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CREATING THE OPTIMISTIC CLASSROOM: WHAT LAW SCHOOLS CAN LEARN FROM ATTRIBUTION STYLE EFFECTS

CORIE ROSEN*

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INTRODUCTION

In more ways than you know, you are what you think. That is the essential thesis behind the emergence of the newest field in psychology, positive psychology. [1] Because the law school experience is a unique producer of psychological distress,[2] law schools are likely to benefit

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[1] Martin E.P. Seligman & Mihaly Csikszentmihalyi, *Positive Psychology – An Introduction*, 55 AM. PSYCHOLOGIST 5 (2000).

[2] Matthew M. Dammeyer and Narina Nunes, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 Law & Hum. Behav. 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* Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Stu-*

from the application of the positive psychology principles of cognitive optimism.[3] This article explores the methods by which incorporation of the language of optimism into the law school learning environment may help to lessen the negative impact of the law school experience[4] on students,[5] and may operate to reduce depression and increase motivation.[6]

This article will first establish the linked problems of declining subjective well-being and increasing depression among law students, and will explore the way that depression in law students, as in other populations, is produced and reinforced by pessimistic attribution style. Then, the paper will address the potential effects of using the language of optimistic attribution in law school classroom feedback, and the methods professors might use to access and build that language into their feedback methodology. Finally, the article will examine the possible effects of an optimistically-oriented learning environment. Perhaps, instead of giving up[7] or falling prey to depression,[8] students exposed to

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dents and Lawyers, 1986 Am. B. Found. Res. J. 225; *Gerald F. Hess, Heads and Hearts: The Teaching and Learning Environment in Law School,* 52 J. Legal Educ. 75 (2002).

[3]MARTIN SELIGMAN, LEARNED OPTIMISM 8-9 (3d ed. 2006) (1990). *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; Martin E.P. Seligman et al., *Why Lawyers Are Unhappy* 23 CDZLR 33.

[4] 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 (2002). *See also* Lawrence S. Krieger and Kennon M. Sheldon, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 Behav. Sci. & L. 261 (2004).

[5] This paper does not present the language of optimism as a panacea for the ills associated with law school environments. Rather, the paper presents a method for integrating optimistic language that may facilitate a more positive law school experience. For optimal success, this language should be applied in combination with other techniques described in the law learning literature.

[6] *See infra* text accompanying notes 84-07. (Carver and Schier suggest that optimism and pessimism are strongly linked to motivation, that "the expectancies with which people return to action are reflected in subsequent behavior." They go on to tie pessimism to decreased motivation and optimism to increased motivation. 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." The also suggest what many know intuitively; "staying engaged [in a task] is a critical determinant of success.")

[7] *Id.* Giving up may take many forms in the law school environment and it is possible that students who appear to be doing their work have in fact given up and are involved in a form of mental disengagement which is just as damaging as physical disengagement from the law school task, since a mentally disengaged student cannot properly prepare herself to succeed within the academic time-frame.

[8] Krieger, *Institutional Denial About the Dark Side of Law School and Fresh Empirical Guidance for Constructively Breaking the Silence,* 52 J. Legal Educ., 114.

the language of optimism in their classrooms may develop healthier psychological defenses to a difficult environment and, in the face of both perceived and actual failure,[9] students who have learned optimism,[10] may remain more motivated and, therefore, prove more successful than students who have not been so exposed.[11]

A. POSITIVE PSYCHOLOGY: THE BEGINNINGS

Unlike the old science of the mind, [12] positive psychology asks probing questions to discover what makes human life work well, seeking information about the methods by which healthy people avoid problems like depression[13] and isolation, and redefining the way the scientific community thinks about human cognition and behavior.[14] 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."[15] That concept of optimal functioning, or "thriving,"[16] has become a new goal for psychological health.[17] In the law school environment, where depression, triggered

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[9] It is widely assumed that, in placing struggling students on academic probation, institutions are effectively telling those students that, at least thus far, they've failed at executing the law learning task.

[10] *See generally* SUSAN C. VAUGHAN, M.D., HALF EMPTY, HALF FULL: UNDERSTANDING THE PSYCHOLOGICAL ROOTS OF OPTIMISM (2000). *See also* SELIGMAN, *supra* at note 3.

[11] Though the success of a given student or group of students may be difficult to predict, any group experiencing the benefits associated with optimism can reasonably be expected to experience enhanced performance and a greater sense of control and well-being.

[12] SELIGMAN, *supra* at note 3. 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…. that behavior was repeated only when reinforced externally." Seligman goes on to explain the shift that precipitated the advent of his theory of Positive psychology, writing that, "starting 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.*

[13] *Id.* at 19-20. (Seligman first began to examine depression when he accidentally discovered learned helplessness, an outcome of experiments in conditioning dogs.)

[14] *See* Martin E.P. Seligman & Mihaly Csikszentmihalyi, *supra* at note 1.

[15] Todd David Peterson & Elizabeth Waters Peterson, *supra* at note 3.

[16] *Id.* at 357. ("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. Of course, in doing so, Positive psychology does not seek to supplant the traditional disease-model of psychology, but rather to augment that body of understanding with a science of thriving.")

[17] *See generally* Seligman (to understand that thriving is understood as maximizing individual potential in terms of performance and achievement markers, which can be quantified

by isolation, extrinsic motivation, and values alienation, is an increasing problem,[18] the psychology of thriving could play an especially important role.[19]

One of the most valuable aspects of positive psychology is its understanding of how language may be used to explain events.[20] Research tells us that the presence of optimism or pessimism[21] in a person's speech and habits of thought is communicated through phrases that carry the indicia of one or another particular outlook. [22] Studying that outlook-defining language, assessing the articulation of thoughts and the expressions used to explain why life events have unfolded in a particular way, is an inquiry into a process that positive psychologists have termed "attribution style,"[23] or explanatory style,[24] the method individuals use to understand why things happen or fail to happen to them. Studies of explanatory style suggest that attribution is as important a motivator of behavior as an external incentive or disincentive to act,[25] and explanatory style theory, together with the models that have grown out of it, have given researchers[26] new tools with which to examine depression and the qualities that insulate some individuals from its ills.[27]

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using specific markers. Thriving, and the concepts of cognitive optimism and pessimism have no relationship to the feel-good ideas associated with the self-esteem movement. This paper 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 also* http://www.boston.com/news/nation/articles/2007/02/27/study_finds_students_narcissistic/ (on how the self-esteem movement has produced narcissistic students).

[18] 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 - 118 (2002), at 115. (discussing the negative effects of law school on law students, during law school and beyond, into their professional lives. Krieger writes, "Lawyers 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").

[19] *Id.*

[20] SELIGMAN, *supra* at note 3.

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

[22] SELIGMAN, *supra* at note 3.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] The University of Pennsylvania now features a Positive psychology Center. http://www.ppc.sas.upenn.edu/index.html

[27] *See generally* SELIGMAN, *supra* at note 3.

I. THE DEPRESSION EPIDEMIC

An increasing number of academics have devoted scholarly attention to the negative aspects of the law school experience.[28] Research has established that something quite bad is happening in law school,[29] that this negative thing is known to produce a marked response in the well-being, attitudes, and behaviors of law students,[30] and that this thing that is happening is the result of the law school experience, and not attributable to underlying psychological problems.[31]

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:

> Far from brimming over with personal and intellectual self-confidence, by the second (2L) year, a surprising number of Harvard Law Students come to resemble what one professor has called "the walking wounded": demoralized, dispirited, and profoundly disengaged from the law school experience.[32]

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[28] *See* sources cited *supra* at note 4.

[29] Lawrence S. Krieger*, Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WBNLJ 247 (writing that ". . . law students'. . . personalities are narrowed rather than broadened by law training and. . . the most basic needs are frustrated in law school").

[30] *Id.*

[31] Currently, two theories have been studied, both of which work to explain what it is about the law school environment that produces such detrimental effects. Anthropologist and law professor Elizabeth Mertz, has suggested 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" (2007). Larry Krieger's research has suggested that the lack of autonomy support in the law school environment causes the depression and related problems with values, motivation, and well-being documented in his work. Though these are the two best-tested theories, others exist and may also be plausible. *See* Krieger, *supra* at notes 4, 8, and 29.

[32] Krieger, *infra* at note 38.

Krieger's work with the Subjective Well-Being Index (SWI)[33] proves empirically what that Harvard student observed anecdotally.[34] Krieger and his research team administered the SWI to incoming law students,[35] controlling for physical health and other factors that might influence students' answers.[36] The study found that, when subjects matriculated into law school, their subjective well-being exceeded that of the control population,[37] and, in the aggregate, their profile looked better than the profile of a large undergraduate sample.[38] Over the course of the law school experience,[39] however, student measures of subjective well-being plummeted, irrespective of academic performance.[40] Ultimately, Krieger concludes, something significant is happening to students' sense of well-being in the law school environment, that it is of a distressing nature, and that it causes an increase in depression and related psychological problems.[41]

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[33] *Id.*

[34] Andrew H. Benjamin, *supra* at note 8 (Benjamin's earlier of Arizona study produced similar results, but used a different instrument, finding "no correlation between symptom levels and a number of factors that one might [expect] to influence student distress. For example…age, undergraduate grade point average, law school grade point average, hours devoted to undergraduate studies, or hours devoted to law school studies."[34] Krieger and Benjamin's work, taken together, suggest that law students' well-being is jeopardized by the law school experience and that the disruptive factor, though perhaps difficult to ascertain, is nonetheless unrelated to age, GPA, or hours spent studying).

[35] An undergraduate control group was used for comparison.

[36] Krieger, *supra* at note 29. *See also* Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WBNLJ 247.

[36] *Id.*

[37] *Id.*

[38] 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, 52 (2002). (writing that "The longitudinal study 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").

[39] Krieger, *supra* at note 28. (writing that "[T]he SWB of the students plunged substantially within the first several months of law school, and did not rebound before graduation.")

[40] *Id.*

[41] *Id.* (writing that "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 at the cost of becoming a lawyer. This is ominous preparation for professional life, and similar constructs apparently do drive many lawyers. . .").

Further inquiry suggests that law student depression is not isolated to certain kinds of schools,[42] but that law students across the country experience equal declines in well-being. The decline in well-being also affects students enrolled in the nation's most elite schools, where one might expect students to feel insulated by the caliber of their institutions[43] and the suppressed competition for jobs that graduation from such institutions might create. Instead, the picture that emerges is one in which negative experiences and sentiments are ubiquitous.[44] On the nationwide nature of lowered subjective well-being and increased depression, Krieger writes:

> Such observations are discouragingly common throughout legal education, and they are confirmed consistently by empirical studies…. clinically elevated anxiety, hostility, depression, and other symptoms among [first year] students ranged from eight to fifteen percent times that of the general population.[45]

Thus, we are told, law schools are negatively effecting students in great numbers, that the changes in student well-being occur soon after students are integrated into the law school environment, and that those changes have real, measurable, psychological outcomes.[46] At the conclusion of their study, *Does Legal Education Have Undermining Effects,* 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 different 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

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[42] *Id. See also* Benjamin, *supra* at note 4.

[43] 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, 52 (2002).

[44] *Id.* at 114 (noting that studies have demonstrated that the detrimental effects of legal education are seen at both elite and other law schools and are "confirmed consistently by empirical studies.")

[45] *Id.*

[46] *Id. See also* Matthew Dammeyer and Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 Law & Hum. Behav. 55 (1999). *See also* Martin E.P. Seligman et al, *Why Lawyers are Unhappy*, 23 Cardozo L. Rev. 33 (November 2001).

> 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.[47]

II. OPTIMISM AND ATTRIBUTION STYLE

A. DIVERGENT ATTITUDES

If human attitude is a spectrum[48] with extreme optimism at one end and extreme pessimism at the other, then pessimism can be broadly characterized as optimism's maladaptive twin.[49] Optimism and pessimism may be two sides of a single coin, but their effects and implications could not be more disparate. It is almost universally true that optimists thrive while pessimists languish,[50] and that the benefits attributable to an optimistic outlook are manifold. Optimists live longer lives, earn more money, succeed more often in school, enjoy happier marriages, experience better health, and have greater resilience in the face of obstacles.[51] Pessimists, however, tend toward shorter life spans, lower earning caps, and lower overall achievement.[52]

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[47] Kennon M. Sheldon and 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 (2004), 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 paper does not seek to duplicate that research and will not focus on those papers' 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 paper 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.)

[48] *See generally* THE SCIENCE OF OPTIMISM AND HOPE: RESEARCH ESSAYS IN HONOR OF MARTIN E.P. SELIGMAN, (Jane E. Gillham ed., Templeton Foundation Press 2000).

[49] *Id* at 3 (human attitude with respect to optimism can, of course, range from highly optimistic to highly pessimistic. Gillham explains Seligman's theory, suggesting that the spectrum of healthy attitudes flow from a belief about life events, that "individuals develop expectancies about the occurrence of adversity in their lives," and that "these expectancies are powerful predictors of behavior").

[50] SELIGMAN, *supra* at note 3 (explaining the effects of these two distinct "habits of thought," Seligman writes, "[l]iterally hundreds of studies show that pessimists give up more easily and get depressed more often….optimists do much better in school and college, at work and on the playing field. They regularly exceed the predictions of aptitude tests. When optimists run for office, they are more likely to be elected").

[51] *Id.*.

[52] *Id.*

It is not surprising, then, that 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 human evolutionary biology.[53] Optimism certainly appears to have enjoyed some evolutionary help,[54] 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.[55] Research in support of the evolutionary defense of optimism may be summed up in this way:

> Medical evidence is suggestive [of the way optimism works]. Optimistic people at risk for skin cancer are more likely to use sunscreen. Optimistic coronary artery bypass patients are more likely than pessimists to be taking vitamins, eating low-fat foods and joining a cardiac-rehab program five years after surgery – and living longer, studies show.[56]

That is, optimists are more likely to believe that, in taking steps, they can improve their odds or prevent a problem.[57] Economic data supports the idea that there are measurable, if indirect, benefits that flow from an optimistic outlook, and that those benefits arise out of serious of small choices which, compounded over time, work to make the optimist more successful than his pessimistic counterparts.[58] Study findings suggest that optimists are inclined to work more, both in the form of longer hours and later retirement.[59] In addition, optimists are more inclined to-

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[53] Robert Lee Hotz, *Except in One Career, Our Brains Seem Built for Optimism*, WALL ST. J., Nov. 9, 2007, *available at* http://online.wsj.com/article/SB119454102049486710.html.
[54] *Id.*
[55] *Id. See also* David T. Robinson, *Optimism and Economic Choice*, 86 JOURNAL OF FINANCIAL ECONOMICS, 71 (2007). *See also* Puri and Robinson, *infra* at note 154.
[56] *Id.*
[57] *Id. See also* Seligman, *generally*.
[58] *Id. See also* Robinson, *supra* at note 55.
[59] *Id.*

ward savings, and therefore better overall financial health.[60] Those categorized as optimists also put more money away for the future and, interestingly, tend to hold more of their money in liquid assets.[61] Optimists pay their credit card bills more promptly and are also more likely to invest in individual stocks.[62] Optimists are also less likely to be smokers and are more likely to remarry after a divorce.[63] These small behaviors, when aggregated, likely give the optimists a distinct advantage and promote greater financial, personal, and emotional health.[64]

As he worked to understand the processes that make some people more resilient, more optimistic than others, Martin Seligman[65] set out to understand optimism as a cognitive process. Seligman and his team identified attribution style,[66] the way a person uses particular language to explain the causes of good and bad events, as they key component in whether a person is optimistic or pessimistic. Seligman and his research team based their inquiry on the early work of UCLA psychologist Bernard Weiner,[67] who in the 1960's theorized that some people achieve more than others because some people think about achievement differently than others do.[68] Weiner's essential theory, mirrored in Seligman's work, [69] was that the people who are most successful see obstacles not as permanent roadblocks, but as temporary states that can be overcome or defeated with hard work.[70] 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.[71]

Weiner's work looked at a single explanation for a single event, but Seligman's sought a more complex answer, ultimately hitting on the idea of a multi-part explanatory style.[72] That multi-part method could be used to analyze habitual thinking and could even be traced through writ-

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[60] Hotz, *supra* at note 31. *See also* Robinson, *supra* at note 55.
[61] Robinson, supra *at* note 55.
[62] *Id.*
[63] *Id.*
[64] *Id. See also* Seligman, *generally*.
[65] *See* http://www.ppc.sas.upenn.edu/bio.htm
[66] SELIGMAN, *supra* at note 3, pp. 40-43.
[67] *See* http://lieber.bol.ucla.edu/Weiner/Weiner.html (Weiner is widely credited with the development of attribution theory.)
[68] SELIGMAN, *supra* at note 3, 40.
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*

ten or spoken patterns and extrapolated to yield information about what an individual's cognitive processes were over the course his lifetime.[73] The new theory established two kinds of thinker; those who predominately used an optimistic explanatory style tended to be more resilient in the face of obstacles, while those who used another tended toward lower resilience, helplessness, and, in many cases, depression.[74]

In 2001, Charles S. Carver[75] and Michael F. Scheier,[76] researchers in the fields of optimism and pessimism,[77] neatly summed up those terms' colloquial definitions. They wrote that, "optimists are people who expect good experiences in the future. Pessimists are people who expect bad experiences."[78] 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."[79] Seligman's research took that folk wisdom into the scientific realm and demonstrated, among other things, that pessimists, as a group, exhibit specific characteristics with respect to the way in which they anticipate bad future occurrences and understand both positive and negative past and present events. He found that pessimists are almost universally people who give up easily,[80] and are more likely to experience depression.[81]

In Seligman's model, pessimistic minds work along a defined spectrum, and attribute events along three dimensions:[82] permanence, pervasiveness, and personalness.[83] Pessimistic people see negative occurrences as the result of some permanent failing.[84] Examples of these

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[73] *Id.*
[74] SELIGMAN, *supra*, at note 3, pp. 43-51.
[75] *See* http://www.psy.miami.edu/faculty/ccarver/
[76] *See* http://www.psy.cmu.edu/people/scheier_vita.pdf
[77] http://www.macses.ucsf.edu/Research/Psychosocial/notebook/optimism.html
[78] Charles S. Carver and Michael F. Scheier, *Optimism, Pessimism, and Self-Regulation, in* OPTIMISM AND PESSIMISM: IMPLICATIONS FOR RESEARCH, THEORY, AND PRACTICE 31 (EDWARD C. CHANG, ed., American Psychological Association 2002).
[79] *Id.*
[80] *See generally* SELIGMAN, *supra* at note 3.
[81] *Id.*
[82] *Id.*
[83] Jane E. Gillham et al., *Optimism, Pessimism and Explanatory Style*, *in* OPTIMISM AND PESSIMISM: IMPLICATIONS FOR RESEARCH, THEORY, AND PRACTICE 53 (EDWARD C. CHANG, ed., American Psychological Association 2002) (in this his earlier work, written with a team, Seligman and fellow researches used the labels, "internal, stable, and global." Those labels were later morphed into the alliterative tags, "permanent, pervasive, and personal." I will use this second phrasing throughout the remainder of the paper).
[84] *Id. See also* SELIGMAN, *supra* at note 3.

kinds of thoughts are, "diets never work,"[85] or "professors always hate me." This kind of a thought or speech habit promotes the concept that the issue in question is one that cannot be modified, remedied, or changed in any way.[86] Pessimists see 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.[87] Examples of this sort of thinking include the phrases "all women are impossible to talk to,"[88] or "all law professors are unfair." This kind of attribution allows negativity to permeate out from a single occurrence and into every related occurrence, encouraging the pessimist to give up. The pessimist extrapolates individual, bad events, or groups of bad events, out to the broader world, expecting those bad events to reproduce themselves indefinitely.[89] 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, at her core, in some way fundamentally and irrevocably flawed. Examples of this kind of thinking include the statements, "I'm stupid,"[90] or "I'm ugly."[91] When good things happen to the pessimist,[92] she sees them as the result of some unusual, perhaps random, confluence of events.[93] 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."[94]

An optimist, by definition, thinks about things in the opposite way.[95] He has a positive attribution style[96] and sees the good things that happen to him as the result of permanent, pervasive, and personal quali-

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[85] *Id. See also* SELIGMAN, *supra* at note 3.
[86] *Id. See also* SELIGMAN, *supra* at note 3.
[87] *Id. See also* SELIGMAN, *supra* at note 3.
[88] SELIGMAN, *supra* at note 3, 47.
[89] SELIGMAN, *supra*, at note 3, 131–134 (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).
[90] MARTIN E.P. SELIGMAN, LEARNED HELPLESSNESS, 51 (RANDOM HOUSE 2002).
[91] *Id.*
[92] This paper will focus primarily on attribution style for negative events or challenging events, the kinds of things that are happening to students in law school.
[93] SELIGMAN, *supra* at note 3, 43-51.
[94] *See generally* Seligman. 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 and temporary, isolated, and specific, while the optimist thinks about negative events in that way. Thus, optimism and pessimism reveal themselves as mirror images.
[95] SELIGMAN, *supra* at note 3, 43-51.
[96] *Id.*

ties that he perceives as positive.[97] When the optimist receives a high mark on an exam, he doesn't think of the event as isolated, he thinks of it as the result of some set of innate qualities in himself. Thoughts like "I am a brilliant test taker," or, "I have always been a great student," run through the optimist's mind in moments of academic success.[98] In terms of negative events, the optimist has a forward-looking explanatory style.[99] When she encounters a setback or a negative event, the optimist views the event in terms that are temporary, specific and hopeful.[100] 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, attributable to some particular failing or problem.[101] 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 the bad event 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, instead of simply reproducing the negative grade.

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,[102] 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,[103] i.e. "I'll never succeed in law school," the optimist views the same experience through a hopeful lens, i.e. I'll work harder next time to make sure I don't get this sort of grade again." And, because the optimist believes, in his heart, that he can "walk on water,"[104] he will bend his world as much as he can to reflect the truth of that internal reality.[105]

Seligman's work suggests that the optimists in our student body will better survive a challenging task like law school, and Krieger tells

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[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] SELIGMAN, *supra* at note 3, 95
[105] *Id* at 95-96 (explaining the power of the belief in one's unstoppable abilities as predictive of great success and original thinking in creative teams charged with difficult tasks.)

us that, even law students who are excelling academically may be experiencing a reduced sense of well-being, values identification, and a greater feeling of depression.[106] Medical and economic evidence[107] suggests that the optimists among our students will be better prepared to cope with the setbacks and struggles, both academic and psychological, that law school may present to them. We must ask, then: if optimism is a valuable trait, can, and should, we teach it to our law students?[108]

Optimism is learnable. At least in the context of behavioral therapy, people who naturally gravitate toward a pessimistic explanatory style can be taught to be more optimistic. In the process of discovering whether and how optimism might be cultivated, Seligman and his colleagues studied cognitive therapy.[109] They quickly found that optimism can be developed – that the mind can be trained into new habits of thought.[110] and that those who learn optimism can obtain all of the benefits associated with that attribution style.[111] It follows that, if optimism were taught to law students, those students would be better insulated against the ills and challenges inherent in the law school task.

In order to cultivate an optimistic thinking habit, a person must, of course, work to change his pessimistic explanatory style to a more optimistic one.[112] But we know that humans have the ability, through self-talk and other techniques,[113] to refute the cognitive process that give rise to pessimism, to make ourselves more optimistic and, as a result, to lead longer, happier, and more productive lives.[114]

If law teachers can teach students and at the same time use the language of optimism, students may learn to attribute their failures and setbacks in a constructive way and may remain motivated in spite of negative feedback. Thus, professor speech may itself facilitate the growth and development of students – helping students to meet, and even exceed their perceived potential. [115]

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[106] *See generally* Krieger.
[107] *See* SELIGMAN, *supra* at note 3. *See also* Benjamin*, supra* at note 4. *See also* Puri and Robinson, *infra* at note 154.
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *See generally* Seligman.
[112] SELIGMAN*, supra* at note 3, 5.
[113] *See generally* MARTIN E.P. SELIGMAN, LEARNED HELPLESSNESS, 51 (RANDOM HOUSE 2002). *See also* SELIGMAN, *supra* at note 3.
[114] *Id.*
[115] SELIGMAN, *supra*, at note 3, 154. "Which comes first – optimism or achievement in the classroom? Common sense tells us that people become optimistic as a consequence of

B. PESSIMISM AND LEARNED HELPLESSNESS

What is the cost of failing to learn optimism? Experiments tell us that without intervention, depression is inevitable in certain cases. In still other cases, environment may actually teach pessimism, learned helplessness, and depression.

Like optimism, learned helplessness,[116] the process by which animals and people, through experiential information gathering, come to the conclusion that no effort on their part can mitigate their circumstances, can be taught.[117] In a series of experiments, researchers successfully taught subjects that negative stimuli could not be reduced with behavior modification, even when that behavior modification was simple to execute, physically possible, and easy to understand.[118] When later 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 reduce or eliminate the negative stimulus.[119] In short, subjects learned to allowed themselves to be victims of circumstance because. Subjects were taught a belief – a habit of thought – and their attribution patterns resulted in the certainty that the subjects could do nothing to improve their situations.

Learned helplessness has been studied, in both dogs[120] and people,[121] as a key process in the development of depression,[122] and it is not difficult to observe the phenomenon in the anecdotal descriptions of law student behavior offered by both professors and students. If a student's overall law school experience provides continuous negative feedback in a way that cultivates pessimistic thinking, or, perhaps in a way that fails to intervene in the students own predisposition toward pessimistic habits of thought, the law school may in effect be teaching learned helplessness.

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being talented or because they do well. But the design of our classroom studies clearly establishes that the causal arrow also points in the opposite direction. In our studies…over and above their talent-test scores, we repeatedly find that pessimists drop below their "potential" and optimists exceed it. I have come to think that the notion of potential, without the notion of optimism, has very little meaning."

[116] *Id. See also* Peterson et al, *supra* note 12.

[117] *See* SELIGMAN, *supra* note 3.

[118] *See* MARTIN E.P. SELIGMAN, LEARNED HELPLESSNESS, 51 (RANDOM HOUSE 2002).

[119] *Id.*

[120] *Id.*

[121] Peterson et al, *supra* note 5.

[122] *See* SELIGMAN, *supra* at note 3.

C. NATURAL VARIATION

Not all people in the general population are equally prone to pessimism, and it can be assumed that the same is true of law students.[123] Donald Hiroto[124] was a graduate student at the University of Oregon when he discovered that one third of people put through learned helplessness experiments did not learn to be helpless and instead resisted the conditioning they received from their experimenters,[125] while about one tenth of people did not need to learn helplessness – they came into Hiroto's studies already helpless.[126]

If law students enter law school looking roughly like the general population,[127] we can expect about one tenth of our incoming students to be suffering from learned helplessness the moment they arrive and we can expect another third of students to be impermeable to the defeatist messages to which others will be susceptible. The remaining students, the susceptible ones, account for slightly less than sixty percent of our student body and they are the people who might benefit from learning optimism.

D. TOP LAW STUDENTS AS UNIQUE

Though the majority of students could benefit from learning optimism, research suggests that a small percentage of law students may not be harmed by their 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.[128] Students in every other studied dis-

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[123] *See generally* Seligman.

[124] Hiroto is now a working therapist living in the greater Los Angeles area. *See* http://www.nationalregister.org/Donald_Hiroto.html

[125] Seligman, *supra*, at 29-30.

[126] *Id* at 29 (noting that the same results showed up in similar experiments with dogs. One tenth of the dogs were already helpless, while one third of the dogs could not learn to be helpless).

[127] Whether the law student population actually mirrors the general population is an open question. Krieger's research on Subjective Well-being actually suggested that, when they enter law school, law students are healthier than the general population. However, with respect to attribution style, Krieger's work may prove inconclusive, since the SWI and Attribution Style Questionnaire are distinct instruments.

[128] Jason M. Satterfield et al., *Law School and Performance Explained by Explanatory Style*, 15 BEHAV. SCI. & LAW, 95 (1997).

cipline[129] proved the researchers' hypothesis that optimism correlates with well-being, achievement, and overall success,[130] but the UVA Law School students produced unique results. There, the top academic performers all had explanatory styles that were extraordinarily pessimistic.[131] For those students, pessimism was a predictor of success, not of failure.[132]

The UVA study presents some strange and ongoing questions. The researchers pointed to the odd fact that only relatively high levels of pessimism had any correlative relationship with law school GPA.[133] The researchers note:

> The pessimists in the law school sample were already high academic achievers and relatively resilient in the face of challenges as evidenced by their high LSAT scores (91st percentile nationally) and high undergraduate GPA's (mean = 3.6). Even if we assume a pessimistic explanatory style predisposes one to learned helplessness and depression, the special law school pessimists had already demonstrated some degree of resilience and the potential to compensate for or perhaps even positively utilize their pessimistic style.[134]

Whatever the explanation for the outcome of the study, there is some reason to believe that, at least for those at the very top of their law school class, a special kind of pessimism is associated with the ability to outperform one's peers. The people who exhibit this type of pessimism,

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[129] *Id.*

[130] *Id.* This was especially true of undergraduates. In studying undergraduate students, the researchers found a strong correlation between outlook for optimism and achievement as quantified by GPA. This is an odd finding in light of the fact that law students, especially those attending schools like the University of Virginia, which is among the nation's most competitive schools, are typically students who had high undergraduate GPAs which might otherwise suggest a predisposition toward optimistic thought habits. The UVA study, while important, seems to raise more questions than it answers with respect to the relationship between explanatory style, special pessimism, and success or perhaps self-selection for enrollment in law school. More research has yet to be conducted vis-à-vis fine tuning the outcome of the UVA study.

[131] *Id* at 128.

[132] Only severe pessimism produced such a correlation. For all other degrees of pessimism, no predictive value could be found. *Id.*

[133] *Id.*

[134] *Id.*

called defensive pessimism,[135] may have a unique approach to developing expectations about their performance that protects them from the fear and anxiety other students experience. Defensive pessimism may serve to insulate students from the environmental factors, such as stress, that can affect performance and expectations of performance. Even if these highly pessimistic performers are insulated by a special kind of pessimism, in terms of other measures of success in the law school environment, membership on law review, moot court success, and other achievements, special pessimism does not function as a predictive indicator at all.[136] Research has not yet shown whether exposure to the language of optimism harms special pessimists in any way. That lack of evidence, together with the evidence that law school causes depression in the majority of students, suggests that perhaps special pessimists should be disregarded and their presence should not prevent professors from importing the language of optimism into their classrooms.

Seligman himself argues that the academy might put special pessimists aside and suggests that change would be welcome in law schools.[137] He writes about the problems of pessimism, depression, and general unhappiness within the broader legal profession, noting that, "unhappiness and depression are intimately associated with passivity and poor productivity at work."[138] He goes on to caution that some of those afflicted with depression may feel a need to achieve more and climb to greater professional heights to make themselves feel better – perhaps a desirable outcome.[139] Yet, he writes, "Law schools are themselves a potential breeding ground for lawyer demoralization and that makes them – as well as firms – candidates for reform."[140]

Seligman argues that attorneys might benefit from "flexible optimism," a learned attribution style that "can be taught to both children and adults to enable them to determine how and in what situations one should use optimism and when to use pessimism."[141] Infusing some op-

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[135] *Id.*

[136] *Id* at 128. "On other success measures including moot court performance, law review membership, community involvement, or classroom participation, out primary composite measure of explanatory style were not predictive."

[137] Martin E.P. Seligman, *Why Lawyers are Unhappy,* 23 CDZ L. REV. 33, 37. "…[L]awyers are in remarkably poor health. They are at much greater risk than the general population for depression, heart disease, alcoholism, and illegal drug use."

[138] *Id. at* 38.

[139] *Id.*

[140] *Id.*

[141] *Id. at* 43.

timism into the law school environment may not solve the complex institutional issues that many researchers have pointed to as detrimental to student psychological health and well-being.[142] But, absent other reforms -- or perhaps in addition them, the optimistic classroom may provide students helpful coping tools.

E. THE LIMITS OF OPTIMISM

Critics of optimism research suggest that some cultures present a strong bias either in favor of or in disfavor of optimistic explanatory styles.[143] Those critics suggest that studies lauding the benefits of optimism omit the cultural values of a large segment of our global society.[144] In her article, *The Optimistic Associate*, Catherine Gage O'Grady summarizes the work of these critics, noting that research has suggested "that optimism may be maladaptive for people raised in collectivist cultures, rather than individualistic cultures,[145] where harmonious relationships with others and "fitting in" are so valued and expected that people often have an 'interdependent view of the self.'"[146]

Studies indicate that, even in our Western culture, optimism may not be useful in certain situations, specifically when precision and worst-case-scenario anticipation may be essential to survival.[147] Examples include discovering that the plane you are flying has run out of fuel,[148] anticipating enemy movements in the theater of war,[149] and deciding how much food to take on a survivalist journey.[150] In such situations, a slight pessimism may produce more cautious behavior and may in fact be

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[142] *Id. at 43. See also* Seligman, *generally*.
[143] Catherine Gage O'Grady, *The Optimistic Associate,* 30 LAW & PSYCHOLOGY, 36 (2006) (explaining the work of Peterson & Chang).
[144] *Id.*
[145] Blackwell Dictionary Reference, http://www.blackwellreference.com/subscriber/uid=428/tocnode?id=g9780631233176_chunk_g97806312349376_ss1-67 ("Collectivist culture is a term used to designate the cultural trait of giving primacy to the goals and welfare of groups in the view of the world related to relationships with other humans (Kluckhohn and Strodtbeck, 1961; Hofstede, 1991)."
[146] O'Grady, *supra,* at note 144, 36.
[147] *See generally* Seligman, *supra.*
[148] SELIGMAN, *supra* at note 3, 209.
[149] *Id.*
[150] *Id.*

helpful in securing a safe landing, shoring up one's defenses, or planning for the future.[151]

However, in terms of basic task motivation, mental health, and life satisfaction, studies[152] suggest that optimism is a powerful tool -- most of the time. Manju Puri and David T. Robinson's study of optimism in relationship to financial health and economic decision-making[153] suggests that extreme optimists[154] were less effective[155] in making lifetime economic decisions than were their counterparts who expressed what the researchers called "a healthy optimism."[156] Extreme optimists were more likely to overestimate their life-spans, to take greater financial risks, to engage in behaviors like day trading and other financially harmful activities.[157] However, despite the rash behavior of this marginal group, Puri and Robinson concluded that optimism was generally a beneficial trait,[158] likening optimism to red wine[159] which, in healthy amounts is quite good for the body, but which in vast quantities will produce alcoholism.[160]

Optimism then, is something that roughly one third of the population has in seemingly unshakable quantities. Another one tenth of the population likely has almost none, and a unique group of law students may benefit from a special kind of adaptive pessimism that makes them better suited to the competitive law school task than their similarly high-

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[151] *Id.*

[152] *See generally* Krieger. *See also* Seligman.

[153] *See* Puri and Robinson, Optimism and Economic Choice, *Journal of Financial Economics* (2007), doi:10.1016/j.fineco.2006.09.003

[154] *Id.* at 10. "We use life expectancy miscalibration as our measure of optimism. This involves comparing respondents' self-reported life expectancy to that implied by actuarial tables."

[155] *Id* at 2&3. "We find, interestingly, that moderate optimism correlates to reasonably sensible economic decisions while extreme optimism correlates to seemingly irrational decisions." "We find that more optimistic people work longer hours, anticipate longer adjusted work careers, and are more likely to think that they will never retire. This holds even after controlling for demographics, health quality, and whether the respondent is self-employed."

[156] *Id.*

[157] *Id.*

[158] *Id.*

[159] *Id.*at 35.

[160] *Id* .at 36 (writing that "[t]he idea that optimism can be both good and bad straddles two opposing views in the psychology literature. Our results suggest that many of the negative traits associated with behavioral biases may only be salient for those with extreme bias, be it over-confidence, self-attribution bias, or optimism, may indeed be associated with seemingly reasonable decision-making").

achieving peers. For everyone else, reasoned optimism, an optimism that is tempered with reality, is the desired mode.[161] It follows that, for those people who find themselves in situations likely to produce pessimism, depression, and learned helplessness, optimism must be actively sought out and cultivated, because bad events can bring out or heighten pessimism and all of its attendant ills.[162]

III. CREATING THE OPTIMISTIC CLASSROOM

A. FLEXIBLE OPTIMISM

In a system of flexible optimism, people can learn to call upon optimism and optimism-creating techniques if and when they think that optimism would be helpful to them.[163] That is to say, a pilot flying a plane that has run out of gas ought not to take the most optimistic approach, thinking, for example, that he once heard of a commercial jet that was able to glide for half an hour without fuel, so his jet ought to be able to do the same.[164] Rather, he should choose a more tempered view and try to land the plane as quickly and safely as possible, recognizing a strong likelihood of disaster if he does not.[165] On the other hand, a law student who has fared badly in the first semester of law school, but wishes to improve his grade point average, would be well served to think about his academic situation in a tempered, but optimistic way.[166] The idea that his first semester grades are going to be the cause of some immediate and immutable disaster does the law student no service, nor does the idea that his grades can never be improved, that he is helpless to become a more effective learner and test-taker. Instead, a strong belief that he can improve his grades, that the law school exercise is learnable, and that he can take affirmative steps to change his grades in the future, will help the student to discover why he did poorly and to redouble his efforts when a new semester begins. We have a choice then, and may teach our

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[161] *Id.*
[162] *See generally* Seligman.
[163] SELIGMAN, *supra* at note 3, 115.
[164] *Id.*
[165] *Id.*
[166] Optimism in this context will help the student see the task as one that is within his grasp. A pessimist, on the other hand, would give up, taking the first semester grades as an indication that some permanent flaw in himself, the system, or the world (and perhaps in all of the above) will always prevent him from excelling academically in the law school environment. Such thinking is unproductive and prevents student growth and achievement.

students to take a flexible approach to optimism,[167] without interfering with the benefits of special pessimism or the general pessimism that evinces itself as prudence in survival situations. Cultivating such optimism is necessary:

> Without [optimism] we would never accomplish anything difficult and intimidating, we would never even attempt the just barely possible. Mount Everest would remain unscaled, the four minute mile unrun; the jet plane and the computer would be blueprints sitting in some financial vice-president's waste basket.[168]

Succeeding in law school, at least for most students, is the very epitome of a task that is both difficult and intimidating,[169] but flexible optimism, a system of attribution that takes the law school learning task in stride, can help students to achieve at higher levels.[170]

Carol Dweck's work has focused on achievement and motivation, and gives further evidence that flexible optimism, an optimistic orientation with respect to one's ability to achieve, is essential to success and growth[171] in an academic setting. Early in her career Dweck noticed that some people, when given a difficult task, gave up easily or eschewed the challenge altogether, while others relished the opportunity to learn from the exercise, though they realized that they might fail.[172] Dweck's research pursued those polarized responses to difficult tasks and evaluated the motivation and behaviors of individuals who engaged with challenges differently.[173] Ultimately, Dweck's work has shown that

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[167] SELIGMAN, *supra,* at note 3, 112.
[168] SELIGMAN, *supra,* at note 3, 114.
[169] This is based on anecdotal evidence. In the course of my own work with students, I have known many who have complained to me that the law school task is exactly those two things – difficult and intimidating.
[170] In many important respects, the goal of employing such language in the classroom is to create "growth mindedness," or a belief that students can improve their grades and knowledge by working hard and learning from their mistakes.
[171] CAROL DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (RANDOM HOUSE 2006).
[172] *Id.* ("What are the psychological mechanisms that enable some students to thrive under challenge, while others of equal ability do not? Over the past years, one motivational model that has been developed to address this question suggests that core beliefs can set up different patterns of response to challenge and setbacks.")
[172] DWECK, *supra* at note 174, 3-4.
[173] *See generally* Dweck.

the fixed, or entity theory of intelligence, mindset[174] is detrimental to motivation and development,[175] and that the growth mindset[176] is essential to achievement and can be encouraged by instructors and institutions.[177]

If we are to help law students respond well to criticism, enabling them to escape the depression that so many law students experience, we must not reinforce the entity theory[178] of intelligence. In developing a flexible optimism that does not reinforce entity-minded conceptions of individual intelligence, it is crucial that instructors avoid ability praise, telling students that they "are smart." [179] In one study, researchers found that students conditioned by ability praise were more likely to lie about their scores on difficult exams[180] in order to make the researchers interfacing with them believe that the students had lived up to their labels.[181] Employing the language of optimism effectively, and in a way that promotes "growth-mindedness," [182] will help professors reorient students to the learning task and, in so doing, increase motivation improve and performance.

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[174] Carol Dweck et al, *Implicit Theories of Intelligence Predict Achievement Across an Adolescent Transition: A Longitudinal Study and an Intervention*, Child Development, January/February 2007, Vol. 78, Number 1, 246-263.

[175] *Id.* at 247.

[176] *Id.* (writing that "some believe that intelligence is more of an unchangeable, fixed "entity" (an *entity* theory). Others think of intelligence as a malleable quality that can be developed (an *incremental* theory). Research has shown that, even when students on both ends of the continuum show equal intellectual ability, their theories of intelligence shape their responses to academic challenge).

[177] *Id.*

[178] *Id.* ("An incremental theory of intelligence was positively associated with positive effort beliefs, learning goals, low helpless attributions, and positive strategies. In addition, these variables were all significantly positively correlated with one another. Thus, an incremental theory of intelligence, learning goals, positive beliefs about effort, non helpless attributions, and strategies in response to failure formed a network of interrelated variables.")

[179] *Id.*

[180] Dweck, *supra* at note 174, page 101. (writing, "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.)

[181] Dweck, *supra* at note 174. *See also* Claudia M. Mueller and Carol S. Dweck, *Praise for Intelligence Can Undermine Children's Motivation and Performance*, Journal of Personality and Social Psychology 1998, Vol. 75, No. 1, 33-52.

[182] Dweck, *supra* at note 174.

B. THE LANGUAGE OF OPTIMISM

In the law school environment, professors give students feedback and communicate either an optimistic or a pessimistic attitude about learning through that feedback. An extreme example of a pessimistic response to a student's incorrect answer might look or sound something like, "You always struggle with proximate cause." (Permanent.)[183] "All those study aides are worthless. Not one of them can do you any good." (Pervasive,)[184] "Maybe law school just isn't for you." (Personal.)[185] It has been my observation that more often than we would like, those of us charged with teaching law students express our frustration or communicate an answer's failings in language that, while likely milder than the above examples, is nonetheless counterproductive to student growth and development.

Perhaps a more 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, and 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.[186] In order to give helpful feedback that helps students to build flexible optimism into their responses to struggle, professors should reorient themselves to the language of optimism and give constructive responses to incorrect answer 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 sound like, "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 around, consider the particular facts before you. Do you see what you are missing?" (Hopeful.)

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[183] SELIGMAN, *supra* at note 3.
[184] *Id.*
[185] *Id.*
[186] 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."

This more optimistic response clearly 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, the optimistic criticism 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 that to be helpless. The message the student hears is not that she should give up, but 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 regarding the law school learning task and classroom performance.

In my own teaching, I have noticed that reframing student setbacks in the language of optimism has helped students reorient their own thoughts about bad academic events. To view a bad semester or a poor mark in terms of the language of optimism is to say to oneself, "Here I have done a poor job, but I can learn to improve and will perform better next time." If they are to succeed in law school and in life, this is exactly the sort of optimistic outlook law students must have, particularly with respect to their ability to perform in the classroom.

Professors can teach students that they ought to employ flexible optimism,[187] turning their optimism on when they consider the law school task and off when they find themselves in situations better handled with a healthy dose of pessimism. Law professors, who in many ways teach law students what and how to think, can model task-oriented optimism during both in-class discussion and in written feedback. In that way, professors can help students to think optimistically about their performance, helping students to improve their grades and realize their potential, rather than seeing themselves as defeated from the outset.[188]

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[187] *See generally* Seligman.
[188] *Id.*

D. PUTTING OPTIMISM TO WORK: A COMPOSITE CASE STUDY

Consider Mandy,[189] a student who came to see me at the beginning of spring semester. She was not on academic probation, but had performed below her expected range, receiving high "C" and low "B" range grades. Mandy had been an "A" student in a well-regarded undergraduate program. After college she had completed a master's degree at another well-regarded school, and she had also been awarded a prestigious fellowship in connection with the work she had done as a graduate student. Mandy came in to ask a question about a class assignment and, while in my office, expressed dejection and feelings of worthlessness that she attributed to her grades from the previous semester.

Mandy said that she had never thought of herself as a failure before, but now that was the only way she could think about herself. She was depressed and unable to forgive herself. She didn't understand what she had done wrong and felt alienated because she had begun to imagine herself as different from her classmates. She was sure that everyone "knew how stupid she was." She felt that she had worked hard to succeed, but had failed anyway. That failure, I learned, had led her to believe that law school was impossible and that any effort on her part was futile.

Mandy exhibited typical signs of pessimism, depression, and learned helplessness. I talked frankly with Mandy about her performance, mastery level, exam taking style, and methods of preparation. As we talked, I reframed Mandy's negative ideas about herself using language that was temporary, specific, and hopeful. Where Mandy had said that she was a failure, I reframed her idea in terms of a temporary setback, characterizing her as a student who had not yet mastered the fundamentals of legal learning. Then, I talked with her to find specific targets that she could work on; she could learn the material at a deeper level, she could do practice problems, she could go into the exam expecting that she would be asked to apply the concepts from her class to a novel situation, a legal hypothetical. That task, in turn, would inform the depth and organization of her outlines, which were not very thorough or neat when she went to take her exams the last time. During our discus-

[189] To protect the confidentiality of my students, I have created composite characters whose comments reflect an amalgamation of statements made by specific individuals. Though this character is female, the attitudes and statement made by her reflect experiences I have had with both male and female students. As such, these composite statements should not be evaluated from a gendered perspective.

sion, I was careful to communicate hopeful ideas, reminding Mandy that law school draws on a particular set of skills and that those skills could be learned with some thoughtful study and determined hard work.

By the end of the semester, Mandy's outlook had changed. Not only did she believe that she could learn to go to law school and to succeed at the particular set of tasks law school required her to perform, she was once again enthusiastic about being a law student. Though I noticed that, all semester long, she remained somewhat wounded from her first semester experience,[190] over time, she developed an optimistic belief that she was in control of her fate, that she could excel if she worked hard and applied herself in the right ways. She was no longer helpless and depressed. Instead, she was energized.

When the summer began, I got an e-mail from Mandy letting me know that she had scored well on all of her exams and that her grade average now hovered somewhere near the B plus range. In that e-mail, she credited my belief that her negative experiences were only temporary and specific, and that she could be hopeful about having better experiences in the future. Of course, her language didn't sound quite like that – it didn't draw on the specific categories laid out by positive psychology. Instead, her message was much simpler. Her e-mail simply read, "You were right."

Regardless of the subject they teach, all law professors can employ the language of optimism in classroom speech, written feedback, and one-on-one meetings.[191] In the doctrinal classroom, students can benefit from the language of optimism and can be encouraged to tackle a question for a second time and to continue to work at mastering difficult concepts. In the legal writing classroom, students can be encouraged to rework written arguments, to redouble research efforts, and to work harder on later drafts of multi-phase projects.

Krieger's research has shown that even top students, those whose performance is the most outstanding, experience depression and suffer a decline in subjective well-being during the law school experience.[192] If both those top students and students whose performance has not met their expectations are experiencing depression, and likely pes-

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[190] This is an observation based on general comportment, behavior, etc.

[191] That is to say, all are equipped with the intellectual and verbal skills with which to implement these techniques. Applicability to unique teaching styles and desire to create an optimistic classroom are threshold issues and the willingness to engage with them can only be gauged by individual professors.

[192] *See generally* Krieger.

simistic thoughts and learned helplessness,[193] then all students, not just struggling or mid-range students, can benefit from experiencing the language of optimism in the classroom.

CONCLUSION

The optimistic classroom should encourage students to see learning tasks in a positive light. Students who experience the optimistic classroom should be better able to avoid pessimism, learned helplessness, and depression in the context of the law school environment. They should also begin to think of any set-backs as temporary events with specific attributes that can be resolved in the future. Further study of those exposed to the language of optimism in the classroom, in the form of empirical inquiry, will help to establish the specific nature and scope of improvement in levels of depression, motivation, and general engagement with the law learning environment. Over time, these linguistic practices should produce real, measurable effects -- redoubled efforts, improved grades, lowered depression, and increased academic thriving.

[193] *See generally* Seligman.