I. AUTHENTIC HAPPINESS

This Article analyzes three questions: can, how, and should legal policy help people in their individual quests for authentic happiness. These questions immediately raise another, namely what is authentic happiness? Psychologist Martin Seligman introduced the phrase “authentic happiness” in the preface to his book of the same title: “[a]uthentic happiness comes from identifying your most fundamental strengths and using them every day in work, love play, and parenting.” What is authentic about authentic happiness is that “[w]hen well-being comes from engaging our strengths and virtues, our lives are imbued with authenticity.” Authentic happiness is thus about more than just experiencing a string of moments that feel good. An example of authentic happiness is being engaged in some activity that is valued, regardless of the presence or absence of positive subjective feelings. “Feelings are states, momentary occurrences that need not be recurring features of personality . . . . [S]trengths and virtues are the positive
characteristics that bring about good feeling and gratification." As opposed to a pleasure, a gratification requires utilizing one’s “strengths to rise to an occasion and meet a challenge.”

Psychologist Mihaly Csikszentmihalyi pioneered the study of flow, which is defined as “the state of gratification that we enter when we feel completely engaged in what we are doing.” People who experience flow often report that it felt like time had slowed down if not stopped entirely.

Seligman and fellow psychologist Edward B. Royzman classified traditional theories of happiness into three categories: (1) hedonism, which views happiness as experiencing positive subjective feelings; (2) desire theory, which views happiness as fulfilling subjective desires; and (3) objective list theory, which views happiness as achieving items from some objective list of worthwhile pursuits or things.

Authentic happiness conceives of three kinds of happy lives: a pleasant life, pursuing pleasurable feelings; a good life, utilizing one’s character strengths to achieve gratification and engagement; and a meaningful life, utilizing one’s character strengths in the service of something larger than oneself. A full life is a life that is at once pleasant, good, and meaningful. So, authentic happiness combines all three traditional theories of happiness in the sense that a pleasant life conceives of happiness in a hedonic sense, a good life conceives of happiness in a desire sense, and a meaningful life conceives of happiness in an objective list sense.

In 1998, when Seligman was President of the American Psychological Association, he proposed that it was time for science to analyze positive emotions and coined the phrase “positive psychology,” which “is the scientific study of the

5 Seligman, supra note 2, at 9.
6 Id.
8 Seligman, supra note 2, at 113.
10 Seligman, supra note 2, at 262–63; Seligman & Royzman, supra note 9.
11 See, e.g., Shelly L. Gable & Jonathan Haidt, What (and Why) is Positive Psychology?, 9 Rev. Gen. Psychol. 103, 103 (2005); Martin E. P.
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strengths and virtues that enable individuals and communities to thrive.”12 Positive psychology consists of three pillars: positive emotions, positive traits, and positive institutions.13 As with emotions generally, one can classify positive emotions by when they occur into “contentment with the past, happiness in the present, and hope for the future.”14 Positive traits include “strengths and virtues, such as the capacity for love and work, courage, compassion, resilience, creativity, curiosity, integrity, self-knowledge, moderation, self-control, and wisdom.”15 Positive institutions, “such as democracy, strong families, and free inquiry... support the virtues, which in turn support the positive emotions.”16 Clearly, legal policy can foster positive institutions.17

Seligman, Paul R. Verkuil, who is a former dean of Cardozo Law School, and another co-author, applied positive psychology to conclude that lawyer unhappiness is caused by their pessimism, large law firm junior associates’ low decision latitude, and the zero-sum nature of the adversarial system.18 Of course, their last cause of unhappiness of lawyers does not explain unhappy transactional attorneys who put deals together or unhappy litigators achieving positive-sum settlements. Several legal scholars recently

13. Id. Recently, Seligman revised his theoretical view of positive psychology to include three additional pillars: positive relationships and accomplishment, achievement, and success in and of itself. Martin E. P. Seligman, Panel Discussion at the 2007 Gallup International Positive Psychology Summit: The Future of Positive Psychology (Oct. 5, 2007).
15. Id.
16. SELIGMAN, supra note 2, at xiii.
examined what might make lawyers affirmatively happy.\textsuperscript{19}

Two Australian law professors claimed that we should evaluate laws by how they impact happiness rather than justice.\textsuperscript{20} Like a few other scholars, they argued that empirical data from happiness research supports very progressive taxation.\textsuperscript{21} But, a tax law scholar found current empirical data from happiness research to be lacking in providing support for a progressive consumption tax.\textsuperscript{22} One of these law professors attempted to apply positive psychology to corporate governance,\textsuperscript{23} in support of a case for shareholder empowerment.\textsuperscript{24} Other legal scholars have been quite skeptical of using positive psychology in a

\textsuperscript{19} Peter H. Huang & Rick Swedloff, Lawyer Happiness and Unhappiness in Law Firm Settings, 58 SYRACUSE L. REV. 335 (2008).


shareholder setting because there is no empirical data that supports this application, shareholders have disparate notions of happiness, and this application does not consider the costs of shareholder participation.25

There are now several undergraduate textbooks about positive psychology.26 There is also a rapidly increasing number of trade books about happiness authored by economists, epidemiologists, historians, psychologists, philosophers, and sociologists.27 Most of these popular books and the happiness research upon which they are based view happiness in terms of self-reported subjective well-being (SWB). SWB entails a hedonic view of happiness.28 Two


28 . See, e.g., WELL-BEING: FOUNDATIONS OF HEDONIC PSYCHOLOGY (Daniel Kahneman et al. eds., 1999); Daniel Kahneman & Alan B. Krueger, DEVELOPMENTS IN THE MEASUREMENT OF SUBJECTIVE WELL-BEING, J. ECON. PERSP.,
economists provide a sample of recent examples of utilizing empirical data from happiness research. An economist and a psychologist analyzed how to utilize SWB measures in policy contexts. Two economists recently provided empirical evidence that in the United States and member countries of the European Union over the last thirty-five years, women’s SWB has declined both absolutely and relatively to men’s SWB. Another economist proposed applying happiness research to immigration policy. But, a policy analyst recently questioned the reliability of current happiness research and the clarity of its policy implications even were that research deemed to be reliable. Philosophers have also examined recent psychological research about SWB. Several psychologists have proposed societal measures of SWB and subjective ill-being. Two
2008] AUTHENTIC HAPPINESS 761 economists cautioned against designing policy to maximize aggregate measures of SWB.36

Alan Greenspan, former Chairman of the Board of Governors of the Federal Reserve, claimed that measuring fear and euphoria could revolutionize economic forecasting.37 Psychologist Daniel Kahneman, 2002 economics Nobel Laureate and his economist colleague, Alan Krueger, advocated supplementing traditional economic objective measures of well-being, such as economic variables,38 with various measures of happiness and SWB.39 They proposed a particular measure called a U-index, defined as the proportion of time that an individual self-reports spending in an unpleasant emotional state, which they defined as one where the most intense self-reported feeling is negative.40 More generally they and three psychologists have advocated National Time Accounting (NTA) to measure social well-being based upon self-reported evaluations of time usage.41 Several economists have offered a number of criticisms of NTA.42

There are two perspectives from which to measure SWB, namely that of an experiencing self or a remembering self.43 Measurements of experiencing SWB can be conducted in real-time as they are experienced, as with the so-called "gold standard" of the Experience Sampling Method (ESM).44 Measurements of experienced SWB can also be performed after they are experienced, as with the Day Reconstruction Method (DRM).45 Measures of experienced SWB include psychologist Michael W. Fordyce’s emotions questionnaire,46 and the Positive and Negative Affect Schedule (PANAS) that consists of ten positive affects and ten negative affects.47

Different from either of these measures of experienced SWB are measures of evaluative SWB, such as the Authentic Happiness Inventory Questionnaire,48 psychologist Ed


Diener’s Satisfaction with Life Scale, and measures of global subjective happiness. A recent evaluative measure of SWB is the Gallup World Poll’s ladder of life satisfaction, which asks respondents:

[To imagine a ladder with steps numbered from 0 at the bottom to 10 at the top. Suppose we say that the top of the ladder represents the best possible life for you and the bottom of the ladder represents the worst possible life for you. If the top step is 10 and the bottom step is 0, on which step of the ladder do you feel you personally stand at the present time?]

Measurements of evaluative SWB entail a cognitive as well as an affective component, while measurements of experienced SWB entail only an affective component.

Authentic happiness is a form of happiness as self-
2008] AUTHENTIC HAPPINESS 763 validation, with its roots in Aristotle’s notion of eudaimonia. Buddhism entails a similar conception of genuine, mature, or true happiness that involves inner peace and personal meaning. Authentic happiness is also related to economic interpretations of meaning, measures of life engagement, measures of meaningfulness, measures of purpose, measures of personal expressiveness, measures of psychological well-being, measures of self-concordance, measures of self-determination, measures of subjective vitality, personal growth scales, regeneration through autonomously regulated tasks, and

59. Alan S. Waterman, Two Conceptions of Happiness: Contrasts of Personal Expressiveness (Eudaimonia) and Hedonic Enjoyment, 64 J. Personality & Soc. Psychol. 678 (1993).
64. Carol D. Ryff, Happiness is Everything, Or is It? Explorations on the Meaning of Psychological Well-Being, 57 J. Personality & Soc. Psychol. 1069 (1989).
self-validation through meaning rather than affect.\footnote{Michael L. Hughes, \textit{Affect, Meaning and Quality of Life}, 85 Soc. Forces 611 (2006).}

It is unclear what exactly those who self-report happiness and other forms of affect have in mind when they respond to survey questions. Thus, an important research agenda is to better understand how authentic happiness is related to existing measurements of happiness and more generally positive and negative affect. For example, the Gallup-Healthways Well-Being Index recently found that:

Among the top 10 days with highest levels of reported negative experiences, many were days that coincided with bad news from the financial markets. For instance, on Jan. 28, when the Commerce Department reported a drop in new home sales, 13% of respondents reported a lot of stress or worry without enjoyment or happiness during their day. About the same percentage of respondents reported a lot of stress or worry in March following the collapse of Bear Stearns and the subsequent intervention by the Fed. On April 2, when Federal Reserve Chairman Ben Bernanke made comments about a possible U.S. recession, 14% of Americans surveyed reported a lot of stress or worry.\footnote{Raksha Arora & James Hartner, \textit{Nearly Half as Many Americans Struggling as Thriving: Happiness and Enjoyment Tend to Peak on Weekends and Holidays}, Apr. 29, 2008, http://www.gallup.com/poll/106906/Nearly-Many-Americans-Struggling-Thriving.aspx.}

It remains unclear how exactly the above large amount of self-reported “stress or worry without enjoyment or happiness” translates into changes in authentic happiness.

\section{SELF-KNOWLEDGE: SIGNATURE STRENGTHS AND SELF-CONCORDANCE}

Seligman and another psychologist Christopher Peterson led a team of “top scholars in youth development, positive psychology, and biological and psychological classification (Systemics)”\footnote{VIA Institute on Character, History, http://www.viastrengths.org/AboutVIA/History/tabid/129/Default.aspx (last visited June 3, 2008).} in an exhaustive review of conceptualizations of positive human characteristics going back in time, across cultures, and across intellectual / religious / philosophical disciplines.\footnote{VIA Institute on Character, About VIA, http://www.viastrengths.org/AboutVIA/tabid/59/Default.aspx (last visited June 3, 2008).} This three-year project culminated in the identification of twenty-four human character strengths that are universally valued and malleable.\footnote{\textit{Id.}} Additionally, each of

\begin{itemize}
\item \footnote{Michael L. Hughes, \textit{Affect, Meaning and Quality of Life}, 85 Soc. Forces 611 (2006).}
\item \footnote{VIA Institute on Character, History, http://www.viastrengths.org/AboutVIA/History/tabid/129/Default.aspx (last visited June 3, 2008).}
\item \footnote{VIA Institute on Character, About VIA, http://www.viastrengths.org/AboutVIA/tabid/59/Default.aspx (last visited June 3, 2008).}
\item \textit{Id.}}
these strengths have roots in social science. These strengths nest within six general categories: Wisdom, Courage, Temperance, Humanity, Justice, and Transcendence.\(^71\) Each of these strengths is linked to an individual’s sense of self, valued for its own sake, and valued by almost every culture.\(^72\) Wisdom and knowledge consists of the cognitive strengths of creativity, curiosity, open-mindedness, love of learning, and perspective.\(^73\) Courage is divided into the emotional strengths of bravery, persistence, integrity, and vitality.\(^74\) Humanity is comprised of the interpersonal strengths of love, kindness, and social intelligence.\(^75\) Justice is made of the civic strengths of citizenship, fairness, and leadership.\(^76\) Temperance involves the strengths of forgiveness and mercy, humility/modesty, prudence, and self-regulation.\(^77\) Finally, transcendence contains the strengths of awe, appreciation of beauty and excellence, gratitude, hope, humor, and spirituality.\(^78\)

This classification system “is intended to be the opposite of the DSM (the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, which serves as a classification scheme of mental illness).”\(^79\) The Values in Action Institute (VIA) Inventory of Strengths is a self-report questionnaire of two hundred forty items that measures to what extent adult respondents possess each of the twenty-four strengths of character.\(^80\) This on-line survey requires approximately thirty minutes to complete, generates a report of one’s top five strengths, and compares one’s scores to the hundreds of thousands of people who have also taken the survey.\(^81\) There is a separate VIA


\(^72\) Character Strengths and Virtues, supra note 71, at 18–20, 23.

\(^73\) Id. at 29.

\(^74\) Id.

\(^75\) Id.

\(^76\) Id. at 30.

\(^77\) Id.

\(^78\) Id.

\(^79\) SELIGMAN, supra note 2, at 11 (emphasis omitted).


\(^81\) Id; Authentic Happiness, [http://www.authentichappiness.sas.upenn](http://www.authentichappiness.sas.upenn).
Strength Survey for children. So, what is the point of learning one’s signature strengths? Martin Seligman eloquently states a reason for knowing one’s signature strengths: “I do not believe that you should devote overly much effort to correcting your weaknesses. Rather, I believe that the highest success in living and the deepest emotional satisfaction comes from building and using your signature strengths.”

Seligman’s belief is related to a similar human resources and personnel management philosophy of developing people’s strengths as opposed to working on their weaknesses. A specific example of such empirical self-knowledge of strengths is law professor Susan Daicoff’s analysis of research about lawyer psychology to conclude that there is a distinctive lawyer personality type.

Identifying your strengths can help you find new work that is personally fulfilling and meaningful or alter your current work to become more personally fulfilling and meaningful. Management and organizational behavior researcher, Amy Wrzesniewski, considered a trichotomy of how people can experience their work: as a job, career, or calling. If you experience your work to be a job, then you are motivated by a paycheck, see that job to be a chore or necessity, expect very little from your job, and look forward to a vacation and the weekend. If you experience your work to be a career, then you are motivated by advancement, see that career to be a contest, expect power and prestige from your career, and look forward to upward mobility. If you experience your work to be a calling, then
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you are motivated by that calling itself, see that calling to be a passion, expect a better world and fulfillment from your calling, and look forward to more work.90

There is another sense in which self-knowledge can help improve your happiness, namely by determining which of a number of strategies that researchers have found empirically lead to sustainable increases of happiness91 best fit you. Empirical and experimental research has provided evidence that intentional activities creating sustainable increases of self-reported happiness include: avoiding over-thinking and making social comparisons,92 committing to goals,93 cultivating optimism,94 developing coping strategies,95 expressing gratitude,96 having more flow...

90. Id.
94. See, e.g., Martin E. P. Seligman, LEARNED OPTIMISM: HOW TO CHANGE YOUR MIND AND YOUR LIFE (1991). But see, Manju Puri & David T. Robinson, Optimism and Economic Choice, 86 J. Fn. ECON. 71, 91-95 (2007) (proposing a novel measure of optimism and finding that although moderate optimists exhibit reasonable financial behavior, extreme optimists display imprudent financial behavior and habits); Jason M. Satterfield et al., Law School Performance Predicted by Explanatory Style, 15 BEHAVIORAL SCI. & L. 95, 98 (1997) (finding empirically that pessimistic law students had higher grade point averages and greater executive board membership on law reviews than optimists); Tali Sharot et al., Neural Mechanisms Mediating Optimism Bias, Nature, Nov. 1, 2007, at 102 (providing evidence of neurobiological basis of optimism, which may lead to poor planning in the case of extreme optimism); Robert Lee Hotz, Except in One Career, Our Brains Seem Built for Optimism, WALL ST. J., Nov. 9, 2007, at B1 (reporting on recent neuroscientific research that, except for lawyers, a positive outlook improves one’s well-being only in moderation).
experiences, learning to forgive, meditating, nurturing social relationships, physically exercising, practicing acts of kindness, practicing spirituality, and savoring life’s joys. It should be clear from introspection and intuition that people will not find all of these alternative programs for constructing happiness equally conducive and effective for their personalities, strengths, and situations.

For example, some categories of people will find that counting their blessings helps increase their happiness, but other types of people will find that counting their blessings does not help to increase their happiness, or actually reduces their happiness. Therefore, self-knowledge in general and knowledge of your strengths in particular enables you to choose happiness-increasing activities that fit you personally. This idea of tailoring happiness interventions to fit you is related to the idea that not one-size-fits-all students in (legal) education. Professor Sonja Lyubomirsky has developed a person-activity self-diagnostic tool that an individual can complete in fifteen to thirty minutes to generate a shortlist of four happiness-increasing activities that best fit a person. Her questions are based on

systematic empirical research about four different kinds of motivation, namely intrinsic motivation from inherent enjoyment and interest, identified motivation to express important values and beliefs, introjected motivation to avoid guilt or anxiousness, and external motivation to please others or for a reward.  

The reason for emphasizing intentional activities and outlook as opposed to circumstances in generating happiness, is that psychological research reveals that of the variance in people’s happiness, 50% can be attributed to genetics, only 10% to circumstances, and the remaining 40% to intentional activities and outlook. However, economists and legal policymakers have tended to focus on changing such objective circumstances as one’s income to improve one’s well-being. This difference between economists and psychologists is aptly summarized by economist Robert Frank, who has incorporated psychological findings into his economic research:

Psychologists may misapprehend the income-happiness link because they tend to work with analysis-of-variance models, which emphasize the proportion of variance attributable to various casual factors. In contrast, economists tend to work with statistical regression models, which emphasize the change in outcome that results from a given change in a casual factor. The regression approach calls our attention to the fact that even though income doesn’t explain a high proportion of the variance in happiness, a given change in income is nonetheless associated with a fairly large change in happiness. And for our purposes, that’s the important practical point: Significant increases in relative income give rise to significant increases in subjective well-being.

In fact, arguably the most often cited finding about happiness is the so-called “Easterlin paradox” which is named after economist Richard Easterlin who first alleged  

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109 Frank, Falling Behind, supra note 21, at 24.
that empirically there is no link between the level of economic development of countries and their average levels of happiness.\textsuperscript{110} Easterlin also claimed that there exists a satiation level of wealth after which countries did not experience increased SWB. Finally, Easterlin declared that there is no evidence that at any point in time, across nations, higher levels of gross domestic product are correlated with higher level of average happiness. These assertions are all the more surprising because it is the case that for any given moment in time, richer people are happier than poor ones in any given country. A large cottage industry of literature purports to explain this so-called paradox.\textsuperscript{111} Two leading explanations to reconcile these findings appeal to: (a) the phenomenon of hedonic adaptation whereby people behave as if they are on a hedonic treadmill,\textsuperscript{112} or (b) people’s happiness depend on their relative as opposed to absolute levels of income.\textsuperscript{113} Acceptance of Easterlin’s empirical conclusions has led many people to question policies of economic growth.\textsuperscript{114}


\textsuperscript{114} See, e.g., Carol Graham, \textit{Insights on Development from the Economics of Happiness}, 20 \textit{WORLD BANK RES. OBSERVER} 201 (2005); Christopher K. Hsee et al., \textit{Hedonomics: Bridging Decision Research with Happiness Research}, 3 \textit{PERSP. PSYCHOL. SCI.} 224 (2008).
recently some researchers question whether there is even really a paradox. In particular, two economists, Betsey Stevenson and Justin Wolfers, analyzed a number of rich datasets that spanned a number of recent decades and for a greater number of countries than Easterlin originally did. They found that a clear and positive link exists between national income and average levels of subjective well-being across countries. They also found no evidence of a satiation wealth level beyond which countries failed to have improved SWB. Finally, they found that greater economic development is associated with more people reporting enjoyment, smiles, and laughter.

III. LEGAL POLICY

Because happiness research, like information, generally is a public good, there is reason for policymakers to subsidize research about happiness and facilitate its dissemination. In particular, legal policymakers can help people develop self-knowledge through a variety of techniques. These range from educational campaigns, government sponsored websites, and monetary incentives, such as subsidies and tax breaks for self-assessment tools. Policymakers can also encourage, subsidize, or even force experimentation with different employment possibilities in order for people to learn whether they can utilize their signature strengths in various employment possibilities. Examples of such experimentation include the Amish tradition of rumspringa, hospital rotations for interns and residents, junior year abroad program for college students,

118. Rumspringa is a period for Amish teens to experiment with non-Amish traditions. See, e.g., DEVIL'S PLAYGROUND (Cinemax Reel Life 2002) (documenting teenagers during rumspringa).
pass/fail or no-credit options for elective courses, and rotating among practice specialties for law firm junior associates.

Research about happiness even from a purely hedonic perspective that does not involve authentic happiness can have legal and policy implications. For example, there is evidence that getting enough deep sleep has beneficial impacts upon happiness and health.119 Thus, policies that make it easier for people to have more deep sleep can be justified by not only increased safety and reduced accidents,120 but also making people happier and healthier. Examples of such policies range from government subsidization of simple plastic tooth guards to prevent teeth grinding during sleep to laws requiring that doctors have scheduled minimum off-duty time between working shifts.121 Another example of the possible health benefits of happiness include the finding that happier nations report lower levels of hypertension, based upon data from a sample of fifteen thousand randomly selected people in sixteen countries.122

Recent empirical and experimental research analyzes how and which exogenous and endogenous variables are correlated with various measures of happiness. Happiness research examines whether, and if so, then how, happiness is related to health, wealth, and other observable objective variables. Interdisciplinary studies have linked various measures of happiness to such biological and physiological variables as cardiovascular functioning,123 hypertension,124

120. Id. at 217–36 (noting safety concerns caused by lack of sleep).
124. Blanchflower & Oswald, supra note 122.
immune function, longevity, neural correlates, and sleep efficiency. Cross-sectional, experimental, and longitudinal studies offer evidence that happiness is not only correlated with career success, but often precedes measures of career success, job satisfaction, and income. Similarly, there is evidence from cross-sectional, experimental, and longitudinal studies that happiness is not only linked with, but also engenders success in such other domains besides work as friendship, health, and marriage.

Most people, when asked, will say that happiness is an important objective for themselves and their children. But what do people mean by happiness? Of course, people often also state that by happiness they do not just mean hedonic pleasure, but also personal meaning. It is correspondingly also important for policymakers to differentiate between merely hedonic notions of happiness and eudaimonic notions of happiness. The word happiness can mean not only hedonistic pleasure, but also more complex and nuanced concepts such as fulfillment, meaning, and purpose. Surely, only hedonists want an exclusively hedonic type of happiness. Similarly, parents want more for their children than that their children excel at only hedonism. Instead, most parents would like to raise their children to grow up to become adults leading full, meaningful, and purposeful lives. Analogously, the goal of legal policy should be to help

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125. See generally Sheldon Cohen et al., Emotional Style and Susceptibility to the Common Cold, 65 PSYCHOSOMATIC MED. 652 (2003); Sheldon Cohen et al., Positive Emotional Style Predicts Resistance to Illness After Experimental Exposure to Rhinovirus or Influenza A Virus, 68 PSYCHOSOMATIC MED. 809 (2006).
130. See generally Ed Diener et al., Dispositional Affect and Job Outcomes, 59 SOC. INDICATORS RES. 229 (2002).
individuals achieve not only a hedonic sense of happiness, but also to foster individual fulfillment, growth, meaning, and purpose. So, in what follows, happiness refers to not just pleasure or positive affect, but also meaning and purpose.

Thus, a first reason for legal policymakers to care about happiness is that people themselves do. But a second reason is that happiness is a public good that generates positive externalities. For example, preliminary findings have linked positive health and positive affect, suggesting that happiness is partly a public health issue. A third reason is that some aspects of happiness involve aggregation or coordination problems. For example, people report high levels of stress from commuting, but may find it difficult to find work located closer to home. Urban planners and policymakers may be able to abate this problem by providing incentives for employers to locate closer to employees.

Another example of a domain where policymakers can influence happiness and health is food consumption and obesity. People often eat more than they should, and admit to eating more than they wanted (from a health standpoint). This is a puzzle if we believe that people

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132. See generally Cohen & Pressman, supra note 126 (suggesting a correlation between positive affect and lower morbidity, decreased symptoms, decreased pain, and increased longevity among community-dwelling elderly); Sarah D. Pressman & Sheldon Cohen, Use of Social Words in Autobiographies and Longevity, 69 PSYCHOSOMATIC MED. 262 (2007) (suggesting an indirect relationship between social word use in autobiographies and longevity); Richman et al., supra note 126 (reporting correlations between increased hope and decreased likelihood of having or acquiring a disease, and increased curiosity with a decreased likelihood of hypertension and diabetes mellitus); Pressman & Cohen, supra note 126 (same); Richman et al., supra note 126 (same). See also Martin E.P. Seligman, Positive Health, 57 APPLIED PSYCHOL. (Supplement) 3 (2008) (proposing a new field of positive health).


135. See generally Heather Bednarek et al., Gluttony and Sloth:
always know what they like and choose to desire what they like. But, much of people's eating activity is mindless, subject to context, cues, environmental factors, mood, and situational influences, instead of being the consequence of deliberative consideration, mindfulness, and rational analysis. Marketing professor Brian Wansink has proposed a number of strategies for government and industry to jointly combat obesity, including marketing nutrition, and de-marketing obesity. An economist has argued that economic prosperity weakens people's self-control and reduces their well-being in many contexts, including food consumption. A pair of economists critically reviewed this argument, provided and reviewed evidence of a negative correlation between happiness and body mass index, and stressed instead of self-control, the importance of relative concerns in body weight. Of particular concern is childhood obesity, not only because much of people's eating habits are formed in their youth, but also because the social stigma attached to being an obese child can have serious adverse emotional and health consequences.

A final and more speculative illustration of how legal policymakers can foster authentic happiness is to consider whether and how to utilize research about meditation and happiness. A recent study involving a seven-week loving-


143. See generally VISIONS OF COMPASSION: WESTERN SCIENTISTS AND TIBETAN
kindness meditation intervention for professional adults found significant and sustained increases in a number of well-being measures over their baseline and over a control waitlist group. A brain imaging study suggested that long-time practitioners of concentration meditation developed abilities to effortlessly concentrate. One study found that experimental subjects who received training in a meditation exercise in addition to a personal happiness enhancement program, significantly improved on several SWB measures compared to subjects who only received instruction on the personal happiness enhancement program and control subjects who received no instruction. A randomized, placebo-controlled clinical trial study found that a sixteen-week training program in transcendental meditation improved blood pressure and insulin resistance as well as reduced several risk factors for coronary heart disease. A randomized, controlled study of a well-known and widely used eight-week clinical training program in mindfulness meditation in a work environment with healthy employees found positive demonstrable effects on brain and immune function. Another clinical intervention study with cancer patients found that increased mindfulness over time was related to decreased mood disturbance and reduced stress.

Professor of law Leonard Riskin has considered benefits
of mindfulness meditation to law students, lawyers, and their clients, as well as benefits of mindfulness meditation for alternative dispute resolution and mediation. Another legal scholar has proposed a more controversial, spiritual, and transformative view of how American lawyers can benefit from the practice of meditation. A recent case study and lawyer narrative suggested that meditation can help community lawyers advocating for economic justice.

A standard policy response to studies that link happiness with meditation is to support additional empirical and experimental research. Another traditional policy response to such research is to widely disseminate these findings to the public. But in addition to, or in lieu of, these policy responses based upon simple orthodox microeconomics, there are policy response that are based upon behavioral economics. A more interventionist policy response is to provide financial incentives, such as tax credits or deductions, to employers, health insurance providers, and individuals for engaging in meditation training. An even more interventionist policy response is to require that employers (above a certain size), health insurance providers, and public schools offer (possibly partially state funded or subsidized) optional meditation training programs. Finally, presumably the most interventionist (feasible) policy response is to require that meditation training programs be offered in public elementary and/or high schools.

How interventionist should policymakers act in this and any other context is a specific instance of a broader, lively, and recent debate among some (behavioral) economists and

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legal scholars about when and whether some form of paternalism is desirable or justifiable. Much of this debate focuses on people being subject to cognitive biases and utilizing heuristics as rationales for some type of paternalism. A noteworthy exception to such cognitively-based paternalism is a recent consideration of emotional paternalism.

A behavioral economist and his co-author who is a legal scholar have recently written a trade book about so-called libertarian paternalism which seeks to help individuals improve their decision-making by influencing their choices via judicious choice architecture. The originators of the phrase “libertarian paternalism” define it as “an approach that preserves freedom of choice but that authorizes both private and public institutions to steer people in directions that will promote their welfare.” By “choice architecture” they mean how choices are described, framed or presented, what happens if people make no active choice, which choices are offered, and similar contextual aspects of decision environments. A related concept is that of asymmetric paternalism, which seeks to help those individuals with problems making choices, without unduly burdening those people who have no problems with making choices. The originators of the phrase “asymmetric paternalism” explain that it is asymmetric because it “creates large benefits for those who make errors, while imposing little or no harm on those who are fully rational.”


157. Thaler & Sunstein, supra note 154, at 179.


159. Id. at 1212.
AS EXPECTED, MANY SCHOLARS HAVE PUT FORTH ANTI-PATERNALISM ARGUMENTS. A DETAILED EVALUATION OF THIS IMPORTANT DEBATE IS THE SUBJECT FOR ANOTHER TIME. But, three quick points are worthy noting here. First, I was once asked upon the start of a talk with discussion of some ideas related to paternalism, why the word “maternal” typically evokes positive connotations and emotions, but the word “paternal” usually evokes negative connotations and emotions. A member of that audience suggested that one reason is that mothers frame their interventions (e.g., “let me help you do that”) differently than fathers do (e.g., “do this and don’t do that”). Another member of the audience volunteered that dads and moms generally engage in different substantive types of parental interventions, perhaps due to a traditional sexual division of labor or outdated gender stereotypes.

Surely, differing perceptions about what being maternalistic versus being paternalistic mean reflect cultural and social conventions about gender roles. Interestingly, an online dictionary and thesaurus defines maternalism as “1. the quality of having or showing the tenderness and warmth and affection of or befitting a mother” and “2. motherly care; behaviour characteristic of a mother.”

160 See e.g., Claire A. Hill, Anti-Anti-Anti-Paternalism, 2 N.Y.U. J.L. & Liberty 444 (2007) (considering and rejecting arguments for libertarian paternalism based upon findings that people sometimes lack self-control and make mistakes); Gregory Mitchell, Libertarian Paternalism Is An Oxymoron, 99 NW. U. L. Rev. 1245 (2005) (arguing that upon close inspection the attempt by libertarian paternalism to reconcile the traditionally opposed concepts of libertarianism and paternalism fails to succeed); Douglas Glen Whitman & Mario J. Rizzo, Paternalist Slopes, 2 N.Y.U. J.L. & Liberty 411 (2007) (arguing that recent versions of paternalism exhibit considerable theoretical and empirical vagueness, therefore making them vulnerable to slippery slope concerns due to altered economic incentives, biases toward simple principles, deference to perceived authorities, enforcement needs, and reframing of the status quo); Glen Whitman, Against the New Paternalism: Internality and the Economics of Self-Control, Policy Analysis, Feb. 22, 2006, at 1 (critiquing paternalism that is based upon the notion that a person consists of multiple selves).

161 Peter H. Huang, Law and Human Flourishing: Happiness, Affective Neuroscience, and Paternalism, Presentation to the Law and the Emotions Conference, University of California, Berkeley, School of Law (Feb. 9, 2007).


mother; the practice of acting as a mother does toward her children.”

In contrast, another on-line encyclopedia defines paternalism, as “the interference of a state or an individual with another person, against their will, and justified by a claim that the person interfered with will be better off or protected from harm.”

Therefore, in what follows, the word paternalism is utilized following convention, but a better gender-neutral term is that of parentalism, which should evoke more neutral connotations and emotions than either maternalism or paternalism does.

Second, a recent and robust defense of so-called light paternalism embraces the metaphor of therapy for policies attempting to steer people towards better decisions without actually imposing those decisions, thus preserving individual autonomy by not being heavy-handed. If we are to seriously think of (behavioral) economists as therapists who have a professional code of ethics, then it is disturbing that part of the paper vigorously defending light paternalism is a section entitled “Harnessing Decision Biases to Improve Decision Making” in which there is a discussion of “a variety of behavioral regularities that can be exploited by the economist/therapist.” The notion is aptly summarized by the first sentence of that section: “[r]edirecting patterns of behavior that usually hurt people to help them instead is a common pattern among light paternalistic interventions.”

But, there is a clear danger in advocating that therapists exploit their clients, even if that exploitation is for the good of their clients. An alternative view of policy as therapy that resonates with positive psychology is to design policy that

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166 . Suber, supra note 165, at 632 (observing that paternalism “is a gender-neutral anagram of ‘paternalism’”).
168 . Id. at 225-29.
169 . Id. at 225.
170 . Id. at 225.
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draws upon the new field of positive therapy.171

Third, a standard if not the prototypical example of so-called asymmetric, libertarian, light, or soft paternalism is that of defaults. The story told is that because anyone can and is free to opt out of a default, there is no restriction of anyone’s freedom of choice and not much cost in moving to a non-default choice, especially if people can opt out of a default by one click of a computer mouse or check of a box. But, there is a lot of empirical behavioral economics and psychological evidence across many decision-making domains that defaults matter because they are sticky. We stick to defaults because we are lazy, mindless, or perhaps believe defaults possess a particular legitimacy. Hence the claim that defaults do not restrict anybody’s choices is at best just plain factually incorrect and is at worst simply disingenuous whether intentional or not. As a robust empirical matter, defaults only do not restrict how a small number of people choose, namely those few people who actually opt out of those defaults. Now it might be hard to avoid having defaults, that is force people always to actively choose, but all that means is that the choice of which defaults to have in place is often quite contentious and therefore will be hotly contested.

**CONCLUSIONS**

Legal policy obviously can help people in their individual quests for authentic happiness.172 There is also an already large and growing body of evidence that people make systematic mistakes in predicting what makes them happy.173 Recent affective neuroscience research provides evidence of a disjunction between two brain systems, those

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172. See Margit Tavits, *Representation, Corruption, and Subjective Well-Being*, 41 COMP. POL. STUD. 48, 48 (2008) (finding that high levels of corruption lead to significantly lower levels of reported SWB based upon cross-national data from sixty eight countries and survey data from sixteen European democracies).
of wanting and liking. Such differences between what people want and what they like offer the possibility that policy interventions might help people achieve outcomes they like if they suffer from mis-wanting. As to whether legal policy can help individuals achieve authentic happiness, evidence of happiness interventions means that legal policy can help individuals adopt such interventions. As to how legal policy can do so, there is a continuum of possibilities, ranging from simply funding research, disseminating it, making it financially easier to adopt such activities, and public provision of opportunities for engaging in happiness boosting activities.

Finally, the more difficult normative question is whether policymakers should facilitate authentic happiness. Do many people only want a hedonic notion of happiness as opposed to authentic happiness? Would most people like authentic happiness if they were to achieve it? Recent research indicating that authentic happiness is correlated with better emotional, mental, and physical health mean that policymakers can appeal to neoclassical microeconomics based positive externalities and public goods justifications for encouraging authentic happiness. But, there are perils and limitations of having policymakers facilitate authentic happiness because such policies are particularly susceptible to abuse given the open-ended things policymakers might deem as being necessary or helpful to promoting authentic happiness. One method to discipline policymakers in their behavior is to demand both ex ante and interim empirical


research evidence of policy efficacy in promoting authentic happiness as opposed to a merely higher hedonic happiness. Elected government officials clearly have incentives to implement policies that raise hedonistic forms of happiness. But, authentic happiness is another matter. An analogy is to parenting to placate or please children as opposed to what’s really in children’s best interests.

Ultimately, legal policy’s ability to influence and transform how people think could be the most important method to increase people’s levels of authentic happiness. The least intrusive and most fundamental way in which legal policy might be able to most effectively and positively affect society is by broadly disseminating information based upon positive psychology research in addition to providing individuals financial incentives and support required to comprehend, act upon, and apply such insights. Legal policy can raise people’s self-knowledge by promoting, sponsoring, and providing tax deductions for utilization of self-assessment tools. In order for learning information about positive psychology and your signature strengths to help you achieve greater authentic happiness, you must apply that data to your life. An analogy is to health information that people have, but do not act upon, such as the importance of physical exercise, and portion control in eating. In other words, legal policy to be effective must and should not only inform people, but help transform people in their attitudes, feelings, habits, perceptions, and thinking about what is authentic happiness. For example, legal policy can foster the view that learning to meditate is a personally valuable skill that parents and society can provide its youth. Then parents and the public in general may seek out meditation instruction for children. Just as most elementary schools and even daycare centers now offer computer instruction, they can also provide children with meditation classes.

177. Wansink, supra note 136.