

THE METHOD AND THE MESSAGE

Corie Rosen*

INTRODUCTION	161
THE CONCEPTS	163
AN ENDEMIC DEPRESSION	163
MINDSET	166
ABILITY PRAISE	166
ATTRIBUTION STYLE	170
Pessimism	172
Learned Helplessness	175
THE CONVERGENCE	176
DISTINCT	176
RELATED	178
ESSENTIAL	178
THE SOLUTIONS	182
THE METHOD	182
THE MESSAGE	183
CRITIQUES	185
CONCLUSION	186

“I found that when you start thinking and saying what you really want then your mind automatically shifts and pulls you in that direction. And sometimes it can be that simple, just a little twist in vocabulary that illustrates your attitude and philosophy.”

—Jim Rohn¹

“The mind is everything. What we think we become.”

—Buddha²

* Professor of Academic Theory and Lecturer in Law, Arizona State University College of Law. B.A., University of California at Berkeley, J.D., University of California at Los Angeles. I am grateful to those programs that have invited me to speak on optimism, growth-mindedness, and the law school learning environment: The Institute for Law Teaching and Learning, The Law School Admissions Council, and The Association of American Law Schools. I would also like to thank Michael Hunter Schwartz, Paula Manning, Charles Calleros, Carissa Hessick, Andy Hessick, Marcy Karin, and Zachary Kramer for their thoughts and suggestions, and Paul Berman and the Sandra Day O'Connor College of Law for their continuous guidance and support. Finally, I would like to thank Eugene Volokh at The University of California at Los Angeles for encouraging me to seek out those ideas of greatest interest to me, and Kristin Holmquist of The University of California at Berkeley for her unending generosity and inspired editing notes. Valuable research assistance on this project was provided by both Amy Levine and Beth DiFelice.

¹ Jim Rohn, *The Subtlety of Language*, GETMOTIVATION.COM, http://getmotivation.com/articlelib/articles/jrohn_of_language.htm (last visited Sept. 16, 2011).

² *Buddha Quotes*, BUDDHIST TOURISM, <http://www.buddhist-tourism.com/buddhism/buddha-quotes.html> (last visited Sept. 16, 2011).

INTRODUCTION

“If you build it, they will come,”³ has been the silent mantra of law teaching programs across the United States since the days of Christopher Columbus Langdell.⁴ For generations, law schools have modeled themselves on Langdell’s system,⁵ believing that traditional law schools with traditional teaching methods were likely to attract law students whose needs and interests were well suited to what the Langdell case-method could provide. Movies like *The Paper Chase*⁶ and *Legally Blonde*⁷ have drawn the popular imagination to the pressures associated with the Langdell method and its unique brand of academic competitiveness.

But in the last two decades, while the engines of popular culture have continued to turn out films and television shows that capitalize on the mythologies of legal education, scholars focused on law student success have begun to identify an alarming real-world phenomenon: law student depression is on the rise and law student wellness is declining rapidly.⁸ Many of today’s students experience a decline in subjective well-being that begins in their first year and continues throughout the course of their legal studies.⁹

Scholars focused on student well-being have demonstrated that law school has a significant impact on law students’ sense of balance and autonomy support,¹⁰ pointing out that these indicators decline throughout law school. These studies have also demonstrated that law students’ values shift over the course of

³ FIELD OF DREAMS (Universal Pictures 1989).

⁴ See generally BRUCE A. KIMBALL, THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL, 1826–1906 (2009) (using a biographical narrative to explain the way that Langdell’s ideas for reforming legal education led to the current system).

⁵ *Id.*

⁶ THE PAPER CHASE (Twentieth Century Fox Film Corporation 1973).

⁷ LEGALLY BLONDE (Metro-Goldwyn-Mayer 2001).

⁸ Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 55 (1999) (indicating that law students suffer depression and other psychological symptoms at very high rates and that law students have a different—and much worse—psychological profile than the general population; the elevated rates of depression and other symptoms begin in the first year and continue, at least as far as the conclusion of the third year); see also G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 225 (1986) (“The anecdotal literature suggests that the process of legal education impairs the maintenance of emotional well-being in law students.”); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 75 (2002) (“Legal education literature documents a number of disturbing effects of law school on law students.”).

⁹ See Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113–15 (2002) [hereinafter Krieger, *Dark Side*] (describing research on happiness and life satisfaction); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 261–63 (2004) [hereinafter Sheldon & Krieger, *Undermining Effects*] (describing the studies of two samples of law students).

¹⁰ Krieger and Sheldon define autonomy support as arising out of three factors:

(a) choice provision, in which the authority provides subordinates with as much choice as possible within the constraints of the task and situation; (b) meaningful rationale provision, in which the authority explains the situation in cases where no choice can be provided; and (c) perspective

their three or so years of study¹¹ and this shift is accompanied by a sharp decline in students' subjective well-being index scores.¹²

These trends in law student psychology suggest that it is law school—not law practice—that is the most damaging aspect of a young lawyer's career. Far from creating lawyers whose outlooks resemble those of the attorneys portrayed in the media, research suggests that law schools are increasingly turning out graduates who suffer from depression¹³ and related psychological ills at a rate that warrants further scholarship and scrutiny, if not widespread institutional change.

Some have suggested possible explanations for the phenomenon of law student distress: a lack of autonomy support,¹⁴ the employment of an academic language that challenges students' most closely held values of justice and equality,¹⁵ and environmental factors that push students to value extrinsic motivators, such as grades, money, and status, in lieu of intrinsic values, such as justice, fairness, equality, and balance.¹⁶

This Article argues that one possible explanation for law student depression lies in the institutional organization of law schools themselves, a model that encourages students to adhere to a belief in the fixed, or entity, theory of intelligence.¹⁷ Those who hold the entity theory of intelligence believe that human intelligence cannot be increased because it exists only in fixed and unchanging quantities. This Article will argue that law school encourages students to view academic achievement not as a product of individual growth and mastery, but as a product of innate ability—and that this deterministic belief

taking, in which the authority shows that he or she is aware of, and cares about, the point of view of the subordinate.

Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 884 (2007) (citation omitted).

¹¹ Lawrence S. Krieger, *Human Nature As a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 261–62 (2008) [hereinafter Krieger, *Human Nature*] (“[Law students’] personalities are narrowed rather than broadened by law training and . . . the most basic needs are frustrated in law school.”).

¹² *Id.* at 263.

¹³ Krieger, *Dark Side*, *supra* note 9, at 114.

¹⁴ Krieger, *Human Nature*, *supra* note 11, at 263 (“[T]he SWB of the students plunged substantially within the first several months of law school, and did not rebound before graduation.”).

¹⁵ Anthropologist and law professor Elizabeth Mertz suggests that the nature of legal thinking and the Socratic classroom, an environment in which students are taught to refute arguments and to disregard their own moral values, empathies, and feelings of compassion, effectively destabilizes their moral grounding and changes their values, resulting in the development of “combat dialog” and the subordination of student’s individual goals and values. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 5–6, 9–10 (2007).

¹⁶ Sheldon & Krieger, *Undermining Effects*, *supra* note 9, at 263 (“Although performance pressures, extrinsic rewards and enticements, and desires to impress others may produce positive performance to some extent, these factors tend to work against persistence, enjoyment, creativity, and integration in the long run.”) (citation omitted).

¹⁷ Jennifer A. Mangels et al., *Why Do Beliefs About Intelligence Influence Learning Success? A Social Cognitive Neuroscience Model*, 1 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 75, 75 (2006); see also CAROL S. DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* 4 (2006).

pushes students to view themselves through an entity-minded lens. More specifically, this Article will argue that law schools inculcation of the entity theory of intelligence leads law students to inaction, which in turn brings on the psychological states of learned helplessness and depression.

This Article does not intend to argue, as some might, that gifted tracking, student raking, and related practices are themselves outright damaging to students. On the contrary, this Article means to argue that these rankings and sorting systems serve a practical purpose. The goal, then, is to prevent the method—sorting, ranking, and the like—from becoming the message. Instead of ranking or labeling students and leaving it at that, schools can take steps to communicate a message of growth-mindedness so that all students, even the most naturally gifted, approach their studies with a mindset that will allow them to reach, and indeed to grow, their potential.

Part one of this Article will establish the shape, depth, and breadth of the problem of law student depression, and will establish that the magnitude of the problem far exceeds what we might expect from a wholly dispositional phenomenon. Part one will go on to define the entity theory of intelligence and the related theory of attribution style, and will explore the way that law schools promote these two theories. Part two will argue that these theories are interrelated and that, taken together, they present one possible framework for understanding some of the sources of the distress experienced by American law students. Finally, part three will explore tactics that law schools can employ at both the institutional and classroom level in order to work against entity-mindedness, pessimistic attribution, and law student depression.

I. THE CONCEPT

A. *An Endemic Depression*

A growing body of research has established that law schools are producers of psychological distress.¹⁸ We now know that many law students experience a decline in psychological health during law school¹⁹ and that this decline is marked by a change in the well-being, attitudes, and behaviors of those students.²⁰ Though the cause of this decline in psychological well-being is difficult to pinpoint, studies indicate that the decline is produced by the law school experience and is not attributable to any underlying psychological problems with which law students may have entered the academy.²¹

In his study, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, Lawrence S. Krieger points to the observation of one Harvard Law Student who said,

Harvard Law School continues to represent, for many people both inside and outside the legal community, the pinnacle of legal education, the breeding ground for

¹⁸ Dammeyer & Nunez, *supra* note 8, at 55; see also Benjamin et al., *supra* note 8, at 225; Hess, *supra* note 8, at 75.

¹⁹ Krieger, *supra* note 11, at 261–62 (writing that “[law students’] personalities are narrowed rather than broadened by law training and . . . the most basic needs are frustrated in law school”).

²⁰ *Id.* at 263.

²¹ Sheldon & Krieger, *Undermining Effects*, *supra* note 9, at 265.

the nation's leaders. Given this status, one would expect to find HLS full of confident, enthusiastic, optimistic students who are thoroughly comfortable with themselves and fully prepared upon graduation to take on the world.

In fact, one finds quite the opposite . . . [B]y third year, a disturbingly high number of students come to convey a strong sense of impotence and little inclination or enthusiasm for meeting the world's challenges head on.

. . . [O]ne must look to the institution itself for an explanation.²²

Through their work with the Subjective Well-Being Index (SWI), Krieger and Sheldon provide empirical support for that student's observations.²³ Krieger and his research team administered the Subjective Well-Being (SWB) test to incoming law students, controlling for physical health and other factors that might influence students' answers.²⁴ They found that, when subjects matriculated into law school, their subjective well-being exceeded that of the control population, and, in the aggregate, their profile looked better than the profile of a large undergraduate sample.²⁵ Over the course of the law school experience, however, student measures of subjective well-being plummeted.²⁶ From these findings, Krieger and Sheldon conclude that something significant and of a distressing nature happens to cause this decline in students' sense of well-being in the law school environment, and that whatever is happening to students in the law school environment is causing increased vulnerability to depression and related psychological problems.²⁷ Krieger takes care to note that law student distress is not isolated to certain kinds of schools: "Such observations are discouragingly common throughout legal education, and they are confirmed consistently . . . [C]linically elevated anxiety, hostility, depression, and other symptoms among [first-year] students ranged from eight to fifteen times that of the general population."²⁸

²² Krieger, *Dark Side*, *supra* note 9, at 113 (quoting Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2027 (1998)).

²³ See generally Sheldon & Krieger, *Undermining Effects*, *supra* note 9.

²⁴ *Id.* at 265–71.

²⁵ *Id.* at 270–71 ("Compared with the Missouri undergraduates, the entering law students evidenced higher positive affect and higher life satisfaction, as well as higher aggregate SWB . . . There was no significant difference in negative affect. On the values measures, the law students also evidenced more intrinsic values overall than the undergraduates . . . The most important thing to take from these analyses is that the law students appeared quite happy and healthy at the beginning of their career, with relatively intrinsic and prosocial values. This suggests, consistent with earlier research (Benjamin et al., 1986), that any later distress among the law students is not an effect of pre-existing distress or problematic personality traits.").

²⁶ Krieger, *Dark Side*, *supra* note 9, at 122 ("The longitudinal study of law students that Ken Sheldon and I have completed confirms these conclusions in all respects. We measured values, motivation, and well-being in students just after they entered law school, again toward the end of the first year, and during the following semester. The arriving students showed healthy well-being, values, and motives—stronger, in fact, than a large undergraduate sample. Within six months, however, the law students experienced marked decreases in well-being and life satisfaction and marked increases in depression, negative affect, and physical symptoms.").

²⁷ *Id.* at 118 ("The interplay of these dominant law school constructs ultimately teaches many students to put aside their personal life and health and accept persistent discomfort, angst, isolation, even depression as the cost of becoming a lawyer. This is ominous preparation for professional life, and similar constructs apparently do drive many lawyers . . .").

²⁸ *Id.* at 113–14 (internal citations omitted).

Krieger's work tells us that law schools are negatively affecting significant numbers of students, that the change in well-being experienced by those students occurs soon after students enter the law school environment, and that those changes have measurable, psychological outcomes.²⁹ Krieger and Sheldon note, in particular, the problems associated with students' shift from intrinsically held values to extrinsically held values, specially their focus on the perceptions and judgments of others.³⁰ Krieger and Sheldon suggest that this shift to a preference for extrinsic values, a change that causes students to place high premiums on what others think about their appearance and perceived status, is close to the core of the problem of what is happening in law schools.³¹ At the conclusion of their study, *Does Legal Education Have Undermining Effects*,³² Krieger and Sheldon admonish:

Past scholarly commentaries and previous studies paint a bleak picture of the effects of legal education on the well-being of law students. Our data from two very diverse law schools confirms these negative reports If these experiences are common in American law schools, as anecdotal reports and other studies indicate, it would suggest that various problems reported in the legal profession, such as depression, excessive commercialism and image-consciousness, and lack of ethical and moral behavior, may have significant roots in the law-school experience.³³

To better understand what is happening at law schools that might cause this shift, it is helpful to consider two theories of the mind that have evolved over the last quarter century. The first of these addresses large-scale institutional approaches to thinking, while the second addresses individual responses to smaller-scale interactions.

²⁹ See *id.*; see also Dammeyer & Nunez, *supra* note 8, at 55; Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 *CARDOZO L. REV.* 33, 37 (2001).

³⁰ Sheldon & Krieger, *Undermining Effects*, *supra* note 9, at 273 ("In the language of [self-determination theory], this suggests a classic 'undermining' effect, in which initial positive motivations are eroded or usurped [S]tudents of all demographic types came to feel that pursuit of their law-school goals was less interesting or enjoyable, and was more controlled by others' desires and dictates.").

³¹ See *id.* at 264.

³² In their work, Krieger and Sheldon argue that one of the major forces driving law student depression, SWI, and other problematic indicators is a lack of autonomy support created by an environment that seeks to control participants. This Article does not seek to explore, endorse, discount, or otherwise investigate that assertion. Instead, this Article seeks to deepen the discourse by introducing additional psychological constructs into the law school pedagogy conversation.

³³ Sheldon & Krieger, *Undermining Effects*, *supra* note 9, at 283. Though the causes of the law student depression epidemic are not entirely clear, some excellent hypothesis have been developed, proposed, and empirically studied by Krieger, Mertz, and others. This Article does not seek to duplicate that research and will not focus on those works' conclusions about the causes of law student depression, nor will it focus on solutions to the depression problem that might require restructuring the curriculum or other aspects of the law school environment. Instead, this Article proposes a classroom and written response feedback method that, when integrated into the existing model of legal education, may alleviate depression by breaking students' cycles of pessimistic attribution, particularly with respect to attitudes toward learning and performance.

B. Mindset

Mindset theory, which suggests that a person's belief about his ability to learn affects that ability, evolved as a result of Carol Dweck's decades-long research.³⁴ Dweck's experiments have examined the ways in which approaches to thinking about intelligence, particularly an individual's attitude about his own intelligence and ability to improve, affect motivation and performance.³⁵ Mindset theory looks at the ways that beliefs shaped by our schools, families, and teachers, either limit or expand our abilities and, as a result, control our actions, thoughts, and subsequent academic successes.³⁶

Dweck demonstrates that students who hold the belief that intelligence is fixed—that each person is born with an innate level of intelligence, and that this level of intellectual power cannot be changed—tend not only to stagnate intellectually, but also develop habits that inhibit their growth. On the other hand, students who believe that intelligence is fluid and that performance can be improved with a combination of hard work and appropriate feedback show an openness to challenges and even failures. Because they are willing to fail and to learn from their failures, over extended periods they will outperform their fixed-minded counterparts.³⁷

C. Ability Praise

i. Incremental vs. Entity Mindedness

When an environment promotes a certain belief about intelligence and students internalize that idea, their beliefs are reflected back in their performance—or lack of performance—on academic tasks.³⁸ Krieger and Sheldon suggest that one of the features of law students' psychological decline is a reframing of student values.³⁹ As students experience law school, their value-orientation shifts from an intrinsic orientation to an extrinsic orientation, a change that also shifts their academic focus from a mastery-driven one to an outcomes-driven one.⁴⁰ As a result, law students come to believe that grades and the perception that one "is smart" are more useful than a willingness to explore and struggle to master difficult concepts. In other words, students become outcome-oriented such that learning is less privileged than being perceived as intelligent. Anecdotal evidence suggests that many law students per-

³⁴ Dweck, Carol S., STANFORD UNIV. DEP'T OF PSYCHOLOGY, <https://www.stanford.edu/dept/psychology/cgi-bin/drupal/cdweck> (last visited Sept. 26, 2011).

³⁵ See generally DWECK, *supra* note 17.

³⁶ See generally *id.*

³⁷ See *id.* at 6–7; see also Claudia M. Mueller & Carol S. Dweck, *Praise for Intelligence Can Undermine Children's Motivation and Performance*, 75 J. PERSONALITY & SOC. PSYCHOL. 33, 48 (1998) (“[C]hildren who received ability feedback appeared to learn to measure their intelligence from their performance in a way that children who received effort feedback did not.”).

³⁸ Mangels et al., *supra* note 17, at 75 (“Most students aim to succeed on academic tests. Yet, there is increasing evidence that the likelihood of their success is influenced not only by actual ability, but also by the beliefs and goals that they bring to the achievement situation . . .”).

³⁹ Sheldon & Krieger, *Undermining Effects*, *supra* note 9, at 264.

⁴⁰ *Id.*

ceive the Socratic dialogue and the final exam as a contest of minds in which the “smart” people will be rewarded, with both grades and social desirability.

Dweck’s research suggests that this kind of focus on extrinsic motivators is indicative of an environment that relies on “ability labeling,” the process by which some people are labeled as smart and others are labeled as less so—the basic contours of a structure that promotes the entity mindset. Both the labeling and the labels are damaging to the learning process.⁴¹ Early in her career, Dweck noticed that some people, when given a difficult task, gave up easily or refused the challenge altogether, while others relished the opportunity to learn from a difficult exercise, even though they realized that they might fail.⁴² Her research pursued those polarized responses to difficult tasks and evaluated the motivation and behaviors of individuals who engaged with challenges differently.⁴³ Those who responded to challenges by giving up, she found, were the same people who believed that intelligence was a fixed trait and that performance could not be improved, even with instruction and training.⁴⁴ Some subjects did not work to get better because, quite simply, they did not believe that they could.⁴⁵ Dweck called these people entity theorists, or those who believe that intelligence is a fixed entity.⁴⁶ Dweck found that, when pressed to complete a task that challenged them such that they were presented with the possibility of failure, entity theorists not only give up, they also respond in unpredictable ways:

Entity theorists tend to be more concerned with besting others in order to prove their intelligence (‘performance goals’), leaving them highly vulnerable to negative feedback. As a result, these individuals are more likely to shun learning opportunities where they anticipate a high risk of errors, or to disengage from these situations when errors occur. Indeed, when areas of weakness are exposed, they will often forego remedial opportunities that could be critical for future success⁴⁷

Ability praise is praise that promotes a belief in the entity theory of intelligence. Such praise promotes labeling, and instructs those who are successful at a task that their achievement resulted from high ability, or a powerful fixed intelligence.⁴⁸ Reinforcement that supports or creates a belief in the entity theory of intelligence occurs when strong performance on some academic task is linked to high intelligence through a praising process that reinforces the belief, “I am smart,” in the mind of the student or performer.⁴⁹ A public ranking system may have the same effect. Describing an environment designed to promote the entity mindset, Dweck writes:

⁴¹ DWECK, *supra* note 17, at 16, 18, 141.

⁴² *Id.* at 180.

⁴³ *Id.* at 72, 82.

⁴⁴ *Id.* at 112, 114, 148.

⁴⁵ *Id.*

⁴⁶ Mangels et al., *supra* note 17, at 76.

⁴⁷ *Id.* at 75 (citations omitted).

⁴⁸ Mueller & Dweck, *supra* note 37, at 34.

⁴⁹ *Id.* at 48–49 (“[C]hildren who received ability feedback appeared to learn to measure their intelligence from their performance in a way that children who received effort feedback did not.”).

Unlike Alfred Binet, [Mrs. Wilson] believed that people's IQ⁵⁰ scores told the whole story of who they were. We were seated around the [class]room in IQ order, and only the highest-IQ students could be trusted to carry the flag, clap the erasers, or take a note to the principal . . . [S]he was creating a mindset in which everyone in the class had one consuming goal—look smart, don't look dumb.⁵¹

This rank-ordering of students looks suspiciously like the rank-ordering that many law schools use to designate top students—and is perhaps more damaging because this particular class was filled with sixth graders and this environment was reinforced on a daily basis. When students say things like, “When I go to class, I am afraid to participate,” “If I say the wrong thing, people will think I'm stupid,” or “Everybody treats me like they're smarter than I am,” they are expressing themselves through statements that are resonant with ability-labeling—and suggesting that students feel that the environment itself is creating and perpetuating such labeling. A preoccupation with symbols of success, an increased concern for and value of others' perceptions, and a tendency to value material indications of achievement over an intrinsic sense of learning and mastery are the key features of the entity theory of intelligence,⁵² and it is likely that law schools, albeit inadvertently, are encouraging such an orientation.⁵³

Even well-intentioned ability praise, like that given when the praiser is trying to encourage performance of a designated task, can be damaging. That kind of praise may seem intuitive,⁵⁴ but it is detrimental to learning.⁵⁵ “You are smart” or the commonly communicated message “You did well because you

⁵⁰ DWECK, *supra* note 17, at 5 (“Wasn't the IQ test meant to summarize children's unchangeable intelligence? In fact, no. Binet, a Frenchman working in Paris in the early twentieth century, designed this test to identify children who were not profiting from the Paris public schools, *so that new educational programs could be designed to get them back on track*. Without denying individual differences in children's intellects, he believed that education and practice could bring about fundamental changes in intelligence.”).

⁵¹ *Id.* at 6.

⁵² *See generally* DWECK, *supra* note 17 (writing that entity theorists tend to believe that they must live up to their “smart” label, and that doing so means never being able to take on a challenge that might reveal their deficiencies).

⁵³ The most likely places in which law schools are inadvertently communicating this message are the ranking system and law firm hiring processes which emphasize immediate, short term outcomes—first-year grades—over longer-term mastery learning goals. While these emphases may be essential to the smooth functioning of on-campus hiring processes and may therefore be indispensable, some tempering message may be required to prevent them from contributing to the problem.

⁵⁴ Prior to conducting this research inquiry, I often told my students that they were “smart enough” to succeed at any task the law learning environment required of them, or that they had succeeded because they were smart. Other ideas that I used to think of as reinforcing but which this research actually shows are harmful are the idea that the student wouldn't have been admitted to law school if she was not smart enough to do the work, and the related idea that everyone at law school is smart.

⁵⁵ Mueller & Dweck, *supra* note 37, at 48 (“Children praised for intelligence after success chose problems that allowed them to continue to exhibit good performance (representing a performance goal), whereas children praised for hard work chose problems that promised increased learning.”).

are smart” actually undermines the ability to grow or learn from the experience itself, ultimately discouraging further effort.⁵⁶

Ability labeling sends the message that labeled people—“smart” students—must live up to their markers or else suffer a fall from grace.⁵⁷ Dweck also finds that ability-marked students are typically⁵⁸ unwilling to set difficult learning goals or engage in tasks that, because of an extraordinary challenge level, present a threat of failure. Of course, these challenging situations also present the greatest opportunity for learning and growth.⁵⁹

In one troubling study of junior high school students, Dweck and her colleagues found that students who held an entity mindset would actually lie about their scores on difficult exams in order to make the people interacting with them believe that the entity-minded students had lived up to their “smart” labels.⁶⁰ In Dweck’s words, “What’s so alarming is that we took ordinary children and made them into liars, simply by telling them they were smart.”⁶¹

In the law school context, rankings and grading systems play an important part in the law firm hiring process, and grades, in some form, are a necessary feature of the academic environment. Nevertheless, grades and rankings too often function as labels, and schools either reinforce that view or do nothing to add a growth-minded aspect to it. It seems that legal institutions also fail to send the message that the learning process is worthwhile and that students not at the very top of the class can improve their knowledge and go on to have fulfilling careers in law. Instead, it seems law schools and legal employers tell students that those who “get it” receive A’s right away, while those who are less intellectually agile will have to struggle to receive A’s and are less worthwhile as students and as future practitioners. Even if those students do start earning A’s, they may only do so in the second and third years—when the law school community tells students that grades count for less and that the curriculum is easier.⁶²

⁵⁶ *Id.* at 48 (“[C]hildren who were explicitly told that they were smart after success were the ones who most indicted their ability on the basis of poor performance. This indictment of ability also led children praised for intelligence to display more negative responses in terms of lower levels of task persistence, task enjoyment, and performance than their counterparts, who received commendations for effort.”).

⁵⁷ *See id.*

⁵⁸ Though not always.

⁵⁹ *See* Lisa S. Blackwell et al., *Implicit Theories of Intelligence Predict Achievement Across an Adolescent Transition: A Longitudinal Study and an Intervention*, 78 *CHILD DEV.* 246, (2007); DWECK, *supra* note 17, at 58 (writing that an incremental theory of intelligence was associated with positive efforts, beliefs, learning goals, and positive strategies, while an entity theory was associated with negative attribution and task avoidance).

⁶⁰ DWECK, *supra* note 17, at 73.

⁶¹ *Id.*

So telling children they’re smart, in the end, made them feel dumber and act dumber, but claim they were smarter. I don’t think this is what we’re aiming for when we put positive labels—‘gifted,’ ‘talented,’ ‘brilliant’—on people. We don’t mean to rob them of their zest for challenge and their recipes for success. But that’s the danger.

Id. at 74.

⁶² Though these are not beliefs to which I ascribe, I have heard them expressed with some regularity by both students and faculty from various institutions.

If Dweck's research tells us anything, it is that grades should not be "scarlet letters" of either pride or shame.⁶³ Instead, they should be taken for what they are: indications of how a particular student performed on a particular exam or set of exams.⁶⁴ Depression, a decline in self-worth, a disinclination to want to work to improve one's grades,⁶⁵ and an inclination to slack off and skate by doing the bare minimum⁶⁶ are the key behaviors Dweck noticed in entity-minded grade school and middle school students who were confronted with less than their desired grades.⁶⁷ Krieger and Sheldon's work tells us that depression and decreased well-being are exactly the kinds of attitudes that manifest themselves in law students.⁶⁸ As law students experience a decline in subjective well-being, they experience a shift from intrinsic values to extrinsic values and go on to manifest learned helplessness, depression, substance abuse, and interpersonal sensitivity.⁶⁹ Might these psychological shifts be linked, at least in part, to the development and reinforcement of an entity mindset? Dweck's research tells us that when entity-theorists find that they are unable to live up to their ability labels, they become despondent, depressed, and less motivated to achieve—exactly the problems that law students develop.⁷⁰

D. Attribution Style

The theory of entity-mindedness is closely related to the concept of attribution style, a theory that has grown out of positive psychology research⁷¹ and one that is particularly applicable to the law school context.⁷² The field of positive psychology seeks to redefine the way the scientific community thinks

⁶³ See Orin Kerr, *Thoughts on First-Year Law School Grades*, THE VOLOKH CONSPIRACY (Jan. 23, 2006, 4:47 PM), <http://volokh.com/posts/1138056460.shtml>.

⁶⁴ That performance, in turn, can tell students what they need to work on, and students should be encouraged to use the information provided by their grades in order to grow, learn, and improve.

⁶⁵ DWECK, *supra* note 17, at 35–36 (“[S]eventh graders told us how they would respond to an academic failure—a poor test grade in a new course. Those with the growth mindset . . . said they would study harder for the next test. But those with the fixed mindset said they would study *less* for the next test. If you don't have the ability, why waste your time?”).

⁶⁶ In contrast, Dweck notes, “People in a growth mindset don't just *seek* challenge, they thrive on it. The bigger the challenge, the more they stretch.” *Id.* at 21.

⁶⁷ *Id.*; see also Mueller & Dweck, *supra* note 37, at 48–49.

⁶⁸ See generally Krieger, *Dark Side*, *supra* note 9.

⁶⁹ *Id.* at 114–15.

⁷⁰ DWECK, *supra* note 17, at 35–36.

⁷¹ See generally Martin E.P. Seligman & Mihaly Csikszentmihalyi, *Positive Psychology: An Introduction*, 55 AM. PSYCHOLOGIST 5 (2000).

⁷² See MARTIN E.P. SELIGMAN, *LEARNED OPTIMISM: HOW TO CHANGE YOUR MIND AND YOUR LIFE* 8–9 (3d ed. 2006); see also 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 357, 361 (2009) (“[T]he relatively new field of positive psychology may provide some useful solutions to the problem where the traditional approaches of clinical psychology and the proposals for curricular reform fail.”); Seligman et al., *supra* note 29, at 35 (“Our belief is that the new field of ‘positive psychology’ (which seeks to cultivate human strengths, rather than focus on human weaknesses), offers coping strategies to reduce unhappiness, and can be adapted successfully to the legal setting”) (citations omitted).

about human cognition and behavior.⁷³ “The principle tenet of positive psychology is that to understand the human condition, we should study not only mental illness and distress but also the conditions that lead to optimal functioning.”⁷⁴ That concept of optimal functioning, or “thriving,” has become a new goal for psychological health.⁷⁵ Unlike the old science of the mind, positive psychology asks probing questions to discover what makes humans thrive, and seeks information about the methods by which healthy people avoid problems like depression and related ills.⁷⁶ In the law school environment, where depression is an increasing problem, an understanding of the psychology of thriving could play an especially important role.⁷⁷

Attribution style tells us that language operates in the brain in powerful ways, and that how we use the language of thought to explain events to ourselves may dictate the way that we respond.⁷⁸ Optimistic or pessimistic⁷⁹ attribution style is identified by key language the optimist or pessimist uses in describing a situation.⁸⁰ Attribution style studies may reveal why it is that some law students experience depression while others sidestep it.

⁷³ See Seligman & Csikszentmihalyi, *supra* note 71, at 10.

⁷⁴ Peterson & Peterson, *supra* note 72, at 361–62.

⁷⁵ Thriving is understood as maximizing individual potential in terms of performance and achievement markers, which can be quantified using specific markers. Thriving and the related concepts of cognitive optimism and pessimism have no relationship to the feel-good ideas associated with the self-esteem movement. This Article does not advocate the unwarranted inflation of students’ self-esteem, but rather suggests a method of encouragement to help struggling students remain motivated in the face of negative feedback. See Peterson & Peterson, *supra* note 72, at 362 (“Although positive psychology researchers were not the first persons to think about what makes for a full and happy life, ‘the value of the overarching term *positive psychology* lies in its uniting of what had been scattered and disparate lines of theory and research about what makes life most worth living.’ Positive psychology aims to move from a disease model, where the focus is solely on fixing what is wrong with people, to a health model, where the focus is on building positive traits and skills that foster optimal functioning.”) (citations omitted); David Crary, *Study Finds Students Narcissistic*, BOSTON.COM (Feb. 27, 2007), http://www.boston.com/news/nation/articles/2007/02/27/study_finds_students_narcissistic/ (on how the self-esteem movement has produced narcissistic students).

⁷⁶ See SELIGMAN, *supra* note 72, at 8–9. Seligman explains B.F. Skinner’s theory of Behaviorism as a theory that understood human action as the belief “that people were ‘pushed’ by their internal drives or ‘pulled’ by external events . . . [B]ehavior was repeated only when reinforced externally.” *Id.* Seligman goes on to explain the shift that precipitated the advent of his theory of positive psychology, writing that “[s]tarting around 1965, the favored explanations began to change radically So the dominant theories in psychology shifted focus in the late 1960s from the power of the environment to individual expectation, preference, choice, decision, control, and helplessness.” *Id.* at 9. Seligman first began to examine depression when he accidentally discovered learned helplessness, an outcome of experiments in conditioning dogs. *Id.* at 19–20.

⁷⁷ See Krieger, *Dark Side*, *supra* note 9, at 115 (“Our graduates rank fifth in the incidence of suicide and show from five to fifteen times the normal incidence of clinical psychological distress as well as very high levels of substance abuse.” (footnotes omitted)).

⁷⁸ See SELIGMAN, *supra* note 72, at 14–16.

⁷⁹ Though the terms “optimism” and “pessimism” have colloquial meanings that are well understood by most laypeople, this Article does not rely on those common definitions. Instead, this Article draws on the science of attribution style theory and the definitions of optimism and pessimism propounded by researchers in that field.

⁸⁰ SELIGMAN, *supra* note 72, at 44.

Dweck tells us that people who believe intelligence can be grown and that performance can be improved are more likely to be insulated from stress-related and performance-related depression. Similarly, positive psychology suggests that people who are resilient in the face of daily challenges think about setbacks through the lens of an optimistic attribution style, while those who give up easily—those who are prone to learned helplessness and depression—are more likely to think about bad academic events through the lens of a pessimistic attribution style.

i. Pessimism

As he worked to understand the processes that make some people more resilient than others, Martin Seligman⁸¹ set out to understand optimism and pessimism as cognitive processes. Seligman and his team identified attribution style, the way a person uses particular language to explain the causes of good and bad events, as the key component in determining whether a person is optimistic or pessimistic, according to Seligman's definition of those terms.⁸² Seligman and his research team based their inquiry on the early work of UCLA psychologist Bernard Weiner,⁸³ who in the 1960s theorized that some people achieve more than others because some people think about achievement differently than others do.⁸⁴ Weiner introduced the idea of attribution in relation to achievement, arguing that the way a person thinks about what happens to her dictates whether she has a pessimistic or optimistic response to obstacles.⁸⁵ Though Weiner's theory differed in some important respects from Seligman's ideas, the essence of Weiner's theory was mirrored in Seligman's work: people who are most successful see obstacles not as permanent roadblocks, but as temporary states that can be overcome or defeated with hard work.⁸⁶

Weiner looked at a single explanation for a single event, but Seligman sought a more complex answer to the question of what makes some people exceptional. Ultimately, Seligman hit on the idea of a multi-part explanatory style that could be used to analyze habitual thinking. This explanatory style could be traced in written or spoken patterns⁸⁷ and those patterns could then be extrapolated to yield information about what an individual's cognitive processes were over the course of an hour, a week, or even a lifetime.⁸⁸ This new explanatory style framework explicitly established two kinds of thinkers: those who predominately used an optimistic explanatory style and so tended to be more resilient in the face of obstacles; and those who used a pessimistic

⁸¹ See Univ. of Pa. Positive Psychology Ctr., *Seligman Bio*, U. PA., <http://www.ppc.sas.upenn.edu/bio.htm> (last visited Oct. 3, 2011).

⁸² See SELIGMAN, *supra* note 72, at 40–43.

⁸³ See *Bernard Weiner*, UCLA, <http://lieber.bol.ucla.edu/Weiner/Weiner.html> (last visited Oct. 3, 2011) (Weiner is widely credited with the initial development of attribution theory. Seligman's work built on the core concept of Weiner's theory, refining it to the categories identified in this Article.).

⁸⁴ SELIGMAN, *supra* note 72, at 14, 16.

⁸⁵ *Id.*

⁸⁶ See *id.*

⁸⁷ *Id.* at 15–16.

⁸⁸ See *id.* at 76–79.

explanatory style and so tended toward lower resilience, helplessness, and depression.⁸⁹

In 2001, Charles S. Carver⁹⁰ and Michael F. Scheier,⁹¹ researchers in the fields of optimism and pessimism, neatly summed up those terms' colloquial definitions.⁹² According to them, most people think, "Optimists are people who expect good experiences in the future. Pessimists are people who expect bad experiences."⁹³ That definitional mode, they said, has "a long history in folk wisdom, as well as in early attempts to categorize people according to their qualities of personality."⁹⁴ Seligman's research took that folk wisdom into the scientific realm and reoriented it, demonstrating that pessimists exhibit specific characteristics in the way that they anticipate future occurrences and understand both positive and negative past and present events.⁹⁵ He found that pessimists are almost universally people who give up easily, and, as a result of their thought and speech habits, are more likely than those with an optimistic explanatory style to experience depression.⁹⁶

In Seligman's model, pessimistic minds work along a defined spectrum, and attribute events along three dimensions: "permanence, pervasiveness, and personalization."⁹⁷ Pessimistic people see negative occurrences as the result of some permanent failing.⁹⁸ Examples of these kinds of thoughts are, "diets never work" or "professors always hate me."⁹⁹ This kind of thought promotes the concept that the issue in question is one that cannot be modified, remedied, or changed in any way.¹⁰⁰

⁸⁹ *Id.* at 44–50.

⁹⁰ See Charles S. Carver: *Distinguished Professor*, U. MIAMI DEP'T OF PSYCHOL., <http://www.psy.miami.edu/faculty/ccarver/> (last visited Aug. 8, 2011).

⁹¹ See Michael F. Schier, Curriculum Vitae (Mar. 4, 2010), available at http://www.psy.cmu.edu/people/scheier_vita.pdf.

⁹² Shelley Taylor, *Optimism/Pessimism*, JOHN D. & KATHERINE T. MACARTHUR FOUND. RES. NETWORK ON SES & HEALTH, <http://www.macses.ucsf.edu/research/psychosocial/optimism.php> (last revised July 1998).

⁹³ Charles S. Carver & Michael F. Scheier, *Optimism, Pessimism, and Self-Regulation*, in *OPTIMISM & PESSIMISM: IMPLICATIONS FOR THEORY, RESEARCH, AND PRACTICE* 31, 31 (Edward C. Chang ed., 2001). Carver and Scheier suggest that optimism and pessimism are strongly linked to motivation, that "the expectancies with which people return to action are reflected in subsequent behavior." *Id.* at 41. Carver and Scheier "begin[] with the assumption that behavior is organized around the pursuit of goals," and go on to tie pessimism to decreased motivation and optimism to increased motivation. *Id.* at 32. They write, "If expectations are for a successful outcome, the person returns to effort toward the goal. If doubts are strong enough, the result is an impetus to disengage from effort, and potentially from the goal itself." *Id.* at 41–42 (citations omitted).

⁹⁴ *Id.* at 31 (citation omitted).

⁹⁵ SELIGMAN, *supra* note 72, at 5.

⁹⁶ *Id.*

⁹⁷ *Id.* at 44. Seligman and fellow researchers used the labels, "internal, stable, and global." See, e.g., Jane E. Gillham et al., *Optimism, Pessimism and Explanatory Style*, in *OPTIMISM & PESSIMISM*, *supra* note 93, at 53, 55. Those labels were later morphed into the alliterative tags, "permanence, pervasiveness, and personalization." See SELIGMAN, *supra* note 72, at 44. I will use this second phrasing throughout the remainder of the Article.

⁹⁸ SELIGMAN, *supra* note 72, at 44–45.

⁹⁹ See Gillham et al., *supra* note 97, at 55; see also SELIGMAN, *supra* note 72, at 44.

¹⁰⁰ See Gillham et al., *supra* note 97, at 54–55; see also SELIGMAN, *supra* note 72, at 44.

The pessimist sees negative events as attributable to some pervasive problem—one that colors not only the single, negative situation the pessimist seeks to understand, but also everything related to that situation.¹⁰¹ Examples of this sort of thinking include the phrases “all women are impossible to talk to” or “all law professors are unfair.”¹⁰² This kind of attribution allows negativity to permeate out from a single occurrence into every related occurrence, encouraging the pessimist to view not only the situation at hand, but also related situations as hopeless; as a result of such thinking, the pessimist is inclined to give up.¹⁰³ As such, the pessimist extrapolates individual bad events to the broader world, expecting those bad events to reproduce indefinitely.¹⁰⁴

The pessimist also attributes negative events in a way that is highly personal. That is, the pessimist believes that bad things have happened to her because she is, in some way, fundamentally and irrevocably flawed.¹⁰⁵ Examples of this kind of thinking include the statements, “I’m stupid” and “I’m ugly.”¹⁰⁶ When good things happen to the pessimist,¹⁰⁷ she sees them as the result of some unusual, perhaps random, confluence of events.¹⁰⁸ When the pessimist receives a high mark on an exam, she thinks, “the test was too easy” or “this is a class of weak students.”¹⁰⁹ In sum, pessimistic attribution style is that habit of thought in which a person, presented with a bad event, regards that event as 1) permanent, arising out of some incurable failing in the individual, 2) pervasive, arising out of a set of circumstances so pervasive as to surround her with similar negative progenitors, and 3) personal, having an origin in an aspect of herself such that the failure can only be attributable to the very make-up of the individual.

An optimist, by definition, thinks about things in a way that is directly opposite.¹¹⁰ When seeking to understand negative events, the optimist has a positive attribution style.¹¹¹ It is in thinking about the good things that happen to her that the optimist identifies with permanent, pervasive, and personal qualities.¹¹² For example, when the optimist receives a high mark on an exam, she thinks of her success as the result of some set of innate quality in herself, not as

¹⁰¹ See Gillham et al., *supra* note 97, at 54–55; see also SELIGMAN, *supra* note 72, at 46.

¹⁰² See Seligman, *supra* note 72, at 47.

¹⁰³ *Id.* at 207.

¹⁰⁴ *Id.* at 131–34 (explaining that, in a study of women who were girls during the Great Depression, those who continued to live in poverty emerged as pessimists, while those whose families were able to recover financially emerged as optimists at an increased rate of statistical significance).

¹⁰⁵ *Id.* at 208.

¹⁰⁶ See *id.* at 76.

¹⁰⁷ This Article will focus primarily on attribution style for negative events or challenging events, the kinds of things that are happening to students in law school.

¹⁰⁸ See SELIGMAN, *supra* note 72, at 50.

¹⁰⁹ See *id.* (The pessimist’s attribution style for understanding positive events parallels the optimist’s attribution style for negative events. The pessimist sees good things that happen to him as temporary, isolated, and specific, while the optimist thinks about negative events in that way. Thus, optimism and pessimism reveal themselves as mirror images.).

¹¹⁰ See, e.g., *id.* at 44–50.

¹¹¹ See *id.*

¹¹² See *id.*

an isolated incident.¹¹³ Thoughts like, “I am a strong test taker” or “I have always been a great student,” run through the optimist’s mind in moments of academic success.¹¹⁴ In terms of negative events, the optimist has a forward-looking explanatory style.¹¹⁵ When she encounters a setback or a negative event, the optimist views the event in terms that are temporary, specific, and hopeful.¹¹⁶ When an optimist sees a poor mark on a paper, she thinks of the mark as temporary, a one-time occurrence. She also perceives the bad event as having grown out of something specific, as being attributable to some particular failing or problem.¹¹⁷ For example, the optimist might see that she did not leave enough time to complete her assignment, that she was less experienced than her classmates, or that she had a personal emergency a few days before the paper was due. The optimist also sees bad events in hopeful terms. She believes that, if she does something or some set of things differently in the future, she can produce a better outcome.¹¹⁸

The views of optimists and pessimists could not be more divergent. Where the pessimist sees the mark as an indication that he is stupid, believing that every assignment is stacked against him and every professor convinced of his inadequacy—a very broad view of the problem—the optimist cabins the issues and thinks about them in the narrow terms appropriate to the particular situation. Where the pessimist sees the mark as indicative of a permanent failing,¹¹⁹ the optimist views the same experience through a hopeful lens. And, because the optimist believes in his heart that he can “walk on water,”¹²⁰ he will bend his world as much as he can to reflect the truth of that internal reality.¹²¹

ii. *Learned Helplessness*

The product of prolonged pessimistic attribution is learned helplessness, a state that leads those experiencing it to look, feel, and behave like depressed persons. Positive psychology defines learned helplessness as the process by which animals and people conclude that no effort on their part can mitigate their circumstances.¹²² Research demonstrates that learned helplessness can be taught.¹²³ In a series of experiments, researchers successfully taught animal subjects that the subjects could not reduce negative stimuli with behavior modification, even when that behavior modification was simple to execute, physically possible, and easy to understand.¹²⁴ Later, when placed in a situation in which behavior modification would reduce or eliminate negative stimulation, the subjects who had learned helplessness refused to act in a way that would

¹¹³ *See id.*

¹¹⁴ *See id.*

¹¹⁵ *See id.*

¹¹⁶ *See id.*

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ *Id.* at 44.

¹²⁰ *Id.* at 95.

¹²¹ *Id.*

¹²² CHRISTOPHER PETERSON ET AL., *LEARNED HELPLESSNESS: A THEORY FOR THE AGE OF PERSONAL CONTROL* 20 (1995).

¹²³ *Id.* at 19–32.

¹²⁴ *Id.*

protect them from harm, even though there were no obstacles to such action.¹²⁵ In short, subjects learned to be victims.

Learned helplessness is thus the result of prolonged thinking using the lens of a pessimistic attribution style and has been identified as a key process in the development of depression.¹²⁶ It is not difficult to observe the phenomenon in anecdotal descriptions of law student behavior offered by both professors and students.¹²⁷ If a student's overall law school experience causes the student to believe that nothing she does can change her circumstances,¹²⁸ she is helpless, academically speaking. Where law schools are encouraging such an outlook, changing the way law schools teach their students to think about academic performance might go a long way toward reducing the incidence of depression and related ills that law students experience.

II. THE CONVERGENCE

A. *Distinct*

The entity theory of intelligence and pessimistic attribution style are not, of course, exactly the same. Each is its own distinct idea and each presents a useful definition and set of tests for determining when a mode of thought or habit of understanding falls under a particular definition. However, pessimistic attribution style and fixed mindedness are related and, in some situations a fixed mindset and pessimistic attribution style for understanding negative academic events may operate in the same way and may, in effect, be the same thing.

This section seeks to establish that some of the institutional features that encourage these kinds of problematic thought patterns may also serve useful purposes. It is likely that four major features of the law school environment promote both the fixed mindset and pessimistic attribution style: the ranking of first-year law students, awareness of large firm hiring preferences, peer-to-peer stigmatization, and professor feedback. Each of these is also integral, in some way, to the very structure of the legal academy as we currently understand it.

The ranking of first year students is tied to large firm hiring preferences. As such, these two practices should be considered together. Perhaps the most obviously entity-minded practice in American law schools today, student ranking reflects a desire to quantify the degree and quality of student learning, and encourages students to think about the law school exercise as a game that some students, typically those in the top 10 percent, have won, while the others, presumably the bottom 90 percent, have lost. Such a view is promoted, in large part, by the preferences and hiring patterns of large firms, who offer law-school graduates high-paying jobs, prestige, and the opportunity to compete for part-

¹²⁵ *Id.*

¹²⁶ *See id.* at 8–16 (for a description of the way helplessness and passivity are manifested as aspects of unipolar depression).

¹²⁷ Many students with whom I have spoken report a reduced interest in mastering the law school material due to feelings of hopelessness and a belief in the impossibility of the task.

¹²⁸ This is the essential belief that characterizes learned helplessness. *See* SELIGMAN, *supra* note 72, at 15.

nership later in their careers. At most law schools, these large firms seek to hire students whose first-year grades place them in the top of their class.¹²⁹

Because employers often predicate hiring decisions upon class rank, students take an interest in assuring or competing for a top place in their class. However, with most law schools offering only one exam in each course, some law students, though bright and capable, find themselves locked out of the all-important top 10 percent after the first semester or, even more disheartening, at the end of the first year. For these students, as well as for those in the top 10 percent of their class, the ranking system is an ability label. But, some would argue, such a label is accurate and useful; law firms require such labels if they are to distinguish the most successful first-year law students from the body of the class. Additionally, law schools have long used such ranking systems. It seems unlikely that law schools are going to change that practice in the near future.

Peer-to-peer stigmatization, like student ranking and large firm hiring preferences, seems, in many ways, to be a fixed aspect of legal education. To an extent, it seems that peer-stigmatization, bullying, and other methods of social sorting are an inevitable part not only of educational environments in general, but of all enterprises in which a critical mass of humans becomes involved.¹³⁰ In many cases, friend selection and community identification is a positive thing, as such identification allows students to form peer-support networks and to simulate a familial kind of support in an environment where students lack close friends and supportive family. Peer-stigmatization, the othering of one who does not form part of one's immediate support network, may simply be the expression of a healthy social sorting process.

Finally, negative professor feedback also has a role to play in student learning and should not be demonized in all its forms. Everyone who has graduated from law school has, at one time or another, sat in a class in which a student, try as he might, failed to answer a professor's questions satisfactorily or, even worse, gave a blatantly incorrect answer. These things happen; people make mistakes. But mistakes must be corrected—especially where the cost of not doing so is a misinformed classroom. On such occasions, it does not behoove the professor to respond to the incorrect answer with anything short of frank candor. A wrong answer is exactly that: a wrong answer. To instruct students otherwise would be to lead them astray, to employ a language of dishonesty, and to promote intellectual degradation and confusion.¹³¹ This paper will explore feedback methods that can be used to point out the failure of an answer while simultaneously avoiding the language that encourages pessimism and entity-mindedness.

¹²⁹ In years past, most students from the best law schools were able to find large-firm jobs. However, that may no longer be the case in today's increasingly competitive market. See David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1, available at <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all>.

¹³⁰ Rebecca Flanagan, *Lucifer Goes to Law School: Towards Explaining and Minimizing Law Student Peer-to-Peer Harassment and Intimidation*, 47 WASHBURN L.J. 453, 453 (2008).

¹³¹ However, as this Article will point out, not all professor feedback is created equal—some feedback actually plays a constructive role in student learning, while other feedback, while likely well-intentioned, is overtly destructive.

B. *Related*

To lay the theories of the entity mindset and attribution style over the law school experience, we must first examine the relationship between the two ideas. Of Dweck's theory of praise conditioning, Ron Ritchhart and David N. Perkins write:

Broadly speaking, learners with an entity mindset believe that "you either get it or you don't," and if you don't, you probably are not smart enough. As a result, they tend to quit in the face of intellectual challenges. In contrast, learners with an incremental mindset believe their abilities can be extended through step-by-step effort, so they persist.¹³²

In contrast, those with the entity mindset believe that a task is either easy or impossible, and that failure is a product of a permanent deficiency in one's intelligence.¹³³ This belief is itself a kind of pessimistic statement; the idea reflects permanence, in the form of the implied thought, "I'll never be smart enough to learn how to do this properly." It reflects pervasiveness to the extent that it implies the idea, "All of my teachers and peers believe that I am too stupid to master this." And, most clearly, it reflects personalness, in that the idea expresses the thought, "I'm a stupid person."

According to attribution style theory, a person who attributes negative academic events in a mode that is permanent, pervasive, and personal, is expressing a pessimistic view—and is, by extension, expressing a belief in the entity view of intelligence because her pessimistic attribution leads her to believe that her intelligence is a fixed trait, one that she can never improve. In the context of perceived negative academic events, it seems that pessimistic attribution is also an expression of the entity mindset. The entity theorist and the pessimist think the same thoughts: "I'm really not that smart. Everyone knows that I'm not that smart."¹³⁴ And I'm always going to be this way."

C. *Essential*

Although natural variation in mindset tendencies as well as variation in susceptibility to external forces is surely present in law student attitudes, anecdotal evidence suggests certain institutional features encourage students to think like entity theorists or pessimists.¹³⁵ Class ranking, the emphasis placed on first-year grades as a result of law firm hiring preferences, peer-to-peer stigmatization, and negative professor feedback all play a part in shaping law students' mindsets and in encouraging particular patterns of attribution.

¹³² Ron Ritchhart & David N. Perkins, *Learning to Think: The Challenges of Teaching Thinking*, in *THE CAMBRIDGE HANDBOOK OF THINKING AND REASONING* 775, 786 (Keith J. Holyoake & Robert G. Morrison eds., 2005).

¹³³ See generally DWECK, *supra* note 17.

¹³⁴ Or: "If I take on a real challenge, everyone will see that I'm not that smart."

¹³⁵ Of course, large law firms and other entities that hire students through a process of interviews have little else on which to rely, and so must use grades to distinguish students. However, law students as a group tend to fail to recognize that, while first-year grades may be important early on in one's career, they are not wholly determinative of the arc of that career.

Evidence suggests that law students who score below their expectations¹³⁶ in the first year often give up, resigning themselves to academic mediocrity throughout the law school experience.¹³⁷ These students are likely responding to their grades through the lens of the belief that no matter what they do, they will not be able to improve their abilities—a belief that is characteristic of the fixed or entity mindset. Alternatively, they may believe that improvement is possible, but not particularly important or helpful as only their first-semester or first-year grades matter—a belief that is characteristic of both a pessimistic attribution style and a fixed mindset.

While it is not likely that law schools can or will invent a system of grading and sorting students that eliminates the emphasis currently placed on ranking and on first year grades,¹³⁸ students who have not performed up to their expectations can still be encouraged to continue to develop. A legal career is, in most cases, a long thing. When students resign themselves to mediocrity, they are eschewing an important opportunity to improve. As a result, the legal academy is graduating students who are not only entity-minded and very likely unhappy, but who have also missed much of the education that law schools offer.

We must ask whether our grading system or the messages we send students about the ultimate importance of first-year grades actually function as a kind of ability praise. Do some students feel that an A grade labels them as brilliant, while a worse grade labels them as hopeless? Are we tacitly employing ability labels and encouraging a sense of helplessness in our law students? Are we teaching entity-mindedness?

Orin Kerr warns against the entity mindset, writing:

All grades do is measure how well you did relative to your classmates on a few 3-hour exams taken at a particular place at a particular time. They're only a snapshot of how well you displayed your ability at one particular time in the judgment of one particular professor, rather than a Scarlet Letter (whether A, B, or worse) sewn on for life . . . My advice is to stick with it: get your old exams back, review them, and make sure you know what you did wrong.¹³⁹

And yet, apart from those who elect or are forced to participate in academic success programs, it seems that few law students take this advice. In response to Kerr's admonition, one student responded: "I saw very little variation in grades after 1st semester. It seemed like wherever people's grades were

¹³⁶ At many law schools, the class is made of students who were not only star academic performers in high school and in college, but also top competitors for places among the admitted elite. Of these, only ten percent of those in any given institution will make the top ten percent. Fewer of these will receive perfect A's in every class. One can imagine the expectation of such a group of high achievers is out of concord with the realities of the law school environment. As such, many students who the institution perceives as "doing fine," perhaps performing in the top quarter of the class, will perceive themselves as performing poorly. Those actually performing poorly may view their grades as worse still.

¹³⁷ Such students have suggested that it is better to "skate" with B grades, doing little work, rather than to expend great effort, only to achieve B+ marks.

¹³⁸ Due largely in part to the slow process of change in the legal academy and due to the nature of large law firm hiring, we can expect top students to continue to be regarded as more promising by both law firms and on-campus career services offices.

¹³⁹ Kerr, *supra* note 63.

after that semester is where they stayed for the next three years. My own first semester GPA was practically identical to my final overall GPA.”¹⁴⁰

Another said:

In reviewing law student transcripts, looking at first year grades can provide a good guidepost. At that point in time, students are not picking an “easy” professor, an “easy” class, or gaming the system in other ways such as taking a pass/fail class to create more time for studying for other exams. I have heard it argued that 1L grades are the only time you can really compare law students. This is perhaps especially true in the clerkship context where there is a desire for raw intellect, someone who “got it” early. Bad news, I know.¹⁴¹

Anecdotal evidence suggests that many students, even those who go on to become lawyers who control hiring processes, believe in an entity theory of intelligence—that you are your grades because your grades are a reflection of some static aspect of you, namely, how smart you are.¹⁴² For example, one student responded: “Grades are the only way to discern some tendency [sic] for competence [sic] . . . unless you want to submit your LSAT!”¹⁴³ It is almost certain that some students enter law school with a fixed mindset, and that law schools currently do little to reorient those students to the incremental mindset. For the purposes of this argument, we must set aside those students who enter law school with the entity-mindset approach and focus on those who entered with an incremental mindset.¹⁴⁴ If law schools are teaching those students to believe that their grades are a proxy for their IQs,¹⁴⁵ and that there is nothing they can do to improve either, then schools are teaching otherwise resilient students to regard their performance through the lens of entity-mindedness; those schools are implicitly telling students that they are powerless over their learning.¹⁴⁶

These students’ statements reflect an entity-minded orientation and the statements employ the language of fixed intelligence. Instead of using the language of fixed intelligence, Dweck writes, we ought to use “growth language,”¹⁴⁷ or language that reflects effort and achievement¹⁴⁸ rather than lan-

¹⁴⁰ Jarhead315, Comment to *Thoughts on First-Year Law School Grades*, THE VOLOKH CONSPIRACY (Jan. 23, 2006, 6:20 PM), <http://volokh.com/posts/1138056460.shtml>.

¹⁴¹ Karen, Comment to *Thoughts on First-Year Law School Grades*, THE VOLOKH CONSPIRACY (Jan. 23, 2006, 7:58 PM), <http://volokh.com/posts/1138056460.shtml>.

¹⁴² While an empirical test will need to be undertaken to determine the ubiquity of this belief among law students and those charged with hiring lawyers, the anecdotal evidence is powerful—and troubling.

¹⁴³ Dustin, Comment to *Thoughts on First-Year Law School Grades*, THE VOLOKH CONSPIRACY (Jan. 23, 2006, 10:14 PM), <http://volokh.com/posts/1138056460.shtml>.

¹⁴⁴ Those entering with an entity mindset are not learning their views from the law school; but their views may be altered by steps the law school takes.

¹⁴⁵ DWECK, *supra* note 17, at 5 (“Wasn’t the IQ test meant to summarize children’s unchangeable intelligence? In fact, no. Binet, a Frenchman working in Paris in the early twentieth century, designed this test to identify children who were not profiting from the Paris public schools, so that new educational programs could be designed to get them back on track. Without denying individual differences in children’s intellects, he believed that education and practice could bring about fundamental changes in intelligence.”).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 7–28.

¹⁴⁸ Mueller & Dweck, *supra* note 37, at 34 (“Findings from previous work that compared the effects of effort praise and ability praise do not, at first glance, appear to follow the

guage that encourages the belief that intelligence or lack of it are immutable attributes.¹⁴⁹ This language supports the incremental-theory of intelligence,¹⁵⁰ the idea that learners can increase their intelligence or ability and can become better, smarter, and stronger through a process of practice and feedback.¹⁵¹ Giving examples in the language of sports coaches, Dweck suggests that this incremental-mindset language sounds something like, “To be successful in sports, you need to learn techniques and skills and practice them regularly,” or “How good you are at sports will *always* improve if you work harder.”¹⁵² This language highlights an attitude of effort, improvement, and time. Dweck notes, “Those with the growth mindset found success in doing their best, in learning and improving [T]his is exactly what we find in the minds of champions.”¹⁵³ If feedback is given in terms of growth, instead of in terms of static labels, setbacks can be motivating and informative.¹⁵⁴ Regardless of their grades or place in the class, students who receive such messages are more likely to become responsible for their own learning and invested in their own educational processes.¹⁵⁵ This investment in process rather than outcome is what distinguishes the champions from the also-rans.¹⁵⁶

Negative professor feedback, where that feedback promotes a pessimistic attribution style, encourages students to think about themselves through the lens of permanent, pervasive, and personal negative attributions, and stunts intellectual growth as a result. Encouraging the fixed mindset and employing a pessimistic attribution style creates a culture in which students’ goals are not targeted at learning, but are instead targeted at either appearing intelligent or not appearing deficient. In a classroom or institution of this nature, students are less likely to take intellectual risks, think through difficult problems, and learn from their mistakes.

If law schools stand in a position of influence with respect to the way students view academic performance, then it seems law schools have an imperative: discourage the fixed mindset for those who enter with it and, for those who have learned it from the legal academy, combat pessimistic attribution style.

proposals outlined above Miller et al. found that children told that they were ‘very good’ and had ‘excellent ability’ in mathematics improved their performance more than children told that they had worked hard. However, these comparisons of effort praise and intelligence praise focused mainly on the feedback’s effects under conditions of success. Whether the praise may lead to differences in children’s responses to a specific failure has remained largely unexamined. In addition, previous researchers did not clearly examine the effects that praise for effort versus praise for intelligence may have on children’s achievement goals and performance attributions.” (citation omitted).

¹⁴⁹ DWECK, *supra* note 17, at 5 (“Of course, each person has a unique genetic endowment. People may start with different temperaments and different aptitudes, but it is clear that experience, training, and personal effort take them the rest of the way.”).

¹⁵⁰ Mueller & Dweck, *supra* note 37, at 44; *see generally* DWECK, *supra* note 17.

¹⁵¹ DWECK, *supra* note 17, at 5.

¹⁵² *Id.* at 98.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 101.

¹⁵⁶ *Id.*

III. THE SOLUTIONS

A. *The Method*

Instead of inadvertently promoting a culture of entity mindedness and pessimism, law schools can benefit their students by promoting a culture of intellectual curiosity—one marked by flexible optimism and the growth mindset. Law schools are not likely to choose to alter their methods, but they can augment and supplement them by taking steps to encourage students to work against the fixed mindset and pessimistic attribution style. To remedy the problems of entity-mindedness and pessimistic attribution, law schools should send an overt message of growth mindedness at the institutional level, and should work to combat pessimistic attribution at the classroom level.¹⁵⁷

As institutions, law schools do not yet go far enough in articulating a worldview in which students are learners and in which grades are indications of progress. Although the curve and law firm hiring processes may be staple features of the law school environment,¹⁵⁸ it is still possible for law schools to do more to encourage incremental mindsets. The words and messages of administrators and instructors are essential in promoting a message of incremental-mindedness.

Seligman's work suggests that optimists, like Dweck's growth-minded students, will better survive the setbacks experienced by many students as part of law school.¹⁵⁹ Medical¹⁶⁰ and economic evidence¹⁶¹ support the notion that

¹⁵⁷ Such a revision is possible. See generally DWECK, *supra* note 17.

¹⁵⁸ Those who would argue that this is because law school is merely a sorting process in which talent for large firm law practice is identified and groomed may be correct. However, law school need not continue to be only this kind of environment. Even if law firms must use 1L grades as a proxy for accomplishment or analytical ability, and even if only the top ten percent of students are able to qualify to work at large law firms, the other ninety percent of students should still be able to learn, grow, and improve throughout the law school experience. To suggest that just because they did poorly on one semester's exams their entire professional lives are over seems both entity-minded and short-sighted, since many of those students will go on to practice law, and therefore should be equipped with as much knowledge and ability as they can develop in three years.

¹⁵⁹ Though the majority of students could benefit from learning optimism, research suggests that a small percentage of law students may not be harmed by pessimism, and may actually benefit from it in the form of enhanced academic performance. A 1987 study conducted by Martin Seligman, John Monahan, and Jason Satterfield examined the explanatory styles of students at the University of Virginia College of Law and found surprising results. See generally Jason M. Satterfield et al., *Law School Performance Predicted by Explanatory Style*, 15 BEHAV. SCI. & LAW 95 (1997). Students in every other studied discipline proved the researchers' hypothesis that optimism correlates with well-being, achievement, and overall success, but the UVA Law School students produced unique results. *Id.* at 96. There, the top academic performers had explanatory styles that were extraordinarily pessimistic. *Id.* at 103. For those students, pessimism was a predictor of success, not of failure. *Id.* The UVA study presents some strange and ongoing questions, and suggests that for those whose pessimism is extreme, it may act in a protective way. *Id.* at 104. Seligman suggests that this may be a phenomenon called defensive pessimism, in which the student chooses not to place any expectations on his performance because he believes that he can only do badly. *Id.* As a result, these defensive pessimists may be more focused on learning for learning's sake—a growth-minded idea, and may be more open to learning through trial and error. *Id.*

¹⁶⁰ Some researchers have characterized optimism as a trait imbued with survival value, and that some argue optimism may have been a highly prized trait, selected for over the course of

the optimists will be better prepared to cope with the setbacks and struggles, both academic and psychological, that law school presents.

Krieger and Sheldon's work tells us that even law students who excel academically may experience a reduced sense of well-being, a shift in values identification,¹⁶² and an increased sense of depression.¹⁶³ This is attributable at least in part to the reduced sense of control law students have. It may also be attributable to the kind of pessimistically-minded feedback many students believe they are receiving in the law school environment. Thus, promoting the incremental mindset at the institutional level may set the stage for academic excellence, but teaching students to think about their individual efforts through the lens of optimism is also important.

B. *The Message*

At the institutional level, schools can work to defeat entity-mindedness and the pessimistic attribution style that entity-minded thinking embodies. To do this, law schools must take steps to send students a different message than the one they are receiving now, and may need to institute events, lectures, mailings, and so on, that explicitly promote the growth mindset. Additionally, law schools must curb ability praise, and must stop sending their students the message that high-achieving students succeed because they are inherently smart. Instead, schools should move to a model that incorporates praise for hard work, so that students can see that any law school task is a learnable one in which, with the appropriate academic guidance and sufficient hard work, anyone can compete and succeed.

This shift in encouragement need not be dramatic. We need only discourage the belief that intelligence and achievement cannot be improved. Such a message will encourage a flexible approach to learning. In considering first-year rankings, law schools can communicate to students that law school has academic value beyond the first year and that the second and third years offer students the opportunity to refine their skills and improve their understanding. If schools endorse the idea that first-year grades are all-defining, then law students will adopt a fixed mindset and cease to learn after the first year is over. If, however, law schools encourage students to view rankings and large firm job placements as indicative of a mastery that can be obtained through learning and hard work, then law schools will encourage students to work harder over the

human evolutionary biology. Optimism certainly appears to have enjoyed some evolutionary help, but research on the evolutionary value of optimism does not suggest that simply thinking optimistically is a panacea, and those skeptical of evolutionary arguments in favor of optimism are quick to point out the survival value of guarded skepticism, which many associate with pessimism. A closer look at optimism studies suggests that thinking optimistically about small things, rather than recklessly expecting good things to happen all the time, regardless of contrary indicators, may lead one to certain behaviors and habits, and that, over time, those small changes in habit and behavior in turn produce health, work, economic, and other survival benefits. See Robert Lee Hotz, *Except in One Career, Our Brains Seem Built for Optimism*, WALL ST. J., Nov. 9, 2007, at B1; see also Manju Puri & David T. Robinson, *Optimism and Economic Choice*, 86 J. FIN. ECON. 71, 73 (2007).

¹⁶¹ See SELIGMAN, *supra* note 72, at 5; Puri & Robinson, *supra* note 160, at 73–74.

¹⁶² From intrinsic values and motivations to extrinsic values and motivations.

¹⁶³ See Krieger, *Dark Side*, *supra* note 9, at 123.

course of their legal study and will produce graduates who are ready to take on the challenges of practice.

At the classroom level, entity mindedness seems, at first glance, harder to root out. In this context, thinking about professor feedback through the lens of attribution style is particularly effective. It is rare that a professor gives praise to a student using the language of ability; for example, it is unlikely that a professor would tell a student, in front of the rest of the class, that she is smart. Instead, it is more likely that professors will give feedback to underperforming students through the lens of a pessimistic attribution style, which in turn encourages the student to believe that she is helpless to improve her academic fate.¹⁶⁴

A common feedback situation is one in which a professor is confronted with a clearly incorrect answer in the course of a Socratic dialog and, not wanting to respond to the incorrect student with targeted criticism, simply ignores the answer, dismisses it out of hand, or calls on another student to tackle the problem before the class. That feedback may be silent, but in many important respects, it is likely just as negative as a directed pessimistic statement. This silent response not only fails to encourage flexible optimism, but also likely serves to defeat and embarrass the student in the same way that pessimistic feedback would.¹⁶⁵

Law professors can work against the pessimistic explanatory style, and thereby combat entity mindedness, by employing the language of optimism in their spoken and written feedback. Their language should encourage students to think about their work through the lens of flexible optimism. To cultivate an optimistic thinking habit, a person must work to change his pessimistic explanatory style to a more optimistic one.¹⁶⁶ But we know that humans have the ability, through self-talk and other techniques, to refute the cognitive processes that give rise to pessimism, to make ourselves more optimistic, and, as a result, to lead longer, happier, and more productive lives.¹⁶⁷

To give feedback that helps students to build flexible optimism into their responses to challenges, professors should reorient themselves to the language of optimism and give constructive responses that, using the language of optimism, guide students to a corrected understanding. Professors can use the temporary, specific, and hopeful language of optimism to explain an incorrect answer's shortcomings. Such an optimistic response might be, "That is not the right answer to this problem." (Specific.) "You have the case in front of you—and if you use it, you can develop a better answer." (Hopeful.) "This next time

¹⁶⁴ An extreme example of a professor's pessimistic response to a student's incorrect answer might look or sound something like, "You always struggle with proximate cause," (Permanent), "All those study aides are worthless. Not one of them can do you any good," (Pervasive), or "Maybe law school just isn't for you," (Personal). See SELIGMAN, *supra* note 72, 44–50.

¹⁶⁵ Empirical study will further reveal the impact of such silences or dismissals, but anecdotal evidence suggests that students do receive a clear message from these silent responses. They hear, "You are wrong," and, in highly judgmental environments, they may equate that message with, "You are not smart."

¹⁶⁶ *Id.* at 15.

¹⁶⁷ *Id.*

around, reconsider the particular facts before you. Do you see what you are missing?" (Hopeful.)

This more optimistic response alerts students to the fact that their work in this particular context is deficient; however, the optimistic answer situates that deficiency in limited terms and encourages the students to envision their wrong answer as a necessary step in the mastery process as opposed to a public indictment of his or her intelligence. Unlike the pessimistic or silent criticism, optimistic criticism is specific to the problem at hand, it is not broadened out to the entire student or to the student's ability to engage with the subject as a whole. The optimistic line of criticism also encourages the student to be hopeful rather than helpless, so that the message the student hears is that her poor performance need not be replicated in the future if she fills in the gaps in her understanding. Relying on the body of optimism research, we can infer that such optimistic language should help students to fight pessimism, at least with respect to their attitudes toward learning.

In my own teaching, I have noticed that reframing student setbacks in the language of optimism has helped students reorient their views. To see a bad semester or a poor mark through the lens of optimism is to say, "Here I have not realized my potential, but I can improve and will perform better next time." If students are to succeed, this is exactly the sort of optimistic outlook all law students must have, particularly with respect to their ability to perform in the classroom.

The next step in this inquiry will be to conduct a set of empirical studies that measure the impact of incrementally-minded, optimistic feedback methods in law students and relate that impact to the incidence of law student depression. For now, law professors, who in so many ways teach law students what and how to think, can model task-oriented optimism during both in-class discussion and in written feedback. Doing so will help students to think optimistically about their performance, improve their grades, and realize their potential.

C. Critiques

There are two direct, perhaps salient, critiques of the argument that law schools should take steps to combat entity mindedness and pessimistic attribution style with respect to academic performance. The first is that, although law student depression seems to be increasing, there is no concrete proof that law students' thoughts or beliefs are the sources of that depression. Though Krieger and Sheldon's research seems to plainly suggest that law students enter law school feeling, on the whole, better than the general population, and that something indeed happens to them while they are enrolled in law school classes,¹⁶⁸ there is no empirical proof that mindset or thought habits are motivating their depression. This critique may have some value, as it ought to promote a more thorough inquiry into this topic, and empirical research is certainly necessary to establish the value of these tactics unequivocally. However, Seligman's work has demonstrated that thoughts and habits of thought lie at the root of depression.¹⁶⁹ In effect, Seligman's work suggests that depression is a pattern of

¹⁶⁸ See generally Sheldon & Krieger, *Dark Side*, *supra* note 9.

¹⁶⁹ See generally SELIGMAN, *supra* note 72.

thought, a belief or set of beliefs about oneself in the world. The logical extension of that understanding is that a change in law students' habits of thought should, at least in part, produce a decline in law student depression. At the very least, shifting students' thought habits with respect to their performance in school should provide them some relief.

The second critique is that efforts to change students' thought process would ultimately be useless, because once a person has embraced a mindset, he cannot change his beliefs. This is perhaps true of those who do not wish to change. One need not conduct an empirical study to recognize that there are people who, no matter what their circumstances, do not wish to change, psychologically or otherwise. There are two primary responses to this argument. First, this Article, due to its broad scope, cannot overly concern itself with those who do not wish to change. Second, and more importantly, even law students who do not wish to alter their approach to learning are likely to be swayed, however subtly, by the forms of praise and the explanations of success provided by their law schools and law professors. Ability praise can condition students to believe that success is the product of innate intelligence. At the same time, praise for hard work has been proven to work in the opposite way, encouraging an incremental or growth mindset. It may be difficult to sway students who do not wish to change from the fixed to the incremental mindset, but Dweck's research suggests that such a change is, indeed, possible.

CONCLUSION

Law schools can do more to combat destructive mindsets and thought processes. At the institutional level, law schools can and should encourage an incremental mindset, or an incremental theory of intelligence, which will encourage students to view the law school experience as a pathway to mastery instead of as an academic sorting system. Simultaneously, at the individual feedback level, instructors should employ in-class response methods that encourage students to continue to work to solve difficult problems. Instructors can encourage students to think about setbacks, however large or small, through the lens of optimistic attribution. Together, the incremental mindset and the optimistic feedback methodology can have real, measurable effects on law student well-being and performance. Over time, these practices should produce law students who are more inclined to effort and less inclined to depression, more prepared for challenge and less afraid of failure, and more likely to thrive academically, professionally, and personally.