



# Happiness Studies and Legal Policy

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positive affect, life judgments, satisfaction, subjective well-being,  
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## Abstract

Social scientists have conducted numerous empirical and experimental studies of self-reported happiness. This review focuses on two fundamental areas of research in happiness and law, namely alternative measures of happiness and various policies to foster happiness. There are many aspects, concepts, dimensions, and visions of happiness. Empirical findings often depend critically on which particular measure of happiness is analyzed. Happiness studies have applications to national well-being indices; policy evaluation; civil judicial and jury decision making about liability and damages in cases of sexual harassment, employment discrimination, and torts; optimal tax law design; family law; criminal sentencing; legal education; and legal practice. There are decision-making, health, productivity, and psychological benefits to various types of happiness. There are more or less paternalistic happiness interventions, including policies to encourage regular physical exercise, good sleep, and meditation. Hopefully, analysis of these topics offers exemplars of possibilities and limits to utilizing happiness studies in designing legal policy.

## INTRODUCTION

The U.S. Declaration of Independence holds it self-evident that among the inalienable rights that all people are endowed with is “the pursuit of happiness.” But what is happiness? How can and should happiness be measured? How does one achieve happiness and maintain it? How is happiness related to preferences that people seem to manifest in the choices they make? How is happiness correlated with autonomy, income, health, relationships, status, and other desirable things? Can and should legal policy facilitate happiness? These are questions that many individuals, philosophies, and societies have attempted to answer. Two recent strands of social science research seek empirical answers to such questions. One strand is built upon assessment of people’s feelings, such as the Positive and Negative Affect Scale (PANAS) (Watson & Clark 1994), a scale that highlights the important difference between the presence of positive affect and absence of negative affect, and their cognitive evaluations, such as the Satisfaction with Life Scale (Diener et al. 1985; Pavot et al. 1991; Pavot & Diener 1993, 2008). Another strand is based upon positive psychology (Siegel 2009) and involves assessment of people’s signature strengths and character virtues.<sup>1</sup> Two recent PBS programs discuss the findings of some happiness studies: *Happiness 101* hosted by positive psychologist Tal Ben-Sharar (2009) and *This Emotional Life* hosted by Psychology Professor Daniel Gilbert (2010).

An ever-growing number of social science studies examines happiness in diverse areas that have potential implications for legal policy, including activism (Klar & Kasser 2009), business cycle fluctuations (e.g., Di Tella & MacCulloch 2006), climate (e.g., Van de Vliert 2009), conspicuous consumption (e.g., Arrow & Dasgupta 2009), crime (e.g., Powdthavee 2005), divorce (e.g., Guven et al. 2009), economic development (e.g., Graham 2010), economic systems (Pryor 2009), environmental

quality (e.g., Welsch & Kühling 2009), ethics (James 2009), experiential purchases (Carter & Gilovich 2010), freedom of choice (e.g., Inglehart et al. 2008, Verme 2009), gender (e.g., Stevenson & Wolfers 2009), gender discrimination (Bjørnskov et al. 2009), generosity (e.g., Konow & Earley 2007), government (e.g., Helliwell & Huang 2008, Hessami 2010), home ownership (e.g., Diaz-Serrano 2009), immigration (Sawhill 2006), income inequality (e.g., Chapple et al. 2009), marriage (e.g., Soons et al. 2009), obesity (e.g., Graham 2010), physical activity and exercise (e.g., Biddle & Ekkekakis 2005), political ideology (Napier & Jost 2008), poverty (e.g., Van Praag & Ferreri-Carbonell 2008), political institutions (e.g., Frey 2008), race (e.g., Stevenson & Wolfers 2008b), sex (e.g., Clark & Oswald 2004), social context (e.g., Helliwell et al. 2010), status (e.g., Tryuts 2010, pp. 138–39), unemployment (e.g., Chadi 2010, Frey 2008, pp. 45–53), watching television (e.g., Frey 2008, pp. 93–105), terrorism (e.g., Frey 2008, pp. 143–47), and work (Warr 2007, Warr & Clapperton 2010). Not surprisingly, there are those who are critical of this plethora of happiness studies (Begley 2008) and its applications to legal policy, including some economists or legal academics (e.g., DeBow & Lee 2006, Fleurbaey et al. 2009, Johns & Ormerod 2007), philosophers (e.g., Feldman 2010, Haybron 2008, Nussbaum 2008), psychologists (e.g., Noren 2002), sociologists (Ehrenreich 2010), and others (e.g., Wilkinson 2007, Wilson 2009).

Scholars have proposed or critiqued specific applications of happiness studies to legal policymaking, such as cigarette taxation (Gruber & Mullainathan 2005), corporate governance (e.g., McConvill 2005), civil litigation (Bronsteen et al. 2008, Huang 2008c, Swedloff 2008), criminal punishment (Bagaric & McConvill 2005; Blumenthal 2005, 2009; Bronsteen et al. 2009), employment discrimination (Moss & Huang 2009), estate taxes (Trout & Buttar 2000), family law (Huntington 2009, 2011), income taxation (e.g., Griffith 2004, Layard 2005, Ring 2004, Weisbach 2008), legal education and practice (Huang &

<sup>1</sup><http://www.authentichappiness.sas.upenn.edu>, <http://www.viacharacter.org/VIASurvey/tabid/55/Default.aspx>.

Swedloff 2008; Levit & Linder 2008, 2010; Peterson & Peterson 2009), shareholder participation (Hutchison & Alley 2007, 2009; McConvill 2006), and torts (Bagenstos & Schlanger 2007; Oswald & Powdthavee 2008a,b; Sunstein 2008; Swedloff & Huang 2010; Ubel & Loewenstein 2008; Wang 2008).

This review does not attempt even to summarize all the findings of happiness studies (see Diener & Biswas-Diener 2008 for an excellent summary of much of this research). Nor does it review all the myriad potential applications of happiness studies to legal policy, as that project would require several volumes to document and would be dated upon its completion because more social science research about happiness appears almost daily. A recent book (Bok 2010) considers how governments might use happiness research to foster happiness, satisfaction, or well-being in several policy arenas (for a review, see Wolfe 2010). This review also does not focus on the important roles that positive institutions, law, and policy can play in fostering human flourishing (see Huang & Blumenthal 2009a,b). The goals of this review are much more modest, namely to focus on two fundamental areas of research in happiness and legal policy: (a) an analysis of alternative dimensions and measures of happiness and (b) legal policies intended to foster happiness. These two topics are exemplars of both the possibilities in and dangers of using happiness studies to design legal policy.

## METHODOLOGICAL ISSUES CONCERNING HAPPINESS STUDIES

Recent experimental studies find that what happiness means to people is not statically fixed over their lifetimes, but rather dynamically changes as they age, with younger people more likely to associate happiness with excitement, older people more likely to associate happiness with feeling peaceful. This change is driven primarily by increasing feelings of connectedness both temporally (to the present moment) and interpersonally (to

others) as people age (Kamvar et al. 2009; see also <http://www.wefeelfine.org>). This research also found that when younger adults completed a meditation based in a Buddhist tradition that increases connectedness, they like older adults defined happiness more as feeling peaceful than excited, compared with a control group of younger adults who did not complete that meditation who defined happiness more as feeling excited than peaceful. In other words, younger adults can be influenced to define happiness like older adults do. This conclusion reverberates with a Buddhist idea of happiness as contentment achieved by not wanting things to be other than as they are. A central Buddhist precept is that a person can end suffering by not clinging to anything. Whatever happiness means to a person, it can be assessed over these five interconnected constitutive domains: career, social, financial, physical, and community (Rath & Harter 2010).<sup>2</sup> The rest of this part of the review analyzes issues that are implicated by different formulations of and technological methods of measuring happiness. These include affective versus cognitive dimensions of happiness, hedonic versus eudaimonic visions of happiness, local or online measures of happiness versus global or remembered measures of happiness, and validity of alternative measures of happiness. How income and happiness are related provides a telling example of how empirical findings depend crucially on which particular measures of happiness researchers collect for analysis.

### Affective versus Cognitive Aspects of Happiness

Happiness has distinct but related components that can be divided into (at least) two categories (see, e.g., Bernanke 2010): (a) emotional, such as presence of positive affect, absence of negative affect, intensity of affect, or variance of affect,

<sup>2</sup><http://gmj.gallup.com/content/127643/Wellbeing-Need-Thrive.aspx>, <http://gmj.gallup.com/content/126884/Five-Essential-Elements-Wellbeing.aspx>.

feelings, or mood; and (b) cognitive, such as life evaluation, judgment, satisfaction, and meaning. An example of a question that measures feelings is: “Did you smile or laugh a lot yesterday?” An example of a question that measures life satisfaction is: “How satisfied are you with your life?” on a scale ranging from one to four or one to ten. Different people at different times place different weights on the importance of these aspects of happiness. In addition, people’s happiness, whether affective or cognitive, may concern their lives globally or only particular domains of life, such as family, work, consumption, or relationships. Survey questions can also be phrased in an open-ended fashion, such as in these examples from various surveys:

1. From the World Values Survey (<http://www.worldvaluessurvey.org>), conducted in over 80 countries every 5 years since 1990: “Taking all things together, would you say you are very happy, rather happy, not very happy, not happy at all?”
2. From the General Social Survey (<http://www.norc.org/GSS±Website>), administered in the United States semi-annually since 1972: “Taken all together, how would you say things are these days—would you say that you are very happy, pretty happy, or not too happy?”
3. From the Eurobarometer ([http://ec.europa.eu/public\\_opinion](http://ec.europa.eu/public_opinion)), performed on behalf of the European Commission every spring and fall since 1973: “On the whole are you very satisfied, fairly satisfied, not very satisfied or not at all satisfied with the life you lead?”
4. From the Latinobarometro (<http://www.latinobarometro.org>), carried out almost annually in 18 Latin American countries since 1995: “Generally speaking, would you say that you are: very happy, quite happy, not very happy, or not happy at all?”

Alternatively, a survey question can provide a frame of reference such as the self-anchoring ladder of life question: “Here is a picture of a ladder. Suppose we say that the top of the

ladder represents the best possible life for you and the bottom represents the worst possible life for you. Where on the ladder do you feel you personally stand at the present time?” This question comes from Cantril (1965) and has been reported on in the Gallup World Poll that started in 2005 and continually surveys people in over 150 countries, representing 95% of the earth’s adult population.<sup>3</sup>

Not surprisingly, answers to different but related questions about happiness or life satisfaction are correlated, but the correlation is less than perfect. For example, Cantril ladder scores and answers to numerical open-ended life satisfaction questions are usually highly correlated, but they often differ substantially; more importantly, current research neither explains these differences nor offers a strong theory as to which of these measures is better (Wolfers 2010). For example, Gallup found that happiness is not quite the opposite of stress (Pelham 2009). The phrasing of survey questions about happiness can also reference aspirations, expectations, the future, or the past. Finally, Vittersø et al. (2009) find evidence that whereas pleasurable feelings are overrated in statements of life satisfaction, feelings of engagement are underrepresented. This suggests that evaluation underlying life satisfaction judgments is tilted away from engagement and toward pleasure.

### Hedonic versus Eudaimonic Conceptions of Happiness

Happiness can also be divided into (a) a hedonic version exemplified by high frequencies of positive affect, low frequencies of negative affect, and evaluations of life as satisfying and (b) a eudaimonic version exemplified by flourishing, growth, meaning, and purpose and by partaking in activities that permit actualization of potential, skills, and talents.<sup>4</sup> This division has philosophical roots dating back to Aristotle,

<sup>3</sup><http://www.gallup.com/consulting/worldpoll/108076/Countries.aspx>.

<sup>4</sup><http://www.ppc.sas.upenn.edu/ppquestionnaires.htm>.

but Biswas-Diener et al. (2009) argue that such a dichotomy imposes costs and problems upon conducting empirical happiness research. This dichotomy just illustrates how multifaceted the concept of happiness is. The one word “happiness” on a survey questionnaire can bring to mind in respondents very different aspects of happiness including contentment, exuberance, joy, peace of mind, and serenity. Different cultural beliefs, norms, practices, and values influence self-reported happiness (e.g., Diener 2009b, Oishi 2010).

The difference between affective and cognitive aspects of happiness is related to the difference between hedonic and eudaimonic traditions of happiness. Because of these differences in happiness, research that finds correlations with alternative measures of happiness is more robust and useful than research that finds correlations with only positive affect, cognitive evaluations, or eudaimonic notions. For example, Urry et al. (2004) found that a neural correlate of greater left than right superior frontal activation was associated with higher levels of both hedonic well-being and eudaimonic well-being. Another example is provided by research finding that mindfulness is related to positive affect, life satisfaction, and eudaimonic well-being (e.g., Brown & Ryan 2003, Howell et al. 2010).

### Empirical Results of Happiness Studies Depend on What Happiness Questions Are Asked

Not surprisingly, but until recently vastly underappreciated, is that the exact happiness question researchers ask in surveys matters quite a lot as to what empirical happiness studies find. For example, favorable life circumstances explain about 20% of the variance in people’s life satisfaction but less than 2% of the variance in people’s experienced happiness; in particular, although married people and rich people report being more satisfied with their lives, they do not report being much happier moment by moment (Kahneman et al. 2010, p. 29). Another example of how empirical findings depend of which kind of happiness is being analyzed is how age is

correlated with people’s overall appraisal of their lives versus their positive and negative affective states (Stone et al. 2010).

A much debated example of how empirical relationships between happiness and variables of interest depend on how happiness is assessed is provided by the vast literature on happiness and income. Diener et al. (2010b,c, 2009a) and Graham et al. (2010) recently conclude that how income and happiness are related is quite sensitive to the method of measuring happiness (and income). Survey questions that are framed in economic or status terms generate a positive and linear relationship between (logarithm of) income and happiness both across and within countries (Deaton 2008, Stevenson & Wolfers 2008a), whereas affective or open-ended happiness survey questions find no such relationship (Easterlin 1974; Leonhardt 2008; Wolfers 2008a,b,c,d,e,f, 2009). Easterlin’s original findings that as countries get richer people in them are not happier and that richer countries are not or not by much happier than poorer countries have been cited numerous times for their policy implication that once people’s basic needs are met, policy should focus no longer upon economic growth, but instead upon increasing positive affect. But Stevenson & Wolfers’s findings that as countries get richer people in them do get happier and that richer countries are happier than poorer countries led to a reaffirmation of the importance of economic growth as a policy objective for improving subjective well-being. Happiness studies that find that more wealth leads people to self-report higher feelings of satisfaction with their lives effectively validate economists’ intuitions that higher national income raises a country’s subjective well-being. Most recently, psychologist and 2002 economics Nobel Laureate Daniel Kahneman and economist Angus Deaton conducted empirical studies that suggest that money does not necessarily make much of a difference in people’s moment-to-moment happiness (Gertner 2010), a notion of happiness that is distinct from their feelings of life satisfaction. Kahneman and Deaton find that income over about \$70,000 does little to improve how much individuals

enjoy their daily activities on a typical day. This raises a natural question of whether people want governments to help them go through their days not feeling misery or instead to increase their sense of life satisfaction? These two questions implicate very different policy choices. If people believe there is just one aspect of happiness that is or should be the goal of people and legal policy, then what is at stake for policymaking is huge. If, as is more reasonable and likely the case, both affective and cognitive dimensions of happiness do and should matter to people and governments, then less is at stake in terms of policy because the happiness studies together lead to a conclusion that economic growth matters but is not everything (Diener et al. 2010b,c).

Devoe & Pfeffer (2009) find a stronger connection between income and evaluations of subjective well-being for those who are paid by the hour as opposed to by salary. Even within the single cognitive dimension of happiness, positive and negative affects are more than just opposite ends of the same phenomenon because while increases in income have only a minor effect on high satisfaction they significantly reduce dissatisfaction (Boes & Winkelmann 2010). Also noteworthy are two points: First, small correlations between affective happiness and income nonetheless can translate into large mean differences in affective happiness between different income groups; and second, even small differences in the size of correlations between affective happiness and income can result in large differences in the affective happiness between the rich and poor (Lucas & Schimmack 2009). Finally, income and wealth are related to other emotions besides happiness or its absence, such as stress (Weiting et al. 2009).

### Alternative Techniques of Measuring Happiness

The gold standard of moment-by-moment self-reported affective measurement is the Experience Sampling Method (ESM), which asks people to stop at random times to record

their experienced feelings in real time (Hekter et al. 2007). A less expensive and less intrusive method of measuring happiness than generated by the ESM is the Day Reconstruction Method (DRM) that Kahneman et al. (2004) pioneered. The DRM is a set of diary-based survey techniques designed to measure how people spend their time and how they emotionally experience various activities in their lives. Survey respondents use procedures that are designed to mitigate recall biases to reconstruct their previous days' activities and affective experiences. It is well known that people systematically misforecast and misremember their affect (e.g., Gilbert 2006). In particular, people believe that future affect will be more intense and last longer than it does. Kahneman et al. (2010, p. 30) observe that such duration bias could be due to people simply forgetting to consider all of the hedonic benefits and costs of changes in their lived circumstances. Such a selective focus on just some hedonic benefits and costs may also have desirable individual motivational consequences and positive social externalities in terms of people consuming, investing, saving, or working more than they would otherwise. That emotions do not last long should not be surprising given that emotions help focus our attention on current events or stimuli that require action. In fact, what our attention is focused on influences our happiness (e.g., Gallagher 2009) because our affect and our cognition both depend on the objects of our attention (see, e.g., <http://www.theyearsareshort.com>). Indeed, it would be dysfunctional if some adult were continually to feel anger or happiness over events from kindergarten. But even short-lived emotions can have long-lasting and possibly irreversible consequences if they involve or lead to severe, drastic actions. For example, temporarily depressed individuals may commit suicide.

Kahneman & Krueger (2006) propose the U-index (U for undesirable or unpleasant) to measure the fraction of time that a person spends in an unpleasant state, defined to be a situation in which the most intensely felt emotion

is a negative feeling (chosen from these six: frustrated, depressed, hassled, angry, worried, or criticized). The U-index can be averaged over a sample of people for activities, overall, and over time periods. Because the U-index is aggregated based upon time, it has desirable cardinal properties for making comparisons across groups and time based upon individual self-reports using ordinal affective scales. The U-index mitigates impacts due to differences in how people interpret affective scales and so is particularly appropriate for cross-country comparisons that are possibly distorted by cultural and language differences in answering standard affect questions. The goal of minimizing a particular notion of misery such as the U-index is also likely to be more politically attractive than maximizing nebulous ideas of happiness. But, as Kahneman et al. (2010, p. 31) note, people care a lot about finding meaning in the narrative of their lives, and time per se does not matter that much in those life narratives compared with the quality of their life stories. When individuals evaluate their lives retrospectively, meaningful and memorable moments are what matters, not moments they spent in routine activities.

### Validity of Happiness Measures

Support for the validity of self-reported happiness measures comes from Blanchflower & Oswald (2008), who find that happier nations report systematically lower levels of hypertension. This finding suggests that high blood pressure readings could be a potential sign of mental strain and low national well-being. Blanchflower et al. (2009) find that inclusion of heart rate and systolic blood pressure improves the fit of mental well-being regression equations. People reporting positive affect have been found to have lower cortisol output; reduced neuroendocrine, inflammatory, and cardiovascular activity; and lower inflammatory markers, such as C-reactive protein and interleukin-6 (Stephens et al. 2009). Until recently, scholars generally believed that facial expressions such as the Duchenne smile could be used to reliably

identify genuine feelings of enjoyment, happiness, or pleasure (Krumhuber & Manstead 2009).

Additional support for the validity of self-reported happiness measures comes from Oswald & Wu (2009, 2010), who found across the 50 states in the United States and the District of Columbia that average self-reported happiness was correlated closely with estimated quality of life based upon only quantifiable objective indicators for each state, such as air quality; coastal land; commute time; cooling degree days; cost of living; environmental regulation leniency; federal land; hazardous waste sites; heating degree days; humidity; inland water; local and state expenditures on corrections facilities, higher education, highways, and public welfare; local taxes; public land; precipitation; student-teacher ratios; sunshine; temperature; wind speed; violent crime; and visitors to national and state parks. Another state-by-state analysis (Rentfrow et al. 2009) found self-reported happiness to be correlated with education, emotional stability, tolerance, and wealth (see Rampell 2009).

### LEGAL POLICY APPLICATIONS OF HAPPINESS STUDIES

This part of the review provides a selective and critical analysis of some of the many legal policy applications informed by happiness studies. The legal areas covered here include applying happiness studies to construct national well-being indices; evaluate legal policies and regulations; improve judicial and jury decision making in cases of sexual harassment, employment discrimination, and torts; reform civil procedure; design optimal tax laws; guide family law; improve criminal sentencing; enrich legal education; and enhance legal practice. Individual and social decision making, health, productivity, and psychological benefits to alternative types of happiness can justify legal policies that entail more or less paternalistic happiness interventions, including legal policies designed to foster continual physical exercise, good sleep, and meditation.

### National Well-Being Indices

Some psychologists propose national well-being indices (Diener et al. 2009b, Diener & Seligman 2004) to complement and supplement economic indicators. In a famous speech in 1968, Senator Robert F. Kennedy challenged the dominant use of gross domestic product (GDP) to measure a society's well-being and progress. In 2009, dissatisfaction with the prevailing GDP measure of a country's living standards motivated French president Nicolas Sarkozy to create the International Commission on the Measurement of Economic Performance and Social Progress (Stiglitz 2009). That commission's report (Stiglitz et al. 2009) discusses the U-index and other subjective measures of well-being. Fleurbaey (2009, pp. 1056–64) critically analyzes approaches to measuring individual well-being and social welfare in constructing alternative measures to GDP based upon happiness studies and concludes that happiness studies “ultimately condemn” the concept of utility “for being simplistic and reveal that subjective well-being cannot serve as a metric for social evaluation without serious precautions” (p. 1030). Frey & Stutzer (2000) caution that a government should not pursue the goal of maximizing social happiness as in a social welfare function because of Arrow's impossibility theorem and because of political economy problems. Frey & Stutzer (2009) point out additional objections to a goal of maximizing national happiness based upon two sets of perverse incentives: first, that of governments to manipulate happiness indicators and create new ones to suit their goals, and second, that of people to strategically misreport happiness levels to influence government policies. Duncan (2010) argues that happiness maximization should not be the goal of governments based upon ethical and empirical considerations.

Based upon the DRM of affective evaluations of time use, Krueger (2007, 2009) and Krueger et al. 2009 propose a set of methods known as National Time Accounting (NTA) to measure, analyze, and compare how people spend and experience their time across

countries and between groups of people in a country at one time or over time. Loewenstein (2009) points out that meaning, wisdom, values, and capabilities are among the things that are missing from NTA and the U-index. He proposes that NTA can be improved with questions that ask if a particular activity was a valuable or worthwhile use of time or a waste of time. The DRM intends to capture the flow of emotional experience during daily activities. White & Dolan (2009) extend the DRM to include thoughts in addition to feelings to provide a more comprehensive measure. They find that some activities that people rate low in affective pleasure, such as time spent with children and at work, are nevertheless thought of as rewarding and thus contribute to an individual's overall well-being. The finding that child care can lead to low or negative affect but provide a lot of meaning in one's life makes clear that happiness in an affective sense and a meaningfulness sense can diverge. It also explains why people may decide to become parents even if they fully anticipate and understand that doing so increases anxiety, stress, and worry.

### Policy Evaluation Based Upon Experienced Affect

Kahneman & Sugden (2005) propose evaluating environmental policies based upon measuring their impacts on experienced affect. Welsch & Kühling (2009) demonstrate how data on happiness provide a potentially effective and novel method of assessing monetary values of environmental amenities. Dolan & White (2007) suggest happiness data can provide a standard metric to ensure consistent policy-making across domains. Loewenstein & Ubel (2008) also argue that public policy should be informed by experienced affect in addition to more traditional choice or revealed preference methods.

Huang (2008d) advocates that financial rules and regulations should take into account their effects on investors' and others' affect, happiness, and trust. Examples of such effects include consumer optimism, financial stress,



anxiety that securities regulators did not deliberate thoroughly over proposed rules, investor confidence in securities disclosures, market exuberance, social moods, and subjective well-being. These psychological variables influence and are influenced by such traditional financial variables as consumer debt, expenditures, and wealth; corporate investment; initial public offerings; and securities market demand, liquidity, prices, supply, and volume. Huang (2008d) proposes that securities regulators can and should evaluate rules based upon measures of affect, happiness, and trust in addition to standard observable financial variables. Huang (2008d) concludes that despite their mandating that federal securities laws consider efficiency among other goals, the organic statutes of the United States Securities and Exchange Commission are indeterminate as to what efficiency should entail. Huang (2008d) illustrates analysis of affective impacts of such financial regulatory policies as mandatory securities disclosures; gun-jumping rules for publicly registered offerings; financial education or literacy campaigns; statutory or judicial default rules and menus; and continual reassessment and revision of rules. These regulatory policies both influence and are influenced by investors' and other people's affect, happiness, and trust. Thus, securities regulators can and should evaluate such affective impacts in order to design effective legal policy.

In a related vein, Vitarelli (2010) explains how measures of the influence of regulatory outcomes upon well-being and affect can supplement prevailing cost-benefit analysis. Such measures of well-being and affect address shortcomings of traditional cost-benefit analysis in the context of three regulations that have diverse impacts and that are representative of the current set of techniques employed in regulatory analysis (Vitarelli 2010): The first is an Environmental Protection Agency rule that governs mobile source air toxins. The second is a Department of Housing and Urban Development rule that governs the inspection, evaluation, and abatement of lead paint in federally subsidized housing. The third is a Department

of Homeland Security rule that governs the mandatory transmission of passenger manifests in advance of departure for inbound flights to the United States. Finally, Vitarelli (2010) analyzes legal regimes governing judicial review of agency decision making and indicates how failure to incorporate hedonic metrics may render agency actions vulnerable to challenge under the Administrative Procedure Act.

Dolan & White (2007) explain how subjective well-being data can both complement and supplement cost-benefit analysis. Bronsteen et al. (2010) propose that instead of using cost-benefit analysis, governments base policy upon a thin conception of individual subjective well-being that is defined as merely positive affect or good feelings. As Loewenstein & Ubel (2008, pp. 1801–2) cogently observe, there are non-affective components of well-being. Bronsteen et al. (2010) also impose a restrictive functional form for an individual's subjective well-being, namely the sum of that person's subjectively experienced moment-by-moment affect. But, as Kahneman et al. (2010, p. 31) point out, equally weighting all momentary affect appears almost absurd from a natural retrospective viewpoint of evaluating life because what people care about are moments in their lives that are meaningful and memorable as opposed to moments they spend on routine activities. Furthermore, experiencing a range or variety of emotions and feelings matters to people and is part of what it means to be alive (Loewenstein & Ubel 2008, p. 1802; Ubel & Loewenstein 2008, p. S206). This means that subjective well-being is a function of not only the sum or integral of momentary affect, but also the variance or higher moments of someone's time series of affect. Kenny & Kenny (2006) propose a definition of happiness that is more sensible and more suitable for policy; they define happiness in terms of three constituent parts they call contentment, welfare, and dignity. By contentment, they mean such cognitive evaluations as life satisfaction or self-reported subjective well-being. By welfare, they mean satisfaction of such physical requirements as drink, food, and shelter. By dignity, they mean three components: (a) autonomy,

choice, or control over one's life;(b) a life that is worthwhile, valuable, or meaningful; and (c) respect and prestige. Finally, although Bronsteen et al. (2010) argue that governments may soon be capable of aggregating subjective well-being, economist Kristoffersen (2010, pp. 118–20) concludes upon analyzing empirical and theoretical evidence that by its very nature subjective well-being is not meaningfully additive.

Harrison (2009) concludes that a direct focus upon only one particular concept of happiness raises several questions, such as whether feeling better off matters more than being better off and whether happiness as remembered or experienced should count more (Kahneman 2010). Harrison explains that outcome-oriented objectives including efficiency, happiness, or well-being ultimately have limited usefulness as objectives for legal policy. Harrison proposes changing legal policy's emphasis from outcomes to process, in particular decision-making processes. Harrison analyzes how law can foster a decision-making idea of decisional equity that addresses information imbalances, cognitive and psychic biases, and adaptations to perceived injustice.

Whatever definition of happiness one adopts for purposes of policy evaluation does not answer contested normative questions about how policy makers should trade off happiness and other socially desirable goals unless one takes an extreme position that happiness is all that matters and trumps everything else. Even then, there is a question of how policy makers should trade off levels of happiness measures over time because, like physical exercise, legal policies often entail accepting short-term unhappiness in return for achieving long-term happiness. Graham (2010) analyzes the paradox of happy peasants and miserable millionaires. Peasants who are poor in material resources can be happy because of lowered aspirations or adaptive expectations, whereas millionaires who are rich in material resources can be unhappy due to the frustration of unrealistic aspirations or from comparison effects with even wealthier peers. Should policy makers make peasants unhappy by raising their awareness of how really bad off

they are and thus raise their expectations, or should policy makers instead let ignorance be bliss? This difficult question highlights the fact that policy makers may care about not only how happy people are but also why they are happy or unhappy. Inappropriately being happy is not presumably what either individuals or policy makers desire. Happiness like other emotions provides information.

### Civil Judicial and Jury Decision Making Informed by Happiness Studies

Blumenthal (2005, pp. 202–4) points out how judges and juries may base their judgments on inaccurate affective forecasts concerning the reasonableness of a sexual harassment victim's perception of harassing activity or the reasonableness of her reactions. Moss & Huang (2009) analyze the legal policy implications of happiness studies for crucial issues regarding damages and liability in employment discrimination cases that litigators, judges, and the Supreme Court face regularly. Because emotional distress and punitive damages are limited, the basic damages available in employment discrimination cases are simply an employee's lost income. But a large robust body of happiness studies finds that being unemployed has a long-term scarring psychological effect of lowering ongoing subjective well-being and that people do adapt emotionally to unemployment even after becoming employed again. This research provides an empirical foundation for courts to make available and presume damages for emotional distress in all employment discrimination cases. Courts also do not draw any distinction between a failure to hire and a termination of a long-term employee, but happiness studies find that the latter typically suffers more affective and psychological losses, thus providing an empirical rationale for greater legal damages. Although effective antidiscrimination programs can shield employers from legal liability, employment discrimination cases and legal scholarship have little to say about which programs are effective. Happiness studies

finding that people think and problem solve best in positive emotional states (Fredrickson 2009) indicate that programs focused on negativity, such as that discrimination will cause a company to be sued, yield fear and backlash instead of productive employee effort, understanding, and empathy that lessen bias. Thus, happiness studies provide a valuable source of guidance for both employers and judges about how to design effective antidiscrimination programs.

Sunstein (2008) and Ubel & Loewenstein (2008) argue that happiness studies of affective forecasting about hedonic adaptation undermine jury awards of nonpecuniary damages.<sup>5</sup> Wang (2008) argues that these scholars overstate the problem. She believes that a nuanced understanding of overestimation and underestimation biases reveals that there is not a need for a new theory to justify compensating victims of catastrophic loss. She also criticizes the proposed solutions these scholars offer by carefully examining the underlying philosophical claims of the nonhedonic theories of well-being upon which their proposals are based. She concludes that while these theories may have appeal in other contexts, they are ill-suited and inappropriate for tort compensation. Swedloff & Huang (2010) conclude that legal hedonists understate the flexibility of the law and overstate dated empirical research on which their arguments are based. They point out how existing law already permits jurors to incorporate hedonic adaptation, and more importantly, laws compensate for a lot more than just emotional changes. Laws compensate for loss of capabilities, loss of emotional and experiential variety, and loss of options. They emphasize that recent social science studies document the incompleteness and variability of hedonic adaptation. They believe that judges and juries acting together appropriately individuate tort awards. They note that expert testimony may help jurors craft awards by providing information about both hedonic and nonhedonic losses.

<sup>5</sup>[http://www.boston.com/bostonglobe/ideas/articles/2009/05/10/perfectly\\_happy](http://www.boston.com/bostonglobe/ideas/articles/2009/05/10/perfectly_happy).

Bagenstos & Schlanger (2007) argue that courts should not award hedonic damages for disabling injuries because most able-bodied people cannot believe other than that disabled people's ability to enjoy life is limited by their disability. Most disabled people are able to adapt to their disability, however, and attain enjoyment in life. Bagenstos & Schlanger reject basing legal policy upon pity and instead stress that tort remedies must be judged not only by how much they provide victorious plaintiffs but also by whether procedures for awarding remedies are empowering or disempowering to disabled people. Bagenstos & Schlanger's emphasis on procedure is related to Harrison's (2009) focus on process and his notion of decisional equity.

Bronsteen et al. (2008) applies happiness studies about hedonic adaptation to argue that an unexplored benefit of prolonged tort litigation is that victims can adapt emotionally to even permanent injuries and therefore are more likely to settle and will settle for less than if their lawsuits proceeded faster. Swedloff (2008) offers some positive critiques of the data on which these arguments rely and on arguments about the litigation process and hedonic adaptation. He also considers the normative question of whether the judicial system ought to foster postadaptation settlements. Huang (2008c) emphasizes that happiness encompasses different perspectives including eudaimonia versus hedonics. This means that many people care about more than just happiness in the sense of positive affect. In particular, litigants may sue to seek justice, revenge, and other emotions besides happiness (Huang & Wu 1992), emotions in tort litigation can be cultural evaluations (Huang 2008b), and plaintiffs are often motivated by seeking identity and meaning. If plaintiffs fear losing litigation options (Grundfest & Huang 2006), they are less likely to settle and will settle for more than if their lawsuits proceeded faster. Social scientists now agree that hedonic adaptation can be very slow and remain incomplete after many years. Finally, fostering emotional adaptation by lengthy tort litigation raises ethical and normative questions.

### **Tax Law Informed by Happiness Studies**

Gruber & Mullainathan (2005) analyze U.S. and Canadian General Social Survey happiness data to find that increased cigarette sales taxes are associated with higher self-reported well-being levels of those having a propensity to smoke. In other words, excise taxes on cigarettes can benefit potential smokers by inducing reduced smoking despite paying more for cigarettes that are smoked. This empirical result is not consistent with a rational addiction model of smoking but supports several behavioral time-inconsistent models of smoking, meaning that cigarette taxes can function as self-control devices.

Based upon Easterlin's (1974) findings and happiness data that seem to support traditional diminishing marginal utility of income arguments (Stevenson & Wolfers 2010), Trout & Buttar (2000) propose redistributive inheritance taxes, and Griffith (2004) and Layard (2005) among others advocate more progressive income taxation. Ring (2004) questions whether happiness is a good proxy for measuring utility and raises concerns about relying on self-reported subjective well-being and how happiness studies should be interpreted and can be improved. Weisbach (2008) examines relative income and status effects on happiness and concludes that current empirical happiness studies do not provide the kind of data necessary to parameterize normative theoretical models and confidently make tax calculations to determine optimal tax rates. In particular, current empirical data fail to support a progressive consumption tax.

### **Family Law Informed by Happiness Studies**

Huntington (2009) analyzes the potential of happiness studies in general and positive psychology in particular to inform the what, why, and how of family law, but cautions that realizing such potential requires overcoming challenges in translating descriptive psychology into prescriptive family law policies. A central and robust finding in positive psychology is

that close interpersonal relationships are significantly correlated with subjective well-being and thriving communities. Huntington (2009) explains how current family law has a negative orientation that positive psychology potentially may change. Huntington (2009) observes that positive psychology is descriptively and normatively indeterminate. In particular, positive psychology provides unclear policy guidance, involves potential malleability of means to achieve happiness, raises contested issues regarding the role of the state, and implicates politically charged visions of what constitutes a happy family.

Huntington (2011) uses positive psychology to develop a new ideal for family law, a rationale for government regulation, and a means for achieving that goal, in essence, the what, why, and how of family law. Positive psychology informs "what" family law is about by providing an ideal of flourishing families, which forms a basis for a new theoretical framework for family law. Positive psychology informs the "why" of family law by demonstrating how societies benefit, both economically and socially, if families flourish. Finally, positive psychology informs "how" family law can work not by ready policy prescriptions, but instead by providing a metric to measure family law's success and offering some guidance on how to help families flourish.

### **Criminal Sentencing Informed by Happiness Studies**

Bagaric & McConvill (2005) propose that the principle of proportionality in criminal sentencing—that severity of a punishment should match seriousness of an offense—can be realized by measuring both offense seriousness and penalty severity by resulting unhappiness or pain. Their proposal assumes that such interpersonal comparisons of unhappiness or pain are meaningful. This proposal also would require surveying a statistically relevant number of victims and offenders, which raises ethical issues. Given that these surveys would involve averages of negative affect across many cases, actually matching punishments to crimes

on an individual case-by-case basis, raises additional moral and technical issues. Finally, such a proposal also has to contend with issues raised by hedonic adaptation. In particular, Bronsteen et al. (2009) argue that hedonic adaptation reduces the likelihood of proportionality in criminal sentencing.

Blumenthal (2005, pp. 193–202) points out how affective misforecasting and hedonic adaptation undercut some abolitionist claims of the psychological suffering and torture inmates experience on death row. Blumenthal (2005, pp. 189–92) further analyzes implications of hedonic adaptation and affective misforecasting for the use of victim impact statements (VIS) in capital punishment. Blumenthal (2009) conducted four empirical mock juror studies and found that VIS at capital sentencing increased the likelihood of death sentences, but expert testimony concerning affective forecasting reduced death sentences to a rate as if there were no VIS.

### Positive Externalities and Public Goods Aspects of Happiness

Gruen (2009) finds that people who self-report being happy seem to be more risk averse in making financial decisions and thus choose safer investments compared with people who self-report being unhappy. Self-reported happy people spend more time making decisions, have more self-control, expect to live longer, are more concerned with the future than the present, and expect less inflation. Happy people are more likely to have savings accounts, operating assets, and life insurance but are less likely to be stockholders and bondholders. Happy people also have a lower desire to invest in stocks because they find them too risky. Finally, happy people are less likely to smoke.

Several happiness studies have found that happier people are more productive. For example, Oswald et al. (2009) offers empirical data from two randomized trial design laboratory experiments that positive affect induces greater intrinsic motivation and produces large increases in productivity. In the first experiment, randomly assigned subjects had their

happiness levels increased by exposure to a ten-minute comedy film clip, while others in a control group did not. Those whose happiness was exogenously increased exhibited 12% greater productivity in a paid piece-rate task by increasing their output but not the per-piece quality of their work. The robustness and lasting nature of this kind of effect was demonstrated in a second laboratory experiment, in which having experienced family bereavement or serious life-threatening close family illness in the last two years were used as naturally occurring major real-world randomized unhappiness shocks. Those who had suffered such a bad life event were approximately 10% less productive in the same paid piece-rate task as utilized in the first experiment.

Fredrickson (2009) proposed the broaden-and-build theory of positive emotions, which suggests that certain positive emotions broaden an individual's cognitions and behavioral tendencies (see also [http://www.unc.edu/peplab/barb\\_fredrickson\\_page.html](http://www.unc.edu/peplab/barb_fredrickson_page.html)). These thoughts and actions in turn build up an individual's intellectual, physical, psychological, and social resources and skills over time. Controlled laboratory studies randomly assigned subjects to watch film clips that induce positive emotions such as amusement and contentment, negative emotions such as fear and sadness, or no emotions. Subjects who had felt positive emotions displayed greater creativity, gestalt perceptual focus, and inventiveness compared with subjects in either of the other two conditions. Longitudinal intervention studies found that positive emotions are crucial to developing such long-term resources as psychological resilience.

Heaphy & Dutton (2008) demonstrate that people's subjective experience of their work relationships has immediate, enduring, and consequential effects on their cardiovascular, immune, and neuroendocrine systems. In other words, high-quality workplace experiences and relationships result in positive physiological imprints upon employees' bodies. This research suggests that the physiology of positive social interactions builds human capacity, such as work recovery or engagement, and that

organizations can shape the physiology of employees by creating or minimizing opportunities for positive social interactions by organizational cultures, leadership, and practices.

Research finds that positive affect is correlated with better health, fewer symptoms, and less pain, but evidence concerning longevity and survival is mixed (e.g., Cohen & Pressman 2006). Overall the findings are provocative but not definitive because of conceptual and methodological limitations in addition to a need for better theoretical understandings. Graham (2008) observes that the relationship between happiness and health is more statistically robust than that between happiness and income. Causality appears to run in both directions in the positive relationship between health and happiness. Health shocks, like serious diseases or permanent disabilities, are linked to negative and often lasting effects on happiness. There is adaptation to health, and people's rising expectations for health standards influence both their self-reported health and happiness levels.

Happiness like other emotions can be correlated across people. Fowler & Christakis's (2008) longitudinal study over 20 years of more than 12,000 participants in a large social network finds that a person's self-reported happiness is associated with the self-reported happiness of people up to three degrees removed in the social network, such as friends of their friends' friends. Individuals surrounded by many happy people are more likely to become happy in the future. Happy people tend to be connected to one another. This research suggests that happiness is not only a function of individual choices and experiences, but also a property of collections of individuals. Statistical analysis found clusters of happy and unhappy people in the network that were significantly greater than expected by chance. The finding that happiness is a collective phenomenon means that legal policies that increase happiness can have multiplier effects. If a legal policy increases one individual's happiness, that person may cascade and have spillover effects upon others' happiness, thus enhancing the cost

effectiveness and happiness effects of that legal policy. It is crucial to determine whether correlations of happiness across people is causal or instead is a result of some third factor. This particular study found that happiness associations with others decayed with geographical distance. But the Internet's impact would have been small for part of the study period, 1971–2003. An open question is what results a similar happiness study conducted today with Internet-based social networks would find.

Another study found similarly that in a sample of 10,000 rural Chinese villagers, controlling for other factors, self-reported happiness depends positively on neighbors' self-reported happiness (Knight & Gunatilaka 2009). The authors' statistical analysis suggested that a major part of that relationship is causal and not just a reflection of the happiness of one's fellow villagers. In other words, villagers raise each other's happiness via their social interaction and bandwagon effects. Their appendix mathematically demonstrates that the aggregate multiplier effect on happiness is positive and nonexplosive if the coefficient of infectiousness lies between zero and one. Finally, the appendix proves that awareness of infectious happiness by those affected results in further increased happiness, via internalization of the happiness externality in addition to partial internalization of both positive and negative externalities.

### Happiness Interventions

One general concern with interventions designed to improve people's happiness is that they typically involve people having to make lasting changes in their lives, something that people usually find hard to do for emotional and psychological reasons (Heath & Heath 2010). A particular concern with measures of happiness and interventions designed to improve happiness is that much of the variance in self-reported happiness is due to genetics and personality (Weiss et al. 2008). Although researchers disagree over how much, happiness studies demonstrate that people can lastingly improve their happiness by engaging in certain activities and adopting certain mindsets

(Lyubomirsky 2007). The field of positive psychology focuses on a notion of happiness known as “authentic happiness.” Psychologist Martin Seligman (2002) introduced that phrase in the preface to his book of the same title. Authentic happiness is 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.

Huang (2008a) analyzes these questions: Can, how, and should legal policy help people in their individual quests for authentic happiness? 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 it can do so, a continuum of possibilities range from simply funding research to disseminating it, making it financially easier to adopt such activities via subsidies, tax credits, and tax deductions, and public provision of opportunities for engaging in happiness-boosting activities. Finally, the more difficult normative question is whether policy makers should facilitate authentic happiness. What if people desire only to pursue 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 means that policy makers can fall back on traditional neoclassical microeconomics-based positive externalities and public goods justifications for encouraging authentic happiness. But there are perils and limitations of having policy makers facilitate authentic happiness because such policies are particularly susceptible to abuse, given the open-ended things policy makers might deem as being necessary or helpful to promoting authentic happiness. One method to discipline policy makers 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 advocating what is really in children’s long-term best interests.

### **Fostering Happiness by Encouraging Good Sleep, Regular Exercise, and Meditation**

Differences in what happiness can mean to people implies that happiness studies that analyze multiple aspects of happiness provide a firmer and less controversial foundation to legal policy. For example, Steptoe et al. (2008) find in a cross-sectional study of 736 men and women aged 58–72 years that both positive affect and eudaimonic well-being are correlated with good sleep and could buffer impacts of psychosocial risk factors. These relationships are likely bidirectional, in the sense that positive psychological states promote better sleep, whereas disturbed sleep causes lower positive affect and reduced psychological well-being. It is perhaps not surprising that a good night’s sleep is highly predictive of self-reported happiness in both affective and cognitive senses. But taken seriously, this finding supplies additional rationales for policy makers to encourage and help all people and not just airline pilots, doctors, medical residents, and truck drivers get a good night’s sleep consistently. Potential policy tools include better and more sleep hygiene education, testing for sleep apnea and other sleep disorders, and subsidies and tax credits and deductions for new technologies to help people better monitor and regulate their sleep (see, e.g., <http://www.myzeo.com>, <http://www.sleeptracker.com>).

Another example of happiness studies that investigates affective, cognitive, and other aspects of happiness is research on the benefits of long-term regular physical activity. Biddle & Ekkekakis (2005, pp. 142–48) study benefits of exercise in terms of better cognitive function, enhanced life quality, higher self-worth, improved moods, less depression, lower reactivity to psychosocial stressors, and reduced anxiety (see their table 6.1), in addition to a more

adaptive pattern of cardiovascular, hormonal, and neuroendocrine responses to stressors, and enhanced immunocompetence and immune function (pp. 154–55). Again it perhaps is not surprising that regular physical activity is correlated with many aspects of happiness. The far more difficult question is how to motivate people to exercise regularly (Biddle & Ekkekakis 2005, pp. 155–59, table 6.2), including environmental and social interventions, such as the provision of indoor physical facilities, lighting of walking paths, and motivational public signs (pp. 160–61). Part of the difficulty of regular exercise is that it often requires breaking entrenched habits. The idea of adopting rituals to replace old habits can be helpful. Again, new technologies may also help make physical activity more fun, such as exercise video games compatible with the Nintendo Wii (see Anders 2008, Berkrot 2009, Mangalindan 2009). More studies should consider the cost effectiveness and efficacy of campaigns designed to motivate physical activity by stressing the fun of doing so (Diaz 2009, Dubner 2009; see also <http://www.rolighetsteorin.se/en>).

A third example of happiness studies that reported on both affective and cognitive dimensions of happiness is a field experiment involving 139 working adults, half of whom were randomly assigned to start a practice of loving-kindness meditation (Fredrickson et al. 2008). This study found that loving-kindness meditation practice led to increases over time in daily positive affect. These positive affective experiences in turn resulted in additional purpose in life, better physical health, greater self-acceptance, increased mindful attention, and more positive relations with others. In turn, these additions to personal resources were followed by greater life satisfaction and fewer depressive symptoms. There are similar findings that mindfulness meditation increased positive affect, positive moods, and psychological well-being, while reducing anxiety, negative affect, and stress.<sup>6</sup> Riskin (2002) proposes introducing

mindfulness meditation into legal practice to improve the well-being and performance of attorneys and to mitigate the dominance of adversarial mindsets. He suggests that mindfulness can help lawyers provide more appropriate service, particularly via better listening and negotiation, and derive more personal satisfaction from legal practice (see also Hyman 2007).<sup>7</sup>

A randomized, controlled study found that mindfulness meditation is associated with increased left-sided anterior activation, a brain pattern that has been associated with positive affect, and significantly increased antibody titers to influenza vaccine (Davidson et al. 2003). Empirical research findings that meditation leads to robust changes in brain structure and function support paternalistic legal policy interventions for two distinct reasons. First, loving-kindness-compassion meditation improves empathy and responsiveness to others' distress, both of which are prosocial impulses with resulting positive externalities and socially desirable behavior. Second, meditation results in types of emotional changes that enhance autonomy, regardless of an individual's particular conception of happiness. These changes include better emotional stability, greater ability to concentrate and focus attention, and increased resiliency in the face of stress and other negative stimuli.

First, there is a social welfare or efficiency-enhancing argument for legal policy to encourage loving-kindness meditation because neuroscience research "findings suggest that cultivating the intent to be compassionate and kind can enhance empathic responses to social stimuli" (Lutz et al. 2008, p. 4). Fostering a practice that heightens people's capacities to see others' distresses and that makes people more responsive to others' pain and suffering could be more effective than, and therefore preferable to, current incentives-based solutions to empathy gaps, such as criminal penalties for harming others and tax deductions for making charitable contributions. Of course, there could be normative disagreements over what form legal

<sup>6</sup>See, e.g., [http://www.studentaffairs.stonybrook.edu/caps/med\\_empirical.shtml](http://www.studentaffairs.stonybrook.edu/caps/med_empirical.shtml), <http://www.investigatinghealthyminds.org/cihmFindings.html>.

<sup>7</sup><http://www.law.ufl.edu/imldr>, [http://www.tailofthetiger.org/documents/complete\\_lawyer.html](http://www.tailofthetiger.org/documents/complete_lawyer.html).



policy interventions to stimulate meditation should take. For example, some parents may disapprove of a public school district introducing loving-kindness-compassion meditation in kindergarten classes. But one can surely defend promoting a practice that could make children more other-regarding as kids who then grow up to become more compassionate as teenagers and even adults. In fact, loving-kindness meditation does not depart that radically from the widely accepted prosocialization function of elementary school education, and it could have more beneficial enduring consequences.

Second, social efficiency concerns notwithstanding, there are benefits to fostering meditation in terms of increased personal autonomy. A fundamental objection to paternalism is that governments are not justified in promoting any one particular conception of what constitutes the good life. Rather, the role of a government should be limited to providing individuals the autonomy and conditions to pursue whatever conceptions of happiness they desire as long as they do not interfere with others' pursuits of their happiness. But the above benefits of meditation accrue no matter what the particular conception of the good life that one adopts. As previously mentioned, Davidson et al. (2003) found that mindfulness meditation is associated with better suppression of negative affect, greater emotional resiliency, and quicker emotional recovery from negative stimuli. In addition, expert focused attention meditators develop advanced concentration, better self-regulation, and less emotionally reactive behaviors, while three months of intensive training in open-minded meditation results in subjects being "able to better attend moment-to-moment to the stream of stimuli to which they are exposed and less likely to 'get stuck' on any one stimulus" (Davidson & Lutz 2007, p. 173).

Greater emotional stability, higher ability to suppress negative affect, and increased fortitude to bounce back from emotionally adverse situations enhance autonomy independent of any particular conception of the good life. In this way, these attributes differ from the benefits that accrue from such legal policies as those

designed to reduce the consumption of sugar, for example. Whether an individual's particular value preferences are to maximize athletic prowess, career success, family well-being, financial wealth, leisure time, physical attractiveness, and so forth, developing the abilities to focus an individual's attention on required activities and to better resist the emotional distractions of various stimuli empowers an individual to achieve their personal subjective goals. While a paternalistically legal policy to reduce sugar consumption is incompatible with a conception of happiness that is based upon eating sugary desserts, emotional resilience is compatible with any vision of what is the good life, except for a vision that believes that emotional resiliency itself is an undesirable characteristic. This is because emotional resilience helps people attain their own chosen objectives, whatever those might be, unless their objective is to lack emotional resilience. In other words, even people who value autonomy above all else should ex ante agree to a legal policy that ex post enhanced their ability to achieve whatever vision of the good life they have. It certainly is at least conceivable that some people may want at certain times to lack emotional resilience in the sense of their desire to grieve for an "appropriate" or socially accepted period of time in response to horrific personal tragedies, such as the death of a child, spouse, parent, or other loved one. But such a desire comes with the danger that it will become all-consuming, counterproductive, and possibly dysfunctional if not debilitating.

A different rationale for people developing emotional stability and focus is that it may offer people the tools to improve their decision making and overcome emotional biases without governments having to engage in substantive interventionist policies. Huang (2005a, pp. 105–9; Huang 2005b, pp. 517–22) identifies a number of emotional influences, such as affect infusion in which people's decisions are influenced by their immediate moods, even if those moods are incidental and unrelated to whatever decisions they are facing, and probability insensitivity in which people are insensitive to the relatively low probability of certain

emotionally salient events but instead focus on the magnitude of the consequences of such events. These affective influences are candidates for substantive legal policy interventions, in the case of affect infusion by ex post judicial relief granted to poor decisions made under debilitating emotional influences and in the case of probability neglect by legislatively substituted risk assessments (Blumenthal 2007, pp. 62–70). Emotional resilience that results from practicing meditation could potentially mitigate such emotional influences without all the attendant costs, distortions, or protests that may come with substantive legal policy interventions.

### Paternalism and Positive Parentalism

One reason that paternalism has long had such negative connotations is the perception that such legal policy intervention infringes on individual autonomy, on the right to make one's own choices even if they are in error, and on individuals' preferences for the freedom to make such choices. Empirical research, however, may cast doubt on all these rationales. First, of course, individuals' choices in many realms, such as finance, health, and safety, clearly show nonoptimal decision making about their own welfare. In addition, research on affective forecasting (e.g., Blumenthal 2005; Frey 2008, pp. 127–37) demonstrates that people are surprisingly inaccurate at predicting the duration and intensity of their future happiness. Furthermore, people often prefer not to make decisions by procrastinating, leaving decisions to others, making second-order decisions, or avoiding decisions in morally difficult and emotionally charged situations. In addition, although people often prefer to preserve options by not making irrevocable decisions and maintaining the possibility of reversible decisions, psychological research (e.g., Gilbert 2006) finds that people are in fact less satisfied with reversible decisions than with irrevocable ones. Also, too much choice can be problematic because people tend to have more difficulty choosing among options when there are more choices available and tend to be less satisfied with their

decision when it is made from among many options as opposed to fewer (e.g., Guthrie 2003).

Each of these findings does not necessarily mean that paternalism is always appropriate. At the least, perhaps, they suggest that critics of the empirical case for paternalism have a higher hurdle to overcome than has been traditionally assumed. And it appears that some of the paternalistic policies that have been suggested may actually help individuals save money, live safer, be healthier, and make better decisions (Thaler & Sunstein 2008). But Blumenthal & Huang (2009) suggest that private or governmental programming to promote beneficial outcomes might be more acceptable to people. They suggest that rather than focusing on people's poor judgment and decision making, governments should develop legal policy to foster people's flourishing. Instead of working to stop an individual from making mistakes or suffering from cognitive biases, such positive parentalism seeks to build on people's signature strengths and character virtues. The literature on loss aversion suggests that people might perceive interventions more favorably when they are framed not as an intrusion into one's autonomy but instead as encouragement toward, or in aid of, a beneficial outcome.

### Happier Legal Education and Practice

Huang & Swedloff (2008) propose that law schools can and should help to reduce the anxiety, stress, and unhappiness that individuals often feel as law students and help them to develop abilities to achieve meaningful careers as lawyers by helping them identify their signature strengths. They also advocate that law firms can and should foster authentic happiness and meaning in the professional lives of their associates by pursuing happiness interventions (Lyubomirsky 2007). Based upon happiness studies, they consider how law firms can implement policies to promote authentic happiness and meaning in their associates' professional lives.

Levit & Linder (2008) draw on happiness studies to analyze whether law schools can make

law students happier, whether making happier law students translates into creating happier and better lawyers, and what follows from law schools adopting a goal of law student happiness. They discuss the limitations of genetic determinants of happiness and happiness set-points. They focus on and apply to legal education those qualities that happiness studies indicate are crucial to life satisfaction, namely control, connections, creative challenge (also known as flow), and comparisons (preferably downward). They argue that making law students happier translates, at least in part, into making them both happier and better lawyers because there are interactions and relationships among collaboration, happiness, and professionalism. For example, people who are happier in life are those who give back. They differentiate between merely feeling good or pursuing hedonic pleasure and doing good, which can lead to a more lasting sense of happiness and a life with meaning. People who have a richer sense of happiness are not those who work on their narcissistic personal needs, but instead are those who embrace a larger sense of civic engagement. Fortunately, that dovetails nicely with pro bono obligations in law. They make concrete proposals about how law schools can increase law student happiness by addressing some of the career reasons why law students become unhappy lawyers. For example, they suggest that if law schools address the phenomenon of poor affective forecasting (Gilbert 2006) by providing better information about not just career decision-making paths, nonpractice career options, and salary expectations, but also findings of decision theory and psychological influences upon decision making, this information can improve the likelihood that law students can more accurately choose how to make their future selves happier.

Levit & Linder (2010) analyze why so many lawyers find so little to like in their jobs and consider what lawyers can do to increase their life satisfaction. They draw upon happiness studies to focus on those factors that lead to professional frustration and stress, from the pressure to bill ever higher numbers of hours to

unhappiness when a lawyer's job's demands come into conflict with his or her personal goals and values. They provide both small and large tools that will help lawyers cope with stress and find more balance in their lives. They also offer ideas on how and why law firms can transform legal practice by improving their flexibility in order to accommodate their employees' needs, thereby boosting morale and, in so doing, facilitating higher-quality work. Finally, they explain the role that law schools can play in helping their law students better define their goals to guarantee having a satisfying legal career.<sup>8</sup> They interviewed more than 200 lawyers across the country and are thus able to personalize their analysis with compelling and often surprising career stories from both happy and unhappy lawyers. Based upon these actual stories, they diagnose and suggest practical solutions that individual attorneys and the legal profession as a whole can adopt in response to a pervasive problem among lawyers, namely that of professional unhappiness. Their analysis offers valuable advice and helpful reassurance to many practicing lawyers and law students experiencing uncertainty over their career choices, especially in these recent times of economic uncertainty.

Peterson & Peterson (2009) analyze how the top 75 law schools presently contend with reports that many law students experience significantly higher incidences of alcohol and drug abuse than their peers at other graduate schools and show evidence of unique signs of psychological distress, such as elevated levels of depression, stress, and anxiety. They find that law school programs for the most part are reactive and fail to address sufficiently the scope and sources of these problems. Positive psychology, they suggest, can be uniquely suited to address law student distress by providing various techniques for law schools to assist law students in combating stress and depression. Empirical findings from a study in which one of these methods was tested in a law school

<sup>8</sup><http://www.law.umkc.edu/faculty/projects/ftrials/happylawyers/Questions.html>.

context found high rates of depression and stress, similar to other studies, and demonstrated a very high correlation between depression and stress. The study confirmed that law students who use their signature strengths are less likely to suffer from depression and stress and are more likely to report life satisfaction. They conclude that encouraging and helping law students to use their personal strengths can thus be a buffer against psychological distress in law school. They conclude with proposals for how law schools can incorporate these findings and other empirically tested positive psychology principles into proactive programs to benefit their law students.

## CONCLUSIONS AND DISCUSSION

Happiness measures clearly offer policy makers information that supplements more traditional nonhappiness measures. But many open and fascinating questions remain in the social science study of happiness. As economist, president of the Federal Reserve Bank of San Francisco, and Federal Reserve Board vice chairperson nominee Janet Yellen (2007) has written, “There is a lot more work to be done to validate and confirm that happiness responses do correspond to well-being. In addition, we care about more than just whether people are happy; we’d like to understand why they are happy” (p. 389). Not only researchers but also individuals and governments care about why they are happy, just as parents wish their children to be happy but also care about why their children are happy.

Leading happiness researcher Ed Diener (2009a, pp. 267–68) recently wrote,

We should no longer ask whether people do or do not adapt to circumstances, but should ask instead, when, to what degree, and why they adapt. We should no longer debate whether people’s baseline levels of happiness can change, but should inquire about the conditions that can change them substantially. We should no longer ask only what correlates with “happiness,” but we need to inquire about the

effects of well-being on future behavior and success. I admonish those who continue to ask the questions of yesterday with the methods of yesterday—we need more now. Not only should we be asking more sophisticated questions, but we should be using diverse and larger subject samples, often in longitudinal designs, and we should always employ measures of diverse types of well-being.

In developing legal policy applications of happiness studies, there is an even greater danger of basing recommendations upon outdated research and simplistic (mis)understanding of nuanced and subtle findings. To be robust, legal policy must be founded upon research examining multiple aspects of happiness. There should be greater reliance upon longitudinal as opposed to cross-sectional studies. There has to be greater theoretical understanding about happiness and not just its correlates but also its causes and consequences. Ultimately, happiness studies offer not only many possibilities, but also many pitfalls in developing legal policies.

In the future, happiness studies are likely to provide insights about five particular areas of legal policy. First, data on how unemployment and inflation correlate with people’s happiness and life satisfaction can inform financial regulations and central bank determination of monetary policy (Di Tella & MacCulloch 2007). Second, regulation of business organizations including corporations, partnerships, and hybrid organizational forms can help members of business organizations flourish and thrive (Huang 2011)<sup>9</sup> by drawing upon positive organizational scholarship.<sup>10</sup> Third, intellectual property law can foster entrepreneurship and innovation by utilizing happiness studies about creativity (Naiman 2007). Fourth, rules of evidence can take into account empirical studies

<sup>9</sup><http://www.law.utk.edu/ccel/conferences/business&behavior>, <http://www.law.utk.edu/ccel/conferences/business&behavior/schedule.shtml>.

<sup>10</sup><http://www.bus.umich.edu/positive>.

about how moods including positive ones can alter information processing (Hamzelou 2010). Fifth, rules governing negotiation and resolution of disputes can benefit from happiness studies in light of the connections between happiness and mindfulness (Pileggi 2008) and those between mindfulness and effective negotiation (Riskin 2010).

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