‘Left Pessimists’ in Rose Coloured Glasses?
Reflections on the Political Economy of Socio-Legal Studies and (Legal)
Academic Wellbeing

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In order to effect ... critical change we need to take seriously the quest to engage in conversations that subject the space of the academy to scrutiny and explore the changing culture of knowledge production and its role in creating environments of mental and emotional distress, not least, because no one should go through these experiences alone.¹

Introduction

At the 2013 *Socio-Legal Studies* (SLSA) Annual Meeting at the University of York, UK, Professor Philip Thomas, editor and co-founder of this journal in 1974, and a founding member of the SLSA, was awarded the 2012 Prize for Contributions to the Socio-legal Community.² The following year the *Journal of Law and Society* (henceforth JLS) published a review article by myself of Margaret Thornton’s 2012 book *Privatizing the Public University: The Case of Law*, a work subsequently widely cited internationally as exemplifying, in the specific context of legal studies, a critique of the marketization of the Higher Education sector.³ This term refers to a transformation in universities that has occurred across societies, including in the UK, which has itself prompted a now vast

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¹ L. Peake and B. Mullings ‘Critical Reflections on Mental and Emotional Distress in the Academy’ (2016) 15(2) *ACME: An International Journal for Critical Geographies* 253, at 276–77.

² York Law School, University of York, 26-28 March 2013. These words began my review of Thornton’s book (below n 3).

³ M. Thornton *Privatising the Public University: The Case of Law* (2011); R. Collier (2013) “Privatizing the University and the New Political Economy of Socio-Legal Studies: Remaking the (Legal) Academic Subject” 49(3) *Journal of Law and Society* 450

interdisciplinary literature, that of ‘Critical University Studies’ (CUS).⁴ In recent years legal studies has also seen work emerge seeking to interrogate multifarious dimensions of this ‘neoliberal’ marketized law school and explore its consequences for law students and legal academics alike.⁵

For some law scholars, however, this work is troubling. Writing in a contribution to the 2020 edited collection *Imperatives for Legal Education Research: Then, Now and Tomorrow*, for example, David Dixon argues that Thornton and other legal academics he terms ‘left pessimists’ seek to advance a profoundly misreading and unduly pessimistic view of the complex shifts that have taken place in universities and their law schools in the years since the formation of the JLS in 1974.⁶ Thornton’s book, Dixon acknowledges, concludes as follows:

It is essential that we do not give up. Increasingly difficult though it is, we must cling valiantly to the idea of *university legal education as a public good* to overcome the impoverished imperatives of corporatisation, as a few radical thinkers have sought to do ... we must not languish in apathy and despair.⁷

In reflecting on how socio-legal studies has evolved in the forty years since the founding of the JLS, therefore, and against the backdrop of these debates about the marketization of universities, it is intriguing how Phil Thomas made an explicit reference, in a short speech at the SLSA conference dinner in 2012, to the original grounding of the journal as a home for

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⁴ This is a vast body of scholarship and I shall refer to selected studies below. For a flavour of more recent work see; R. Barcan *Academic Life and Labour in the New University: Hope and Other Choices* (2016); R. Hall *The Alienated Academic: The Struggle for Autonomy Inside the University* (2018); T. Pesta, S. Barrie and J. McLean ‘Academic Life in the Measured University: Pleasures, Paradoxes and Politics’ (2017) 36(3) *Higher Education Research and Development* 453. Y. Taylor and K. Lahad *Feeling Academic in the Neoliberal University: Feminist Flights, Fights and Failures* (2018).

⁵ See, for example, M. Thornton, ‘The Case of Law Student Wellbeing: A Neoliberal Conundrum’ (2016) 58(2) *Australian Universities Review* 42; M. Thornton (ed), *Through a Glass Darkly: The Social Sciences Look at the Neoliberal University* (2015); P. Baron, “‘Sleight of Hand’: Lawyer Distress and the Attribution of Responsibility’ (2014) 23(2) *Griffith Law Review* 26; R. Collier ‘Wellbeing in the Legal Profession: reflections on recent developments (or, what do we talk about when we talk about wellbeing?)’ (2016) 23(1) *International Journal of the Legal Profession* 41; R. Collier, “‘Love Law, Love Life’: Neo-Liberalism, Wellbeing and Gender in the Legal Profession – The Case of Law School’ (2014) 17(2) *Legal Ethics* 202; C. Parker, ‘The “moral panic” over psychological wellbeing in the legal profession: a personal or political ethical response?’ (2014) 37(3) *University of New South Wales Law Journal* 1103; J. Clare Wilson and C. Strevens, ‘Perceptions of Psychological Well-being in UK Law Academics’ (2018) 52(3) *The Law Teacher* 335.

⁶ D. Dixon ‘The Poverty of Pessimism’ in *Imperatives for Legal Education Research: Then, Now and Tomorrow* ed. B. Golder, M. Nehme, A. Steel and P. Vines (2020) 49. See also F. Cownie and T. Bradney ‘Gothic Horror? A Response to Margaret Thornton’ (2005) 14 *Social and Legal Studies* 277

⁷ Thornton op. cit n 2 at p 228, my emphasis.

critical, contextual scholarship,⁸ for, precisely, ‘radical thought’; and how, notwithstanding the changes in the landscape of legal education and research over the intervening years (see below), there remained an urgent need for socio-legal studies to remain ever vigilant and self-reflective with regard to the social, political and economic contexts in which legal academic work is undertaken. In this regard the JLS, like Phil Thomas’s work and writing more generally, can be broadly aligned with a political commitment to both social justice and a critical, contextual study of law; an approach to law ‘in context’ that has pervaded the pages of this journal since its inception as a “leading British periodical for Socio-Legal Studies” offering “an interdisciplinary approach ... committed to achieving a broad international appeal ... and addressing issues from a range of legal cultures, as well as theoretical concerns of cross- cultural interest.”⁹

This article, in the context of a collection discussing the career and contribution of Phil Thomas to socio-legal studies, seeks to unpack selected aspects of this debate and the shifting terrain of legal scholarship; and, more specifically, explore the extent to which his warning in 2012 anticipated changes to come in the political economy of socio-legal research. Is it the case, as some have suggested, that ‘we’re all socio-legal now’?; the inhabitants of a ‘liberal law school’ in which socio-legal studies is not just accepted but has become, if anything, the ‘new normal’?¹⁰ Is David Dixon correct in his argument that while ‘left pessimists’ may “identify some real problems, they misdiagnose them, thereby discrediting critical positions and perversely strengthening what they oppose”?¹¹ Or may the picture, in fact, be rather different, more complex and, I shall suggest below, contradictory?

The Focus of Discussion

Many examples and themes could be used as a case study or focus for discussion of these issues, and I have recently considered elsewhere shifting conceptualisations of the place of

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⁸ See also P.Thomas ‘Socio-Legal Studies: The Case of Disappearing Fleas and Bustards’ in *Socio-Legal Studies* ed. P.Thomas (1997).

⁹ <<https://onlinelibrary.wiley.com/page/journal/14676478/homepage/productinformation.html>>

¹⁰ See for example A.Bradney *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (2003); F.Cownie, *Legal Academics: Culture and Identities* (2004).

¹¹ Dixon op cit. n 6

men and masculinities in relation to changes in university law schools¹² and equality, diversity and inclusion agendas in contemporary legal profession(s) within a global frame.¹³ In what follows I shall interweave an analysis of this shifting political economy of socio-legal studies with consideration of another topic, one that has assumed an increasingly high profile across university law schools and legal communities internationally; that of wellbeing and mental health and, in this specific context, the wellbeing of legal academics. The article here seeks to contribute to understanding of the “private life” of university law schools addressed by Fiona Cownie in her 2004 book *Legal Academics*, as well as the shifting social conditions in which academic labour is undertaken to which Phil Thomas referred in 2012.¹⁴ The article further aligns with a growing body of work that is seeking to explore the interconnections between this ‘neo-liberal’ law school and (legal) academic wellbeing and mental health.

Setting the Scene: Socio-Legal and Critical University Studies

As noted, recent years have witnessed an explosion of interdisciplinary work collectively termed ‘Critical University Studies’ (henceforth CUS); scholarship that seeks, quite explicitly, to address the wider political economy of academic work.¹⁵ The field of CUS has become a distinctive strand of academic scholarship. There exists a multitude of books and articles, special issues of journals, research reports and data sets concerned with diverse aspects of the evolution, core characteristics and wider social consequences of what has been termed, variously, the ‘neoliberal’ ‘corporatized’ or ‘marketized’ university.¹⁶ Numerous workshops, conferences and events have been held on the subject across disciplines, with an array of networks and campaigns forming that seek, in essence, to defend a model of the

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¹² R.Collier, “Rethinking Men, Masculinities and the Legal Academy: Or, Whatever Happened to the ‘Nuttty Professor?’” in U.Schultz (eds) *Gender and Careers in the Legal Academy* (in press).

¹³ R.Collier, “Masculinities and Legal Professions: Asking the ‘Man Question?’” in R. Abel and H.Sommerlad, with O Hammerslev and U Schultz (eds), *Lawyers in 21st-Century Societies: Comparative Perspectives* (in press).

¹⁴ F.Cownie op cit n 10.

¹⁵ Note for example the establishment in 2018 of a Critical Universities Studies Early Career Researcher Network <<http://www.crassh.cam.ac.uk/programmes/critical-university-studies-an-early-career-researcher-network-2018>>

¹⁶ For a flavour of this work, in addition to work cited above, see S. Collini *Speaking of Universities* (2017); A. McGettigan, *The Great University Gamble: Money, Markets and the Future of Higher Education* (2013); R. Brown and H. Carasso, *Everything for Sale? The Marketization of UK Higher Education* (2013); S.Collini, *What Are Universities For?* (2012); CC Morphew and PD Eckel (eds), *Privatizing the Public University: Perspectives from Across the Academy* (2009); V. Gillies and H. Lucey (eds), *Power, Knowledge and the Academy: The Institutional is Political* (2007); S. Slaughter and L. Leslie, *Academic Capitalism: Politics, Policies and the Entrepreneurial University* (1997).

‘public university to which Thornton referred in her conclusions above;¹⁷ a university commonly positioned as the product of the nexus of particular social and political forces - and, importantly, a model of funding of Higher Education - that was a context for the formation of the JLS in 1974. This engagement with political economy of academic labour is undoubtedly more developed in some disciplines than others (particularly advanced, for example, in sociology and geography). In legal scholarship internationally, nonetheless, we are seeing a range of attempts to explore multifarious dimensions of the neoliberal marketized law school and its consequences for legal education and research; for the law students, legal academics, managers and all staff who inhabit it.

In recent years, however, it is striking how the focus of much of this analysis of marketization, both in the context of law and other disciplines, has turned to the wider implications of the neoliberal university for the wellbeing and mental health of university students and staff, including (legal) academics. What, therefore, has been said in this work? To understand the broad trajectory of this engagement it is necessary, first, to locate these debates within a far broader engagement with wellbeing across the legal community.

Interrogating the ‘Neoliberal’ Law School: The Example of (Socio) Legal Academic Wellbeing and Mental Health

Over the past five years wellbeing and mental health has become an increasingly significant feature of the legal landscape in the UK. In legal practice interest in the topic is reflected across an array of practical initiatives, reports, articles and books, as well as substantial media coverage.¹⁸ Lawyer wellbeing is the focus of research studies and policy developments on the part of Law Societies, bodies representing junior lawyers, the judiciary, Bar and regulators such as the Bar Standards Board (BSB) and Solicitors Regulation Authority (SRA), as well as research by legal academics. The Covid-19 pandemic of 2020,

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¹⁷ <<http://publicuniversity.org.uk>>

¹⁸ See generally, for an introduction to the issues, E.Jones, N.Graffin, R.Samra and M.Lucassen *Mental Health and wellbeing in the Legal profession* (2020)

ongoing at the time of writing this paper, has accelerated this trend and redrawn these debates around wellbeing in the legal profession in complex and unpredictable ways.¹⁹

The wellbeing of law *students*, meanwhile, is a now well-established topic within legal studies internationally and the focus of a distinctive strand of law scholarship.²⁰ This work embraces a wide range of issues about legal education; questions, for example, about how wellness might be embedded within the law curriculum via ‘intentional design’ for wellbeing in law schools;²¹ explorations of the place of resilience and emotion within university legal education; discussions of the contribution that positive psychology, self-determination theory and therapeutic jurisprudence can each make to better understanding law student wellbeing and mental health.²² As with work on lawyer wellbeing, above, the UK literature has been particularly influenced by studies from Australia and, to a lesser degree, United States.²³ Yet across jurisdictions we see a central argument being made; not only have traditional law school teaching practices and cultures impacted in deleterious ways on law students; law schools and other providers of legal education themselves have an ethical obligation *to* engage with wellbeing and mental health issues, to ‘educate for wellbeing’. In the UK this is a debate driven, in particular, by a significant heightening of political and policy concern about a purported ‘crisis’ of wellbeing and mental health across the Higher Education sector;²⁴ a crisis that pre-existed Covid-19 but which the pandemic has accentuated.

University law schools across the UK Higher Education sector, in short, are now engaged in a debate about law student wellbeing that is shaping discussions about legal education in ways

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¹⁹ R.Collier ‘Towards a New Normal? Rethinking Wellbeing in the Legal profession after Covid-19’ <<http://slsblog.co.uk/blog/blog-posts/towards-a-new-normal-rethinking-wellbeing-in-the-legal-profession-after-covid-19/>>

²⁰ See in Jones et al op cit n 17; R. Field and C. Strevens (eds), *Educating for Well-Being in Law: Positive Professional Identities and Practice* (2019): Exemplifying the growing focus on law students in the media, C.Baksi, ‘Help us at hand for students struggling with Mental health’ *The Times Brief: Student Law Week* 19 February 2018 <<https://www.thetimesbrief.co.uk/users/39765-catherine-baksi/posts/30357-help-is-at-hand-for-students-struggling-with-mental-health>>

²¹ Field and Strevens (eds) Id.

²² E.Jones, *Emotions in the Law School: Transforming Legal education through the Passions* (2019): E. Jones, ‘Transforming Legal Education Through Emotions’ (2018) 38(3) *Legal Studies* 450

²³ See further R. Field, J. Duffy and C. James (eds), *Promoting Law Student and Lawyer Wellbeing in Australia and Beyond* (2016).

²⁴ See for example Higher Education Policy Institute *The Invisible Problem? Improving Students’ Mental Health* (2016): C. Thorley/IPPR, *Not by Degrees: Improving Student Mental Health in the UK’s Universities*, (2017); Universities UK, *Minding Our Future: Starting a Conversation about the support of student mental health* (2018), at: <<https://www.universitiesuk.ac.uk/minding-our-future>>

that would have been difficult to envisage at the time of the formation of the JLS in 1974. Indeed, student wellbeing has been seen by some as no less than part of the core function of the contemporary university. Writing in 2016, and developing her earlier critique in *Privatizing the Public University*, Thornton describes law student wellbeing as a ‘neo-liberal conundrum’;²⁵ an issue that cannot be understood *apart from* a consideration of the neoliberalisation of higher education as a primary cause of stress and poor mental health in law schools.

A question remains however - what of *legal academics*? More specifically, and addressing the changing political economy in which socio-legal work is undertaken – Phil Thomas’s concerns highlighted at the SLSA conference in 2012 - how do the arguments advanced within CUS scholarship and by legal academics such as Margaret Thornton – the very ideas that David Dixon takes issue with (see below) - relate to understandings of academic wellbeing and mental health? In the following section I shall explore in more depth how issues of wellbeing intersect with changes in the organisation of academic labour in ways that indicate Phil Thomas was indeed prescient to suggest socio-legal scholars remain vigilant with regard to the changing political economy in which legal academic work is undertaken.

What Is the Problem? Approaching (Legal) Academic Wellbeing

It has become commonplace across the literature on mental health in university law schools to acknowledge that the wellbeing of law students and those who teach them interconnect in a myriad of ways. The analogy ‘first put on your own oxygen mask’ has been widely used to capture the idea that, as Rachel Field and others have argued, it is not possible to promote law student wellbeing if the staff they encounter are not well equipped and/or competent to do so.²⁶ The interlinked nature of staff/student wellbeing is itself now well-recognised in cross-sector engagements with wellbeing in the UK Higher Education sector.²⁷

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²⁵ Thornton op. cit n 5.

²⁶ R. Field, C. Strevens, C. Wilson and C. James (2018) ‘Fit Your Own Oxygen Mask First: The well-being of Academics in Neoliberal Universities’ paper presented at *Wellbeing in a Changing World: the impact of technology and Innovation on the legal profession* conference, University of New South Wales, 15 November 2018.

²⁷ Universities UK 2018; #stepchange: *Mental Health in Higher Education*, available at: <http://www.universitiesuk.ac.uk/stepchange>

Drawing on the CUS scholarship discussed above, however, the central problem can be simply stated. A now substantial interdisciplinary research base exploring the emotional and affective consequences of the marketisation of the Higher Education and rise of the neoliberal university suggests that the organised practices, structures and cultures of UK universities are profoundly implicated in the current state of mental health of its members.²⁸ A considerable evidence base is highlighting the scale of poor mental health not only amongst UK university students, as above, but also university staff, including academics. The 2019 Higher Education Policy Institute Report *Pressure Vessels: The Epidemic of Poor Mental Health Among Higher Education Staff* is the most recent of a succession of studies and data sets highlighting the scale of poor staff wellbeing and mental health problems across the Higher Education sector.²⁹ Certainly, it is important to recognise the need for caution in reading across disciplines and institutions with regard to local and specific impacts of broader processes of marketization. Nonetheless, with regard to UK university law schools there is no reason to think UK legal academics as a diverse group are somehow immune from the pressures being described within the CUS scholarship interrogating the nature of this wellbeing problem in universities.

What, therefore, is being said? At the risk of greatly simplifying the arguments made within a rich and multi-layered literature, some key and recurring themes emerge in work exploring how the neoliberal university connects to the subjective wellbeing of university academics. Attention has focused, for example, on the consequences of an intensification of multitude of processes around the metricisation and audit of whole swathes of academic labour for the subjective wellbeing and mental health of academics; the social/personal and

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²⁸ See further, and generally, H. Radice, 'How We Got Here: UK Higher Education under Neoliberalism' (2013) 12(2) *ACME: An International Journal for Critical Geographies* 407; S. Slaughter and G. Rhoades (2000) 6 'The Neo-Liberal University' *New Labor Forum* 73.

²⁹ L. Morrish, *Pressure Vessels: The Epidemic of Poor Mental Health Among Higher Education Staff* (2019); Higher Education Policy Institute *Report Occasional Paper 20* (2019). Note also 'Higher Education Staff Suffer "Epidemic" of Poor Mental Health', *The Guardian*, 23 May 2019. HEPI Policy Note 13 (May 2019) *Measuring Wellbeing in Higher Education*, at <<https://www.hepi.ac.uk/2019/05/09/measuring-well-being-in-higher-education/>>; G. Kinman and S. Wray, *Work-Related Wellbeing in UK Higher Education – 2014* (London, UCU, 2015), at <https://www.researchgate.net/publication/319464567_Work-related_wellbeing_in_UK_Higher_Education-2014>; G. Kinman, 'Doing More with Less? Work and Wellbeing in Academics' (2014) 4(2) *Somatechnics* 219; G. Kinman, 'Pressure points: A Review of Stresses and Strains on UK academics' (2001) 21(4) *Educational Psychology* 473; J. GROVE (2018) 'Half of UK academics "suffer stress-linked mental health problems"', <<https://www.timeshighereducation.com/news/half-uk-academics-suffer-stress-linked-mental-health-problems>>

organisational/cultural consequences of the proliferation of national and global rankings that have come to pervade academic life and which have been associated with the rise of the ‘Data University’;³⁰ a host of systems and metric assemblages that enable rankings and differentiation, demarcating the ‘winners’ from ‘losers’.³¹

Studies have sought to explore multifarious aspects of new ‘structures of feeling’³² that have accompanied these changes within Higher Education and the consequences of workplace cultures shaped by a logic of the market and competition (whether between individuals or institutions); the host of seemingly relentless calculative competitions that have arisen from the embedding of new forms of performance management,³³ an increasing ‘quantified control’³⁴ of academics being positioned as new kind of entrepreneurial, corporate workers; a transformation of academic cultures marked, importantly, by a monetisation of more traditional academic values and a broader commodification of academic labour as quantifiable ‘outputs’.³⁵

What has emerged at a subjective level, meanwhile, in ways that track directly to the growing concerns about poor wellbeing and mental health difficulties, is a widespread sense of subjective anxiety associated, in one recent strand of work, with the rise of the ‘anxious university’ as a discrete kind of neoliberal entity.³⁶ Across disciplines, including law, scholars

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³⁰ C. Knowles and R. Burrows, ‘The Impact of Impact’ (2014) 18(2) *Etnográfica* 237; L.D. Gonzales and A.M. Nunez, ‘The Ranking Regime and the Production of Knowledge: Implications for Academia’ (2014) 22 (31) *Education Policy Analysis Archives* 1; A. Fazackerley, ‘Universities’ league table obsession triggers mental health crisis fears’, *The Guardian*, 12 June 2018. R. Burrows, ‘Living with the h-index: metric assemblages in the contemporary academy’ (2012) 60(2) *The Sociological Review* 355.

³¹ R. Burrows, ‘Ancient cultures of conceit reloaded? A comparative look at the rise of metrics in higher education’ (2016), at <<https://blogs.lse.ac.uk/impactofsocialsciences/2016/02/29/ancient-cultures-of-conceit-reloaded>>

³² Burrows op cit. n 29.

³³ R. Watts, *Public Universities, Managerialism and the Value of Higher Education* (2017).

³⁴ Knowles and Burrows op. cit 29; D. Lupton, (2013) *The Academic Quantified Self*, at: <<https://simplysociology.wordpress.com/2013/10/14/the-academic-quantified-self/>>.

³⁵ Burrows op cit n 29. See further J. Chubb, ‘Academics fear the value of knowledge for its own sake is diminishing’ (2017) *The Conversation*, 19 June 2017, <<http://theconversation.com/academics-fear-the-value-of-knowledge-for-its-own-sake-is-diminishing-75341>>; B. Davies and P. Bansel, ‘Governmentality and Academic Work: Shaping the hearts and minds of academic workers’ (2010) 26(3) *Journal of Curriculum Theorizing* 5; J. Pack, *How the Neoliberalization of Academia Leads to Thoughtlessness: Arendt and the Modern University* (2018).

³⁶ Moorish op. cit n 28; R. Hall and K. Bowles, ‘Re-engineering Higher Education: The Subsumption of Academic Labour and the Exploitation of Anxiety’ (2016) 28 *Workplace: A Journal for Academic Labour* 30; L. Berg, E. Huijbens and H.G. Larsen, , ‘Producing Anxiety in the Neoliberal University’ (2016) 60(2) *The Canadian Geographer* 168. See generally D. Beer, ‘Is neoliberalism making you anxious? Metrics and the

have charted, via a range of methodologies including autobiographical work, the wider social consequences of the emergence of a commonplace subjective feeling of being always monitored and assessed;³⁷ a process that has resulted in a cultural normalisation of long working hours, of being ‘always on the treadmill’ and cultures of hyper-performance within an ‘accelerated academy’.³⁸

Elsewhere, studies have explored what it can mean at a subjective level to inhabit these organisations increasingly focused, at a multitude of levels, on the management of individual and institutional risks; for academics, the risk, for example, of been adjudged to not be internationally ‘excellent’ in research outputs, to have adequately tackled allocated workloads (such as around marking load) or to have failed to secure student satisfaction or particular levels of external funding (the latter, notably, the focus of extensive discussion following the recent suicides of UK academics);³⁹ and for organisations, the reputational and financial risks of the falling institutional ranking, poor student enrolment and so forth. This is the backdrop against which recent CUS scholarship is addressing the gendered, raced and classed dimensions of this anxious university; of how social backgrounds intersects with a widespread sense of ‘impostor syndrome’ in the academy,⁴⁰ commonplace fears of ‘being found out’, personal experiences of isolation and, in some instances, burnout.⁴¹ What we see in this work are accounts of how an emphasis on the impact, visibility and performance of academic labour, alongside injunctions towards a relentless performativity, are bringing about new configurations of social inequalities. Explorations of what Ros Gill has influentially termed the ‘hidden injuries’ of the neoliberal university reveals,⁴² in short, a picture of some

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production of uncertainty’ (2019) *LSE British Politics and Society* blog, at <http://blogs.lse.ac.uk/politicsandpolicy/55395-2/>

³⁷ See M. Pereira, *Power, Knowledge and Feminist Scholarship: An Ethnography of Academia* (2017).

³⁸ See for example M. Carrigan, ‘Life in the Accelerated Academy: Anxiety, Thrives, Demands Intensify and Metrics hold the Tangled Web Together’, at < <http://blogs.lse.ac.uk/impactofsocialsciences/2015/04/07/life-in-the-accelerated-academy-carrigan/> >

³⁹ S. Cassidy, ‘University Enquiry into Professor Stefan Grimm’s death’, *The Independent*, 28 November 2014; R Pells, ‘Cardiff plans review after suicide of ‘overworked’ lecturer’, *Times Higher Education*, 8 June 2018.

⁴⁰ M. Breeze, ‘Impostor syndrome as a public feeling’ in Y. Taylor and K. Lahad (eds), *Feeling Academic in the Neoliberal University: Feminist flights, fights and failures* (2018) at p. 199.

⁴¹ O.Sibai, B. Figueiredo and M. Chrinsina Ferreira, ‘Overworked and isolated: the rising epidemic of loneliness in academia’, *The Conversation*, 29 January 2019, at <<https://theconversation.com/overworked-and-isolated-the-rising-epidemic-of-loneliness-in-academia-110009>>

⁴² R. Gill, ‘Breaking the Silence: The Hidden Injuries of the Neoliberal University’ in R. Flood and R. Gill (eds), *Secrecy and Silence in the Research Process: Feminist Reflections* (2009).

significant physical and emotional costs attached to inhabiting cultures productive of hyper-competition, anxiety, shame, fear and uncertainty.⁴³

How does this link to law schools? I entered legal academia in 1988 and, like others of my generation, have experienced diverse aspects of the transformation that has occurred in universities and their law schools. These changes, I shall suggest in the following section, are double-edged, complex and do not lend themselves a single over-arching narrative; be it one that suggests ‘we’re all socio-legal now’ or that the kind of the critical, contextual scholarship to which the JLS has been committed is itself somehow a thing of the past.⁴⁴ The universities of 1974 and social context in which Phil Thomas established the JLS may seem another era to some readers of this collection (at the time of writing it certainly feels so to this author). However I suspect I am not alone in recognising the force of aspects of the above arguments about academic wellbeing both in my own life and those of many others in law schools. In the final section, therefore, I wish to chart a way through the arguments of David Dixon in his 2020 paper ‘The Poverty of Pessimism’ and the literature on wellbeing and the political economy of academic labour discussed above, and revisit this changing landscape of socio-legal scholarship.

Revisiting the Political Economy of Socio-Legal Studies

It is not possible, I have argued elsewhere, to extrapolate across the different fields of legal practice and legal academy in discussing wellbeing in the legal community.⁴⁵ Just as there is no unitary ‘wellbeing problem’ within a diverse and fragmented legal services sector, the specificities of UK law schools mediate how the issues discussed above are experienced at a local level and personally. Nonetheless, it is possible to discern some common themes in the growing literature on legal academic wellbeing and CUS scholarship; a set of issues and

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⁴³ Note J.Gove (2020) ‘Competition drives researchers to counselling – and exit door’, reporting that half of researchers have sought or wanted professional help to deal with anxiety or depression, and blaming competition and targets for creating an aggressive culture of bullying and overwork, at <https://www.timeshighereducation.com/news/competition-drives-researchers-counselling-and-exit-door>

⁴⁴ R.Collier, ‘We’re All Socio-Legal Now?’: Legal Education, Scholarship and the Global Knowledge Economy – Reflections on the UK Experience” (2004) 26 (4) *Sydney Law Review* 503.

⁴⁵ R. Collier, op cit 2016 n 5; R.Collier ‘Moving Across Silos: Legal Academic Wellbeing and the Legal Professions – Some Reflections on the UK Experience’ in J.Chan, P. Vines and M.Legg (eds) *Wellbeing in a Changing World: The Impact of Technology and innovation on the Legal Profession* (2020), at 311.

concerns that bear upon any understanding of the ‘private life’ of the contemporary law school. Indeed, I suggest, it is difficult to speak *of* the landscape of Higher Education in the UK without at least acknowledging these discussions around wellbeing and mental health in universities, something the ongoing Covid-19 pandemic has all too clearly accentuated.

Is David Dixon accurate, therefore, in arguing legal scholars and ‘left pessimists’ such as Thornton and others – I might include myself here – present “excessively pessimistic, inaccurate accounts, ignoring achievements and marginalising difference and resistance?”⁴⁶ Central to Dixon’s paper is the claim that the work of left pessimists – and by extension, core tenets of the CUS literature – tends to be characterised by five features; first, a tendency towards a nostalgic and “rosy view of the past”,⁴⁷ an appeal to “the good old days” (such as, let us say, the time and context when the JLS was established in 1974); second, to a ‘glass half-empty’ view which simplifies complex processes by emphasising problems, focusing on “the failings, but never the achievements”; third, a ‘good is bad’ perspective marked by a contrariness that “either ignore[es] evidence running contrary to their thesis or claiming that it is merely the exception that proves the rule”; fourth, an antagonism towards the object of study, in this case the contemporary university, and especially, in some accounts, its senior management; and, finally, an overriding sense of ‘we’re doomed’, an overarching pessimism about the possibilities of change.⁴⁸

Within the context of recent debates around wellbeing in the legal community there has certainly at times been a tendency for neo-liberalism, a deeply contested notion, to be under-theorised and applied in a rather broad-brush way.⁴⁹ Dixon’s paper valuably draws attention to the subjective complexities, the pleasures, rewards, seductions and contradictions of inhabiting a purportedly marketized, managerial and metricised law school. With regard to the issue of resistance and pessimism, however, Thornton’s book, as noted above, concludes with a plea to “cling valiantly to the idea of university legal education as a public good”;⁵⁰ to defend the kind of ‘radical thought’ published in the JLS. A closer reading of the CUS scholarship, in fact, reveals an array of political and discursive strategies and at times specific

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⁴⁶ Dixon op cit. n 5 p 49

⁴⁷ Id p 50

⁴⁸ Id.

⁴⁹ See further Collier op cit n 3 2013.

⁵⁰ Thornton op cit n 3 p 228.

examples, of attempts across countries precisely to *resist* and remodel the ‘managed’ university.⁵¹ Liz Moorish and the UK Analogue University’s 2016 account of academic identities in the neoliberal university, for example, charts one case study of resistance to management by metrics, illustrating how collegial action can be fostered to work towards research improvement.⁵² Wellbeing, however, has become a part of a far broader set of counter narratives to neoliberalism evident in attempts to reposition wellbeing as a ‘force of change’,⁵³ to develop new ways of working that might challenge traditional work cultures and organisational structures; to resist the marketised neoliberal university and re-envision what a ‘good university’ might be;⁵⁴ urging academic staff to ‘slow down’, for example, to take time *away from work*;⁵⁵ to be, in the title of Berg and Seeber’s 2016 book, a ‘slow professor’.⁵⁶ This is a particular theme in recent feminist scholarship exploring the particular challenges facing feminism within a marketised academy.⁵⁷

Contra Dixon’s charge of looking at the past through ‘rose coloured glasses’, meanwhile, much, if by no means all, of the CUS literature, including commentary within the context of law schools, has in fact been cognisant of the highly problematic, hierarchical and exclusionary nature of academic life in the past; the dangers of evoking of a “sense of change for the worse ... of a more or less golden earlier period”; “these were”, for some who remember university law schools of the not too distant past, “not so jolly times.”⁵⁸ Concerns about the increasingly ‘business like’ nature of universities, it is important to remember, were already resonate at the time the JLS was founded in 1974, just a few years on from E. P.

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⁵¹ See for example M. Heath and P. Burdon, ‘Academic Resistance to the Neoliberal University’ (2013) 23(2) *Legal Education Review* 379; The Analogue University, ‘Correlation in the Data University: Understanding and Challenging Targets-based Performance-management in Higher Education’ (2019) 18(6) *ACME: An International Journal for Critical Geographies* 1184.

⁵² L. Moorish and The Analogue University, ‘Academic Identities in the Managed University: Neoliberalism and Resistance at Newcastle University UK’ (2017) 59(2) *Australian Universities Review* 23.

⁵³ J Chan, ‘Conceptualising Legal Culture and Lawyering Stress’ (2014) 21(2) *International Journal of the Legal Profession* 213.

⁵⁴ R. Connell, *The Good University: What Universities Actually Do and Why it’s Time for Radical Change*, (2019).

⁵⁵ Y. Hartman and S. Darab, ‘A call for slow scholarship: A case study on the intensification of academic life and its implications for policy’ (2012) 34(1)–(2) *Review of Education, Pedagogy, and Cultural Studies* 49.

⁵⁶ M. Berg and B. Seeber, *The Slow Professor: Challenging the Culture of Speed in the Academy* (2016); Also Mountz et al., ‘For Slow Scholarship: A Feminist Politics of Resistance through Collective Action in the Neoliberal University’ (2015) 14(4) *ACME: An International E-Journal for Critical Geographies* 1235.

⁵⁷ See, for example, M. Pereria, “‘Feminist theory is proper knowledge but ...’: The status of feminist scholarship in the academy’ (2012) 13(3) *Feminist Theory* 283

⁵⁸ A. Norrie, “These Are The Days”, *The Reporter* (Winter 2011) p 1.

Thompson's 1970 book *Warwick University Ltd: Industry, Management and the Universities*.⁵⁹

Far from taking a 'glass half empty' view critical studies in law here acknowledge that in many respects legal scholarship, albeit with different inflections across sub-fields of legal study and institutions, is more diverse, plural and open to socio-legal and critical approaches than it was in 1974. Alongside the growth of numerous socio-legal journals and book series over the intervening years, simply by way of example, feminist scholarship, legal work on race, ethnicity, class and post-colonialism, on sexuality, sex/gender and queer theory, attempts to de-essentialise gender grounded in a cis-male body and so much more have each become key features of UK legal scholarship and university law schools in ways that would have been difficult to predict in 1974. Work on law and literature, history, art, film, popular culture, law and affect, emotion, disability, vulnerability and care have transformed the scope of legal studies. This research, alongside work analysing the discourse of legal education bringing together research, theory and practice, exemplify legal scholarship the product of a very different geo-political conjuncture to forty years ago.

Looking to the staffing of law schools, meanwhile, the *British Academics* depicted in Halsey and Trow's 1971 book were, as Celia Wells later observed in the pages of JLS, in all likelihood white, male and middle-class.⁶⁰ The form of community in which this academic participated was marked by as a white middle-class, male collegiality.⁶¹ It is this ostensibly 'liberal' autonomous regime of the old universities, a form of 'clubbable' managerial control largely by men, and largely of men, that has, on one reading of the rise of liberal legal education, been disrupted by new managerial controls and the equality and diversity agendas with which they have been associated.

Yet it is also important I suggest, not to lose sight of the 'bigger picture'. An extensive body of work has tracked how the intersections of gender, race, ethnicity, health and socio-economic background *continue* to shape the contours of academic careers as well as the legal

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⁵⁹ E.P. Thompson, *Warwick University Ltd: Industry, Management and the Universities* (1970)

⁶⁰ A.H.Halsey and M.A.Trow, *The British Academics* (1971); C.Wells, 'Working Out Women in Law Schools' (2001) 21(1) *Legal Studies* 116.

⁶¹ J. Hearn 'Men, Managers and Management: The Case of Higher Education' in S. Whitehead and R. Moodley (eds) *Transforming Managers: Engendering Change in the Public Sector* (1999)

profession more generally in profound ways. A cursory look at the contemporary landscape and politics of Higher Education in the UK, meanwhile, reveals how questions of structural inequality, discrimination and violence remains endemic to institutions. To recognise as much is not to view the past through ‘rose coloured glasses’. Rather, the discussion of wellbeing above, and the specific concerns increasingly addressed in legal studies and the CUS literature, must be grounded in the context of wider social changes; questions, precisely, about neoliberal economies, growing social inequalities and rise of mental health problems within populations. The Covid-19 pandemic, for example, has revealed the scale of these wider social inequalities all too clearly at both a local/national and global level.

In any discussion of wellbeing and university law schools internationally, and locating wellbeing as a *social* and not simply a *professional* problem, therefore, if we look at the ‘global tides’ of a ‘market world’⁶² neoliberal economic agendas have accentuated the professional shifts detailed in recent work on both the changing legal profession and university law schools; stripping away, as Thornton argues, welfare law and social care provision across countries and fostering new (gendered, raced) social inequalities and divisions whilst maintaining and, indeed, enhancing the power of white male global elites.⁶³ In the period since Thornton’s book appeared in 2012 traditionally ‘mainstream’ politics and media, and norms and institutions of liberalism, have come under attack from nationalist and authoritarian forces in the UK, as elsewhere, as “neoliberal reforms have sought to elevate financial mechanisms and metrics about legal ones”.⁶⁴

These are issues that at first may seem far removed from a consideration of wellbeing in law schools. Yet, I suggest, they *frame* and provide the social context for a discussion of the issues relating to wellbeing that are addressed in the CUS literature; questions, for example, about the prevalence of ‘everyday sexism’⁶⁵ across social institutions, including the world’s legal professions⁶⁶ and in universities, exposed by an international #MeToo movement. Discussion of the political and economic context in which universities and their law schools

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⁶² R. Connell (2014) ‘Global Tides: The Market World and Gender Dynamics on a world scale’ 1(1) *Social Currents* 5

⁶³ R. Connell *Confronting Equality: Gender, Knowledge and Global Change* (2011)

⁶⁴ See further W. Davies *This is Not Normal: The Collapse of Liberal Britain* (2020) p 238.

⁶⁵ L. Bates, *Everyday Sexism* (2014) ch 4 ‘Young Women Learning’.

⁶⁶ International Bar Association *Us Too? Bullying and Harassment in the Legal profession* (2019) at <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.

now operate must also accommodate a recognition of how social processes associated with neoliberalism have provoked in recent years a virulent anti-feminism associated with the rise of nationalist and populist movements; in some accounts, a resurgence of white hetero-patriarchy and co-ordinated backlash against the social welfare and equality reforms of past decades. These developments raise questions about global political changes and heightened social inequalities. Indeed, social liberalism and the ideas of public responsibility for higher education that Thornton sees as being supplanted by neo-liberalism may themselves, as global political shifts over the last decade show, not least in the UK and United States, have been but an aberrant ‘blip’ in a far longer story. As Davies observes, writing in 2020 in the context of Covid-19, “neoliberalism has grown increasingly illiberal producing new mutations of nationalism and deregulation”,⁶⁷ and one feature of the dismantling of the liberal-legal state that Thornton addresses in *Privatizing the Public University* is precisely a replacing of:

...separate spaces of ‘enclosure’ with a ‘continuous network’, where everything is constantly connected to everything else. Leisure, work, education, healthcare, intimacy all blend into one, producing an exhausted individual who lacks any downtime or breaks.⁶⁸

At the time of writing this paper, therefore, with specific regard to the marketization of universities and their law schools, the ongoing Covid-19 pandemic and the debates taking place and leading the news in the UK about student and staff wellbeing in universities, alongside related concerns around public health and safety, raise fundamental questions about the limits and consequences of the market model of higher education discussed in the CUS literature and the critique advanced by Thornton and other legal scholars; how, as Simon Marginson has put it, ‘something has to give, and it won’t be the pandemic’; how a model is being expected to operate more or less as normal in a highly abnormal time, producing the uneasy tensions now seen across countries between the financial sustainability of universities (and their law schools), public health and welfare.⁶⁹

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⁶⁷ Davies op cit. p 240

⁶⁸ Id. p 239.

⁶⁹ S.Marginson (2020) ‘Covid 19 and the market model of Higher education: something has to give and it won’t be the pandemic’ at <<http://cdbu.org.uk/covid-19-and-the-market-model-of-higher-education-something-has-to-give-and-it-wont-be-the-pandemic/>>

Concluding Remarks

We have seen above a picture of pervasive and at times significant mental distress in the academic workplace; a growing concern across Higher Education in the UK about, and desire to challenge, stigma around the disclosure of mental health difficulties; accounts across disciplines of low personal accomplishment, depersonalisation and frequent sense of alienation; specific emotional and affective reactions to work, including exhaustion, stress, anxiety, unhappiness, overload, insomnia, shame, guilt, feelings of worthlessness, depression and, in some instances, suicidal ideation. In university law schools and the legal profession alike the recent wellness literature is seeking to address high levels of workplace stress associated, in particular, with increasing workload, poor work–life balance⁷⁰ and the wellbeing implications of new technologies blurring traditional distinctions between ‘work’ and ‘life’.

It is not unduly pessimistic about the possibilities for change to recognise that these problems around academic wellbeing closely align with the depiction in CUS scholarship of academic professional identities inflected by neoliberal imperatives; academics who are cast as entrepreneurial subjects, new kinds of business professionals and who, like lawyers, have experienced over past decades declining professional autonomy and status; individuals inhabiting workplaces marked by cultural and regulatory/performance management around the enactment of a particular kind of ‘enterprising self’. What we see in recent writing on wellbeing in universities, as in the legal profession, is how an institutional and individual complicity in cultural hyper-identification with work can itself serve to reproduce cultures of stigma around mental health problems. There is a need to recognise how the pleasures and rewards, financial and psychological, of identification with a particular professional ideal (and, indeed, as Dixon may acknowledge, management ideal) are enmeshed with a set of practices known to be detrimental to wellbeing; practices that can be accepted at least for

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⁷⁰ In addition to work cited above see, for example, *Times Higher Education*, *Work life balance survey 2018; long hours take their toll on academics* in E. Bothwell, ‘Get a life? No time for that’ *Times Higher Education*, 8–14 February 2018, 34–47. 8 February 2018, at: <https://www.timeshighereducation.com/features/work-life-balance-survey-2018-long-hours-take-their-toll-academics>

some of the life course but which, research on mental health suggests, tend to be revealed at particular times of life transition, vulnerability and personal crisis.⁷¹

An intersectional reading of wellbeing and neoliberalism reveals further connections; concerns, for example, around the increased precarity of many legal workers and, in universities, the difficulties that can face early-career academics in the context of new forms of classed, raced and gendered professional segmentations across the legal community (and where, once again, the impact of Covid-19 is relevant);⁷² how processes of professional socialisation and circulation of social, economic and cultural capital *continue* to function in ways that serve to reproduce social elites in a hierarchical education system; how these legal wellbeing debates are enmeshed with wider equality, diversity and inclusion issues, including concerns around discrimination, harassment and violence in what can, for some, be highly toxic workplace cultures.

To conclude. Far from seeing wellbeing as a marginal issue in relation to contemporary legal scholarship it is a topic, I have suggested, around which a broad set of concerns relating to the changing political economy of socio-legal research and structural and cultural changes coalesce. A closer interrogation of wellbeing reveals much about not only about what is happening in relation to the ‘private life’ of the contemporary law school; it also sheds light on the shifting social, political and economic contexts in which legal academic work is undertaken, the issue Phil Thomas addressed in 2012. Manifestations of distress within the legal community, be it in the context of lawyers, law students or legal academic staff, should not be understood simply in terms of individual pathology and located solely in a medicalised framework. It is important, rather, to locate these debates, as Thornton argues, within a political, economic and cultural context. The time has never been more important to defend the kinds of scholarship supported by the JLS and many other social-legal journals – work

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⁷¹ In the context of men in the legal profession see, for example, R. Collier, ‘Fatherhood, gender and the making of professional identity in large law firms: bringing men into the frame’ (2019) 15(1) *International Journal of Law in Context* 68.

⁷² See for example, H. Sommerlad, “‘A pit to put women in’: professionalism, work intensification, sexualisation and work–life balance in the legal profession in England and Wales’ (2016) 23(1) *International Journal of the Legal Profession* 61; S. Inge, ‘UK Universities rely on casual staff ‘for up to half of teaching’, *Times Higher Education*, 6 March 2018 <<https://www.timeshighereducation.com/news/uk-universities-rely-casual-staff-half-teaching>>; E (2020) ‘Casualised staff ‘dehumanised’ in UK universities’, at <<https://www.timeshighereducation.com/news/casualised-staff-dehumanised-uk-universities>> L Archer, ‘The New Neoliberal Subjects? Young/er academics’ constructions of professional identity’ (2008) 23(3) *Journal of Education Policy* 265.

focused on social justice, emancipatory programmes, progressive politics – at a moment when a realignment of political forces are attacking and reframing the tenets of the liberal society. When ‘push comes to shove’, as the Covid-19 pandemic has shown, the financialization of social life has consequences for universities and the wellbeing of those who inhabit them; and what once may have seemed the stable and ‘built to last’ structures and institutions of Higher Education would appear far more fragile than many of us may have thought. Far from engaging in ‘left pessimism’ or to end on a note of despondency this is to make the case for a defense of higher education not as an individualized “value for money” product, but as *public good*. It is to challenge a marketized demand-led model of education and call for maintaining critical socio-legal scholarship precisely of the kind published in the pages of the JLS since its inception.