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## **Wellbeing in the legal profession: reflections on recent developments (or, what do we talk about, when we talk about wellbeing?)**

**ABSTRACT** *In recent years the legal profession in England and Wales, as elsewhere, has begun to pay increasing attention to the issue of wellbeing. This debate takes place against the backdrop of a substantial body of international and, more recently, UK based research that suggests significant problems exist in this area for many lawyers. More specifically, a growing literature base raises questions about environmental factors within legal practice, workplace structures, cultures and aspects of legal education and training that can have deleterious consequences for lawyer and law student wellbeing. This article addresses the intersections of these fields; it reviews recent developments, considers counter-arguments challenging the idea of a particular problem around lawyer wellbeing and assesses how ideas about wellbeing are deployed in ways that connect to wider debates about gender equality, diversity and inclusion. The paper concludes by considering the implications of rethinking wellbeing for legal professionalism within the context of the entrepreneurial, market-orientated and ‘hyper-masculinist’ cultures associated with neoliberalism. Critically assessing wellbeing does not only tell us much about the socio-political and ethical dimensions of changes in the legal profession. It reveals important contradictions within the cultures of law firms and processes of identity formation as a legal professional.*

**Keywords:** Legal profession, wellbeing

### **Introduction**

In recent years the legal profession in England and Wales, as elsewhere, has begun to pay increasing attention to the issue of wellbeing. This ‘wellbeing question’ in law, focused on a diverse set of concerns about contemporary legal practice, is now widely seen as having significant implications for individuals and businesses (see, for example of discussion in the professional press, Rimmer, 2015; Rayner, 2013; Pryce-Jones, 2013; Kearns, 2013). It is also, I shall suggest in this article, interlinked in complex and often contradictory ways to debates about gender equality, inclusion and diversity in law

firms; and, at a broader level, about the changing nature of legal professionalism itself. The conversation about wellbeing takes place against the backdrop of a substantial body of international and, more recently, UK-based research suggesting significant problems exist in this area for many lawyers. More specifically, a growing literature is raising questions about environmental factors within legal practice, workplace structures and cultures, the cohort attributes of those who enter the law and aspects of legal education and training that, it is argued, can have deleterious consequences for lawyer and law student wellbeing.

This article addresses the intersections of the above fields. The first section reviews recent developments in the UK context and factors and concerns reshaping this debate about wellbeing in the legal profession. The second section briefly outlines a set of counter-arguments which challenge the idea that there does exist a particular problem around lawyer wellbeing in the UK. Third, focusing on developments around mental health, the paper assesses how diverse ideas *about* wellbeing are actually deployed in different ways within this debate, revealing particular assumptions about the relationship between gender equality and inclusion. Finally, the paper considers the implications of rethinking wellbeing for understanding legal professionalism (Baron, 2015, 17-18; Wald, 2010) within the context of entrepreneurial, market-orientated and 'hyper-masculinist' cultures associated with neoliberalism [1]. This debate about wellbeing, the paper argues, does not only tell us much about socio-political and ethical dimensions of change in the legal profession. It is marked by deeply problematic assumptions about the cultures of law firms and processes of identity formation as a legal professional (on which see further Sommerlad, 2007; Faulconbridge *et al.*, 2012).

## **Wellbeing and the legal profession: what do we know?**

Wellbeing has, over the past decade or so, moved centre stage across jurisdictions within a range of debates relating to the nature and consequences of economic, cultural and political change. What, however, does wellbeing mean? It has recently been described by the Economic and Social Research Council (ESRC) as about ‘how we are doing’ as individuals, communities and as a nation and how sustainable this is for the future”; [2] as having various dimensions “which have been shown to matter most to people in the UK”, including “how satisfied we are with our lives, our sense that what we do in life is worthwhile, our day to day emotional experiences (happiness and anxiety) and our wider mental wellbeing”. [3]

Such definitions are contested within the wellbeing and health care literature (see further below). Nonetheless, considerable evidence suggests that interest in wellbeing is growing across a range of arenas and debates. For example, on the part of the UK Government attempts have been made to instrumentally measure subjective wellbeing, to use wellbeing data in shaping public policy (Bache and Reardon 2015) [4]. Wellbeing itself cuts across diverse concern about public health policy, health service provision and resourcing and political and cultural perceptions of physical and mental health (NHS, 2015). It raises issues about the legal frameworks governing workplace health and safety, the responsibilities of employers and the work of diverse organisations concerned with promoting positive wellbeing in society, not least, increasingly, in the field of mental health (where there has been a marked ‘step-change’ in activity; see, for example, *MIND, Anxiety UK, Sane and Time to Change*).

The above developments are each set against the backdrop of a striking explosion of books, articles and research reports on the topic, along with extensive media discussion and numerous other cultural artefacts (for example Bok, 2011; Alexander, 2015; Rather, 2012; Furness-Smith, 2015; c.f. Davies, 2015). Such is the cultural and political resonance

of 'wellbeing', indeed, that a far-reaching commodification of the idea has been seen as a particular feature of contemporary social life; a process in which capitalism is responding to concerns about psychological malaise amongst workers precisely by producing new income streams for businesses, part of a growing (and politically problematic) 'happiness industry' (Davies, 2015). In the way in which it now embraces a wide range of questions about the social dimensions of psychological and physical health, including in the workplace, in summary, wellbeing is now seen, across policy and disciplinary fields, as an increasingly significant feature of social debate around good governance, assessments of the 'good society' and quality of life (see further Bache & Reardon, 2013; Bache *et al.*, 2015).

### *Wellbeing in law firms*

This is the context against which the legal profession in England and Wales has begun to pay increasing attention to wellbeing. It has done so, as noted, cognisant of a substantial body of international research suggesting significant problems exist in this area for many legal professionals. The scholarship derived initially from the United States during the late 1980s and 1990s, linked to debates around the need to 'humanize legal education' (see further Krieger, 2002, 1998; Seligman *et al.*, 2005; Hagan & Kay, 2007; Schiltz, 1999; Harrell, 2001; Lewis, 2007). In recent years, however, it has expanded considerably and engagement with the 'unhappy lawyer', what it might mean to 'make a good life' in the law (Levit & Linder, 2010; also Hardy, 2008), has become the focus of extensive debate and discussion in the legal field. This development is particularly marked recently in Australia (see for example discussion in Kelk *et al.*, 2009; Medlow *et al.*, 2011; Baron 2015, 2014) and, to a lesser degree, the UK (for example Rimmer, 2015; Collier, 2014). In short, a considerable international literature is concerned with charting, seeking to better understand and, importantly, doing something *about* the scale of poor wellbeing in the contemporary legal profession.

There are, of course, dangers in generalising across jurisdictions, legal systems and areas of practice. The concerns of the Bar Council (Positive, 2015; Bar Council, 2014) and the Law Society (2014, 2012), for example, reflect different kinds of pressures, different workplace contexts. Nonetheless, common themes tend to recur. The research points, for example, to a higher incidence of depressive symptoms amongst lawyers and law students generally compared with national populations and other professions (e.g. Shanfield *et al.*, 1985; Benjamin *et al.*, 1986); to the high propensity of legal professionals, and it is suggested City workers especially, to use alcohol or other drugs to reduce or manage the symptomatology associated with poor wellbeing (for example Beck *et al.*, 1996; Benjamin *et al.*, 1990). Work has identified, a theme of particular relevance to university law schools, the correlation between aspects of conventional legal education and practical training programmes in law and future life problems (see further below). The latter has become a particular feature of debate in the Australian context, where a range of studies have considered the way law students are (or are not) encouraged in the development of personal and interpersonal skills in their legal education; in ways that might better promote self-reflexivity, resilience, self-awareness and a capacity to manage anxiety and stress at moments in the life course and throughout a career in law (for discussion see Baron, 2014; Parker, 2014).

The argument being made, importantly, is not that lawyers are somehow genetically predisposed to poor wellbeing or depression. Certainly, the cohort attributes of those who enter the law has been seen in some literature as a relevant factor (Daicoff 1997); the conjunction, for example, of psychological tendencies towards competitive, driven and perfectionist personalities amongst law students and lawyers and the 'pessimistic' orientation of much of legal education and employment; how legal practice can itself be marked by a kind of cognitive distortion, focusing on 'worst case' scenarios that foster the development of 'catastrophising' mentalities. In contrast to such an approach, however, the central claim being made in the wellbeing literature is rather different; there is something *about* the cultures of law, legal education and legal professional

practice that exacerbates problems in this area. The work has tended to focus on two key areas or wellbeing narratives in particular.

First, and most significantly, attention has been paid to environmental factors in contemporary legal practice and the nature of workplace cultures; for example, work-life balance in the law, the need for frequent long hours and phenomena of 'work-aholism', especially in certain areas of work and in the large commercial 'City' firms in particular (Thornton, 2014a, 2014b; contrast Lee, 1999). Related concerns include the low decision latitude and lack of workplace autonomy for many practitioners (in particular law firm associates) and the way legal workplaces can be marked by endemic cultures of 'presenteeism' and frequent job insecurity, leading to career dissatisfaction (Working Families, 2008). The combination of high pressure/high stakes working environment and the dominant structure, organisation and form of the billing of legal work, in particular, has been seen within the context of an increasingly hyper-competitive and business-like profession to heighten pressure on lawyers in ways that have implications for experiences of social connectedness, subjective wellbeing and understandings of professional commitment.

When set within an increasingly user-pays system of higher education and legal training, meanwhile, where considerable debts can accrue for many trainee lawyers, there has been a heightening of concern around the potential 'fear of failure' and consequences and risks (financial and psychological) of seeking to pursue a professional education and training in the law (Collier, 2014; Baron, 2013). Universities, and their law schools, it is argued, may be 'picking up the pieces' of an intensification of pressures, reflected in the higher demands being placed on university wellbeing support services and concern on the part of universities - and their law schools - to address these issues (via the establishment, for example, of dedicated 'health and wellbeing' weeks and days, and various other initiatives (see for example, Armstrong, 2015; also NUS 2011).

The second focus of the work on wellbeing in law is rather different and relates to the contexts of legal education and training noted above (see further James, 2008; Townes O'Brien *et al.*, 2011; Tang & Ferguson, 2014; Schechter, 1996; Sheldon & Krieger, 2004; Tani & Vines, 2009; Jolly-Ryan, 2009; Coxon, 2012; c.f. Baron, 2014, Parker, 2014). By exploring the impact of legal education on law students, it is argued, lawyer wellbeing may be improved by changes, for example, in the way the academy teaches the LLB; change that may involve refocusing away from adversarial, individualistic and doctrinal focused law degrees to an embrace of, for example, dispute resolution, a concern with students' emotional intelligence and resilience, and the 'soft' skills called for in the 'real' world of work (Galloway & Jones, 2014). Studies in this field have highlighted law student perceptions of how the experience of law school can itself tend to make them more rational, objectifying, analytical and logical; and yet also, at the same time, more isolated and, often, more insecure, anxious and intolerant (Townes O'Brien, 2014; Alfini & Van Vooren, 1995); how the experience and pressures of an increasingly marketized legal education may itself be reconfiguring, for some law students, whatever broadly altruistic motivations they may have at point of entry.

Detailed discussion of the above issues around legal education is beyond the specific focus of the present paper (for a critical overview see Parker, 2014). It is important to note, however, against the backdrop of a far-reaching and multi-layered marketisation of Higher Education, how UK universities are themselves now instituting diverse programmes of support precisely around these questions of wellbeing and seeking, through such initiatives, to foster and encourage better mental and physical health in the academic workplace for both students and staff (Collier, 2014).

*Profession Responses: what is to be done about lawyer wellbeing?*

It is in legal practice, however, that there has been a particularly focused response to concern about wellbeing in the law. Recent years have witnessed, for example, various organisational attempts both in the legal profession generally and in specific law firms to, first, promote improved wellbeing and mental/physical health awareness amongst lawyers; second, encourage greater support for those staff who do face difficulties; and, third, to reconsider at national and local levels the nature of legal working cultures and conditions deemed deleterious to lawyer health (Rimmer, 2015).

These developments are multidimensional. For example, in terms of support provision the registered charity *LawCare*, established in 1997 exists as “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”. [5] The service is free and confidential and includes a dedicated ‘Wellbeing Portal’, an online tool to help assess and address lawyer stress, along with an extensive set of downloadable Information Packs and resources. [6] Within specific law firms, meanwhile, a growing number of large corporate firms in particular (such as Herbert Smith Freehills, Ashursts, Clifford Chance, Freshfields Bruckhaus Deringer, Hill Dickinson and Shoosmiths, amongst others) have established dedicated wellbeing programmes and/or set up other initiatives for their staff. The Law Society of England and Wales has itself appointed a Policy Officer with specific responsibility for social mobility *and wellbeing*. [7]

The UK has not to date seen the establishment of dedicated ‘wellness networks’ (WNL, 2015) and national conferences, events and other initiatives of the kind emerging in Australia, [8]. Nonetheless wellbeing is a subject of heightened concern and debate in the profession, as the above developments illustrate. Whether couched in terms of promoting awareness and positive wellbeing in the legal workplace via the encouraging of ‘mindfulness’ in law (Orenstein, 2014; West Allan, 2015), facilitating individuals to speak out, tackle stigma and share experience (Lee, 2013; Bar Council, 2014), or else via

the establishment of focused firm based initiatives, wellbeing is an increasingly high profile issue within the contemporary legal profession (Rimmer, 2015).

In the next two sections I wish to look closer at these different dimensions of wellbeing. The particular, though not exclusive, focus of much of this discussion about wellbeing has concerned the larger broadly corporate and transnational firms. The issues raised, however, have a far more general resonance both for the legal profession and wider social and political debates around wellbeing. What, in short, *do* we talk about when we talk about wellbeing?

### **An interlude: crisis? What crisis? Law firms and the evidence base**

There is immediately need for caution. It is not possible to make a straightforward correlation between economic and political shifts, legal workplace cultures and individual lawyer wellbeing. I have suggested elsewhere, rather, that features associated with poor wellbeing in law, such as the experience of low mood, anxiety disorders, insomnia and other depressive-associated symptoms, are multifactorial; the product of complex, often unpredictable interplays of the personal and structural (Collier, 2014). Life course events, illness, genetic disposition and lifestyle can each potentially come together at moments in the life course to foster problems for some lawyers. Poor wellbeing, in the sense of an association with emotional and mental health, is itself, like depression, a trans-historical and cross-cultural phenomenon (Horwitz & Wakefield, 2007; Lawlor, 2012; Ehrenberg, 2009; Solomon, 2002). If much research does suggest significant problems exist in the area of law, moreover, it is important to remember that concern over de-professionalisation and a broader 'corrosion of character' within the workplace (Sennett, 1999, 2007) are far-reaching; bound up with a broader reshaping of work and personal life within the context of political realignments associated with neoliberalism (Comaroff & Comaroff, 2001).

In a rather different vein, Christine Parker (2014) has highlighted methodological problems within some recent studies of wellbeing in law, notably in the context of Australian legal education. She draws attention to the dangers, for example, of overplaying the available data. The UK research itself suggests a complex picture. *LawCare* data, undoubtedly, reveals poor wellbeing across a range of indicators, although the nature of problems can vary across the profession and type of firm. [9] The 2014 *Law Society Health and Wellbeing Report*, a survey of 1,517 practising certificate (PC) holders, found 96% reporting having negative stress in their working lives, with 19% at 'extreme' or 'severe' levels; one third of PC holders in the 2012 study had taken time off over previous 12 months due to ill health (Law Society, 2012a), while in 2014 39% reported going to work when sick leave should have been taken. At the same time, however, 85% of solicitors reported being in good health, four percentage points about figures for the working population generally. Law itself remains a relatively prestigious occupation and, notwithstanding whatever difficulties that do exist, job security and salary levels in law firms can be viewed as remaining relatively advantageous. Law continues to be seen as a desirable field of study and employment (Rickman, 2015) and if the pressure and demands on lawyers are increasing in distinctive ways this does not mean, noting estimates of how many in the UK experience a mental health problem each year, [10] that lawyers are disproportionately 'unhappy' or do not enjoy and find satisfying many aspects of their work.

The above is, however, I shall argue in the remainder of this article, itself a partial and misleading picture of what is actually happening in the debate around wellbeing in law. Focusing on what it is 'we talk about when we talk about wellbeing', a closer look at the contradictions underscoring this wellbeing agenda reveal rather different, and troubling, concerns; issues that, I shall suggest in the following section, have particular bearing on questions of gender equity, inclusion and diversity in the legal profession.

### **On wellbeing, gender and legal professionalism**

This debate around wellbeing in law is addressing, as alluded to above, a complex set of environmental factors in legal practice. In what way, however, does this connect to gender? I have sought elsewhere to consider how gender equity and inclusion in the legal profession continues to be discursively framed in terms of the law's 'women problem'; more precisely, in such a way that important questions about the practices, responsibilities and identities of *men* all too often fade away from view (Collier, 2010, 2014, 2015). This absence is especially evident in relation to work-life balance and flexible working, the interconnections of parenting and gendering of ideas of commitment to a legal career, not least in relation to normative understandings of fatherhood in law firms (see further Collier, 2013; also Cunningham, 2001). The deleterious consequences for women of some distinctly gendered cultures and practices in law firms, meanwhile, as the vast scholarship on women in the world's legal professions and contemporary debates attest, appear all too clear (Law Society, 2012b).

Yet what has all this to do with wellbeing? The problematic consequences of these gendered workplace cultures underscore the recent comments of Lord Neuberger who, speaking in the 2014 Rainbow Lecture on Diversity in the UK House of Commons, draws attention to what he terms the "virtually 24/7 commitment" required by "top firms" from their employees and partners (Neuberger, 2014). Feminist-inflected research in law has of course sought to unpack precisely this notion of an ostensibly gender-neutral (but in fact highly gendered, masculine) model of a 'bleached out' ideal, committed legal worker; to question, in particular, how it has historically positioned women lawyers in terms of "otherness" to a male gendered norm. By highlighting the dysfunctional, if not pathological, nature of this 24/7 commitment for individual wellbeing and businesses, Neuberger suggests, changing men's priorities and practices and changing (problematic) legal workplace cultures somehow become inseparable (although, as is acknowledged,

such change “is easy to say, but quite hard to achieve”). That is, cultures and practices within law firms discursively positioned as masculine, male dominated and problematic (especially for women) become merged with the ‘business case’ for gender equality and, my concern here, strategically addressing issues around wellbeing in law of the kind discussed above. The point is not just that such “obsessive” work-focused men may “not be as effective professionally as women with more balanced lives” (Neuberger, 2014). This is a form of life potentially detrimental to the wellbeing of all lawyers.

This debate is, on the face of it, gender neutral. Undoubtedly, research studies indicate that concern about poor wellbeing and pressures of work in law firms cut across women and men in the profession (for example Working Families, 2008; Lee, 1999). If we dig deeper, however, certain assumptions about the precise nature of this (gendered) legal workplace underscore the wellbeing agenda in curious ways. This is a workplace on closer examination simultaneously normalised *and* constructed as problematic in relation to contemporary discussions of wellbeing in the law. To illustrate this theme it is instructive to consider, by way of example, the relationship between gender, wellbeing and mental health.

### *The example of mental health*

Mental health is an area, as noted above, receiving increased attention in the legal profession, in particular within the large corporate firms and, more recently, at the Bar. [11] Linking to the question of how to engage men in gender equality projects (United Nations 2014) and, specifically, in bringing about change in the legal profession (Law Society, 2012b), meanwhile, the reluctance of men relative to women to seek help at times of emotional difficulty, well documented in the wider literature on men’s health, takes on particular significance in the context of discussing wellbeing in law. Such reluctance connects, health and gender research suggests, to wider social processes around the nature of masculine identity formation and cultural ideas about masculinity;

at its simplest, to an array of ideas associated with what it means to be (and to be seen by others as) 'a man' (Robertson, 2007; MIND, 2009; Wheeler, 2003; O'Brien *et al.*, 2005). The growing research base on wellbeing and interdisciplinary studies of men's physical and mental health similarly suggest that questions of gender, emotion and vulnerability can inform perceptions of subjective wellbeing in distinctive ways (for example Wilkins, 2010; Conrad & White, 2009; Wilkins & Kemple, 2010; Men's Health Forum, 2007; White, 2011); that this, in turn, has implications for understanding support provision in addressing men's engagement, or lack thereof, in wellbeing programmes and whatever other therapeutic and other interventions may be offered within or beyond a particular workplace (Wilkins, 2013).

In the light of the above, it is revealing to note a number of contradictory assumptions with regard to how contemporary legal professionalism is understood in this wellbeing narrative; and, in particular, the paradoxical nature of the normative commitment to a certain kind of legal professionalism as described above. In what way is this so? A rich body of international scholarship has drawn attention to the hyper-competitive and, in some accounts, hyper-masculine aspects of contemporary legal-business cultures within many areas of practice (Thornton, 2014a; Wald, 2010; Sommerlad, 2011; Bagust, 2013); how a production process in law and financial services has itself come to embody more generally the entrepreneurial and market-orientated values associated with neoliberalism; how complex processes of social closure, encompassing ideas about economic, social and cultural capital, continue to inform in complex ways the regulation of access to, and the development of future careers within, the legal profession (see further Sommerlad *et al.*, 2010; Ashley & Empson, 2013; Cook *et al.*, 2012). Locating these processes within the context of structural (gendered) polarisation or segmentations within the legal workforce (Bolton & Muzio 2007, 2008; Muzio & Ackroyd, 2005; Webley, 2015), meanwhile, there appears to be a heightened division, in terms of income, status, size and influence, between the elite corporate law firms and other legal professionals (Dinovitzer, 2011; Webb, 2004).

What has all this to do with wellbeing and gender? Set in this context, the “obsessive, testosterone-driven” men “who work 24/7 in law firms”, as referred to by Lord Neuberger, appear normalised, as above; depicted across a wide range of discursive contexts and representations or displays of contemporary legal professionalism and career success, not least in the marketing material used by firms themselves, as individuals who are in different ways to be admired/emulated (Collier, 2005; Thornton & Shannon, 2013). In the case of transnational legal practice, meanwhile, where the wellbeing debates are most advanced and visible, such corporate lawyers appear part of what has been termed within sociological work an emerging ‘kinetic elite class’ (Codourey, 2008); individuals committed to a form of hyper-mobility and instantaneous communication that is itself driving contemporary corporate legal business strategy but which, as discussed, brings with it particular subjective consequences. These are legal-businesses understood precisely as being served by such an ideal, individualistic and ambitious lawyer who is, as a result of technological developments and investments, fully implicated in a broader blurring of the ‘work life’ divide; a lawyer who is, for example, never ‘offline’, and who is, as Lord Neuberger notes, potentially available 24/7 if need be to meet client demands (Thornton, 2014b).

The discursive normalisation of this (gendered) professional subject can be fleshed out further by noting the strong resonance between depictions of the hyper-competitive cultures of law and what has been described, at a broader cultural level, as new forms of global ‘transnational business masculinities’ (Connell & Messerschmidt, 2005; see also Elias & Beasley, 2009; Hearn, 2015). This refers to what both empirical and theoretical studies of men over the past two decades identify as a distinctive model of masculinity that has emerged among globally mobile managers and businessmen; a group, I argue elsewhere, personified in certain respects by the figure of the transnational City corporate male lawyer (Collier, 2013). What is being described here, that is, is an association between men, gender and wellbeing in law that differs in some significant

ways from ideas of the male 'lawyer as gentleman' and cultures and practices of the profession at earlier historical moments (contrast, for example, Burrage, 1996). Culturally powerful and resonant ideas about income, professional status and prestige are being hierarchically linked with the (still predominantly male) corporate law firm partner and the workplace cultures associated with this form of transnational business masculinity; cultures, we have also seen, positioned as a significant part of the 'problem' that needs addressing within the wellbeing debate.

It is at this point, therefore, echoing themes around gender and mental health discussed above, that within the wellbeing narrative in law a rather curious, recurring and revealing (gendered) figure emerges who, in different ways, exemplifies these tensions; the 'cracking up' 'alpha male', an individual who works within such a competitive long hours workplace and who, the narrative holds, must take 'better care' of himself by addressing wellbeing. This figure underscores policy calls to challenge organisational silence around poor wellbeing in the legal profession; to "talk about mental health without fear or stigma" and "maximise business performance", in the words of the City Mental Health Alliance, interconnected with the demand to tackle gender stereotypes in the legal profession, as above. Challenging these gendered assumptions has itself become a key part of campaigns aimed at raising awareness about depression in the law, with the suicide of male lawyers, and concerns around reputational consequences for law firms, a significant driver of debate both in Australia and the UK (Whitworth, 2014; contrast Simpson, 2013; Mezzani, 2013; see further Wylie *et al.*, 2012; Jones, 2014; Crampton, 2013).

A rich body of feminist work in law has long sought to explore the way gendered notions of commitment, performativity and self-promotion are marked as masculine in the social script, particularly so far as authoritative positions are concerned (Thornton, 1988); how an 'ideal' (legal) worker maps to characteristics associated with a form of 'unencumbered' masculinity, to assumptions about emotional labour and men's

disembodiment (from practices of care for example) and the taking up of a particular kind of depersonalised, dispassionate voice within hierarchical organisations (Thornton, 1988). These issues take on particular resonance in considering the interconnections of emotional labour and the professional project that frames this discussion of mental health in terms of the normative assumptions it contains about embodied authority and what it is to be a lawyer, as above. Digging deeper, this debate is suffused with contradictory ideas about gender and professional identity in relation to discussions about, for example, 'getting on with things' (notwithstanding personal difficulties); about the subjective dangers, and individual risks, in disclosure and 'revealing' vulnerability at an organisational level. Within the wellbeing discourse, in particular, these gendered associations are simultaneously pathologised *and* normalised, celebrated and rendered problematic, as above.

For example, a reflexive engagement with the subjective and relational consequences of a form of "24/7" commitment, what it might mean for both the self and others, is being called for whilst, at the same time, a consideration of what significantly changing such a model of commitment might mean for individuals and organisations is evaded, a point to which I shall return in the conclusions below. Thus, individuals are encouraged to make up for their "deficits" ; women are positioned as needing to become more assertive, to speak up, 'lean in', whilst at the same time men are to become somehow less masculine, more emotionally reflexive and so forth. Yet in ways that echo Thornton and Bagust's (2007) analysis of the limits of flexible working policies in the legal profession, the centrality of the normative worker model underscoring this narrative appears "to be almost impossible to dislodge" (Thornton & Bagust, 2007, p. 805). It is curious therefore, in the light of the above, how the repeated call for a 'better, healthier, happier' profession, the demand for change, runs alongside a systematic side-stepping of engagement with the very cultures and practices that, it is simultaneously acknowledged, produce these problems the first place. At the same time, somewhat ironically, a new alignment of gender relations in law would appear to be well attuned to

a formal *acceptance* of progressive formal equality, inclusion and wellbeing policies whilst, at the same time, subjective commitments to new ideas of legal professionalism and organisational values associated with a hyper-competitive marketplace culture make dealing with these problems so very difficult to imagine (see further Connell 2005).

In the final section, by way of concluding remarks, I wish to relocate these debates within the wider social and political contexts around wellbeing discussed at the beginning of this paper. What is taking place in the legal profession, I shall suggest, does not only reveal significant contradictions within new gendered alignments around the 'ideal' legal worker, as discussed above. Attempts to tackle wellbeing, as it is presently conceptualised, stand in a profoundly uneasy relation to socio-political and structural changes that are themselves interlinked to a reframing of legal professionalism within the context of patterns of growing social inequality (Pickett & Wilkinson, 2011).

### **Concluding remarks: tackling wellbeing, promoting resilience – the limits of wellbeing?**

Wellbeing initiatives of the kind discussed above are framed, I have argued, like gender equity and work–life balance previously, broadly in terms of the underlying logic of the 'business case' for reform, with all its well-documented conceptual and political strengths and limitations (Ashley, 2010; McGlynn, 2000). The assumption appears to be that whilst legal organisations can certainly do things to support individuals it is, and must, be a matter of individual responsibility to manage difficulties, to cope and 'make it work' and so on (Parker, 2014; Collier, 2014). Mapping to themes of autonomy, responsibility and individualism seen within sociological work as enmeshed with neoliberalism (Ventura, 2012), meanwhile, related ideas about the ability to 'make one's own biography', to 'choose' to aspire to succeed and so forth pervade a wellbeing discourse pitched, at a general level, in terms of promoting resilience.

When set in this context it is particularly intriguing, therefore, how concerns with wellbeing have recently become part of the corporate 'lifestyle package' on offer to many City lawyers, reflected in the provision, in larger corporate firms at least, of gymnasiums, meditation and mindfulness sessions and the like. Wellbeing appears, more generally, as an organisational resource, a 'catch all' concept deployed within an increasingly competitive marketplace in law to maximise productivity, manage risk, as above, and help create wealth and competitive advantage. It is a concept commodified across an array of cultural artefacts, we have seen, branded in a multitude of ways as a potential income stream linked to diverse concerns about the changing nature of personal life within the political-economic conditions of neoliberalism. William Davies has recently argued:

The future of successful capitalism depends on our ability to combat stress, misery and illness, and put relaxation, happiness and wellness in their place. Techniques, measures and technologies are now available to achieve this, and they are permeating the workplace, the high street, the home and the human body... (Davies, 2015: 4; see also Schrecker and Bambra 2015)

They are also, it would seem, permeating the legal profession.

The organisational cultures, practices and forms of governance that, I suggested above, have remodelled and refashioned lawyer subjectivities appear aligned not only to commitments to formal equality and diversity in the legal profession therefore (see further Nicolson, 2005). They also connect, increasingly, to this need to 'do something' about poor lawyer wellbeing and to adjust subjectivities in ways that are *better attuned* to the competitive 'new world' in which law firms operate. The problem, I have argued, is that at the very moment these discourses of equality, inclusion and concern about wellbeing, and need for more 'balanced' lives, become embedded organizationally in the legal profession, other processes appear to be militating against these wellbeing and equality agendas. New opportunities are undoubtedly being opened up, for example, for

some at least, as a result of the neoliberal driven deregulation of legal services. At the same time, however, it has been argued, new disciplinary technologies and adaptations (Sommerlad, 2007), structural realignments (Sommerlad *et al.*, 2010) and processes of professional segmentation and 'de-skilling' (Webley & Duff, 2007; Webley, 2015) appear to be ensuring that, in several respects, the masculinity of super-élite law firms, and masculinism of the neoliberal corporate world generally (Leslie, 2012) is reproduced (Thornton, 2014a). This professional culture does not only rest on problematic (and gendered) conceptions of merit (Sommerlad, 2010); it can itself be inimical to good wellbeing and authorize and legitimize the very practices and attitudes, including forms of cultural sexism and workplace bullying, that research suggests have deleterious consequences for the health of many legal practitioners (Bagust, 2014; Le Mire and Owen, 2014).

Reframing this debate in terms of questions of *values*, meanwhile, a theme in feminist inflected work concerned with the limits of the business case for equality (for example Webley & Duff, 2007), highlights a rather different set of concerns about the way in which law schools are themselves implicated in this debate about wellbeing. The wellbeing movement in law is undoubtedly raising important questions about legal workplaces which, far from facilitating healthy and balanced lives for many practitioners, would appear to inhibit for some "basic ethical human interaction based on decency and respect and [which] cultivates oppression through fear of failure" (Bagust, 2014). What social value is then ascribed within legal education to workplaces marked by exceptionally high material rewards (for some) and high stress (for many it would seem)?; to economic and cultural imperatives and political reforms pushing young lawyers away from 'service' orientated law careers, such as legal aid, and towards a model of legal corporate professionalism, what Pryor (2008) refers to as the 'pin-striped prison'? What are the social and subjective 'costs' of high achievement in this process as well as perceived failure?

To conclude, what *do* we talk about when we talk about wellbeing? This is a discursive field, I have argued in this article, beset with contradictions and tensions around understandings of legal professionalism and the values and ethics to which organisations should aspire (see Webley & Duff, 2007; Nicolson & Webb, 2005). At issue, on closer examination, are diverse concerns; questions about the physical and mental health of lawyers but questions also about the nature, purpose and consequences of legal education and training; about equality, diversity and the changing nature of workplace cultures being associated with a form of hyper-competitive legal professionalism; and questions, ultimately, about organisational and professional identity in law, structures of feeling, modes of self-management and processes of gendered embodiment.

Underscoring recent initiatives seeking to promote better wellbeing in the legal profession, therefore, is a question that maps to calls for legal scholars to better understand aspects of the 'private life' of the law (Cownie, 2004). That is, how the practice of law might be made more intelligible via a closer engagement with the 'inner mind' of those who inhabit it; an engagement that entails exploring the shifting rhythms of personal life and the consequences of social, economic, demographic and cultural shifts on aspirations and expectations. The global financial crisis, for example, and subsequent politics of austerity, have had a profound impact on the job security and broader measures of health for many legal professionals in the UK. At the same time the gendered nature of this crisis, and how it connects to the hyper-competitive workplace cultures discussed in this paper, is an issue seldom explored (see Maclean, 2015). Wellbeing has itself become an umbrella term for a wide range of concerns, at once signifying a great deal and yet seemingly very little of substance (see further Davies, 2015); it is, Bache, Reardon and Anand (2015) suggest, a 'wicked problem', demanding far closer deliberation and scrutiny.

Ultimately, as has been observed in other contexts, the very lack of a suitably professional language to describe what may be going on here can itself be seen as a symptom of the problem; a debate framed via a particular kind of politically liberal version of what a 'good life' could and should be. There appears to be a disconnection between genuine organisational commitments to change practices and cultures and what research suggests are the everyday realities of many aspects of contemporary legal lives. Until the issues around emotional labour discussed in this paper are recognised and integrated into a reflective framework for professional development, however, it is unlikely that lawyer wellbeing will be tackled effectively. At the same time lawyer distress appears to be routinely medicalized, framed in terms of a broader reflexive moral project whereby, within the dominant wellbeing discourse, the 'good lawyer' must respond to a realignment of market, state, economy, civil society precisely by better attending to their wellbeing. Yet as Paula Baron observes:

Until the structural issues within law and legal education that impact negatively on lawyer well-being are acknowledged, these issues will continue. While individual techniques of self-management may help the individual to endure the issues that lead to their distress, no amount of anti-depressants, time management workshops, or resilience training will ultimately solve the problem for the profession as a whole (Baron, 2015, p 20)

The dominant equality, diversity and inclusion discourse, I have argued in this paper, as presently configured, embeds this focus on individual responsibility, diverting attention from broader models of talent management that might position accountability for poor wellbeing more effectively with the law firm, partnership, department managers and teams as well as individual lawyers. By rethinking this debate about wellbeing, and questioning the dominant individualizing logic and processes of pathologization that shape it, this article has sought to ask a rather different question; what actually *is* it that we talk about when we talk about wellbeing in law?

## Notes

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[1] See further, on the grounding of these debates within neoliberal economic and political agendas, discussion in Baron, 2015; Collier 2014, especially pp 201-214; Webley, 2015, especially pp 2532-2356.

[2] ESRC 'What Works' Wellbeing, Available at: <http://www.esrc.ac.uk/funding-and-guidance/funding-opportunities/32283/what-works-wellbeing21-jan-2015.aspx>, accessed 25 March 2015.

[3] Available at: [http://www.esrc.ac.uk/images/what-works-wellbeing-common-specification\\_tcm8-32407.pdf](http://www.esrc.ac.uk/images/what-works-wellbeing-common-specification_tcm8-32407.pdf), p. 4, accessed 25 March 2015

[4] The establishing of a national 'measuring wellbeing' programme launched by the Office of National Statistics (ONS, 2015), has proved to be the catalyst for a heightened interest in the significance of wellbeing for the public sector, businesses, charities, individuals and communities.

[5] See further [www.lawcare.org.uk/](http://www.lawcare.org.uk/), accessed 25 March 2015.

[6] The wellbeing portal is available at: <http://lawcare.wellbeingportal.com/tools/portal/login.asp>, accessed 25 March 2015.

[7] Available at: [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 25 March 2015.

[8] See for example The Tristan Jepson Memorial Foundation Wellness Network Academic Resources, available at: <http://www.tjmf.org.au/wellness-network/wellness-network-resources/>; National Wellness for Law Forum, available at: <http://law.anu.edu.au/conferences/wellness-law>; papers available at: <http://wellnessforlaw.com/2014/03/2014-forum-materials/>; [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); also *Wellbeing and the Law Foundation*, [www.watlfoundation.org.au/default.aspx](http://www.watlfoundation.org.au/default.aspx), all sites accessed 25 March 2015. Note also <http://beyondblue.org.au>

[9] See for example Lawcare, *Initial Results of Lawcare's Stress in the Legal profession Survey*, available at: <http://www.lawcare.org.uk/whats-new/stress-in-the-legal-profession-survey/>, accessed 25 March 2015. *Lawcare* files opened in 2012, for example, report 69 % of calls relating to stress, with others including issues around depression, alcohol and financial problems. Concern about workload was the most frequently mentioned cause, with women representing 62% callers.

[10] A figure commonly cited, for example, is that one on four people in the UK will experience a mental health problem each year: see further <http://www.mind.org.uk/information-support/types-of-mental-health-problems/statistics-and-facts-about-mental-health/how-common-are-mental-health-problems/>; Tracey McVeigh (2001) 'Depression Hits One in Four Adults' *The Observer* 7 January 2001, available at: <http://www.theguardian.com/uk/2001/jan/07/education.highereducation>, accessed 25 March 2015

[11] Note, for example, the work of the City Mental Health Alliance;  
<http://www.citymentalhealthalliance.org/about-us/4583228430>, accessed 25 March 2015.

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