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# HAPPINESS IN BUSINESS OR LAW\*

PETER H. HUANG\*\*

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## I. INTRODUCTION

Empirical studies of self-reported happiness are hot subjects these days,<sup>1</sup> as are their potential applications to government policy.<sup>2</sup> Huang analyzes two fundamental areas of

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<sup>1</sup> See, e.g., CAROL GRAHAM, *HAPPINESS AROUND THE WORLD: THE PARADOX OF HAPPY PEASANTS AND MISERABLE MILLIONAIRES* (Oxford Univ. Press 2010) (2009); THE BROOKINGS INSTITUTION, *PARADOX AND PERCEPTION: MEASURING QUALITY OF LIFE IN LATIN AMERICA* (Carol L. Graham & Eduardo Lora eds., 2009).

<sup>2</sup> See DEREK BOK, *THE POLITICS OF HAPPINESS: WHAT GOVERNMENT CAN LEARN FROM THE NEW RESEARCH ON WELL-BEING* (2010) (surveying potential regulatory and legislative applications in the United States of empirical social science research about happiness); SISSELA BOK, *EXPLORING HAPPINESS: FROM ARISTOTLE TO BRAIN SCIENCE* (2010) (considering views about happiness from art, literature, philosophy, natural sciences, and social sciences); ABBOTT L. FERRISS, *APPROACHES TO IMPROVING THE QUALITY OF LIFE: HOW TO ENHANCE THE QUALITY OF LIFE* (2010) (offering a handbook for community workers that reviews techniques for improving quality of life in ten domains based upon well-tested interventions); Interview by Charlie Rose with Derek Bok, Former President, Harvard (April 29, 2010), available at <http://www.charlierose.com/view/interview/10988>; see also Elizabeth Kolbert, *Everybody Have Fun: What Can Policymakers Learn from Happiness Research?*, THE NEW YORKER, Mar. 22, 2010 (discussing the books: *HAPPINESS AROUND THE WORLD: THE PARADOX OF HAPPY PEASANTS AND MISERABLE MILLIONAIRES*, *THE POLITICS OF HAPPINESS: WHAT GOVERNMENT CAN LEARN FROM THE NEW RESEARCH ON WELL-BEING*, and *STUMBLING ON HAPPINESS*); Peter Monaghan, *Seriously Happy*, CHRONICLE OF HIGHER EDUC., Aug. 8, 2010, at B14 (interviewing Sissela Bok and discussing her book

research in happiness and law, namely alternative methods of measuring happiness and various policies to foster happiness.<sup>3</sup> Huang points out how there are many aspects, concepts, dimensions, and visions of happiness.<sup>4</sup> In particular, self-reported emotions on twelve million personal blogs and three experiments reveal that what happiness means is not fixed, but instead shifts as people age, with younger people more likely to associate happiness with excitement and older people more likely to associate happiness with feeling peaceful.<sup>5</sup> Such changes in what happiness means are driven by people feeling more connected to both others and the present moment as they age.<sup>6</sup>

This article provides a short introduction to recent happiness research and its applications to business or law. Section II considers: (1) troubling and not so troubling reservations about happiness research and (2) how money and happiness are related. Section III surveys two sets of applications of happiness research to business: (1) workplace well-being and meaning and (2) marketing. Section IV reviews two categories of happiness research implications for law: (1) business regulation and (2) law student and lawyer happiness.

## II. HAPPINESS

Empirical happiness research analyzes people's answers to questions such as this one from the United States General Social Survey: "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?"<sup>7</sup> or this one from the World Values Survey: "Taking all things together, would you say you are very happy, rather happy, not very happy, not happy at all?"<sup>8</sup> or one from the Latinobarometro survey: "Generally speaking, would you say that you are: very happy, quite happy, not very happy, or not happy at all?"<sup>9</sup> or one from the Eurobarometer survey: "On the whole are you very satisfied, fairly satisfied, not very satisfied or not at all satisfied with

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EXPLORING HAPPINESS: FROM ARISTOTLE TO BRAIN SCIENCE).

<sup>3</sup> Peter H. Huang, *Happiness Studies and Legal Policy*, 6 ANN. REV. L. & SOC. SCI. 405 (2010).

<sup>4</sup> See, e.g., FRED FELDMAN, WHAT IS THIS THING CALLED HAPPINESS? 107-125 (2010) (presenting a theory of happiness that is a form of attitudinal hedonism, identifying one's happiness level with how much pleasure one takes in things).

<sup>5</sup> Cassie Mogilner, Sepander D. Kamvar & Jennifer Aaker, *The Shifting Meaning of Happiness*, SOCIAL PSYCHOL. AND PERSONALITY SCI. 1 (2010), available at <http://spp.sagepub.com/content/early/2010/12/15/1948550610393987>; see also Stephanie Steinberg, *Study of Twitter Users Finds Daily, Hourly Mood Swings*, USA TODAY, July 28, 2010, available at [http://www.usatoday.com/news/health/2010-07-29-Twittermoods29\\_STN.htm](http://www.usatoday.com/news/health/2010-07-29-Twittermoods29_STN.htm) (reporting on study of more than 300 million tweets from September 2006 to August 2009 finding patterns of happy tweets during certain days and hours); Pulse of the Nation: U.S. Mood Throughout the Day Inferred from Twitter, <http://www.ccs.neu.edu/home/amislove/twittermood/>.

<sup>6</sup> Mogilner, Kamvar & Aaker, *supra* note 5.

<sup>7</sup> Brooke E. O'Neil, *Happiness on the Horizon*, U. CHI. MAG. (Nov.-Dec. 2009), available at <http://magazine.uchicago.edu/0912/investigations/happiness.shtml>

<sup>8</sup> Knowledge Networks, Inc., World Values Survey, U.S. Values (2006), <http://www.wvsvsdb.com/wvs/WVSDocumentation.jsp?Idioma=1> (follow: "WVS – United States – 2006" hyperlink; then see page 161, V10) (last visited March 10, 2011).

<sup>9</sup> See ESDS Int'l, Cross-national survey research topic: Well-being, Latinobarometro survey, <http://www.esds.ac.uk/international/resources/wellbeing.asp> (follow: "Latinobarometro" hyperlink; then follow "Documentos" hyperlink; then follow "Cuestionarios" hyperlink) (last visited March 10, 2011).

the life you lead?”<sup>10</sup> Clearly, these questions are quite similar to each other. A different kind of question providing a self-anchoring “ladder of life” frame of reference comes from the Gallup World Poll: “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?”<sup>11</sup>

All of the above questions are deceptively simple because they appear to be quite straightforward, but they all mask a plethora of multiple possible conceptions of happiness, including but not limited to affect (pleasure), appreciation (gratitude), contentment (serenity), engagement (flow), evaluation (judgment), meaning (identity), and life story or narrative (coherence). Precisely the same question will be differently understood, interpreted, and thus answered by people with different cultural beliefs, norms, practices, and values. Therefore, how a happiness question is phrased and who answers it alters what empirical findings result from happiness research. Huang analyzes differences between affective versus cognitive interpretations of happiness, hedonic versus eudaimonic aspects of happiness, and local real-time or shortly thereafter measures of experienced happiness versus global measures of remembered happiness.<sup>12</sup> Influential designer Donald A. Norman argues that in the design and marketing of products and services, memories are more important than experiences.<sup>13</sup> Remembered emotions (memories) are usually rosier than experienced ones, and people are guided by predicted emotions which tend to coincide with their memories.<sup>14</sup> Huang draws upon happiness and neuroscience studies to conclude that law and public policy should focus more on people’s experiences than on their memories,<sup>15</sup> if and when people’s experiences result in chronic health or stress consequences that either (1) societies care about more than individuals do (because of externalities, public bads, or public goods) or (2) individuals also care about, but were unaware of, do not remember, or are unable to act upon (due to self-control problems).<sup>16</sup>

#### A. Concerns Regarding Empirical Happiness Research

Some psychologists have voiced concerns about what exactly self-reports of happiness measure. Several well-known examples illustrate such reservations. First, when undergraduates responded to a question about happiness in general before one specifically about happiness from dating, their answers only weakly correlated.<sup>17</sup> Though, when other

<sup>10</sup> TNS Opinion and Social, Special Eurobarometer 315, Social Climate Full Report, at 11 (2010), [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_315\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_315_en.pdf) (last visited March 10, 2011); see also ESDS Int’l, Cross-national survey research topic: Well-being, Eurobarometer survey, <http://www.esds.ac.uk/international/resources/wellbeing.asp> (last visited March 10, 2011).

<sup>11</sup> George Gallup, Human Needs and Satisfaction: A Global Survey, 40 PUB. OPINION Q. 459, 460 (1977), available at <http://poq.oxfordjournals.org/content/40/4/459.full.pdf+html>.

<sup>12</sup> Huang, *supra* note 3, at 407-09.

<sup>13</sup> Donald A. Norman, *The Psychology of Waiting Lines*, 1, 9, Aug. 21, 2008, <http://www.jnd.org/ms/Norman%20The%20Psychology%20of%20Waiting%20Lines.pdf>.

<sup>14</sup> *Id.* at 15-16.

<sup>15</sup> Peter H. Huang, Experiences versus Memories: Should Law and Policy Care More About Your First Love or Your Memories of It? (Apr. 2011) (unpublished manuscript, on file with author).

<sup>16</sup> *Id.*

<sup>17</sup> Fritz Strack, Leonard L. Martin & Norbert Schwarz, *Priming and Communication: Social Determinants of Information Use in Judgments of Life Satisfaction*, 18 EURO. J. SOC. PSYCHOL. 429, 434-35 (1998) (presenting the experimental finding that responding to a question about one particular component of life satisfaction influenced overall life

undergraduates answered those same two questions in reverse order, their answers were significantly correlated.<sup>18</sup> Second, when undergraduates answered a question about general happiness before one concerning their normal monthly dating frequency, their answers only weakly correlated,<sup>19</sup> but when other undergraduates answered those same two questions in reverse order, their answers were significantly correlated.<sup>20</sup> Third, people reported more happiness and life satisfaction when they were in a good mood than when they were in a bad mood (such moods were induced by asking people for vivid descriptions of a recent happy or sad event in one study and by phone interviews conducted on rainy or sunny days in another study).<sup>21</sup> Furthermore, the negative impact of bad moods was eliminated when people were induced to attribute their present feelings to external transient sources, irrelevant to evaluating their lives, but people in good moods were not affected by such misattribution manipulations.<sup>22</sup> Collectively, these results demonstrate that self-reported happiness can be very sensitive to various factors that seemingly are not and should not be central to happiness. Thus, it might seem questionable to base legal and public policies upon highly variable self-reports of happiness. Nevertheless, a careful survey design and heterogeneous, large samples of people in different moods counteract both question order effects and present mood effects.

Some other criticisms of empirical research based upon self-reported happiness are similarly not very troubling. For example, in criticizing economists Betsey Stevenson and Justin Wolfers' famous recent empirical study that finds women's self-reported happiness fell both absolutely and relative to men's over the last thirty-five years despite women's lives improving by most objective measures since 1970,<sup>23</sup> columnist and pop sociologist Barbara Ehrenreich mentions a well-known experiment in which each subject completed a life satisfaction questionnaire after photocopying a sheet of paper.<sup>24</sup> Half of these randomly chosen subjects found a dime on that photocopy machine and reported significantly higher life satisfaction.<sup>25</sup> One response to some people being temporarily happier after finding a dime on a photocopier is the response already mentioned earlier to any other present mood effect, namely conducting studies that entail heterogeneous, large samples of people in different moods. Ehrenreich further criticizes Stevenson and Wolfers' econometric study for utilizing ordered probit estimates,<sup>26</sup> calling them "occult statistical manipulation."<sup>27</sup> But,

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satisfaction assessments).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 436-37.

<sup>20</sup> *Id.*

<sup>21</sup> Norbert Schwarz & Gerald L. Clore, *Mood, Misattribution, and Judgments of Well-Being: Informative and Directive Functions of Affective States*, 45 J. PERSONALITY & SOC. PSYCHOL. 513, 514-20 (1983) (presenting two experiments finding that moods during judgments about happiness and life influenced those judgments).

<sup>22</sup> *Id.*

<sup>23</sup> Betsey Stevenson & Justin Wolfers, *The Paradox of Declining Female Happiness*, 1 AM. ECON. J.: ECON. POL'Y 190 (2009).

<sup>24</sup> Barbara Ehrenreich, *Are Women Getting Unhappier? Don't Make Me Laugh*, L.A. TIMES, Oct. 14, 2009, available at <http://articles.latimes.com/2009/oct/14/opinion/oe-ehrenreich14>.

<sup>25</sup> *Id.*

<sup>26</sup> See VANI KANT BOROOAH, LOGIT AND PROBIT: ORDERED AND MULTINOMIAL MODELS (2002).

<sup>27</sup> Ehrenreich, *supra* note 24.

ordered probit estimates are quite standard in econometric analysis.<sup>28</sup>

Genuine concerns about empirical happiness research are raised by a recent quantitative analysis of some mathematical properties of happiness data that still remain contentious among economists; namely their additivity, cardinality, and neutrality. This is true even though psychologists have to a certain extent already successfully addressed international, interpersonal, and intertemporal comparisons of happiness data.<sup>29</sup> Also unclear is whether self-reported happiness measures capture such important human motivations as finding meaning.<sup>30</sup> Economist George Loewenstein proposes that deriving meaning can motivate people to engage in activities that do not produce momentary positive effect, including childcare, caring for elderly or sick loved ones, jogging, mountaineering, and serving in the military.<sup>31</sup>

Finally, businesspeople, legal scholars, and policy makers alike should be cautious in applying happiness research because researchers are still actively changing and revising even some long-standing empirical findings. For example, set-point theory, an often cited but extreme psychological notion about hedonic adaptation, holds that long-term adult happiness fluctuates but always returns to a set point which depends primarily upon genetic influences that include personality traits, which people express and mold early in their lives.<sup>32</sup> However, a recent direct empirical test of set point theory proves it to be seriously flawed because a significant proportion of Germans experienced long-term and ostensibly permanent changes in happiness as reported in German Socio-Economic Panel longitudinal survey data from 1984 to 2008.<sup>33</sup> This research also demonstrates that people can influence their long- and medium-term overall happiness via their choices and preferences about healthy lifestyles, leisure versus working hours, life goals/priorities, life partner, religion, and social participation.<sup>34</sup>

<sup>28</sup> See, e.g., PETER KENNEDY, *GUIDE TO ECONOMETRICS* 263 (5th ed., The MIT Press 2003).

<sup>29</sup> Ingebjørg Kristoffersen, *The Metrics of Subjective Wellbeing: Cardinality, Neutrality and Additivity*, 86 *ECON. REC.* 98 (2010) (presenting empirical and theoretical evidence of alternative hypotheses about whether self-reported happiness is cardinal, strictly ordinal, of ratio quality, and hence meaningfully additive).

<sup>30</sup> See Carroll E. Izard, *Don't Pursue Happiness—Find and Follow What Interests You*, *EMOTION RESEARCHER* 25, at 5-6 (discussing the importance of meaning to happiness).

<sup>31</sup> George Loewenstein, *That Which Makes Life Worthwhile in MEASURING THE SUBJECTIVE WELL-BEING OF NATIONS* 87, 94, 102 (Alan B. Krueger ed., 2009).

<sup>32</sup> See generally Philip Brickman & Donald T. Campbell, *Hedonic Relativism and Planning the Good Society in ADAPTATION-LEVEL THEORY: A SYMPOSIUM* 287, 289 (M. H. Appley ed., 1971) (proposing that people are unable to sustain happiness over time because they are living on a “hedonic treadmill”); Bruce Headey & Alexander Wearing, *Personality, Life Events, and Subjective Well-Being: Toward a Dynamic Equilibrium Model*, 57 *J. PERSONALITY & SOC. PSYCHOL.* 731, 736-38 (1989) (outlining a dynamic equilibrium model where people have normal equilibrium levels of life events and subjective well-being that can be predicted based upon age and personality, with subjective well-being changing only if events deviate from their equilibrium levels); David Lykken & Auke Tellegen, *Happiness is a Stochastic Phenomenon*, 7 *PSYCHOL. SCI.* 186, 188-89 (1996) (estimating that heritability of the stable component of happiness approaches eighty percent, and concluding that individual differences in happiness on average over time and at any moment are mainly due to chance).

<sup>33</sup> Bruce Headey, Ruud Muffels & Gert G. Wagner, *Long-Running German Panel Survey Shows That Personal and Economic Choices, Not Just Genes, Matter for Happiness*, *PROC. NAT'L. ACAD. SCI.* (2010), available at <http://www.pnas.org/content/early/2010/09/27/1008612107.abstract>.

<sup>34</sup> *Id.*

### B. *Happiness and Money*

Huang analyzes how the correlation of happiness and income illustrate that empirical results typically depend on what particular type of happiness is being measured.<sup>35</sup> A recent example of research about income and happiness, based upon Gallup World Poll data, shows that income quite strongly predicts life evaluation but much more weakly predicts negative and positive feelings. Instead, positive feelings are most associated with psychological and social prosperity.<sup>36</sup>

Another recent empirical result demonstrating how income and happiness are related, based upon 450,000 responses to a daily survey of 1,000 American residents (Gallup-Healthways Well-Being Index), is that high income is correlated with life satisfaction as measured by Cantril's Self-Anchoring Scale<sup>37</sup> but not with happiness as measured by questions about emotional experiences yesterday.<sup>38</sup> More, low income is associated with both low life evaluation and low emotional well-being.<sup>39</sup> Emotional well-being and life evaluation are correlated with different variables.<sup>40</sup> More specifically, care giving, health, loneliness, and smoking are relatively stronger predictors of daily emotions, but income and education are more closely related to life evaluation.<sup>41</sup> Emotional well-being increases as income increases, but plateaus around an annual income of \$75,000.<sup>42</sup> However, life evaluation monotonically increases when plotted against the logarithm of income, at least until \$160,000.<sup>43</sup> Low income exacerbates the emotional pain associated with such misfortunes as divorce, ill health, and being alone.<sup>44</sup> So, how money and happiness are related crucially depends on what sort of happiness is being measured: emotional well-being or life evaluation.<sup>45</sup>

A final example of recent empirical research on how happiness and income are related is DePianto's analysis of how personal income affects financial satisfaction and perceived income, concentrating on demographic gaps among white males, black males, white females, and black females.<sup>46</sup> Different race/sex pairs have different financial

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<sup>35</sup> Huang, *supra* note 3, at 409-10.

<sup>36</sup> See, e.g., Ed Diener, Weiting Ng, James Harter & Raksha Arora, *Wealth and Happiness Across the World: Material Prosperity Predicts Life Evaluation, Whereas Psychosocial Prosperity Predicts Positive Feeling*, 99 J. PERSONALITY & SOC. PSYCHOL. 52 (2010).

<sup>37</sup> Gallup.com, *Understanding How Gallup Uses the Cantril Scale*, <http://www.gallup.com/poll/122453/Understanding-Gallup-Uses-Cantril-Scale.aspx> (last visited Mar. 10, 2011).

<sup>38</sup> See Daniel Kahneman & Angus Deaton, *High Income Improves Evaluation of Life But Not Emotional Well-Being*, 107 PROC. NAT'L ACAD. SCI. 16489 (2010).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 2, tbl 1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 2-3, fig. 1, tbl. 2.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 4, tbl 3.

<sup>45</sup> See Philip Ball, *The Price of Happiness*, NATURE NEWS, Sept. 6, 2010, at <http://nature.com/news/2010/060910/full/news.2010.447.html> (discussing richness and subtleties of Kahneman & Deaton's research data and their possible social policy implications).

<sup>46</sup> David E. DePianto, *Financial Satisfaction and Perceived Income Through a Demographic Lens: Do Different Race/Gender Pairs Reap Different Returns to Income?*, SOC. SCI. RES. (2010), available at



satisfaction and perceived income responses to income, with white females, black females, and black males all having flatter income/financial satisfaction and flatter income/perceived income gradients in comparison to white males.<sup>47</sup> DePianto suggests that social comparison among racial and gender in-groups may drive these observed demographic differences.<sup>48</sup> DePianto's innovative analysis has potentially far-reaching implications for employment discrimination awards. For example, Moss and Huang apply empirical happiness findings to analyze monetary damages in employment discrimination cases.<sup>49</sup>

Swedloff and Huang analyze implications of empirical happiness research about hedonic adaptation for monetary jury awards of noneconomic damages in tort cases.<sup>50</sup> DePianto analyzes General Social Survey data to find that emotional harms impact happiness to a larger extent than physical conditions that (1) entail similar losses of capability, (2) manifest with similar frequency, (3) rise to particular levels of seriousness, or all three.<sup>51</sup> DePianto's novel analysis presents a challenge to distinctions that are currently drawn in tort law. Swedloff considers how litigation processes impact plaintiffs' happiness and monetary awards for damages in tort cases.<sup>52</sup> Huang concludes that empirical findings about hedonic adaptation have limited relevance in analyzing motivations of tort plaintiffs<sup>53</sup> because many other emotions besides happiness can motivate litigation,<sup>54</sup> and emotions in tort cases may function as cultural evaluations.<sup>55</sup> Huang also notes that if tort plaintiffs fear losing their litigation options,<sup>56</sup> they are less likely to settle and will likely settle for more than if their lawsuits were to proceed faster.<sup>57</sup> Williams observes that while the process of adapting to severe injuries increases happiness, it does so with a cost of substantial adjustments to a victim's goals and ideals, which constitute such vital aspects of self-identity that changing them changes us.<sup>58</sup>

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<http://linkinghub.elsevier.com/retrieve/pii/S0049089X10002759>.

<sup>47</sup> *Id.* at 4-5, 8.

<sup>48</sup> *Id.* at 9.

<sup>49</sup> Scott A. Moss & Peter H. Huang, *How the New Economics Can Improve Employment Discrimination Law, and How Economics Can Survive the Demise of the "Rational Actor"*, 51 WM. & MARY L. REV. 183, 220-22 (2009).

<sup>50</sup> Rick Swedloff & Peter H. Huang, *Tort Damages and the New Science of Happiness*, 85 IND. L.J. 553, 584 (2010).

<sup>51</sup> David E. DePianto, *Happiness and Tort Damages Revisited: Evaluating the Physical/Emotional Distinction Through Survey Evidence*, at \*3 (2010) (unpublished manuscript, on file with author).

<sup>52</sup> Rick Swedloff, *Accounting for Happiness in Civil Settlements*, 108 COLUM. L. REV. SIDEBAR 39, 44-45 (2008), [http://www.columbialawreview.org/Sidebar/volume/108/39\\_Swedloff.pdf](http://www.columbialawreview.org/Sidebar/volume/108/39_Swedloff.pdf).

<sup>53</sup> Peter H. Huang, *Emotional Adaptation and Lawsuit Settlements*, 108 COLUM. L. REV. SIDEBAR 50, 51-52 (2008), [http://www.columbialawreview.org/Sidebar/volume/108/50\\_Huang.pdf](http://www.columbialawreview.org/Sidebar/volume/108/50_Huang.pdf).

<sup>54</sup> Peter H. Huang & Ho-Mou Wu, *Emotional Responses in Litigation*, 12 INT'L REV. L. & ECON. 31, 32 (1992).

<sup>55</sup> See Peter H. Huang, *Diverse Conceptions of Emotions in Risk Regulation*, 156 U. PA. L. REV. PENNUMBRA 435 (2008), <http://www.pennumbra.com/responses/03-2008/Huang.pdf>.

<sup>56</sup> Joseph A. Grundfest & Peter H. Huang, *The Unexpected Value of Litigation: A Real Options Perspective*, 58 STAN. L. REV. 1267, 1276-78 (2006) (introducing real options model to analyze litigant behavior).

<sup>57</sup> Huang, *supra* note 53, at 52.

<sup>58</sup> Sean Hannon Williams, *Self-Altering Injury: The Hidden Harms of Hedonic Adaptation*, 96 CORNELL L. REV. 535 (2011).

### III. HAPPINESS IN BUSINESS

It might seem that business comes equipped with a natural set of metrics for evaluating and judging outcomes, such as profit and loss or, more generally, economic performance. But as economist and happiness researcher, Andrew J. Oswald points out:

Economic performance is not intrinsically interesting. No-one is concerned in a genuine sense about the level of gross national product last year or about next year's exchange rate. People have no innate interest in the money supply, inflation, growth, inequality, unemployment, and the rest. The stolid greyness of the business pages of our newspapers seems to mirror the fact that economic numbers matter only indirectly.

The relevance of economic performance is that it may be a means to an end. That end is not the consumption of beefburgers, nor the accumulation of television sets, nor the vanquishing of some high level of interest rates, but rather the enrichment of mankind's feeling of well-being. Economic things matter only in so far as they make people happier.<sup>59</sup>

This section only briefly considers two categories of the many possible applications of empirical happiness research to business. There are several whole new related fields applying happiness research to business, including these: positive identities,<sup>60</sup> positive leadership,<sup>61</sup> positive organizational behavior,<sup>62</sup> positive organizational psychology,<sup>63</sup> positive organizational scholarship,<sup>64</sup> positive psychology and work,<sup>65</sup> and positive relationships at work.<sup>66</sup> Related scholars apply positive psychology research to analyze business ethics and corporate ethics.<sup>67</sup> Much of this research offers lessons about designing organizations so that they help their members flourish and thrive. These lessons potentially apply to legal forms of business organizations such as corporations, partnerships, and the myriad of hybrid

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<sup>59</sup> Andrew J. Oswald, *Happiness and Economic Performance*, 107 ECON. J. 1815, 1815 (1997).

<sup>60</sup> See generally EXPLORING POSITIVE IDENTITIES AND ORGANIZATIONS: BUILDING A THEORETICAL AND RESEARCH FOUNDATION (Laura Morgan Roberts & Jane E. Dutton eds., 2009).

<sup>61</sup> See generally KIM CAMERON, POSITIVE LEADERSHIP: STRATEGIES FOR EXTRAORDINARY PERFORMANCE (2008).

<sup>62</sup> See generally POSITIVE ORGANIZATIONAL BEHAVIOR (Debra Nelson & Cary P. Cooper eds., 2007); Fred Luthans & Bruce J. Avolio, *The "Point" of Positive Organizational Behavior*, 30 J. ORG. BEHAV. 291 (2009) (identifying and examining major issues and questions about positive organizational behavior).

<sup>63</sup> See generally Stewart I. Donaldson & Ia Ko, *Positive Organizational Psychology, Behavior, and Scholarship: A Review of the Emerging Literature and Evidence Base*, 5 J. POSITIVE PSYCHOL. 177 (2010) (providing a detailed picture of current state of positive organizational psychology for making significant improvements in quality of working life and organizational effectiveness).

<sup>64</sup> See generally HANDBOOK OF POSITIVE ORGANIZATIONAL SCHOLARSHIP (Kim S. Cameron et al. eds., 2011); POSITIVE ORGANIZATIONAL SCHOLARSHIP: FOUNDATIONS OF A NEW DISCIPLINE (Kim S. Cameron, et al. eds., 2003); Center for Positive Organizational Scholarship, University of Michigan Ross School of Business, <http://www.bus.umich.edu/Positive/CPOS/About%20the%20Center/about.html> (last visited March 10, 2011).

<sup>65</sup> See generally OXFORD HANDBOOK OF POSITIVE PSYCHOLOGY AND WORK (P. Alex Linley et al. eds., 2010).

<sup>66</sup> See generally EXPLORING POSITIVE RELATIONSHIPS AT WORK: BUILDING A THEORETICAL AND RESEARCH FOUNDATION (Jane E. Dutton & Belle Rose Ragins eds., 2007).

<sup>67</sup> See generally POSITIVE PSYCHOLOGY IN BUSINESS ETHICS AND CORPORATE RESPONSIBILITY (Robert A. Giacalone et al. eds., 2005).

organizational forms.

### A. *Happiness and Meaning at Work*

It is unsurprising that “work plays a central role in the development, expression, and maintenance of psychological health,”<sup>68</sup> given that people spend at least one-third of their lives working.<sup>69</sup> People also spend additional time on consumption or investment of their income from work. This section focuses on how employers can help employees find happiness and meaning from their employment. There are many other insights from happiness research applicable to work design.<sup>70</sup> For example, and unsurprisingly, happiness researchers find that people in countries having a greater number of mandated vacations report a bit more happiness, but caution that a large gap exists between such a finding and any sort of policy recommendation.<sup>71</sup> Labor economist, Lonnie Golden, analyzes how work week reform affects employee happiness, productivity, stress, and work-life balance.<sup>72</sup> Professor Golden concludes that, in light of heterogeneity of work hour preferences over life-cycle stages, increasing flexibility in how many hours employees must work or when they must work offers greatest promise as Fair Labor Standards Act reform proposals.<sup>73</sup> Another example is research by economists George Akerlof, 2001 economics Nobel Laureate,<sup>74</sup> and Rachel Kranton, applying identity economics to analyze organizations and concluding that if employees view themselves as firm insiders as opposed to outsiders, lower pay differentials are required to induce higher effort.<sup>75</sup>

People usually approach work from at least one of these perspectives:<sup>76</sup>

(1) It’s just a job, meaning one’s principal focus is on financial rewards instead of intrinsic rewards such as interest. What matters is money, so higher pay can motivate switching jobs.

(2) It’s more of a career, meaning one cares about advancement. One desires to climb as far up as possible on a career ladder or be among those most highly-regarded professionals in one’s field. What matters is power, prestige, and status derived from work.

(3) It’s really a calling, meaning one derives inspiration from work itself. What

<sup>68</sup> David L. Blustein, *The Role of Work in Psychological Health & Well-Being: A Conceptual, Historical, and Public Policy Perspective*, 63 AM. PSYCHOL. 228, 228 (2008).

<sup>69</sup> Amy Wrzesniewski et al., *Jobs, Careers, and Callings: People's Relations to Their Work*, 31 J. RES. PERSONALITY 21, 21 (1997).

<sup>70</sup> See generally PETER WARR & GUY CLAPPERTON, *THE JOY OF WORK?: JOBS, HAPPINESS, AND YOU* (2009); PETER WARR, *WORK, HAPPINESS, AND UNHAPPINESS* (2007).

<sup>71</sup> Alberto Alesina, Edward Glaeser & Bruce Sacerdote, *Work and Leisure in the United States and Europe: Why So Different?*, NBER MACROECONOMICS ANNUAL 1, 6, 53-55, tbl. 1.16 (2005).

<sup>72</sup> Lonnie Golden, *A Purpose for Every Time? The Timing and Length of the Work Week and Implications for Worker Well-Being*, 42 CONN. L. REV. 1181, 1181 (2010).

<sup>73</sup> *Id.*

<sup>74</sup> Nobelprize.org, The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2001, [http://nobelprize.org/nobel\\_prizes/economics/laureates/2001/](http://nobelprize.org/nobel_prizes/economics/laureates/2001/) (last visited Apr. 7, 2011).

<sup>75</sup> GEORGE A. AKERLOF & RACHEL E. KRANTON, *IDENTITY ECONOMICS: HOW OUR IDENTITIES SHAPE OUR WORK, WAGES, AND WELL-BEING* 59 (2010).

<sup>76</sup> Wrzesniewski, *supra* note 69, at 22.

matters is fulfillment and satisfaction from work that is well-done, as opposed to financial gain or career advancement.

There is longitudinal empirical data finding that engagement levels at work correlate positively with health as measured by levels of cholesterol, cortisol, depression, heart rates, and triglyceride.<sup>77</sup> Related research finds that having a manager who principally focuses on employees' strengths increases the probability that employees are being actively engaged.<sup>78</sup> Furthermore, work providing daily opportunities to utilize strengths is correlated with greater energy, engagement, fun, learning, life quality, pride, and satisfaction.<sup>79</sup> Moss and Huang analyze how employers can formulate effective antidiscrimination programs<sup>80</sup> based upon empirical happiness research about emotional, health, and psychological benefits of positive affect.<sup>81</sup>

Economist George Loewenstein argues that people climb mountains because facing the extreme discomforts and dangers of mountaineering enhances their sense of self.<sup>82</sup> More generally, Loewenstein and two other economists draw attention to four alternative interpretations of people's desire for meaning as an important motivation driving a lot of human behavior and economic activity: (1) resolving uncertain preferences, (2) extending oneself either socially or temporally, (3) asserting one's free will, or (4) constructing autobiographical narratives.<sup>83</sup> Recent empirical research manipulates perceived meanings of simple, repetitive tasks in a laboratory setting and finds a strong influence on subjects' labor supply.<sup>84</sup> Even though wages and tasks are constant across experimental conditions,<sup>85</sup> subjects in meaningless conditions demand consistently more payment for work than subjects in meaningful conditions.<sup>86</sup> Additionally, where there are meaningful conditions, subjects' productivity—as measured by speed of completing tasks—more strongly affects

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<sup>77</sup> TOM RATH & JIM HARTER, *WELL-BEING: THE FIVE ESSENTIAL ELEMENTS* 18-25, 188-92 (2010).

<sup>78</sup> *Id.* at 26, 193.

<sup>79</sup> *Id.* at 27-29, 193-94.

<sup>80</sup> Moss & Huang, *supra* note 49, at 251-52.

<sup>81</sup> See generally BARBARA FREDRICKSON, *POSITIVITY: GROUNDBREAKING RESEARCH REVEALS HOW TO EMBRACE THE HIDDEN STRENGTH OF POSITIVE EMOTIONS, OVERCOME NEGATIVITY, AND THRIVE* (2009) (providing empirical data showing that maintaining a three-to-one ratio of positive thoughts to negative emotions creates a tipping point between flourishing and languishing); Barbara L. Fredrickson, *Cultivating Positive Emotions to Optimize Health & Well-Being*, 3 PREVENTION & TREATMENT Article 0001a (2000) (developing hypothesis that intervention strategies cultivating positive emotions are particularly suited to prevent and treat problems caused by such negative emotions as aggression, anxiety, depression, and stress-related health problems); Barbara L. Fredrickson, *The Role of Positive Emotions in Positive Psychology: The Broaden-and-Build Theory of Positive Emotions*, 56 AM. PSYCHOL. 218 (2003) (proposing that experiences of positive emotions broadens people's thought-action repertoires, which in turn builds enduring personal intellectual, physical, psychological, and social resources).

<sup>82</sup> George Loewenstein, *Because It Is There: The Challenge of Mountaineering ...for Utility Theory*, 52 KYKLOS 315, 323-25 (1999).

<sup>83</sup> Niklas Karlsson, George Loewenstein & Jane McCafferty, *The Economics of Meaning*, 30 NORDIC J. POL. ECON. 61, 61 (2004).

<sup>84</sup> Dan Ariely, Emir Kamenica & Dražen Prelec, *Man's Search for Meaning: The Case of Legos*, 67 J. ECON. BEHAV. & ORG. 671, 672 (2008).

<sup>85</sup> *Id.* at 672-75.

<sup>86</sup> *Id.* at 673-76.

labor supply.<sup>87</sup>

### B. *Happiness in Marketing*

Suggesting the converse of the above finding indicating that people may be motivated to work by a desire to find meaning in terms of achievement and recognition, additional research finds that people may search for meaning in order to stay busy or work.<sup>88</sup> These studies find that people are happier when they are busy, yet unless they have some (even specious) reason to be active, they choose to do nothing due to an evolutionary instinct for idleness to conserve their energy.<sup>89</sup>

Researchers who conducted these studies define a notion of busyness they call futile busyness, which serves no purpose other than to prevent idleness.<sup>90</sup> One often cited example of deliberately creating futile busyness to increase happiness involves an airline serving Houston, Texas, which moved its gate for disembarking from a flight further away from the main airport terminal and chose the most distant baggage carousel for delivery of that flight's luggage to increase passengers' total travel time from deplaning to baggage claim from one minute to six minutes, and thereby reducing baggage carousel waiting time from seven minutes to just one minute.<sup>91</sup> Influential designer Don Norman provides yet another example of increasing the pleasantness of waiting by keeping people occupied in theme park waiting lines because filled time passes more quickly than unfilled time.<sup>92</sup> Finally, at his lunchtime talk for this [Clayton Center conference on Behavior and Business Law], law professor and Instapundit blogger,<sup>93</sup> Glenn Reynolds raised the question of whether blogging and such forms of social media networking as Facebook exemplify futile busyness in addition to being mere busyness.

The researchers who introduced the futile busyness terminology also contend that futile busyness is more realistic and socially less desirable than constructive busyness, but is socially more desirable than destructive busyness.<sup>94</sup> Because they found that most subjects do not voluntarily engage in futile busyness, they propose that policy makers pursue strategies that generate futile busyness to increase happiness levels of idle people.<sup>95</sup> They state that: "Homeowners may increase the happiness of their idle housekeepers by letting in some mice and prompting the housekeepers to clean up. Governments may increase the

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<sup>87</sup> *Id.* at 676.

<sup>88</sup> See Christopher K. Hsee, Adelle X. Yang & Liangyan Wang, *Idleness Aversion and the Need for Justifiable Busyness*, 21 PSYCHOL. SCI. 926 (2010).

<sup>89</sup> *Id.* at 927-29.

<sup>90</sup> *Id.* at 929.

<sup>91</sup> See Richard C. Larson, *Perspectives on Queues: Social Justice and the Psychology of Queueing*, 35 OPERATIONS RES. 895, 897 (1987).

<sup>92</sup> DONALD A. NORMAN, *LIVING WITH COMPLEXITY* ch. 7 (2010) (analyzing design of waits); Norman, *supra* note 13, at 7-8; see also David H. Maister, *The Psychology of Waiting Lines in THE SERVICE ENCOUNTER: MANAGING EMPLOYEE/CUSTOMER INTERACTION IN SERVICE BUSINESSES* (John A. Czepiel et al. eds., 1985), available at <http://davidmaister.com/articles/5/52/> (providing examples of similar practices by other service organizations).

<sup>93</sup> Instapundit.com, <http://pajamasmedia.com/instapundit/> (last visited March 10, 2011).

<sup>94</sup> Hsee, Yang & Wang, *supra* note 88, at 929.

<sup>95</sup> *Id.*

happiness of idle citizens by having them build bridges that are actually useless.”<sup>96</sup> This last statement conjures up images of a government in an economic depression hiring people to dig up holes in the ground and then (other) people to fill them. Of course, governments could probably find at least some *ex ante* socially desirable public works projects rather than building useless bridges. While acknowledging that these public works projects might be unethical, proponents support the projects nonetheless, because they believe that futile busyness is more socially desirable than both destructive busyness and idleness.<sup>97</sup> They are worried that idle people will spend their energies and time in destructive busyness ranging from “inner-city crimes to crossborder wars.”<sup>98</sup> They concede that in an ideal world, “idle people should devote their energy to constructive courses, but it is often difficult to predict which actions are constructive (e.g., Are business investments or scientific discoveries always constructive?), and not every idle individual is capable of constructive contributions.”<sup>99</sup> Their observation that it can be hard *ex ante* to determine whether a particular activity will be socially desirable is aptly illustrated by financial innovation utilizing derivative securities.<sup>100</sup>

Five other examples illustrate how marketing researchers conduct and apply happiness research to consumer behavior and choice. First, there are proposals to increase people’s happiness by improving presentation and choices among external outcomes (for example, how fixed outcomes are arranged among themselves or relative to other outcomes) without increasing objective levels of those outcomes.<sup>101</sup> Second, there is field and laboratory experimental evidence of a “mere categorization effect,” whereby irrespective of their content, the mere presence of categories positively influences satisfaction of choosers unfamiliar with a choice domain (because more categories signal more variety among available choices, this allows for a greater sense of self-determination from choosing).<sup>102</sup> Third, there is other field and laboratory experimental evidence of a “time versus money effect” in which priming time as opposed to money usually results in more favorable product attitudes and people spending their money and time to achieve greater happiness (because time increases focus on product experience, activating time augments personal connection with products, thus boosting attitudes and decisions).<sup>103</sup> Fourth, additional field and laboratory experimental evidence suggests that implicitly priming construct of time motivates people to spend less time at work and more time with family and friends, both associated with increased happiness (while implicitly activating money motivates people to work more and socialize less, which though productive, does not increase happiness).<sup>104</sup> Fifth, there is experimental evidence that experiential purchases (such as concerts, sporting

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> See generally Peter H. Huang, *A Normative Analysis of New Financially Engineered Derivatives*, 73 S. CAL. L. REV. 471 (2000) (demonstrating that such financial innovation is typically but not always normatively socially undesirable).

<sup>101</sup> See Christopher K. Hsee, Reid Hastie & Jingqiu Chen, *Hedonomics: Bridging Decision Research With Happiness Research*, 3 PERSP. PSYCHOL. SCI. 224 (2008).

<sup>102</sup> See Cassie Mogilner, Tamar Rudnick & Sheena S. Iyengar, *The Mere Categorization Effect: How the Presence of Categories Increases Choosers’ Perceptions of Assortment Variety and Outcome Satisfaction*, 35 J. CONS. RES. 202 (2008).

<sup>103</sup> See Cassie Mogilner & Jennifer Aaker, *“The Time vs. Money Effect”: Shifting Product Attitudes and Decisions through Personal Connection*, 36 J. CONS. RES. 277 (2009).

<sup>104</sup> See Cassie Mogilner, *The Pursuit of Happiness: Time, Money, and Social Connection*, 21 PSYCHOL. SCI. 1348 (2010).

events, vacation travel) usually produce more retrospective happiness for positive purchases, and less for negative purchases, than material purchases (such as cars, furniture, and houses).<sup>105</sup>

A final application of happiness research to marketing is analysis of how choice and happiness are related.<sup>106</sup> The notion that more choice is not always more desirable might be surprising to many Americans,<sup>107</sup> but it is clearly illustrated by noting that people may cope better if doctors, instead of family members, make such emotionally difficult choices as withdrawing a loved one from life support.<sup>108</sup> In addition, as two well-known psychologists observe, “even when choice *can* foster freedom, empowerment, and independence, it is not an unalloyed good.”<sup>109</sup> These psychologists review studies demonstrating that choice and freedom have different levels of importance and meanings to working-class Westerners and those from non-Western cultures than they have for university-educated people, who have been the subjects of almost all research about how choice, freedom, autonomy, and well-being are related.<sup>110</sup> The psychologists conclude with a number of difficult, but important future research questions about choice and happiness.<sup>111</sup>

#### IV. HAPPINESS IN LAW

Huang illustrates how empirical happiness studies have been applied 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.<sup>112</sup> Huang observes that various types of happiness are correlated with decision-making, health, productivity, and psychological benefits.<sup>113</sup> Huang explains that happiness interventions can be more or less paternalistic and considers policies to encourage happiness via regular physical exercise, good sleep, and meditation.<sup>114</sup> Happiness research offers a potential for societies to help individuals create and sustain certain types of happiness by utilizing institutions,<sup>115</sup> law,<sup>116</sup> and public policies.<sup>117</sup>

<sup>105</sup> See Leonardo Nicolao, Julie R. Irwin & Joseph K. Goodman, *Happiness for Sale: Do Experiential Purchases Make Consumers Happier than Material Purchases?*, 36 J. CONS. RES. 188 (2009).

<sup>106</sup> See SHEENA IYENGAR, *THE ART OF CHOOSING* (2010); see also Knowledge@Wharton, *Sheena Iyengar on the Power of Choice – and Why It Doesn't Always Bring Us What We Want* (Aug. 18, 2010), <http://knowledge.wharton.upenn.edu/article.cfm?articleid=2572> (including video interview).

<sup>107</sup> See generally BARRY SCHWARTZ, *THE PARADOX OF CHOICE: WHY MORE IS LESS* (2005) (explaining why many Americans are feeling less satisfied even as their freedom of choice increases).

<sup>108</sup> IYENGAR, *supra* note 106, at 228-30.

<sup>109</sup> Hazel Rose Markus & Barry Schwartz, *Does Choice Mean Freedom and Well-Being?*, 37 J. CONS. RES. 344, 344 (2010).

<sup>110</sup> *Id.* at 345-52.

<sup>111</sup> *Id.* at 352-53.

<sup>112</sup> Huang, *supra* note 3, at 411.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> See Peter H. Huang & Jeremy A. Blumenthal, *Positive Institutions, Law, and Policy* in OXFORD HANDBOOK OF POSITIVE PSYCHOLOGY 589 (Shane J. Lopez & C. R. Snyder eds., 2d ed. 2009).

<sup>116</sup> See Jeremy A. Blumenthal & Peter H. Huang, *Positive Parentalism*, NAT'L L.J., Jan. 26, 2009, available at

### A. Happiness in Business Regulation

Motivated by happiness research, some legal scholars have advocated increased shareholder empowerment and participation as paternalistic interventions in the market for corporate governance and executive compensation.<sup>118</sup> But another pair of legal scholars have criticized increased shareholder participation on a number of grounds: including the observation that such proposals for increased shareholder participation cite happiness data that fails to address directly whether shareholder empowerment and participation will necessarily increase happiness,<sup>119</sup> the fact that shareholders form a group having divergent interests,<sup>120</sup> the lack of clarity about what exactly is an appropriate notion of happiness,<sup>121</sup> and the fact that shareholder participation is very expensive to participating investors, other investors, companies in which shareholders participate, economies at large, and other institutions.<sup>122</sup>

One proposal based partially upon happiness research advocates the resurrection of death or inheritance taxes in the United States.<sup>123</sup> There have also been a number of proposals advocating more progressive consumption and income taxation as policies to motivate people to consume or work less, and in doing so, improve people's choices balancing work and life.<sup>124</sup> However, other tax law scholars have critiqued such proposals,

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<http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202427700551>; Peter H. Huang & Jeremy A. Blumenthal, *Positive Law and Policy*, ENCYCLOPEDIA OF POSITIVE PSYCHOLOGY 730 (Shane J. Lopez ed., 2009).

<sup>117</sup> See generally Peter H. Huang, *Authentic Happiness, Self-Knowledge, and Public Policy*, 9 MINN. J. L. SCI. & TECH. 755 (2008) (arguing that legal policy's ability to influence how people think could ultimately increase levels of "authentic happiness").

<sup>118</sup> See e.g., JAMES MCCONVILL, *SHAREHOLDER PARTICIPATION AND THE CORPORATION: A FRESH INTER-DISCIPLINARY APPROACH IN HAPPINESS* (Routledge Canvendish 2006) (advocating increasing shareholder participation in corporate governance to raise happiness); JAMES MCCONVILL, *THE FALSE PROMISE OF PAY FOR PERFORMANCE: EMBRACING A POSITIVE MODEL OF THE COMPANY EXECUTIVE* (2005) (arguing that happiness research explains why existing CEO compensation practices are misguided); James McConvill, *Executive Compensation and Corporate Governance: Rising Above the "Pay-for-Performance" Principle*, 43 AM. BUS. L.J. 413, 417-19 (2006) (arguing that paying for corporate performance is misguided); James A. McConvill, *Positive Corporate Governance*, 6 J. BUS. & SEC. L. 51, 55-57 (2006) (arguing that corporate law should recognize and foster potential strengths of company executives, rather than simply trying to control them by imposing corporate governance requirements); James McConvill, *Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation*, 33 OHIO N.U. L. REV. 1013, 1049-53 (2007) (arguing that shareholder participation can be a vehicle for realizing happiness).

<sup>119</sup> Harry G. Hutchison & R. Sean Alley, *Against Shareholder Participation: A Treatment for McConvill's Psychonimicosis*, 2 BROOK. J. CORP. FIN. & COM. L. 41, 56 (2007) (pointing out that all of the cited empirical studies about happiness only describe what in general terms correlates with people's happiness and possess no direct connection to shareholders and the debate over the allocation of corporate power in particular).

<sup>120</sup> *Id.* at 57-60.

<sup>121</sup> *Id.* at 62-63.

<sup>122</sup> *Id.* at 59-62; see also Harry G. Hutchison & R. Sean Alley, *The High Costs of Shareholder Participation*, 11 U. PA. J. BUS. L. 941, 947-64 (2009) (pointing out costs of increased shareholder participation include costs to initiating and implementing changes to current systems and related implications for corporate performance).

<sup>123</sup> J. D. Trout & Shahid A. Buttar, *Resurrecting "Death Taxes": Inheritance, Redistribution, and the Science of Happiness*, 16 J.L. & POL. 765, 828-32 (2000) (making this proposal).

<sup>124</sup> See e.g., Mirko Bagaric & James McConvill, *Stop Taxing Happiness: A New Perspective on Progressive Taxation*, 2 PITT. TAX REV. 65, 87-90 (2005) (arguing that empirical happiness research data supports progressive taxes); Robert H. Frank, *Progressive Consumption Taxation as a Remedy for the U.S. Savings Shortfall*, 2 ECONOMISTS' VOICE 1, 5-7 (2005) (arguing that imposing a progressive consumption tax remedies a primary reason that Americans save



based upon concerns about what happiness and happiness studies mean,<sup>125</sup> lack of support from current empirical evidence and theoretical frameworks about relative income and status effects involving happiness,<sup>126</sup> and the unresolved question of whether marginal utility declines with income.<sup>127</sup> Finally, based on Canadian and American happiness data, two economists find evidence that cigarette sales taxes raise happiness of people with a propensity to smoke.<sup>128</sup>

Huang analyzes empirical and experimental research demonstrating that investors' moods influence their financial behavior.<sup>129</sup> One recent experimental study provides the first evidence that changes in investors' moods cause changes in investors' risk aversion.<sup>130</sup> A recent empirical research study by Lepori utilizes the time-series variation in theatrical release of comedy movies to conclude that an increase in comedy admissions on a particular weekend is followed by a decrease in stock returns on the subsequent Monday.<sup>131</sup> In related work, Lepori utilizes prevailing ambient air pollution concentrations near stock exchanges as proxies for traders' moods to show a negative pollution mood effect on traders' decisions and resulting stock prices and returns.<sup>132</sup> Huang also reviews a case study, empirical and experimental data, and theoretical models of irrational anxiety and exuberance in securities markets.<sup>133</sup> In many empirical studies, weather serves as a proxy for people's moods. In research along those lines, Simonsohn provides field evidence based upon analyzing the enrollment decisions of 1,284 prospective students who visited "a university known for its

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so little, namely the pressure to keep up with community spending standards, that have been exacerbated recently by rising income and wealth inequality); Thomas D. Griffith, *Progressive Taxation and Happiness*, 45 B.C. L. REV. 1363, 1395-98 (2004) (arguing that happiness research provides additional support for progressive taxation); Marjorie E. Kornhauser, *Educating Ourselves Towards a Progressive (and Happier) Tax: A Commentary on Griffith's Progressive Taxation and Happiness*, 45 B.C. L. REV. 1399, 1406-10 (2004) (proposing a national tax literacy campaign to increase public knowledge about and acceptance of progressive taxation).

<sup>125</sup> See Diane M. Ring, *Why Happiness?: A Commentary on Griffith's Progressive Taxation and Happiness*, 45 B.C. L. REV. 1413, 1422-23 (2004) (examining issues raised by proposals to use happiness research in determining tax policy).

<sup>126</sup> David A. Weisbach, *What Does Happiness Research Tell Us About Taxation?*, 37 J. LEGAL STUD. 293, 311-14 (2008) (examining arguments for progressive taxation and concluding they are not supported by existing data or models about happiness).

<sup>127</sup> Sarah B. Lawsky, *On the Edge: Declining Marginal Utility and Tax Policy*, 95 MINN. L. REV. 904, 923-27 (analyzing problems with empirical happiness studies and concluding that happiness data fail to establish, despite being suggestive, of declining marginal utility of income).

<sup>128</sup> Jonathan H. Gruber & Sendhil Mullainathan, *Do Cigarette Taxes Make Smokers Happier*, 5(1) ADV. ECON. ANALYSIS POL'Y, Article 4 (2005), available at <http://www.bepress.com/bejeap/advances/vol5/iss1/art4/>.

<sup>129</sup> See, e.g., Peter H. Huang, *Moody Investing and the Supreme Court: Rethinking Materiality of Information and Reasonableness of Investors*, 13 SUP. CT. ECON. REV. 99, 102-08 (2005).

<sup>130</sup> See Noel Harding & Wen He, *Does Investor Mood Really Affect Stock Prices? An Experimental Analysis* (Mar. 15, 2011) (unpublished manuscript), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1786344](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1786344).

<sup>131</sup> See Gabriele M. Lepori, *Positive Mood, Risk Attitudes, and Investment Decisions: Field Evidence from Comedy Movie Attendance in the U.S.* (Oct. 11, 2010) (unpublished manuscript), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1690476](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1690476).

<sup>132</sup> See Gabriele M. Lepori, *Environmental Stressors, Mood, and Trading Decisions: Evidence from Ambient Air Pollution* (May 18, 2009) (unpublished manuscript), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1284549](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1284549).

<sup>133</sup> Peter H. Huang, *Regulating Irrational Exuberance and Anxiety in Securities Markets* in THE LAW AND ECONOMICS OF IRRATIONAL BEHAVIOR 501, 505-18 (Francesco Paresi & Vernon Smith eds., 2005).

academic strengths and recreational weaknesses.”<sup>134</sup> An increase in cloud cover of one standard deviation on the day of visiting a school is associated with an increase in probability of enrollment by 9 percentage points.<sup>135</sup> In a complementary field study, Simonsohn analyzes 682 actual university admissions decisions and finds that college admissions reviewers increase the weight placed on academic attributes of applicants evaluated on cloudier days and increase the weight placed on non-academic attributes on sunnier days.<sup>136</sup>

Huang advocates that financial regulators ought to take into account impacts that regulations have on investors’ and others’ affect, happiness, and trust.<sup>137</sup> Examples of these impacts include changes in investors’ and consumers’ anxiety, confidence, exuberance, happiness, moods, optimism, and stress.<sup>138</sup> These psychological variables affect and are affected by such traditional financial variables as consumer debt, income, and spending; corporate debt, expenditures, and investment; securities market demand and initial public offerings; liquidity, prices, supply, and volume.<sup>139</sup> Research evidence shows that although hosting sports events is typically economically unprofitable, those events can be associated with increased happiness.<sup>140</sup> This evidence demonstrates that the same activity can have different impacts on economic and psychological variables.<sup>141</sup> Some people feel more comfortable basing public policy upon economic variables than psychological variables. These feelings can be due to beliefs that although economic variables are objective and publicly observable data, psychological variables are subjective and self-reports about private and unobservable information. In fact, such well-known economic variables as Gross Domestic Product, inventory levels, and the unemployment rate are calculated from self-reported survey data. To be sure, people vary in their feelings about basing public policy upon economic variables versus non-economic variables, including psychological variables. Huang proposes that such individual differences in emotional responses to basing public policy upon economic variables can be due to people’s identities and worldviews.<sup>142</sup>

A central, robust empirical finding is that unemployment has large and long-lasting effects on the happiness of not just people that become involuntarily unemployed, but also people generally due to fears and insecurities of themselves, their family members, or friends becoming unemployed in the future.<sup>143</sup> Two economists, Rafael Di Tella and Robert

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<sup>134</sup> Uri Simonsohn, *Weather to Go to College*, 120 ECON. J. 270, 270 (2009).

<sup>135</sup> *Id.* at 275-77.

<sup>136</sup> See Uri Simonsohn, *Clouds Make Nerds Look Good: Field Evidence of the Impact of Incidental Factors on Decision Making*, 20 J. BEHAV. DECISION MAKING 143 (2007).

<sup>137</sup> See Peter H. Huang, *How Do Securities Laws Influence Affect, Happiness, & Trust?*, 3 J. BUS. & TECH. L. 257 (2008), available at [http://www.law.umaryland.edu/academics/journals/jbtl/issues/3\\_2/3\\_2\\_257\\_Huang.pdf](http://www.law.umaryland.edu/academics/journals/jbtl/issues/3_2/3_2_257_Huang.pdf).

<sup>138</sup> *Id.* at 261.

<sup>139</sup> *Id.* at 263-66.

<sup>140</sup> SIMON KUPER & STEFAN SZYMANSKI, *SOCCERNOMICS: WHY ENGLAND LOSES, WHY GERMANY AND BRAZIL WIN, AND WHY THE US, JAPAN, AUSTRALIA, TURKEY-AND EVEN IRAQ-ARE DESTINED TO BECOME THE KINGS OF THE WORLD’S MOST POPULAR SPORT* 245-48 (2009) (describing empirical findings of happiness research, including correlation of large persistent jumps in happiness of men with European countries hosting World Cup soccer tournaments).

<sup>141</sup> *Id.*

<sup>142</sup> Peter H. Huang, *Emotional Reactions to Law & Economics, Market Metaphors, & Rationality Rhetoric in THEORETICAL FOUNDATIONS OF LAW AND ECONOMICS* 163, 164-69 (Mark D. White ed., 2009).

<sup>143</sup> See generally Andreas Knabe & Steffen Rätzel, *Scarring or Scaring? The Psychological Impact of Past Unemployment and*

MacCulloch, analyze data correlating on the one hand rates of unemployment and inflation with on the other hand self-reports of happiness and life satisfaction to inform financial regulations and central bank determination of monetary policy.<sup>144</sup> They believe that while happiness data better captures instantaneous mood, life satisfaction data might serve as the best available proxy for an overall measure of people's welfare.<sup>145</sup> They also believe that a central bank should target life satisfaction even if that results in decreased happiness.<sup>146</sup> They note that other financial actors may be motivated by such other emotions as regret,<sup>147</sup> or anger over economic processes.<sup>148</sup> Finally they observe that economists concerned over asset bubbles may not be so impressed by central bankers who focus on life satisfaction, leaving interest rates constant during a period of rising asset prices.<sup>149</sup>

Another economist and happiness researcher, Alan B. Krueger observes that Di Tella and MacCulloch's analysis helps to explain both the dual mandate of price stability and full employment found in the Humphrey–Hawkins Full Employment and Balanced Growth Act of 1978,<sup>150</sup> as well as the popular support for it.<sup>151</sup> A former Chairman of the Council of Economic Advisors from 2003 to 2005,<sup>152</sup> macroeconomist, and consumer of happiness research, Gregory Mankiw, questions whether happiness is the right objective for central bankers, emphasizing “there is a vast difference between happiness and satisfaction, that a good life is more important than a happy one.”<sup>153</sup>

#### B. *Happiness in Legal Education and Practice*

A recent empirical study reports that law students finding ways to utilize their

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*Future Unemployment Risk*, 78 *ECONOMICA* 283 (2011) (providing recent supporting empirical data).

<sup>144</sup> See Rafael Di Tella & Robert MacCulloch, *Happiness, Contentment, and Other Emotions for Central Banks in* POLICYMAKING INSIGHTS FROM BEHAVIORAL ECONOMICS 311 (Christopher L. Foote et al. eds., 2009), available at <http://www.bos.frb.org/economic/conf/BehavioralPolicy2007/chapter6.pdf>.

<sup>145</sup> *Id.* at 342.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 342-43 (discussing role of regret in asset and housing market bubbles); see also Julio J. Rotemberg, *Behavioral Aspects of Price Setting and Their Policy Implications in* POLICYMAKING INSIGHTS FROM BEHAVIORAL ECONOMICS 51, 59-60 (Christopher L. Foote et al. eds., 2009) (discussing regret from purchases made or not made), available at <http://www.bos.frb.org/economic/conf/BehavioralPolicy2007/chapter2.pdf>.

<sup>148</sup> Rotemberg, *supra* note 147, at 60-64 (discussing anger over unfair prices); see also Rafael Di Tella & Robert MacCulloch, *Why Doesn't Capitalism Flow to Poor Countries?*, 1 *BROOKINGS PAPERS ON ECONOMIC ACTIVITY* 285, 306-16 (2009) (analyzing voters controlling anger from observing a corrupt privatization). See generally Julio J. Rotemberg, *Customer Anger at Price Increases, Changes in the Frequency of Price Adjustment and Monetary Policy*, 52 *J. MONETARY ECON.* 829 (2005) (demonstrating that threat of consumer anger can both account for constancy of prices and explain some dynamic responses of an economy to monetary policy shocks).

<sup>149</sup> Di Tella & MacCulloch, *supra* note 148, at 343.

<sup>150</sup> 15 U.S.C. § 3101 (2011).

<sup>151</sup> Alan B. Krueger, *Comments on “Happiness, Contentment, and Other Emotions for Central Bank Policymakers” by Rafael Di Tella and Robert MacCulloch in* POLICYMAKING INSIGHTS FROM BEHAVIORAL ECONOMICS 355, 360 (Christopher L. Foote et al. eds., 2009).

<sup>152</sup> The White House, Council of Economic Advisers, Former Members of the Council, <http://www.whitehouse.gov/administration/eop/cea/about/Former-Members> (last visited Apr. 7, 2011).

<sup>153</sup> N. Gregory Mankiw, *Comments on “Happiness, Contentment, and Other Emotions for Central Bank Policymakers” by Rafael Di Tella and Robert MacCulloch in* POLICYMAKING INSIGHTS FROM BEHAVIORAL ECONOMICS 363, 364 (Christopher L. Foote et al. eds., 2009).

personal strengths are more likely to be satisfied with their lives and less likely to suffer from depression and stress.<sup>154</sup> Another empirical study of 124 first year law students recruited from the entering classes of 2001 to 2005 finds a positive correlation between changes in their optimism and cell-mediated immunity.<sup>155</sup> Changes in expectations over their future in law school predicted changes in these first year law students' cellular immune function (as measured in vivo by delayed-type hypersensitivity skin testing).<sup>156</sup> This relationship was partially accounted for by their positive but not negative affect.<sup>157</sup> Huang and Swedloff advocate that law schools can and should help to reduce anxiety, stress, and unhappiness and should help law students develop abilities to achieve meaningful legal careers.<sup>158</sup> Two other law professors, Levit and Linder, apply happiness research to analyze whether law schools can make law students happier, whether making happier law students translates into making them happier lawyers, and whether making law students happier creates better lawyers.<sup>159</sup> They also make perhaps unexpected recommendations for how to choose a law school to maximize a law student's prospects for long-term happiness.<sup>160</sup> Law professor Allison D. Martin and psychologist Kevin L. Rand analyze how legal educators can foster hope in law students.<sup>161</sup> Law professor Camille Lamar Campbell outlines a comprehensive in-class exercise designed to build a framework of hope in legal research and writing,<sup>162</sup> and law professor Emily Zimmerman analyzes how to meaningfully cultivate law student enthusiasm.<sup>163</sup> The most recent annual conference of the Association of American Law Schools (AALS) included a session on January 5, 2011 titled Beyond Humanizing: Can – and Should – Law Schools Strive to Graduate Happy Students?<sup>164</sup>

Empirical psychological research suggests that mood influences how successfully lawyers negotiate; consequently, lawyers can negotiate better by studying, managing, and understanding mood.<sup>165</sup> Huang and Swedloff also propose that law firms are capable of

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<sup>154</sup> See Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 358 (2009).

<sup>155</sup> See Suzanne C. Segerstrom & Sandra E. Sephton, *Optimistic Expectancies and Cell-Mediated Immunity: The Role of Positive Affect*, 21 PSYCHOL. SCI. 448 (2010).

<sup>156</sup> *Id.* at 449.

<sup>157</sup> *Id.* at 453.

<sup>158</sup> See Peter H. Huang & Rick Swedloff, *Authentic Happiness and Meaning at Law Firms*, 58 SYRACUSE L. REV. 335 (2008).

<sup>159</sup> See Nancy Levit & Douglas O. Linder, *Happy Law Students, Happy Lawyers*, 58 SYRACUSE L. REV. 351 (2008).

<sup>160</sup> NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* 115-25 (2010).

<sup>161</sup> See Allison D. Martin & Kevin L. Rand, *The Future's So Bright, I Gotta Wear Shades: Law School Through the Lens of Hope*, 48 DUQ. L. REV. 203, 218-31 (2010).

<sup>162</sup> See Camille Lamar Campbell, *How to Use a Tube Top and a Dress Code to Demystify the Predictive Writing Process and Build a Framework of Hope During the First Weeks of Class*, 48 DUQ. L. REV. 273, 298-314 (2010).

<sup>163</sup> See Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 855-917 (2009) (analyzing how to meaningfully cultivate law student enthusiasm).

<sup>164</sup> AALS, The AALS 2011 Annual Meeting, Final Updated Program, [https://memberaccess.aals.org/eWeb//DynamicPage.aspx?webcode=SesDetails&ses\\_key=fd1dea8-4cd2-43ca-9e20-5d03e18aef2](https://memberaccess.aals.org/eWeb//DynamicPage.aspx?webcode=SesDetails&ses_key=fd1dea8-4cd2-43ca-9e20-5d03e18aef2) (last visited Apr. 7, 2011).

<sup>165</sup> Clark Freshman, Adele Hayes & Greg Feldman, *The Lawyer-Negotiator as Mood Scientist: What We Know and Don't Know about How Mood Relates to Successful Negotiation*, 2002 J. DISP. RESOL. 1, 6-11 (2002).

helping their attorneys find meaning and satisfaction in their professional lives if managing and senior partners adopt organizational happiness interventions.<sup>166</sup> Such fostering of authentic happiness makes good business sense by retaining happy attorneys and reducing high turnover due to attorney dissatisfaction.<sup>167</sup> One psychologist offers advice about how to seek happiness through all stages of a lawyer's career, strategies to remain satisfactorily employed during even stressful times, and helpful suggestions to develop resilience, manage stress, and practice habits to cope with anger and anxiety.<sup>168</sup> The result is a reduction of adverse health, physical, physiological, and psychological consequences.<sup>169</sup>

More generally, Levit and Linder examine causes of lawyers' dissatisfaction and suggest possible routes to happier, more fulfilling, and more satisfying legal careers.<sup>170</sup> They explain for attorneys just starting their careers which legal jobs have greatest potential to provide long-term happiness, according to happiness research.<sup>171</sup> They also supply for lawyers already in practice a useful collection of easy to understand steps to enhance career happiness, and for law firm senior partners a variety of methods to restructure law firms into more fulfilling and satisfying environments.<sup>172</sup> They examine causes of lawyers' unhappiness to offer alternative routes to happier and more fulfilling legal careers that steer clear of a one-size-fits-all approach by demonstrating that attorneys can maximize their chances of achieving sustainable happiness by understanding their interests, personality types, strengths, and values.<sup>173</sup> They draw upon empirical happiness research, neuroscience, and knowledge of the organization and function of modern law firms to provide crucial insights, valuable to both current and future attorneys.<sup>174</sup>

## V. CONCLUSIONS

This condensed synopsis of empirical happiness research and its applications to business or law illustrates both possible limitations of and opportunities for utilizing self-reported happiness data to raise people's happiness in business or law. But just as parents care about not only their children's happiness, but also why their children are happy, designers of businesses or laws can and should care about not only people's happiness, but also about why people are happy. As economist and Federal Reserve Vice Chairman Janet Yellen states: "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."<sup>175</sup> Similar to happiness

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<sup>166</sup> Huang & Swedloff, *supra* note 158, at 336-39, 343-46.

<sup>167</sup> *Id.*

<sup>168</sup> See REBECCA NERISON, *LAWYERS, ANGER AND ANXIETY: DEALING WITH THE STRESSES OF THE LEGAL PROFESSION* (2010).

<sup>169</sup> *Id.*

<sup>170</sup> See LEVIT & LINDER, *supra* note 160, at 49-111.

<sup>171</sup> *Id.*, at 112-159.

<sup>172</sup> *Id.* at 232-242, 160-207.

<sup>173</sup> See LEVIT & LINDER, *supra* note 160.

<sup>174</sup> *Id.*

<sup>175</sup> Janet L. Yellen, *Implications of Behavioral Economics for Monetary Policy in* POLICYMAKING INSIGHTS FROM BEHAVIORAL ECONOMICS 379, 389 (Christopher L. Foote, Lorenz Goette & Stephan Meier eds., 2009), available at <http://www.bos.frb.org/economic/conf/BehavioralPolicy2007/chapter7b.pdf>.

researchers, legal policy makers do and should care about why people are happy. A particular challenge to business managers and legal policy makers is that happiness is multi-faceted: People typically care more about hedonic and short-term versions of happiness than cognitive and long-term versions of happiness. It is worth keeping in mind this anecdote:

Like many parents, I try to impress upon my children that there is a vast difference between happiness and satisfaction, that a good life is more important than a happy one. This conversation usually takes place when I am trying to explain to my young son that it is time to turn off his Game Boy, and that I am telling him to do this not as a punishment but for his own good. Somehow, he never seems convinced.<sup>176</sup>

Martin Seligman who founded positive psychology,<sup>177</sup> now believes that happiness and life satisfaction are both only parts of the first of these five elements of well-being: positive emotion, engagement, positive relationships, meaning, and accomplishment (Seligman helpfully offers an acronym and mnemonic of PERMA).<sup>178</sup> Analysis of how Seligman's new well-being theory is applicable to business and law must await another article, but the final chapter of Seligman's new book is titled "The Politics and Economics of Well-Being."<sup>179</sup> Seligman proposes that business schools should offer "positive business" courses to expand what MBAs and companies care about from merely making money to cultivating well-being in terms of the above five elements PERMA.<sup>180</sup> Seligman also proposes that policymakers evaluate policies via a common metric of well-being in terms of the above five elements PERMA.<sup>181</sup>

Finally, there is of course a risk that business managers, legal policy makers, and parents may enforce their definitions and visions of happiness on respectively their employees, constituents, and children. For example, Yale law school professor Amy Chua's well-known memoir about how she raised her two children to stand out at music and in school incited a firestorm about whether a parent should aspire to raise kids who are outwardly successful versus inwardly happy or both if possible.<sup>182</sup>

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<sup>176</sup> Mankiw, *supra* note 153, at 364.

<sup>177</sup> See MARTIN E. P. SELIGMAN, *AUTHENTIC HAPPINESS: USING THE NEW POSITIVE PSYCHOLOGY TO REALIZE YOUR POTENTIAL FOR LASTING FULFILLMENT* (2004).

<sup>178</sup> MARTIN E. P. SELIGMAN, *FLOURISH: A VISIONARY NEW UNDERSTANDING OF HAPPINESS AND WELL-BEING* 16 (2011).

<sup>179</sup> *Id.* at 221-41.

<sup>180</sup> *Id.* at 231.

<sup>181</sup> *Id.* at 239-41; see also Roger Cohen, *The Happynomics of Life*, N.Y. TIMES, Mar. 13, 2011, at WK12 (reporting and providing an op-ed about British Prime Minister David Cameron's recent decision to have the Office of National Statistics collect national well-being data that measure anxiousness, happiness, life satisfaction, and meaning).

<sup>182</sup> AMY CHUA, *BATTLE HYMN OF THE TIGER MOTHER* (2011), see also Amy Chua, *Why Chinese Mothers Are Superior?*, WALL ST. J., Jan. 8, 2011, (offering provocative selections from her book), available at <http://online.wsj.com/article/SB10001424052748704111504576059713528698754.html>. But see Peter H. Huang, *Tiger Cub Strikes Back* (Apr. 2011) (unpublished manuscript, on file with author) (providing a response by way of reflections to Professor Chua's book).