CHAPTER

56 Positive Institutions, Law, and Policy

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Abstract

We analyze how positive institutions—democracy, strong families, free inquiry, free press, schools, businesses, communities, societies, work, and culture—can help foster human flourishing. We provide four examples of positive law and policy to illustrate the important role legal and social institutions can play in facilitating positive psychology. First, we explore positive psychology's potential interplay with law firm culture to reduce unhappiness of law firm associates. Second, we review the influence of civic participation in juries and democratic processes on citizens' well-being. Third, we identify the effects of policy changes on subjective perceptions of well-being in a wide range of contexts, and the complexities of evaluating such effects in light of individuals' cognitive and emotional tendencies. Finally, we speculate about the role of government or other third-party institutional intervention in enabling individuals and communities to flourish and thrive. Our overarching goal is to generate discussion about positive psychology's role in developing institutions that can help improve individuals' quality of life.

Keywords: democratic participation, Institutions, Paternalism, subjective well-being, workplace satisfaction

We analyze the third one of the three pillars of positive psychology: positive emotions, traits, and institutions (Seligman & Csikszentmihalyi, 2000). Positive institutions include democracy, strong families, free inquiry, and free press (Seligman, 2002); schools, businesses, communities, and societies (Peterson, 2006); and work and culture (Compton, 2005; Snyder & Lopez, 2007). We share the assumption that "positive institutions facilitate the development and display of positive traits, which in turn facilitate positive subjective experiences" (Peterson, 2006, p. 20) and therefore focus on how legal, public, and social policies and institutions can foster a good life.

We present four particular examples of positive institutions, law, and policy. First, we demonstrate how positive psychology suggests changes to make big law firm practice healthier by reforming institutional cultures (Huang & Swedloff, 2008). Second, we summarize how jury participation and direct participatory democracy improve life satisfaction. Third, we analyze how various measures of subjective well-being assist policy evaluation in a number of diverse settings. Fourth, we speculate about what positive psychology implies for paternalistic government intervention. We choose these examples because they illustrate the important role legal and social institutions can play in facilitating positive psychology (Bohnet, 2006).

How to Make Big Law Firms Positive Institutions

Legal institutions, such as administrative agencies, courts, and legislatures, play ubiquitous roles in our lives. They also share two common features: they shape policy and involve lawyers. But, lawyers consistently rate poorly in surveys as to whom society trusts (e.g., Harris Poll, July 7–10, 2006). Lawyers have a negative image in popular culture: films increasingly portray lawyers negatively (Asimow, 2000; Post, 1987) and lawyer jokes abound (Galanter, 2005).

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Some empirical studies find evidence that many lawyers have poor emotional, mental, and physical health, suffering from alcoholism, anxiety, depression, divorce, drug abuse, suicide, and unhappiness (Heinz, Nelson, Sandefur, & Laumann, 2005; Schlitz, 1999; Seligman, Verkuil, & Kang, 2001; but see Hull, 1999, for critical view of these studies). Lawyers at big law firms are among the unhappiest (Dinovitzer et al., 2004; Schlitz, 1999; but see Hull, 1999, for opposing perspective). Multiple causes explain unhappiness at big law firms, including long hours, organizational hierarchy, and competitive professional culture (Schlitz, 1999). Thus, a lawyer who wants to be happier and healthier should avoid firms that are or act like big law firms, including seeking alternatives to private practice (Schlitz, 1999). But, an important question remains: how to make lawyers at large law firms happier and healthier? Unhappy and unhealthy lawyers are unproductive lawyers.

Three fundamental psychological explanations for lawyer unhappiness are lawyer pessimism, junior associates' low decision latitude, and the zero-sum nature of adversarial systems (Seligman et al., 2001). Positive psychology offers coping strategies to reduce each of these sources of unhappiness (Seligman et al., 2001). First, flexible optimism (Seligman, Reivich, Jaycox, & Gillham, 1995) and learned optimism (Seligman, 1998) are well-documented antidotes for pessimism. Second, lawyers should have more personal control over their workday (Langer & Rodin, 1976; Seligman, 1992). Law firms can accomplish this by delegating more responsibilities, having partners mentor junior associates, offering more substantive training, permitting associates to have contact with clients earlier in associates' careers, and providing junior associates with voices in law firm management. Law firms can and should learn their associates' signature strengths to tailor work environments accordingly (Buckingham & Clifton, 2001; Peterson & Seligman, 2004). Third, law firms can strive to make litigation more cooperative and less adversarial (Croson & Mnookin, 1997; Gilson & Mnookin, 1994). In addition to law firms, law schools also can help to mitigate lawyer unhappiness by not fostering learned helplessness (Kurson, 2000; Seligman et al., 2001), by helping law students make better academic and career decisions based upon a realistic picture of the demands of a lawyer's professional life (Rodin, 1976), and by learning their signature strengths (Seligman et al., 2001). Lyubomirsky (2007) provides a number of happiness interventions that can help lawyers and others achieve sustainable increases of their happiness.

Subjective Well-Being and Civic Participation

Across a wide range of contexts, individuals derive substantial satisfaction from both participation in various activities and from the simple right to participate in the particular process. Research has long shown that with small-scale interactions, individuals' satisfaction with process can lead to their satisfaction with outcome—the notion of "procedural utility" (e.g., Frey, Benz, & Stutzer, 2004) or "procedural justice" (e.g., Lind & Tyler, 1988). But this is so at the larger institutional level as well: from trial juries to political institutions, individuals' subjective well-being from an institution in which they participate correlates with that institution's formal arrangement, and with those individuals' opportunity to participate in the institution.

Specifically, research findings demonstrate that people are happier with procedures or institutions when they are given a voice (Thibaut & Walker, 1975). When individuals participate in a process, express their opinions, or are given the opportunity to do so, they are generally more satisfied with that process. One of the classic opportunities for individuals to express their opinions in the legal system is in the trial jury. Jury trials, though increasingly rare, are an important part of today's justice system and are a constitutionally enshrined American institution. Despite substantial investigation of how juries function, however, surprisingly little evidence exists as to how jurors actually experience their time in service. Research shows that jurors who serve are generally satisfied with their experience and typically report willingness to serve again (Seamone, 2001–2002). The source of this satisfaction, however, is not always clear (see Cutler & Hughes, 2001, for review). We suggest that jurors' satisfaction with their experience may stem from their ability to participate, especially in the mini-democracy of jury deliberation. That is, jurors might be "motivated by a feeling of satisfaction with participation in the democratic process" (Prescott & Starr, 2006, p. 339, n. 190). For instance, for a small percentage of actual jurors surveyed, it was their "fellow jurors," rather than any other aspect of service, who "made the experience more positive" and changed their perception of the court system from "unfavorable" or "neutral" to "favorable" (Cutler & Hughes, 2001, p. 313, tbl. 4). In the same survey of over 4,600 jurors, 89% agreed that they "were satisfied with the jury

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deliberation process," the same percentage that agreed with the vaguer statement, "I was satisfied with the way the trial was conducted" (p. 315, fig. 2). Jury deliberation, in fact, generated the least dissatisfaction of all aspects of the experience about which jurors were asked (Cutler & Hughes, 2001). Further, civil juries operating under a unanimity decision rule deliberate longer and more thoroughly and seem to be more satisfied with their verdicts (see Diamond, Rose, & Murphy, 2006). Criminal juries too seem to "fee[l] better about themselves and their fellow citizens" under such a rule (Leib, 2006, p. 195).

Small group research supports these observations (e.g., Foels, Driskell, Mullen, & Salas, 2000; Peterson, 1999). Overall, individuals are more satisfied with democratic groups versus groups with autocratic leaders (e.g., Foels et al., 2000). This seems to derive directly from the increased opportunity to express one's voice, communicating that one is involved and participating in the group's decision and decision-making process (Peterson, 1999). Most fundamentally, such participation reinforces individuals' notions that their ideas, identities, and participation are of value: "the opportunity to express their thoughts . . . implies that [participants'] thoughts are worthy of being considered and that [they] are important individuals" (Peterson, 1999). This "group value" model of procedural justice (Tyler & Lind, 1992) emphasizes the importance of expressing oneself by participation in small groups, helping to affirm one's place in such groups and, thus, one's self-identity. Accordingly, jurors' satisfaction may stem from participating, from being active rather than passive participants (Dann, 1996).

Expressing one's opinions—or simply having the right to do so—is also of substantial importance at the level of political institutions. Participating in a democratic political culture, or having the chance to do so, can lead to increased subjective well-being (Frey & Stutzer, 2000, 2002). For instance, Frey and Stutzer (2000) interviewed thousands of residents in the various Swiss cantons about their overall life satisfaction. Controlling for a variety of demographic and economic factors, the opportunity to participate in direct democratic processes (e.g., referenda and other popular initiatives) was positively associated with individuals' self-reported subjective well-being concerning their life as a whole. Evidently, "citizens may gain procedural utility from such participation rights over and above the outcome generated in the political process, because they provide a feeling of being involved and having political influence, as well as a notion of inclusion, identity and self-determination" (Frey et al., 2004, p. 380).

Three lines of research might profitably develop these findings. First, both mock and actual jury research might ask jurors whether the participatory opportunities of deliberation lead to their generally high satisfaction with serving. Second, deliberation—deliberative democracy in particular—is an increasingly prominent topic for political researchers. Of particular interest is Fishkin and colleagues' Deliberative Polling (DP) project, in which small groups are informed, and then deliberate about, political and societal issues. Although some evidence suggests that such deliberation leads to increased support for the democratic process (Luskin & Fishkin, 2002), reported findings have focused on decision "outcomes." Further examination of DP participants' satisfaction with "process," "outcome," and "self" would be of interest. Third (and related), in light of recent arguments to increase direct democracy, profitable research might replicate Frey and Stutzer's (2000) study in the U.S., examining whether increased availability and/or use of direct democratic processes such as referenda correlate with self-reports of subjective well-being across different states.

Subjective Well-Being Measures of Policy

Measures of subjective well-being are typically answers to questions asking survey respondents to self-report their subjective well-being on a numerical scale ranging from a low number such as 0 or 1 to a higher number such as 4, 7, or 10. Such measures are utilized in the Gallup World Poll (Gallup Organization, 2006), Eurobarometer (Inglehart & Klingemann, 2000), General Social Survey (Davis, Smith, & Marsden, 2001), World Values Survey (Inglehart, European Values Study Group, & World Values Survey Association, 2005), Experience Sampling Method (Andersson & Tour, 2005; Hektner, Schmidt, & Csikszentmihalyi, 2007; Stone & Shiffman, 1994), Daily Reconstruction Method (Kahneman, Krueger, Schkade, Schwarz, & Stone, 2004a), national well-being accounts (Diener, Kesebir, & Lucas, 2008; Kahneman, Krueger, Schkade, Schwarz, & Stone, 2004b) and brief indices (Diener, 2000, 2006; Diener & Seligman, 2004). Bhutan introduced a gross national happiness index to replace gross national product for measuring progress (Sherr, 2005). China recently announced plans to add a happiness index to its roster of key indicators

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(Ford, 2006). Instead of designing public policy to achieve higher subjective well-being, there could be more emotional appeal to and political support for designing public policy to minimize subjective ill-being. An example of a subjective ill-being index is the U-index measuring the fraction of time that people spend in an unpleasant emotional state (Blanchflower, forthcoming; Kahneman & Krueger, 2006; Kreuger et al., forthcoming).

Subjective well-being measures offer nonmonetary metrics for evaluating policy in risk regulation (Huang, 2008a) or financial and securities regulation (Huang, 2008b). Such measures take into account investor confidence, financial euphoria, and market moods. Subjective well-being measures can lend insight into contexts as diverse as business ethics and social responsibility (Giacalone, Jurkiewicz, & Dunn, 2005), cigarette taxation (Gruber & Mullainathan, 2004), development economics (Graham, 2005; Graham & Pettinato, 2002), disadvantaged subpopulations (Delle Fave & Massimini, 2005), education (Martin, 2005; Noddings, 2003), employment discrimination litigation (Huang & Moss, 2006), environmental protection (Kahneman & Sugden, 2005), income inequality (Alesina, Di Tella, & MacCulloch (2004); Graham & Felton, 2006), labor market regulation (Alesina, Glaeser, & Sacerdote, 2006), macroeconomics (Clark & Oswald, 1994; Di Tella, MacCulloch, & Oswald, 2003; Di Tella & MacCulloch, 2006; Eggers et al., 2006; Oswald, 1997; Stutzer & Lalive, 2004), marriage (Frey & Stutzer, 2005), obesity (Graham & Felton, 2005), organizational behavior (Baker, Greenberg, & Hemingway, 2006; Cameron, Dutton, and Quinn (2003), political economy (Graham & Sukhtankar, 2004), poverty (Rojas, in press), public housing (Kling, Liebman, & Katz, in press), taxation (Bagaric & McConvill, 2005; Griffith, 2004; Kornhauser, 2004; Layard, 2005; Ring, 2004), terrorism (Frey, Luechinger, & Stutzer, 2007), and urban planning (Frey & Stutzer, 2004). In all these diverse settings, changes in policy are associated with changes in subjective well-being measures. Empirical findings that positive affect is positively correlated with physical health (Pressman & Cohen, 2005) and success (Lyubomirsky, King, & Diener, 2005) provide additional rationales for policies to foster positive affect.

Complicated issues about positive policy involve how people's own judgments of their subjective well-being vary over time (Sanna & Chang, 2006). People experience subjective well-being not only in the moment but also in savoring and memory (Elster & Loewenstein, 1992). Although future subjective well-being and past subjective well-being affect our current subjective well-being, they do so asymmetrically. Recent psychological studies find people feel more intense subjective well-being upon contemplating some future events than upon recalling past ones (Van Boven & Ashworth, 2006). Complexities multiply if our current subjective well-being depends upon not only our own anticipated subjective well-being and remembered subjective well-being, but also our anticipations and remembrances of others' subjective well-being. These varieties of subjective well-being can, in turn, depend on our current subjective well-being. Such dependencies are filtered through systematically inaccurate affective forecasting (Gilbert, 2006) and imperfect memory (Sutton, 1992). Incorrect predictions and recollections do help motivate us to pursue and strive for goals (Lench & Levine, 2006), and inaccuracies may also produce more financial economic activity than accuracies (Huang, 2005a, pp. 102–109). But irrational exuberance and unjustified anxiety raise normative questions about whether institutions and policies promoting accuracy about subjective well-being are socially desirable (Huang, 2005b). A final issue is whether to design policy to maximize aggregate subjective well-being or to assist people in advancing their individual and collective ideas of what is the good life (Frey & Stutzer, 2006a).

Positive Paternalism

One traditional concern about institutions is the possibility that they will engage in manipulation or improper influence against individuals. Indeed, a substantial body of economic and legal scholarship has recently developed about the propriety of "paternalism," that is, intervention by either the government or private parties into individual decision making and/or behavior in order to improve that person's welfare (e.g., Camerer, 2006; Jolls, Sunstein, & Thaler, 1998; Thaler & Sunstein, 2008).[1] This body of scholarship applies psychological findings documenting the prevalence of cognitive biases and heuristics to suggest that paternalism may sometimes be appropriate to protect people

[1] "Paternalism" has long had strongly negative connotations, in large part due to the perception that such 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 of these rationales (Blumenthal, 2007).

from their own costly and self-injurious errors. Other analyses focus on emotional, rather than cognitive, influences on decision making (Blumenthal, 2005, 2007; Huang, 2006).

Little discussion of paternalism occurs, however, in the context of positive psychology. But to the extent that positive psychology is seen as prescriptive, not only descriptive (see, for example, Seligman & Pawelski, 2003), there may be a role in developing institutions that can intervene to enable individuals and communities to flourish and thrive. As we suggest above, a positive paternalism of institutions might supplement traditional paternalism, by helping to elevate individuals' and society's subjective well-being from some existing baseline.

We take no position here as to the normative propriety of such intervention. We do, however, suggest that both the positive and normative aspects of such possibilities be discussed and be investigated empirically. Public reluctance to accept paternalistic intervention is a formidable hurdle to overcome, and there are a variety of other social costs in developing paternalistic "interventions" (Blumenthal, 2007; Glaeser, 2006). However, private or governmental programming to promote "beneficial" outcomes might be more palatable to the public (as the loss aversion literature might suggest).

Consider, for instance, governmental response to the problem of poor physical health, including obesity or coronary heart disease. A remedial paternalistic intervention might prevent fatty and other unhealthy food from being sold in restaurants, cafeterias, or even supermarkets, to remove the option to purchase and consume such unhealthy food. In contrast, government mandating of an exercise program—perhaps even just for those at risk for heart disease—might be seen as less intrusive than the "remedial" approach. Avoiding juveniles' obesity and other health problems is of substantial current interest, and one approach has been the encouragement of requiring minimum levels of physical activity in schools, with potential accountability for schools that fail to provide appropriate physical education programs (e.g., Pate et al., 2006).

Similarly, consider the burgeoning research on "affective forecasting," the prediction of future emotional states (Wilson & Gilbert, 2003). Individuals are surprisingly poor at accurately predicting the intensity and duration of future emotions (Wilson & Gilbert, 2003). One application of this research has discussed its potential relevance to paternalism issues, but focused on remedial interventions (Blumenthal, 2007; see also Guthrie, 2003). Other examples of remedial interventions are to identify contexts where individuals are poor at recognizing what matters for their subjective well-being—and providing people better information about what will in fact matter for their subjective well-being (Frey & Stutzer, 2006b; Loewenstein & Ubel, 2006). A positive psychology approach would help individuals identify and develop their signature strengths so that people find their work more fulfilling and view it as a calling instead of a career or job (Huang, 2008c). If a metaphor for light paternalism is therapy designed to combat and correct for cognitive and emotional disturbances that detract from people's subjective well-being (Loewenstein & Haisley, 2008), then a metaphor for positive paternalism is positive therapy.

Finally, recent affective neuroscientific data provide evidence of a disjunction between two brain systems—wanting and liking (Nettle, 2005)—a gap that supplies a scientific language for normative and positive theories of paternalism (Camerer, 2006). Huang (2006) proposes that environments in which it is challenging to learn to want what you will like, such as those involving viscerally addictive experiences or substances, decisions having irreversible or very costly to reverse consequences, and infrequently repeated situations, justify some type of paternalism. Examples include possible choices about career, children, death, family, health, living wills, marriage, and retirement. For example, some people repeatedly fail to learn to distinguish between passionate love, which is "the love you fall into," and companionate love, which "grows slowly over the years" (see Chapter 42). But the trajectories over time of these distinct kinds of love diverge in both the short and long run (Haidt, 2006). In particular, their short-term divergence creates "two danger points, two places where many people make grave mistakes." The first possible mistake is premature marriage during passionate love. The second is premature breaking up when passionate love fades, "because if the lovers had stuck it out, if they had given compassionate love a chance to grow, they might have found true love" (Haidt, 2006, pp. 126–127). Many states in the U.S. currently have laws that impose a waiting period before entering into or dissolving a marriage; but this research has implications for other contexts as well.

Clearly, the public's approbation of any such intervention by either government or private parties is a matter for further empirical research, as is, of course, such programs' effectiveness. Nevertheless,

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we hope to prompt both such research and further discussion about the normative aspects of such interventions.

Conclusion

Institutions maintain a variety of roles: creating incentives, coordinating behavior, guiding self-selection, providing information, facilitating causal explanations, and influencing preferences (Bohnet, 2006). Reviewing past and potential research on large law firms, civic participation, and policies designed to increase subjective well-being, we have sought to demonstrate one overarching goal: through these roles, institutions can help improve individuals' quality of life. We hope our review helps point to "recommendations for how to change institutions for the better of humankind" (Bohnet, 2006, p. 232).

Questions

(1) How can empirical research identify optimal policies to relieve unhappiness, especially of employees at large law firms?

(2) What are the costs and benefits of using measures of subjective well-being, rather than of economic well-being, as well-being criteria and standards for individuals, communities, and nations?

(3) What is a government's role in intervening to enable individuals and communities to flourish and thrive that do not limit particular decisions and prohibit certain behavior?

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Chapter 56

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