-20130913-2tqci.html>, (accessed 10 December 2013).

<sup>36</sup> See further work cited above n 23, 24, 28; LawCare, n 22; note also, for example, in Australia the Law Council of Australia's mental health and wellbeing portal, described as a 'new initiative designed to provide a centralised source of information about mental health for the legal profession'. This highlights the range of resources and assistance services currently available and highlights a range of other initiatives being undertaken in this area: [www.lawcouncil.asn.au/lawcouncil/index.php/12-resources/240-mental-health-and-wellbeing-in-the-legal-profession](http://www.lawcouncil.asn.au/lawcouncil/index.php/12-resources/240-mental-health-and-wellbeing-in-the-legal-profession) (accessed 15 January 2014); *Wellbeing and the Law Foundation*, [www.watfoundation.org.au/default.aspx](http://www.watfoundation.org.au/default.aspx) (accessed 10 December 2013).

has become an increasingly high profile issue within the legal profession. It underscores, as noted, more well-established policy debates and developments around the promotion of work-life balance and flexible working in law and attempts to challenge cultures and practices in law firms deemed deleterious to the general health of lawyers.

Yet wellbeing is also, I shall argue below, an issue enmeshed with growing concern around the promotion of equality and diversity in the legal profession and understandings of legal professionalism; and, on closer examination, how these issues may themselves relate in complex ways to the marketization of universities and their law schools referred to above. It is significant how at the same time as these debates are taking place in legal practice, there are signs that UK universities are also instituting diverse programmes of support around questions of wellbeing, seeking, through these initiatives, to foster and encourage better mental and physical health in the academic workplace.<sup>37</sup> Universities are doing so, importantly, in the light of changes that, I shall suggest in the following section, are reshaping the (legal) academic workplace and legal education in a number of ways that also have implications for this debate about wellbeing in law.

### **Neoliberalism, the Law School and the Marketization of Universities**

Neoliberalism is, of course, a highly contested concept. It has been described, variously, as an economic theory, a cultural politics, a philosophy and form of public pedagogy.<sup>38</sup> It is an idea that encapsulates a multitude of processes and, indeed, a distinct cultural field,<sup>39</sup> one in which the logic of the market and market rationale has come not just to shape civil society and the provision of core services (such as health care, justice, education) but also something else; the

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<sup>37</sup> Taking the form, for example, of dedicated ‘Stress Awareness Weeks’, staff development and management workshops on stress and mental health awareness, ‘mindfulness’ taster sessions and a range of workplace health related initiatives. For a rather different reading Fiona Cownie (2004) ‘Two Jobs, Two Lives and a Funeral: legal academics and work-life balance’ (2004) 5 *Web In Current Legal Issues* <http://webjcli.ncl.ac.uk/2004/issue5/cownie5.html> (accessed 9 January 2014). At the time of writing *The Guardian* newspaper is conducting an online survey into the issue, following articles and blog posts published on The Guardian Higher Education Network: “While anecdotal accounts multiply, mental-health issues in academia are little researched and hard data is thin on the ground”: <http://survey.confirmit.com/wix0/p3068868030.aspx> (accessed 16 April 2014). See further Matthew Taylor, ‘Getting Engaged’ *RSA Journal* 4, 2013, 16-20.

<sup>38</sup> See further work cited above, n 4.

<sup>39</sup> Harvey n 4.

very nature of what sociologists conceptualize as personal lives,<sup>40</sup> ‘structures of feeling’ (see below), forms of affective relationships, ideas of community, citizenship, political engagement and, more generally, what it means to be, and to be seen as, a ‘good and responsible citizen’; ideas, that is, of physical and psychological health, happiness and belonging that are themselves central to understandings of social wellbeing.

The rise of neo-liberalism and the corporate state, its consequences for the world of work, provision of public services and understandings of social life are each well-documented themes within this wider interdisciplinary literature. Until fairly recently, however, little attention had been paid to the interconnections between neo-liberalism, university law schools and the legal profession; less still to gendered dimensions of these changes and their implications for understanding wellbeing, my concern here. It is necessary in this section, therefore, to briefly outline some of these changes before proceeding to explore, in the subsequent section, what they may mean for understandings of gender and wellbeing in law schools and legal practice.

### *Neo-Liberalism, Legal Ethics and the Privatizing of University Law Schools*

A stand of contemporary scholarship on university law schools, quite distinct in focus from the field of ethical jurisprudence, has sought to question the personal implications of this neo-liberal driven reform of universities.<sup>41</sup> It has addressed specific economic, cultural and structural changes in universities that, it is argued, have reshaped the context in which legal academic work is undertaken and law is studied. Interrogating what these changes mean for those who “inhabit” the “neo-liberal university”<sup>42</sup> (see below), this work raises questions about the ethical basis on which law is taught and how (and why) research in law is undertaken. Addressing, for example, the relationship between legal academics, law students and universities, scholarship has considered the affective, emotional dimensions of social

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<sup>40</sup> Smart, n 20. See further Patricia Ventura, *Neoliberal Culture: Living with American Neoliberalism* (London, Ashgate 2012); Jean Comaroff and John L Comaroff *Millennial Capitalism and the Culture of Neoliberalism* (Duke University Press 2001); Christina Scharff, ‘Gender and Neoliberalism: Exploring the Exclusions and Contours of Neoliberal Subjectivities’ available at <http://theoryculturesociety.org/christina-scharff-on-gender-and-neoliberalism/> (accessed 16 April 2014).

<sup>41</sup> See work cited above n 5, n 9.

<sup>42</sup> Thornton ‘Inhabiting’ n 14.

relations in the context of the “private life” of the university law school.<sup>43</sup> Mapping to themes within a rich literature on women legal academics<sup>44</sup> in particular, it has also considered the interconnections between gender, social class, race and ethnicity in universities and how they relate to wider questions of equality and diversity in the legal profession.<sup>45</sup> This research has been concerned, albeit at times implicitly, with issues of *values* and the limits of the ‘business case for equality’, questions of identity and emotion in law, of economy and power, wellbeing and affect (the latter an issue of particular interest within recent feminist studies).<sup>46</sup>

This is a debate, therefore, about what the embrace of a market metanarrative might mean at both an organizational and a *personal* level in the repositioning of academics as individuals for whom knowledge is, it is argued, increasingly no longer to be considered primarily valuable ‘in and of itself’ – it is, rather, tracking to neo-liberal imperatives and the economic/cultural field considered above, a commodity, a resource to help create wealth and competitive advantage.<sup>47</sup> Sociological, anthropological and, indeed, socio-legal studies of academic enquiry highlight the cumulative development of academic knowledge, the fundamentally collective nature academic life.<sup>48</sup> Within the neo-liberal model, in contrast, as financial circuits are rerouted in ways that reconstitute the *value* attached to knowledge and the processes of its production, a very different form of academic life and knowledge production is, critics suggest, being fostered.

Law schools, inevitably, are not immune from these processes of change in universities and it is important to be clear what has been argued in the work.<sup>49</sup> Engaging with social, economic and cultural changes transforming universities, much of the literature is driven by an attempt

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<sup>43</sup> Cownie n 7.

<sup>44</sup> For example, in the UK context, Celia Wells, ‘Working Out Women in Law Schools’ (2001) 21(1) *Legal Studies* 116; Fiona Cownie, ‘Women Legal Academics - A New Research Agenda?’ (1998) 25 (1) *Journal of Law and Society* 102.

<sup>45</sup> See further Sommerlad et al n13.

<sup>46</sup> For discussion of values in the context of equality and diversity debates see Lisa Webley and Liz Duff, ‘Women Solicitors as a barometer for problems in the legal profession – time to put values before profits?’ (2007) 34(3) *Journal of Law and Society* 374-402; On affect, Carolyn Pedwell and Ann Whitehead ‘Affecting Feminism: Questions of Affect and Feeling in Feminist Theory’ (2012) 13(2) *Feminist Theory* 115.

<sup>47</sup> Thornton n 5; Mark Olssen and Michael A Peters, ‘Neoliberalism, Higher education and the Knowledge Economy: from the free market to knowledge capitalism’ (2005) 20(3) *Journal of education Policy* 313.

<sup>48</sup> See for example Cownie n 7.

<sup>49</sup> This is not, of course, to say these processes impact on all law schools in the same way. Indeed, much of this debate and literature has tended to focus on ‘elite’ institutions such as, in the UK, Russell Group research intensive schools (at least as traditionally understood). See further below on how new configurations of this hierarchy may now be emerging. At the same time it is important not to generalise across jurisdictions, and between, for example, US and Australian research cited above and the UK context.

to resist the neoliberal university,<sup>50</sup> to defend and promote an ideal of the university as a ‘public good’; an ideal that, it would appear, is under threat, if not already part of another era.<sup>51</sup> The wider debate is often characterised as being about what university (legal) education and the university itself is, ultimately, pace Newman,<sup>52</sup> Readings,<sup>53</sup> Halsey,<sup>54</sup> Collini,<sup>55</sup> Thornton<sup>56</sup> and others,<sup>57</sup> *for*. One cannot, of course, generalise about the effects of shifts that have swept through Higher Education internationally over recent decades. Nonetheless, studies of the neo-liberal marketization, corporatization or privatization of universities suggest broad consensus internationally that transformative macro-structural change within Higher Education has had implications for the discipline of law and, in turn, consequences for those individuals who work and study in university law schools.<sup>58</sup>

I have suggested elsewhere, drawing in particular on the work of Margaret Thornton, three broad areas or concerns emerge of particular note within the UK context.<sup>59</sup> Each, I argue below, raise potential ethical questions about values and legal education, its place within processes of credentialization into the legal professions and, with it, understanding of social relations and perceptions of individual and collective wellbeing therein.

First, significant shifts have occurred in the workplace cultures of universities, changes in, for example, operating and staff development policies, funding systems and reward structures. Increasingly, Faculties, Schools and individual academics are charged with redirecting their energies towards the capitalization and exploitation of learning; a multi-layered readjusting of the focus of work, not simply looking towards the ‘satisfaction’ of the law student as market

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<sup>50</sup> Mary Heath and Peter D Burdon, ‘Academic Resistance to the Neoliberal University’ (2013) 23(2) *Legal Education Review* 379. .

<sup>51</sup> Note for example, the UK Campaign for the Public University <http://publicuniversity.org.uk/> (accessed 12 May 2013). Also Alistair Bonnett (2013) ‘Something New in Freedom’ *Times Higher Education*, [www.timeshighereducation.co.uk/features/something-new-in-freedom/2003930.article](http://www.timeshighereducation.co.uk/features/something-new-in-freedom/2003930.article) (accessed 24 May 2013).

<sup>52</sup> J.H. Newman, *The Idea of a University* (New York: Holt, Rinehart and Winston, 1960)

<sup>53</sup> Bill Readings, *The University in Ruins* (Harvard University Press Cambridge MA 1996).

<sup>54</sup> A.H. Halsey, *The Decline of Donnish Dominion: The British Academic Professions in the Twentieth Century* (Oxford: Oxford University Press, 1995)

<sup>55</sup> N 5.

<sup>56</sup> N 5.

<sup>57</sup> For example Bradney n 7 2003, esp ch 2 ‘Holistic Education: What is a Liberal Education?’

<sup>58</sup> Above n 5. See also Baron n 25; Ruth Barcan, ‘Why do some academics feel like frauds?’ *Times Higher Education* 9 January 2014, who locates shifts in personal experience in the academy, and the ethical dimensions of academic labour and an ‘exploited vocationalism’, in the context of the university as a ‘hybrid’ organisation: simultaneously, a scholarly community, bureaucracy and a pseudo-corporation.

<sup>59</sup> Richard Collier, ‘Privatizing the University and the New Political Economy of Socio-Legal Studies: Remaking the (Legal) Academic Subject’ 2013 40(3) *Journal of Law and Society* 450.

consumer/customer of a discrete (but actually largely standardised) product but also something else; a reframing of the role and function of the university and academics alike as players in a wider (global) knowledge economy. In the case of law, the institution of ‘commercial awareness’ in the curriculum and embedding of corporate cultures within law schools more generally (see further below) exemplify aspects of this process.

Second, structural change has occurred in the governance of universities, illustrated by the rise over the past two decades of a top-down ‘new managerialism’ across the sector<sup>60</sup> (and, in some contexts, the rise of the ‘administrative university’).<sup>61</sup> This is a phenomenon marked by the erosion of institutional collegiality,<sup>62</sup> large-scale organisational restructuring (the emergence of the “mega-faculty” and “law dean as subaltern”)<sup>63</sup> and drives towards the standardization of practice in relation to teaching, student assessment and research management.<sup>64</sup> At issue, however, is more than simply a surface shift in the content, style, structure and nomenclature of management practices; more, indeed, than the negation of academic collegiality and subject-specific/departmental autonomy. What has resulted is a new *form* of organizational governance of academics marked by what has been termed an increasing (and seemingly limitless) ‘metricisation’ of the academy and the rise of the ‘quantified’ subject.<sup>65</sup> I shall return to this issue below.

Third, and finally, these changes have brought about an incremental shift in the boundaries of ‘acceptable’ knowledge within universities. This process is marked within the specific context of university law schools, Thornton argues, by an increasing move towards a “sloughing off of the social”, a heightened vocationalising of the law curriculum, a “jettisoning of the critical” and a “dissolution of the social” within the legal academy in the

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<sup>60</sup> Thornton n 5 110-115.

<sup>61</sup> Benjamin Ginsberg, *The Fall of the Faculty and the Rise of the All-Administrative University* (Oxford, Oxford University Press 2011).

<sup>62</sup> Thornton n 5 131-135. This is seen as part of a step-change in how academics increasingly appear, building on A.H. Halsey’s (n 54) depiction of the ‘proletarianisation’ of academic labour, members of a new ‘managed class’ within universities (Thornton n 5 132-33) as collegiality gives way to top-down managerialism and as middle-managers become caught in the double-bind of instituting such change whilst, ultimately, having little control over their content and direction.

<sup>63</sup> Ibid, 124-131.

<sup>64</sup> Martin Parker and David Jary, ‘The McUniversity: Organization, Management and Academic Subjectivity’, (1995) 2 (2) *Organization* 319-338.

<sup>65</sup> Deborah Lupton, *Blog: The Academic Quantified Self*, available at <http://simplysociology.wordpress.com/2013/10/14/the-academic-quantified-self/> (accessed 8 January 2014); Barcan, n 58.

context of the wider turn in Higher Education towards ‘market-friendly’ and commercial-orientated subjects and activities.<sup>66</sup>

### **Approaching Wellbeing in this Context of Change: A Note of Caution**

How do the above themes relate to the issues of wellbeing introduced above? One cannot make a clear-cut correlation between neoliberalism and individual wellbeing. Certain features associated with poor wellbeing and general health, such as the experience of low mood, anxiety disorders, insomnia and other depressive-associated symptoms, are themselves the product not of one unitary factor but complex, and often unpredictable, interplays of the personal and structural; of life course events, illness, genetic disposition and lifestyle, each potentially coming together at moments in the life course to foster problems for individuals. ‘Poor wellbeing’, in the sense of an association with emotional and mental health broadly defined, is itself, like depression, a trans-historical and cross-cultural phenomenon.<sup>67</sup> Wellbeing is an issue, therefore, that, in the broader context of global inequalities and injustices associated with neoliberalism, may appear a marginal concern when approached from a wider political terrain. If research suggests there are significant social problems in the area of *law*, meanwhile, the claim that this links to neoliberalism and the processes discussed above must be taken with a degree of caution, notwithstanding the well-established links between economy, culture and emotional life.<sup>68</sup>

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<sup>66</sup> Thornton n 5 provides specific examples drawn from empirical research suggesting the increasing marginalization within some law schools of space to engage in critical social science scholarship, a process exacerbated by managerial ‘top-down’ imperatives in relation to research quality audit assessment and internal promotion and appointment processes. Thus, it is argued, growing numbers of individuals are being encouraged (and in some cases instructed) to refocus their publications on a narrow range of ‘gold standard’ highly ranked generalist journals at the expense of the ‘outlier’, the specialist and the esoteric outlet. Notwithstanding repeated statements of both RAE and REF panels in the UK that subject panels “assess all forms of output on an equal basis, with no preconception of quality attached to the form or medium of an output. No sub-panel will use journal impact factors or any hierarchy of journals in their assessment of outputs” Section C2, Para 38, *REF Panel Criteria and Working Methods* HEFCE London 2012: see further Kathy Bowrey, ‘Audit Culture: Why law journals are ranked and what impact this has on the discipline of law today’ (2007) 17(1) *Legal Education Review* 291

<sup>67</sup> Different cultures, for example, have different experiences of what the West labels ‘depression’: see further Clark Lawlor, *From Melancholia to Prozac: A History of Depression*, (Oxford, OUOP, 2012); Alain Ehrenberg, *The Weariness of the Self: Diagnosing the History of Depression in the Contemporary Age* (McGill, Queens University Press 2009); Andrew Solomon, *The Noonday Demon* (London, Vintage, 2002).

<sup>68</sup> A perspective popularised in the UK context in the work Oliver James. See for example Oliver James *Affluenza* (London Vermillion 2007).

In the case of law schools and the rise of ‘liberal legal education’ over recent decades it is possible to pursue this theme further.<sup>69</sup> There may be some agreement in the literature that academic life has changed in ways aligned with neoliberal economic and political imperatives. This does not mean, however, that these changes have had a deleterious impact on wellbeing at an individual and collective level in both the legal academy and legal profession. Many would support attempts to reform of the funding structure of universities,<sup>70</sup> recalibrate their function in society, further vocationalize the law curriculum along business-commercial lines and, it has been argued in defence of recent changes in England and Wales, to substantially ‘improve’ the law student experience. One may argue student wellbeing, certainly, could be enhanced immeasurably by the changes set out above, with moves towards the embedding of a ‘student as consumer’ model in Higher Education placing new demands on universities and academics. Far from depicting universities and their law schools as beset with insecurity and anxiety, moreover, it can be argued that law has fared and will fare well in this new marketplace;<sup>71</sup> that workplace contentment in law remains generally high both in relation to law school and legal practice.<sup>72</sup>

It is, in addition, important to note the nuances of current political attitudes to higher education and the complexities and contradictory nature of subjective investments in this realigning of academic activity associated with the new economic imperatives and political directives considered above; beyond any sense, that is, in which they can themselves be seen as pragmatic, economically rational responses by organizations to a changing economic and political climate.<sup>73</sup> In ‘buying in’ to such change, for example, there may be institutional and individual ‘winners’ as well as ‘losers’, and the experiential dimensions of psychological and often material rewards or ‘seductions’ of success in this context are, at the micro-

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<sup>69</sup> For example Bradney n 7, esp ch 2 ‘Holistic Education: What is a Liberal Education?’, also Cownie n 7.

<sup>70</sup> Whereby privatizing imperatives are seen as components of budget deficit reduction and austerity politics.

<sup>71</sup> Anthony Bradney, ‘Austerity Politics, Neo-Liberalism and English University Law Schools’, paper presented at the Research Committee of the Sociology of Law Meeting, Toulouse, France, 3-6 September 2013.

<sup>72</sup> Thus, as Thornton notes in her critique of neo-liberalism and legal education, ‘Despite the general decline in morale arising from the market embrace, the overwhelming preponderance of legal academics interviewed felt privileged to be part of the academy. This is the paradox of academic life. A passion for academic ideas – a belief in the freedom to think, to pursue interesting lines of inquiry, to write, to engage with and influence future lawyers – and to change the world – compelled them to remain ... many loved the facets of academic life associated with the traditional idea of the university – teaching and the pursuit of knowledge for its own sake’ Thornton n 5 218. Present political attitudes can themselves be seen as reflecting, to degrees, the inherent as well as utilitarian value of higher education: David Willetts, *Robbins Revisited: Bigger and better Higher education* London Social Market Foundation 2013, ch 2 ‘The Report and the value of learning’.

<sup>73</sup> Thornton *Ibid.* xiv.

interpersonal level, not to be underestimated. For those fortunate enough to receive special mentoring via leadership management schemes, opportunities and other funding support, for example, or who have studied at the most prestigious universities, the rise of the market metanarrative may afford considerable opportunities for personal advancement.<sup>74</sup> The introduction of full fees in England and Wales has reinforced an institutional view that law is a broadly applied subject, a relatively in-demand commodity within the new educational marketplace, one in which the *value* of a university degree is pitched, increasingly, in terms of an individual social mobility project and future earnings potential. The latter is a point of particular relevance to the case of wellbeing in law, as we shall see.

We could go further. Debates about the ‘corrosion of character’ in the new workplace<sup>75</sup> are not confined to the legal profession. Set in this wider social context, job security and salary levels in both universities and law firms remain relatively secure and advantageous.<sup>76</sup> Law remains a relatively prestigious occupation, a profession profoundly implicated and interlinked with neoliberalism in terms of its function in facilitating market economics. Any general claim that law schools are, as a result of these changes, more oppressive and difficult environments in which to work than in the past, or that these university-business links are themselves somehow new, must thus be treated with a considerable degree of caution.<sup>77</sup> In short, this is hardly a picture of poor wellbeing in law.

Finally, turning to gender, the focus of discussion in the following section, it is possible to read these changes as in fact enmeshed with the rise of equality and diversity agendas in law schools and legal practice. It is important to remember, for example, that the typical ‘British Academic’ discussed in A.H. Halsey and Martin Trow’s 1971 book of that name was, in all likelihood, a white, male and middle-class figure.<sup>78</sup> As Celia Wells observes in her 2002

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<sup>74</sup> *Ibid*, 207

<sup>75</sup> Richard Sennett, *The Corrosion of Character: Personal Consequences of Work in the New Capitalism* (London WW Norton 1999); Richard Sennett *The Culture of the New Capitalism* (Yale, Yale University Press 2007).

<sup>76</sup> Locating this debate within broader perspectives both nationally and globally suggests the processes of privatisation, audit and concerns about de-professionalisation are ubiquitous and long-standing, with work at all levels within neoliberal economies characterized by lack of conceptual clarity, heightened insecurity and growing inequality and division.

<sup>77</sup> See for example E.P. Thompson, *Warwick University Ltd: Industry, Management and the Universities* Harmondsworth: Penguin, 1970; E.P. Thompson, ‘The Business University’ *New Society* 19 February 1970.

<sup>78</sup> A.H.Halsey and M.A.Trow, *The British Academics* (Cambridge, Harvard University Press, 1971).

study of women in UK law schools,<sup>79</sup> the form of community in which this academic subject participated was marked by a dominant culture of homosocial and hetero-normative male collegiality,<sup>80</sup> a culture encapsulated, in certain respects at least, in aspects of the British campus novel; a culture marked by patronage, (male) privilege and relatively clear-cut gender divisions.<sup>81</sup> It is a model of organisational life broadly aligned with the gendered cultures of the legal profession at earlier historical moments.<sup>82</sup> In understanding gendered change, therefore, it is precisely an ostensibly liberal autonomous regime of the old universities, a form of managerial control largely by men, and largely of men, that has, within the twin narratives of the rise of liberal legal education<sup>83</sup> and the ‘feminization’ of law schools and the legal profession,<sup>84</sup> been disrupted by new managerial controls from government and equality and diversity agendas with which they have been associated.

Interlinking economically rational gender-neutral imperatives associated with neo-liberalism, therefore, the changes that have taken place can be read as, far from entrenching gender divisions, as having ‘opened out’ a university system (and with it, their law schools) hitherto based on patronage, elitism and unaccountability to what are, for all their limitations, more egalitarian processes and cultures in relation to areas such as recruitment and promotion.<sup>85</sup> The political/cultural embedding of equality and access agendas across legal organizations further attest to these egalitarian processes and the scale of organizational commitment that

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<sup>79</sup> N 44. Although, as Wells observes thirty years later, ‘Readers of this journal [*Legal Studies*] .... most likely are male, pale, middle-class and able-bodied. True, there is more chance that they are female than there would have been 20 years ago, but those women will almost invariably be fit and white’: *Ibid*, 116.

<sup>80</sup> See further Margaret Thornton ‘Hegemonic Masculinity and the Academy’, 17 *International Journal of the Sociology of Law* (1989) 115; Richard Collier, ‘Masculinism, Law and Law Teaching’ (1991) 19 *International Journal of the Sociology of Law* 427.

<sup>81</sup> Roger Burrows (2012) ‘Living with the h-index: metric assemblages in the contemporary academy’ 60 (2) *The Sociological Review* 355, at 358; Elaine Showalter, *Faculty Towers: The Academic Novel and its Discontents* Oxford, Oxford University Press 2005.

<sup>82</sup> Contrast Michael Burrage, *From a Gentleman’s to a Public Profession: Status and Politics in the History of English Solicitors*, 3 INT’L J. LEGAL PROF. 45, 49 (1996).

<sup>83</sup> Bradney n 7.

<sup>84</sup> A process underscored by a complex configuration of demographic, economic, cultural and technological changes although, as is well-documented, this ‘gender transformation’ at point of entry to law schools and the legal professions has not necessarily been matched by access to senior levels. See further Sommerlad et al n 13; Webley and Duff n 46; Sharon Bolton and Daniel Muzio ‘The Paradoxical Processes of Feminization in the professions: the Case of Established, Aspiring and Semi-Professions’ (2008) 22(2) *Work, Employment and Society* 281; Hilary Sommerlad, ‘The Myth of Feminization: Women and Cultural Change in the Legal profession’ (1996) 1(1) *International Journal of the Legal Profession* 31.

<sup>85</sup> There is, Oakley suggests in the context of the restructured university, something attractive to the marginalized about cultures that stress the need for open procedures and that question potentially inefficient and unfair concepts as tenure: ‘But when the culture of bureaucracy and commodification is combined with a disregard - flagrant in its explicitness - for the way *power* operates, the result is bound to be discriminatory’: Oakley, n 2, xiii, my emphasis.

exists to making law more diverse in terms of gender (if not necessarily, perhaps, in the same way, race and class).<sup>86</sup> In addition, Fiona Cownie and Anthony Bradney argue, turning to the law curriculum, far from seeing a marginalization of critical and social perspectives, as some suggest, there has been a flourishing of socio-legal scholarship in recent decades in the UK, including work on gender.<sup>87</sup>; and, moreover, a disciplinary commitment in law to defending a distinctive academic as opposed to vocational stage of legal education and what is ultimately, if anything, a less deferential relation to the legal profession than in the past.<sup>88</sup>

Other readings are possible however and in the following section I explore rather different intersections of gender, wellbeing and equality in law. Drawing on work on women in jurisprudence,<sup>89</sup> on law schools and on gender and the restructured university,<sup>90</sup> I shall argue the picture is actually far more complex than the above suggests. At issue in this debate is not just a matter of glass-ceilings, pay and promotion.<sup>91</sup> In the case of the law school, it is about questions of legal values, ethics and *how* aspects of contemporary academic labour and the new management practices and cultures can themselves, on closer examination, be viewed as gendered; and how these changes, in turn, relate to shifting understandings of the academic subject and wellbeing – to what it means to be and to identify as a (legal) academic. Changes associated with the neo-liberal corporatization of universities may themselves be serving not so much to *diminish* men's power or the significance of gender, I shall suggest, but rather, alongside the embedding of formal equality, as above, to be *re-gendering* universities in some particularly problematic and often contradictory ways.

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<sup>86</sup> See further discussion in Sommerlad et al n 13; Donald Nicolson, 'Demography, discrimination and diversity: a new dawn for the British legal profession?' (2005) 12(2) *International Journal of the Legal profession* 201-228. These are developments that, judged against a range of indicators, reveal a strong commitment within the legal academy to gender equality, an issue embedded, for example, in aspects of the 2014 REF process

<sup>87</sup> Cownie n 7.

<sup>88</sup> Bradney n 7.

<sup>89</sup> Note, for example, the 'JurPro' project on women professors in jurisprudence funded by the German Federal Ministry of Education and Research and the European Social Fund (ESF): <http://www.fernuni-hagen.de/jurpro/>, (accessed 4 February 2013).

<sup>90</sup> Including work cited above n 5, n 9.

<sup>91</sup> Eli Wald, 'Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes and the Future of Women Lawyers at Large Law Firms' (2010) 78 *Fordham Law Review* 101. Note, for example, themes in Miriam David and Diana Woodward (eds.) *Negotiating the Glass Ceiling: Careers of Senior Women in the Academic World*, (London: Falmer Press, 1998); Ann Brooks *Academic Women*, Milton Keynes: SRHE and Open University Press, 1997; Danusia Malina and Sian Maslin-Prothero (eds) *Surviving the Academy: Feminist Perspectives*, London: Falmer Press, 1998; Louise Morley and Val Walsh (eds.) *Breaking Boundaries: Women in Higher Education*, London: Taylor and Francis, 1996; Louise Morley *Organising Feminisms: The Micro politics of the Academy*, London: Macmillan Press, 1999; J. West and K. Lyon 'The Trouble with Equal Opportunities: The Case of Women Academics' (1995) 7 *Gender and Education* 51.

## RESHAPING THE UNIVERSITY? INTERSECTIONS OF GENDER, WELLBEING AND EQUALITY

Roger Burrows, writing in the UK context, has recently considered the growing “metricisation” of academic activity within universities;<sup>92</sup> that is, the institution of an increasingly intensive and seemingly ubiquitous governance of academics via various systems of metrics. This refers to a process whereby individual academics, schools and universities are judged, across a diverse range of areas, by reference to a multitude of metrics; on the basis of their performance, measured against input/output equations in such a way as to determine judgements of individual and institutional efficiency (and inefficiency) against pre-determined criteria (whether it be research quality or levels of external research income, number of research students, assessments of student satisfaction, student employability and so forth).<sup>93</sup> An ostensibly gender neutral process, this is particularly evident in, but is not confined to, assessments of the quality and appropriate quantity of (legal) research. It is framed, moreover, by a culture of ‘research entrepreneurialism’ set within an increasingly intensive competitive culture around publication outputs, funding and student recruitment.<sup>94</sup> In turn, models of career success in the academy, it is argued, are increasingly shaped by a form of ‘relentless performativity’ in which, whether in relation to teaching, research or administrative/management tasks, assessments of productivity are pitched against measures in which there can never, ultimately, be ‘enough’; there is always more an individual can ‘give’ to ‘add value’ to the organisation.<sup>95</sup>

This governance by metrics and related culture of performativity is deeply enmeshed, Burrows argues, within the neoliberal university. Whereas metrics were once seen as part of an auditing process, designed to ensure greater accountability in universities,<sup>96</sup> they have “in

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<sup>92</sup> Burrows n 81.

<sup>93</sup> This is not to argue that metrics are themselves *inherently* problematic. It is, rather, to ground them within the political-economic and ideological context of neo-liberalism discussed above. On this theme see further the work of Thornton n 9.

<sup>94</sup> Thornton n 5, 179. Also Peter Roberts, ‘Neoliberalism, Performativity and Research’ (2007) 53 *Review of Education* 349; See Paula Baron, ‘Thriving in the Legal Academy’ (2007) 17(1) *Legal Education Review* 27.

<sup>95</sup> An idea which echoes the more familiar notion of the law firm as ‘greedy’ organisation; Susan Long, *The Perverse Organisation and its Deadly Sins* (London, Karnac Books, 2008).

<sup>96</sup> Burrows n 81.

more recent times, taken on another role, functioning as part of a process of ... ‘quantified control’.<sup>97</sup> In this new form of regulation of academics as ‘knowledge-workers’, processes of control have become associated, in particular, “with the ‘autonomization’ of metric assemblages from auditing processes.”<sup>98</sup> More precisely, a metricisation of the academy is interlinked to the reconstitution of academic identities as particular *kinds* of ‘quantified’ neoliberal social subjects.<sup>99</sup> It is against this background that changes within organisational identity formation in universities have been charted as new ‘structures of feeling’,<sup>100</sup> modes of self-management, presentation and processes of embodiment emerge.<sup>101</sup> That is, as new organisational cultures, practices and forms of governance remodel and refashion academic subjectivities in ways that are better attuned to the ‘new world’ in which universities operate. This is not to state that resistance to the ‘neo-liberal university’ is impossible or to present these changes as in any sense a fixed or finished process. It is to recognise the scale of the change, the hegemonic nature of these new cultures and their impact on understandings of academic value discussed above.<sup>102</sup>

Turning to issues of wellbeing, meanwhile, these changes, Burrows suggests, have had particular consequences:

Something has changed in the UK academy. Many academics are exhausted, stressed, overloaded, suffering from insomnia, feeling anxious, experiencing feelings of shame,

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<sup>97</sup> *Ibid.*, 368.

<sup>98</sup> *Ibid.*.

<sup>99</sup> Lupton n 65.

<sup>100</sup> Raymond Williams *Marxism and Literature* (Oxford, Oxford University Press 1978).

<sup>101</sup> Erica McWilliam ‘Changing the Academic Subject’ in R.Hunter and M.Keys *Changing Law: Rights, Regulation, Reconciliation* Aldershot: Ashgate, 2005; Craig Pritchard ‘Embodied knowing, knowledge management and the reconstruction of postcompulsory education; a case of ‘Find a (knowledge) market, suck it, satisfy it and move on?’ available at [www.mngt.waikato.ac.nz/ejrot/cmsconference/1999/documents/Information%20Knowledge/cms%20km%20paper%20webversion.pdf](http://www.mngt.waikato.ac.nz/ejrot/cmsconference/1999/documents/Information%20Knowledge/cms%20km%20paper%20webversion.pdf) (accessed 5 January 2014); Craig Pritchard, ‘The Body Topographies of Education Management’ in J.Hassard, R.Holliday and H.Willmott (eds) *Organization and the Body* (2000): C.Casey, ‘Corporate Transformation: Designer Culture, Designer Employees and ‘Post-Occupational Solidarity’ (1996) 3(3) *Organization* 317; C.Casey (1999) ‘“Come, join our Family”: Discipline and Integration in Corporate Organizational Culture’, *Human Relations*, 52 (2): 155.

<sup>102</sup> Thornton, n 9, 2001, 67: on the issue of resistance to managerialism and neoliberalism within law schools note Heath and Burden n 50; Jessica Guth and Chris Ashford, ‘The Legal Education and Training Review: Regulating Socio-Legal and Liberal education?’ (2014) 48 *The Law Teacher* 5-19. See also Clare Polster and J.Newson, ‘Don’t Count Your Blessings: The Social Accomplishments of Performance Indicators’ in Currie and Newson (eds.) n 9.

aggression, hurt, guilt and ‘out-of-placeness’ One can observe it all around; a deep, affective, somatic crisis ....<sup>103</sup>

It is, of course, as noted above, possible to counter such a picture of poor wellbeing in the academy in a number of ways.<sup>104</sup> Nonetheless, drawing on a range of research studies, a growing association is now being made between these uncertainties and anxieties, if not a sense of “somatic crisis”, and the nature, pace and scale of the changes considered above, not least in relation to this increasingly intensive ‘governance by metrics’. This is reflected in a growing number of blogs, articles, related events and, more recently, surveys on the issue of well-being in universities.<sup>105</sup>

What concerns me at this point is how all this might relate to gender and what, on closer examination, the implications of this may be for understandings of wellbeing and legal professionalism, as above. In ‘fleshing out’ this argument it is possible to make five specific yet interconnected points in this regard.

### **Merit, Gender and Productivity**

First, the cultures of competition, performativity and research entrepreneurialism associated with the new ‘governance by metrics’ represents, Thornton has argued, in fact an uneven

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<sup>103</sup> Burrows, n 81 references omitted. In a similar manner, Thornton observes how “The criteria are constantly changing, not only because of political change, but because of the propensity of the subjects of audit – universities in this case – to manipulate whatever criteria are in vogue. Academics are therefore perennially beset with uncertainty and insecurity arising from the need to reinvent the self. The instability of the criteria also precludes long-term monitoring of the auditing process ... In gearing up for a research assessment exercise, the norms of academic life are invariably subverted. Thornton n 5 186-188; Lupton n 65.

<sup>104</sup> See, for example, Bradney n 7.

<sup>105</sup> See n 37; Baron n 25; for example, Diane Reay, ‘From Academic Freedom to Academic Capitalism’ <http://www.discoversociety.org/2014/02/15/on-the-frontline-from-academic-freedom-to-academic-capitalism/> (accessed 15 April 2014); Priyamvada Gopal, ‘Viewpoint: The Assault on Higher Education and Democracy’ <http://www.discoversociety.org/2014/02/15/viewpoint-the-assault-on-higher-education-and-democracy/> (accessed 16 April 2014); ‘SLOW University’ conference, March 2014 St Aidan’s College, Durham University: <https://www.dur.ac.uk/whatson/event/?eventno=19198> (accessed 16 April 2014). This is a ‘state of play’ in which social practice is seen as shaped within a wider culture of risk-management and perpetual vigilance against risks associated with the marketplace and new metrics; for example, the potential student complaint, the falling league table ranking, the comparatively poor level of external funding and so forth can each represent threats to be guarded against, states of existence to be overcome. Falling below the “internationally excellent” can itself potentially be deemed a failure that needs, at the experiential level, to be managed and dealt with institutionally and personally level; see Collier n 59; Thornton n 5, 179.

playing field.<sup>106</sup> Assessments of merit, considered extensively in recent studies of judicial diversity for example, are far more contingent and subjective than they may at first appear.<sup>107</sup> Importantly, academic scholarship itself is not simply, as noted, the result of individual effort set apart from collective labour processes or wider structural context. This raises questions about the gendering of social commitments around those ‘inevitable dependencies’ and responsibilities that bear upon, for example, caring practices (in a context where such responsibility is increasingly privatized).<sup>108</sup> Outlined above is a model of performance in which the traditionally ‘open-ended’ temporal nature of academic labour itself becomes profoundly double-edged in terms of time-value and commitment. Set in this context, the idea of an individual committed to visible, quantifiable achievements and a model of performance that would negate content in the name of productivity can be read as potentially gendered in terms of how:

Performativity and promotion of the self are marked as masculine in the social script particularly so far as authoritative positions are concerned ... The phenomenon is not new, but the ruthlessness that may be expected of line managers in meeting productivity targets underscores [this] masculinist characterisation ... <sup>109</sup>

## **Gender, Management and a ‘Compulsive Masculinity’**

Second, following on from the above, the “new management practices required by the restructured university” can themselves be characterised by an emphasis on “overly rational,

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<sup>106</sup> Margaret Thornton, ‘The Mirage of Merit: Reconstituting the ‘Ideal Academic’’ 2013 28(76) *Australian Feminist Studies* 127; Thornton, ‘Inhabiting’ n 14; Margaret Thornton ‘The Mystique of Merit: Gender in the Neoliberal Legal Academy’ paper presented at ‘More Gender than Justice?: Gender and Careers in the (Legal) Academy, Hagen, German 13 June 2013 (copy of paper with author); Hilary Sommerlad, ‘Minorities, Merit and Misrecognition in the Globalized profession’ (2010) 80 *Fordham Law Review* 2481.

<sup>107</sup> Erika Rackley, ‘Rethinking Judicial Diversity’ in Ulrike Schultz and Gisela Shaw (eds) *Gender and Judging* (Oxford Hart 2013); Erika Rackley, *Women, Judging and the Judiciary: From Difference to Diversity* (London, Routledge 2013).

<sup>108</sup> Martha Fineman, *The Neutred Mother, the Sexual Family and other Twentieth Century Tradgedies* New York Routledge 1995. Thornton observes, for example, how the social assumption that women are the primary carers does not fit easily “with the conventional image of the autonomous worker, which remains a masculinist construct ... Academic fathers, like male corporate lawyers, tend to have partners who either are not in employment or work part-time, while academic mothers are expected to take primary responsibility for children, as well as sick and aged relatives. It is therefore somewhat ironic that just as the proportion of women in the academy has well and truly satisfied the requirements of a critical mass and challenged the stereotype, corporatisation has masked a masculinist backlash. (Thornton n 5 152 references omitted). See further K.Gerson, *No Man’s Land: Changing Commitments to Family and Work* (New York Basic Books 1994); on male lawyers and fatherhood in the legal profession Richard Collier, *Men, Law and Gender: Essays on the ‘Man’ of Law* (London, Routledge, 2010) Ch 5.

<sup>109</sup> Thornton n 5, 158

disembodied and instrumental pursuits”<sup>110</sup> which “make modern management [in universities] particularly important sites for the reproduction of masculine discourses and practices.”<sup>111</sup> The argument is not that the appointment of women to senior positions is being precluded. Rather, at issue is the way “she is expected to defer to the institutional mission and divest herself of feminine traits”;<sup>112</sup> how at more senior levels especially, but not exclusively, particular gendered (as masculine) organisational practices and cultures are reproduced, albeit in some new and distinctive ways (see below). The gendered discourses of new corporate management styles, in particular, appear well suited to the patterns of a form of what has been termed “compulsive masculinity” which, in turn, can lead to a growing sense of *disembodiment* within the academy in terms of developing a reflexive engagement with the affective consequences (both for the self, and for others) of this continuous pursuit of new targets and challenges, set within the overarching ethos of performativity discussed above.<sup>113</sup>

Such processes, again, are formally gender neutral. However, studies of women academics and university managers, of gender and the restructured university alike suggest that “men [appear] more likely to (and/or more likely to be perceived to) match the (embodied) requirements of bureaucratic organization far more closely than women do”;<sup>114</sup> and that these

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<sup>110</sup> Deborah Kerfoot and David Knights ‘The Best is Yet to Come? The Quest for Embodiment in Managerial Work’ in David Collinson and Jeff Hearn (eds) *Men as Managers, Managers as Men: Critical Perspectives on Men, Masculinities and Management*, (London: Sage, 1996). See also Deborah Kerfoot and Stephen Whitehead ‘Boys Own Stuff: Masculinity and the Management of Further Education’ (1998) *Sociological Review* 436; Stephen Whitehead ‘Men, Managers and the Shifting Discourses of Post-Compulsory Education’ (1996) 1 (2) *Research in Post-Compulsory Education*, 151; Thornton n 5 128, notes how this process that can itself have gendered dimensions whereby, for example “top-down managerialism encourages the appointment of ‘yes-men’ who are prepared to do the bidding of management,” underscored by “a much cruder Realpolitik within the university such as ‘a battle of male egos and who is boss and who isn’t’...”: n 5, 120

<sup>111</sup> Kerfoot and Knights *Ibid*. See further Jeff Hearn ‘Men, Managers and Management: The Case of Higher Education’ in Stephen Whitehead and Ron Moodley (eds) *Transforming Managers: Engendering Change in the Public Sector* (London Routledge 1999); Jeff Hearn, ‘Academia, Management and Men: Making the Connections’ in Brooks and Mackinnon (eds.) n 5; Craig Pritchard, ‘Managing Universities: Is It Men’s Work?’ in Collinson and Hearn n 110.

<sup>112</sup> Thornton n 5, 156. “Ironically if women act like men and pursue the aggressive and competitive model of managerialism that corporatisation demands of them, unflattering epithets, such as the ‘phallic female’ may be used to denigrate them”: Contrast Collier n 108 Ch 6.

<sup>113</sup> Kerfoot and Knights n 110.

<sup>114</sup> Thornton n 5, 156. See also Sharon R Bird. ‘Unsettling Universities’: Incongruous, Gendered Business Structures: A Case Study Approach (2011) 18 *Gender, Work and Organisation* 202; A.Witz, Susan Halford and Mike Savage ‘Organized Bodies: Gender, Sexuality and Embodiment in Contemporary Organizations’ in Lisa Atkins and Vicki Merchant (eds) *Sexualising the Social: Power and the Organization of Sexuality*, Basingstoke: Macmillan, 1996, at 175, cited in Brooks, n 91, 36 David Knights and W.Richards, ‘Sex Discrimination in UK Academia’ (2003) 10(2) *Gender, Work and Organisation* 213; Celia Davies and Penny Holloway ‘Troubling Transformations: Gender Regimes and Organizational Culture in the Academy’ in Morley and Walsh (eds.) n 91; Y.Benschop and M.Brouns, ‘Crumbling Ivory Towers: Academic Organising and its Gender Effects’, (2003) 10(2) *Gender, Work and Organisation* 194.

processes of corporatisation are themselves necessitating “a dispassionate and depersonalised voice in order to be heard within hierarchical organisations,”<sup>115</sup> a voice that maps to the more traditional associations between gender and authority discussed in earlier feminist-inflected work on women in law schools and the legal profession.<sup>116</sup> At the same time, research suggests that the themes of (male) patronage and “clubbability” and the presence of homosocial and often sexist cultures can remain highly resonant within parts of the contemporary university and legal professions. In this respect it is important to ground these processes in far wider debates and concerns around what has been termed contemporary ‘UniLad’ culture and activism around ‘everyday sexism’ agendas on university campuses.<sup>117</sup>

### **Gender, Value and the Market Metanarrative**

Third, developing this theme by turning to recent critical studies of men and masculinity, it is possible to expand on the above arguments in ways that further question the view that gender is, at best, marginal in understanding these processes of social change. Far from seeing associations between masculinity and the legal profession as in any sense immutable, it is more accurate to trace the emergence of new *forms* of masculinities within particular organisational contexts and, more specifically, the rise of what I have termed elsewhere a particular kind of *business-entrepreneurial*, rather than older style paternalistic, masculinity at the core of senior management and policy making.<sup>118</sup> In the case of law social, economic, political and cultural change of the kind discussed above, that is, appears to have redrawn earlier historical models of the male academic “lawyer as gentlemen” in some particular ways.<sup>119</sup> More specifically, the processes of corporatisation are enmeshed with new forms of gender relations in organisations and the emergence of a distinctive form of entrepreneurial

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<sup>115</sup> Thornton n 5 156.

<sup>116</sup> For example Margaret Thornton, ‘Authority and Corporeality: The Conundrum for Women in Law’ (1988) 6 *Feminist Legal Studies* 147.

<sup>117</sup> The research of Sommerlad et al n 13 draws attention to the “legacy of the profession’s white, male elitist origins” and the continued “significance of cultural stereotypes” (at 6). In this shifting cultural there is reason to think changes in higher education are recalibrating the relationship between female staff and male students in problematic ways. See further *That’s What She Said: Women Students Experiences of ‘lad culture’ in higher education* (University of Sussex, NUS: London, 2012); Laura Bates, *Everyday Sexism* (London, Simon and Schuster 2014), ch 4 ‘Young women learning’

<sup>118</sup> Collier n 108 Ch 6.

<sup>119</sup> See further Richard Collier, “Natty Professors, Men in Suits and New Entrepreneurs: Corporeality, Subjectivity and Change in the Law School and Legal Practice” (1998) 7(1) *Social and Legal Studies* 27-53.

business-academic masculinity, mapping to what Raewyn Connell and James Messerschmidt have termed, writing in 2005, the rise of (hegemonic) ‘transnational business masculinities’ associated with neoliberalism and the wider corporatisation of culture and social life.<sup>120</sup>

How does this relate to understandings of gender and well-being in these debates? This notion of entrepreneurial rather than older style paternalistic masculinities can be seen as a distinctive and significant feature of an increasingly hypercompetitive and commercialised legal profession and legal academy. In terms of organisational values, the identification of transnational business masculinities as “a new form of masculinity” among globally mobile managers and businessmen is described by Connell and Messerschmidt as marked by an “increasing egocentrism, very conditional loyalties (even to the corporation), and a declining sense of responsibility for others (except for purposes of [individual] image-making)”<sup>121</sup> It is a form of masculinity personified, in certain respects, I argue in other work, by the transnational corporate lawyer.<sup>122</sup> It also tracks to diverse social practices in relation to ideas of consumption, individualism and lifestyle that resonate with du Gay’s analysis of the relation between the economic and the cultural whereby, within this competitive marketplace, goods and services become inextricably bound up with economic processes of production, circulation and exchange.<sup>123</sup> What is significant in the present context, however, is how this model of masculinity appears to capture well elements of new gendered cultures, ideas of legal professionalism<sup>124</sup> organizational values and the increasing synergy that research suggests exists between these gendered (masculine) cultures of business and the academy; processes whereby, for example, both law firm and law school are described as locked in the

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<sup>120</sup> R.W. Connell and James Messerschmidt, James (2005) “Hegemonic Masculinity: Rethinking the Concept” 19(6) *Gender and Society* 829. See also Penny Griffin (2005) *Neoliberal Economic Discourses and Hegemonic Masculinity(ies): Masculine Hegemony (Dis)Embodied*, IPEG Papers in Global Political Economy No. 19. Available at

[www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.bisa-ipeg.org%2Fwp-content%2Fuploads%2F2013%2F06%2F19PennyGriffin.pdf&ei=XJDNUsbrGcSShge8joDQAO&usg=AFQjC NH44esQeKebTWt5Vpz\\_otYSEUgVtw&bvm=bv.58187178,d.bGQ](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Fwww.bisa-ipeg.org%2Fwp-content%2Fuploads%2F2013%2F06%2F19PennyGriffin.pdf&ei=XJDNUsbrGcSShge8joDQAO&usg=AFQjC NH44esQeKebTWt5Vpz_otYSEUgVtw&bvm=bv.58187178,d.bGQ), (accessed 3 January 2014). On the contradictory positioning of young women as paradigmatic neo-liberal subjects however see Christina Scharff, *Repudiating Feminism: Young Women in a Neoliberal World* (London Ashgate 2012).

<sup>121</sup> Connell and Messerschmidt n 120. See further Fidelma Ashe *The New Politics of Masculinity Men, Power and Resistance* (London: Routledge 2007) at 150; R.W. Connell, *The Men and the Boys* Cambridge: Polity 2000; Jeff Hearn, Marina Blagojević, Katherine Harrison (eds) *Rethinking Transnational Men: Beyond, Between and Within Nations* (London Routledge 2013).

<sup>122</sup> Richard Collier "Rethinking Men and Masculinities in the Contemporary Legal Profession: The Example of Fatherhood, Transnational Business Masculinities, and Work-Life Balance in Large Law Firms," (2013) 13(2) *Nevada Law Journal* 410.

<sup>123</sup> Paul du Gay, *Production of Culture/Cultures of Production* London Sage 1998.

<sup>124</sup> Francis n 3.

mutual embrace of hypercompetitive marketplace culture, a culture which, Thornton suggests, is itself framed by a distinctly gendered language - a terrain marked by the 'survival of the fittest', 'winning the war' (for talent and students),<sup>125</sup> securing the 'bigger and longer' research grant and so forth; a culture in which there will, inevitably, be 'winners' and 'losers' (see below).<sup>126</sup>

### **'Getting On': Gender, Law Students and Lawyers**

Fourth, it is important to also consider how the changing experience of law students may interconnect with these structural shifts whereby, far from 'opening out' law to increased diversity, as in the reading above, there may in fact be reason to see these developments as potentially *reinforcing* the idea of law as a relatively closed professional practice - in ways, importantly, that again point to the continued relevance of gender. This point requires clarification.

A central assumption underscoring the shift to the 'user-pays' model of Higher Education as a private good has been an expectation, if not promise, that the law degree will provide a key credentialization point within a life course mobility project; one that will in time, in particular, result in high professional salaries. Increasingly however, for many, and especially, but not exclusively, those located in the less 'prestigious' institutions - with, of course, distinctive cohorts in terms of socio-economic, race and ethnic background - that is not the case.<sup>127</sup> There appears a growing tension, that is, between the massification project and the realities that face many law student-consumers who will find the jobs not waiting for them. Whilst these are longstanding concerns in the case of law, they raise, in the present context, pressing questions about how the experiential may then interconnect with such structural shifts in ways that, on closer examination, have implications for understandings of wellbeing.

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<sup>125</sup> Margaret Thornton, 'Global Law Firms and Media Constructions of Hypermasculinity' paper presented at the 5<sup>th</sup> International Legal Ethics Conference, Banff, Canada 12-14 July 2012. Copy of paper with author.

<sup>126</sup> On the place of values in this global marketplace see, for example, Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge, Cambridge University Press 2007).

<sup>127</sup> Sommerlad et al n 13.

How is this so? Recent socio-legal scholarship concerned with the formation of legal professional subjectivity,<sup>128</sup> drawing on sociological studies concerned with the performative, fluid nature of identity categories around gender, class and race during the life course, has noted the powerful resonance in the field of law of ostensibly gender-neutral ideas about the ability to ‘make one’s own biography’, to engage in a reflexive ‘enterprise of the self’, to ‘choose’ to aspire to succeed and so on.<sup>129</sup> Each are promises deeply enmeshed with neoliberalism, ideas that pervade the contemporary legal profession and university law schools in numerous ways. They are particularly evident in the ethical values embedded in the branding and marketing material produced and aimed at future law students and lawyers.<sup>130</sup> In the case of law schools, undoubtedly, the hold of this ‘corporate dream’ remains powerful at a cultural level, celebrated organisationally and now entwined with contemporary legal academic practice in numerous ways. The reality, however, appears more complex and contested.

The performance of this legal professionalism entails in practice, Sommerlad argues, and in different ways depending on context, something far more than simply knowing ‘what is required’; more, indeed, than becoming appropriately credentialized to a particular level (such as, in the UK, securing an Upper Second Class Honours Degree). Rather, following Bordieu, ideas about social and cultural capital are mobilised and mediated in complex ways in the legal profession by questions of class, gender, race and ethnicity, sexuality and region,<sup>131</sup> each of which can intersect and shape what it means to embody and ‘live’ such professionalism within a specific instance and workplace context; what it means to convey, for example, what is required in terms of an appropriate professional demeanour in a particular situated setting. These are well-documented concerns in the sociology of the legal profession. However, they take on particular significance in the context of the contemporary profession and corporate

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<sup>128</sup> See further discussion in Hilary Sommerlad, ‘Researching and Theorizing the Processes of Professional Identity Formation’, (2007) 34(2) *Journal of Law and Society* 190-217; Andrew Francis and Hilary Sommerlad ‘Access to legal work experience and its role in the (re)production of legal professional identity’ (2009) 16(1) *International Journal of the Legal Profession* 63-86; Hilary Sommerlad, ‘Let History Judge?: Gender, Race, Class and Performative Identity: A Study of Women Judges in England and Wales’ in Ulrike Schultz and Gisela Shaw (eds) *Gender and Judging* Oxford Hart 2013.

<sup>129</sup> On failure, inadequacy and tensions with the limitless potential of neoliberalism see further Zygmunt Bauman, *Life in Fragments* (Oxford Blackwell 1995); Ventura n 40..

<sup>130</sup> Where the repeated mantra is that one can ‘be who you want to be’, that ‘aspiration’ to success in life can be achieved *through* success in law: Richard Collier ‘Be smart, be successful, be yourself...’: representations of the training contract and trainee solicitor in advertising by large law firms (2005) 12 (1) *International Journal of the Legal Profession*; Margaret Thornton and Lucinda Shannon, ‘“Selling the Dream”: Law School Branding and the Illusion of Choice’ (2013) 23(2) *Legal Education Review* 249.

<sup>131</sup> See Sommerlad n 128; Francis and Sommerlad n 128; Sommerlad et al n 13.

state, where the marketization of legal education, discussed above, has run alongside a growing outsourcing of legal services. Research points to a growing ‘gap’, for example, between such aspirations and ideas of success and the emergence, in practice, of an increasing and precarious casualized legal workforce;<sup>132</sup> a workforce itself highly gendered, with women disproportionately incorporated into this new sub-professional group, what Sommerlad has termed the category of the ‘embryonic’ ‘inauthentic’ lawyer, the rise of a professional precariat. These career ‘flatliners’ have been seen as functioning as a class of ‘fee on legs’ lawyers, individuals whose surplus value exists to be extracted and whose conditions of work, importantly, appear far removed from the ‘corporate dream’ held out in the cultural representations of law circulating widely in the field of legal education.<sup>133</sup>

This (gendered) polarisation, in other words, a process of “gendered segmentation”,<sup>134</sup> stands in marked contrast to dominant cultures and ideas about high income, status and prestige in law that are hierarchically associated with the (still predominantly male) corporate law firm Partner; and, with it, the workplace cultures associated with the form of transnational business masculinity discussed above. What it reveals is the continued reproduction of far more traditional if subtle gendered divisions and assumptions in law which continue to shape ideas about, and approaches to, for example, the issue of flexible working in law firms, the connections between career dissatisfaction and attrition post-qualification, dominant organisational cultures around balancing work and home and so forth.<sup>135</sup> Alongside the narrative of the feminization of law school and legal profession, that is, and the heightened policy profile of equality and work-life balance in law, a simultaneous entrenching of gender divisions ‘under the radar’ would appear to be occurring as, as Sommerlad puts it, new ideas of legal professionalism then come to function *as* a disciplinary mechanism in terms of inclusion and exclusion. It is against this backdrop, importantly, that the new forms of

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<sup>132</sup> E.g. *Ibid.*, n 134, below.

<sup>133</sup> See further Sommerlad n 128; Hilary Sommerlad, ‘Women Solicitors in a Fractured Profession: Intersections of Gender and professionalism in England and Wales’ 9(3) *International Journal of the Legal Profession* 213; Hilary Sommerlad, ‘The Gendering of the professional Subject: Commitment, Choice and Social Closure in the Legal profession’ in Clare McGlynn (ed.) *Legal Feminisms: Theory and Practice* (Aldershot Dartmouth 1998);

<sup>134</sup> Sharon Bolton and Daniel Muzio ‘Can’t live with ‘em; can’t live without ‘em’: Gendered Segmentation in the Legal Profession’ 41 *Sociology* 147.

<sup>135</sup> See, for example, *Lord Neuberger Rainbow Lecture on Diversity 2014*, House of Commons, 12 March 2014, available at <http://supremecourt.uk/docs/speech-140312.pdf> (accessed 15 April 2014); ‘Legal Lives’, n 30; Webley and Duff n 46; Margaret Thornton and Joanne Bagust, ‘The Gender Trap: Flexible Work in Corporate Legal Practice’ (2007) 45(4) *Osgoode Hall Law Journal* 773. see further Liz Duff and Lisa Webley, *Equality and Diversity: Women Solicitors Research Study 48, Volume 2: Qualitative Findings and Literature Review* London: Law Society, 2004

masculinity, as above, connect to the way senior men in law firms may themselves personally align with gender neutral, progressive formal equality policies whilst seeking to maintain status rewards and reproduce new forms of legal professionalism.<sup>136</sup> It is not difficult to see, in turn, in how this raises potential questions about legal ethics and values and how these link to understandings of such professionalism; and, turning to wellbeing, how the reality of employment may well jar for many with the promise being held out in legal education, of incentives which, for significant numbers, never materialise.<sup>137</sup>

## **New Hierarchies**

Fifth, and finally, it is necessary to return to the question of structural change in universities considered above and unpack this idea of ‘winners and losers’ and academic ‘buy-in’ to such shifts. Authors such as Andrew McGettigan,<sup>138</sup> Roger Brown and Helen Carasso,<sup>139</sup> amongst others, suggest, for example, that what is likely to follow in the UK in years to come is a heightened polarization within the sector marked by an eventual reduction in the number of universities and their law schools, whether through merger or collapse; that, in time, the rise of new private providers in law will intensify efforts to extract value from ever larger numbers of legal trainees and students, new ‘edu-businesses’ concerned, ultimately, with remunerating the investments of shareholders.<sup>140</sup> Amidst evidence of (predictable) declining levels of student satisfaction within a marketplace-consumer culture,<sup>141</sup> meanwhile, “learner earners” and “student customers” may well choose legal educational products driven by the need to repay the costs of their education.<sup>142</sup> This rerouting of “the financial circuits” via privatization discussed above is likely to result in “a new elite” “cement[ing]... its position... while the majority of institutions [are] left to scrap in a new market swamped with cheap

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<sup>136</sup> See further Juanita Elias, ‘Hegemonic Masculinities, the Multinational Corporation and the Developmental State: Constructing Gender in ‘Progressive’ Firms’ (2008) 10 *Men and Masculinities* 405. R.W. Connell and Julian Wood (2005) ‘Globalization and Business Masculinities’ 7(4) *Men and Masculinities* 347

<sup>137</sup> Although see further, and more generally, Lisa Pryor, *The Pinstriped Prison: How Over Achievers get trapped in Corporate Jobs they hate* (London, Picador 2008).

<sup>138</sup> N 5.

<sup>139</sup> N 5.

<sup>140</sup> Such as BPP University College <http://www.bpp.com/> (accessed 21 May 2013).

<sup>141</sup> See *Which? The Student Academic Experience Survey 2013* (London Which 2013), one reading of which suggests present law staff contacts may not be sustainable as the nature of the law degree and student expectations change.

<sup>142</sup> It is Thornton’s argument that ‘...law schools, too, [appear] magnetically drawn to the wealthy firms and their perceived needs in design of their curricula’: Thornton, n 9 2001, 40.

degree providers”.<sup>143</sup> A heightened bifurcation within and between law schools,<sup>144</sup> in other words, between a narrow band of the ‘elite’ institutions and ‘the rest’, has affective consequences for individuals therein, an issue with implications for understanding the processes of professionalism as a disciplinary mechanism discussed above and the complexities of new forms of legal professionalism itself.

CONCLUDING REMARKS:  
BRINGING IT ALL BACK HOME – REFLECTIONS ON NEOLIBERALISM AND  
WELLBEING IN LAW

The time might be ripe for a profession-wide debate, involving individual practitioners, practice organisations, professional bodies as well as legal academics, over the values and ethics to which contemporary practice can organisations should aspire.<sup>145</sup>

Universities add enormous value to our society and economy, enriching the lives of all of us through the education and research they provide. But in a[n] ... age, where knowledge is money and growth is elusive, powerful forces are bending the university to serve short-term, primarily pragmatic, and narrowly commercial ends. And no equal and opposite forces are organised to resist them. <sup>146</sup>

The issue of wellbeing, albeit often neglected in law, I have argued, underscores contemporary debates about gender, the law school and legal profession in a number of ways. The reconstruction of the ‘good’ corporatized academic subject detailed above is, on closer examination, enmeshed with a re-gendering of social relations in universities and political shifts that run alongside, paradoxically, the embedding of formal equality and diversity agendas associated with gender-neutral neoliberal economic and political imperatives.<sup>147</sup> Turning to the legal profession, and in ways that track to the reading of transnational business masculinities above, Sommerlad has sought to frame these contradictions within the emergence of an explicitly commercial professional paradigm and corporate culture in law within the context of neoliberalism. She notes, in particular, how a reinforcing of technocratic

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<sup>143</sup> McGettigan n 5 ix.

<sup>144</sup> Thornton n 5 135-144.

<sup>145</sup> Nicolson and Webb n 12, 170.

<sup>146</sup> <http://cdbu.org.uk/> (accessed, 20 May 2013).

<sup>147</sup> Baron n 25.

modes of control require the “shift from a profession overtly based on traditional status categories and the use of mechanisms of patronage to effect professional closure, to one which espouses meritocratic, economically rational practices.”<sup>148</sup> At the same time, however, “existing power relations are maintained through [organisational] *adaptation* to historical change.”<sup>149</sup>

This argument maps to the reading of a re-gendering or re-masculinization of the law school and the legal profession presented above, gender shifts that are increasingly being discussed in the growing literature and debate on the privatization of the public university. What marks the rise of new entrepreneurial business masculinities is a model of gender highly attuned to new discourses around equity and diversity, and now wellbeing, that are associated with the opening out of the profession’s supply side and the gender transformation at point of entry to law. The ‘remasculinization thesis’ here aligns with accounts of the rise of the liberal law school and weakening of social stratification in law, a diversification of the academy and legal practice and acceptance of formal gender equality. At the same time, however, it is interlinked with social processes marked by an increasing (gendered) segmentation and polarisation in law; the valorisation of cultures and practices associated with the overly rational, disembodied and instrumental pursuits discussed above, practices and commitments shaped increasingly by a culture of continuous targets and performativity. The rise of a new hegemonic bureaucratic managerialism can itself be characterised as largely male-dominated, patriarchical in nature<sup>150</sup> and, frequently, marginalizing of women and others who do not ‘fit’ the new dominant cultural codes, not least in relation to the regimes of target-setting, institutional control and performativity considered above.<sup>151</sup>

Broader conclusions relating to wellbeing are necessarily speculative, with hard data on universities, in contrast to the legal profession itself, as noted, thin on the ground. I have

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<sup>148</sup> Sommerlad 2007 n 128.

<sup>149</sup> *Ibid.* Perhaps this gives us a handle then on why it should continue to be the case that “The ‘star’ academics” in British universities “are so often white and male” S.Jones, *The Guardian* 22 April 2013.

<sup>150</sup> Thornton, n 9 2001

<sup>151</sup> Diane Reay comments: “So what has happened to ‘the community of scholars’ in the new managerialist era? I suggest that it has been reconfigured as an upper echelon of elite, mainly male, academics serviced by an army of casualised teaching, research and administrative staff, a poor shadow of what a community should be. And do I have any solutions? .... I feel as complicit and compromised as many other academics are feeling.... ensnared in contemporary neoliberal academia” (N 105). See further Stephen Whitehead 'From Paternalism to Entrepreneurialism: the Experience of Men Managers in UK Post Compulsory Education' (1999) *Discourse: Studies in the Cultural Politics of Education* 20 (1).

nonetheless sought to unpack how assumptions about wellbeing are frequently implicit in the debates discussed in this article; for legal academics, in the concerns being raised about new ‘structures of feeling’ and emotion in the academy and the rise of the ‘quantified subject’; for law students, in negotiating the gap between aspiration and reality in the context of the dismantling of the public university. Interrogation of how these ideas about wellbeing and legal professionalism are related raises important questions about values and ethics, equality and diversity in law, about the changing nature legal practice itself, gender balance and the hold of male dominated cultures in law;<sup>152</sup> a context in which “across the legal profession there have been moves towards the routinization of work and the adoption of corporate values that may either have the effect of deskilling staff, or at least giving the impression that they are being deskilled and de-professionalized.”

The argument is not that there ever existed a ‘golden age’ of universities and their law schools.<sup>153</sup> Rather, significant shifts are occurring set within the context of neoliberal political and economic imperatives and cultural change that is redrawing ideas of legal professionalism in far reaching ways. These changes, importantly, are the result of political will, a restructuring process transforming not just the traditional modus operandi of universities but also understandings education *as* a public good, with education “reconstituted within a system of [new] techniques and political disciplining”,<sup>154</sup> one element of the construction of a post-welfare, ‘bankrupt’, ‘minimal’ State in which responsibility for service delivery is to be increasingly “contracted out to agents who are run to targets, a remodeled Market State [marked by] relations between a semi-privatised state sector and state-subsidised private sector, reducing the central state to broker between privatized service and citizen become consumer.”<sup>155</sup> This process has refigured understandings of the State as an

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<sup>152</sup> Duff and Webley n x, 394.

<sup>153</sup> N 77. Thus, Alan Norrie observes (“These *Are* The Days”, *The Reporter* (Winter 2011) 1), one may question the evoking of a “sense of change for the worse ... of a more or less golden earlier period” in accounts of changes in universities; “these were”, he warns, for those of us who remember university law schools of the not too distant past, “not so jolly times.” “Is it inevitable that the university will be reduced to the function of providing, with increasingly authoritarian efficiency, pre-packed intellectual commodities which meet the requirement of management? Or can we...transform it into a centre of free discussion, and action, tolerating and even encouraging ‘subversive’ thought and activity for a dynamic renewal of the whole society within which it operates” (Warwick University Ltd, 1971, n 77, cited by A.Chakraborty, *The Guardian* 25 March 2014)

<sup>154</sup> McGettigan n 5 175.

<sup>155</sup> Campaign For The Public University, Review of Books, 9 April 2013, <http://publicuniversity.org.uk/2013/04/09/review-of-books-focused-on-the-public-university/> (accessed 15 April 2013).

agent of diversification and equality at the very moment economic pressures associated with neoliberalism are producing a reserve army of legal labour, casting the individual as author of her/his own success or failure. Much has been written on how market reforms have raised new questions about the economics and ethics of large law firms, reshaping ideas of legal professionalism. Yet there is growing reason to think this is a framework in which ideas of academic value are themselves being transformed, as within:

the neo-liberal university world of student fees and ever greater competition for student numbers and research grant income ... metrics function as a form of measure able to translate different forms of value. Academic *value* is, essentially, becoming monetized, and as this happens academic *values* are becoming transformed. This is the source of our discomfort ... we are fully implicated in their enactment. We are all involved in the co-construction of statistics and organisational life.<sup>156</sup>

Writing in 1998 Sennett observed how employment may no longer provide temporal and social freedom; how in the ‘new world of work’ there is a new moral ordering of social practice. This article has sought to raise questions about gender and wellbeing in law that have been ‘under the radar’ in discussion of legal ethics and values. Yet in asking what the experiential consequences of these shifts may be for individuals and, following Carol Smart, for the ‘personal lives’<sup>157</sup> of lawyers, law students and legal academics alike, there is good reason to reflect on what this all means for the practice and purpose of legal education, the meaning of ‘success’ and the moral compass that guides us in the teaching and study of law.<sup>158</sup> If it is the case that we are all “fully implicated” in the enactment of these processes, as Burrows suggests, it is important to guard against and reflect on what these changes may mean for understandings of wellbeing and value in law. As Ruth Barcan observes:

The lack of a professional language to describe a commonplace professional feeling is itself a symptom of the problem. In the highly pressurized and competitive world of the contemporary academy, it is easy to take on board the tactics of individualization and pathologisation ... It is against this individualizing logic that a structural analysis ... is important. This refusal to depoliticize personal experience remains a feminist staple.<sup>159</sup>

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<sup>156</sup> Burrows n 81 368.

<sup>157</sup> N 20

<sup>158</sup> See for example Jo Bostock, *The Meaning of Success: Insights from Women at Cambridge* (2014) (Cambridge, CUP), suggesting gender differences in academic values attached to social success: Matthew Reisz, ‘Redefining success may help women achieve potential’ 6 March 2014, available at <http://www.timeshighereducation.co.uk/news/redefining-success-may-help-women-achieve-potential/2011805.article> (accessed 16 April 2014); Boris Groysberg and Robin Abrahams, ‘Manage your work, manage your life’ 3 *Harvard Business Review* 92 (March 2014): 58–66, suggesting marked differences in how male and female executives perceive career success.

<sup>159</sup> Ruth Barcan, ‘Why do some academics feel like frauds?’ *Times Higher Education* 9 January 2014.

If such issues are to be discussed anywhere in the field of legal studies, they would appear core concerns of legal ethics and of this journal.

16 April 2014

