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The Method and the Message

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INTRODUCTION

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 Rohn

The mind is everything. What you think you become.

Guatama Buddha

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“If you build it, they will come,”¹ has been the silent mantra of law teaching programs across the United States since the days of Christopher Columbus Langdell.² For generations, law schools have modeled themselves on Langdell’s system,³ 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. The pressures associated with the educational system that has grown out of the Langdell method have been made famous by films like The Paper Chase⁴ and Legally Blonde,⁵ films that draw a picture of an education methodology that breeds a unique brand of academic competitiveness. Hollywood has sold movie tickets and DVDs by telling us stories that demonize and simultaneously romanticize the agonies and ecstasies of the law school experience.

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.⁶ Today’s students are experiencing a marked decline in subjective well-being⁷ that begins in their first year and continues throughout the course of their legal studies.

¹FIELD OF DREAMS (Universal Pictures 1989).
² See generally Bruce A. Kimball, The INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL, 1826-1906 (STUDIES IN LEGAL HISTORY) (2009) (using a biographical narrative to explain the way that Langdell’s ideas for reforming legal education led to the current system).
³ Id.
⁴ THE PAPER CHASE (Twentieth Century Fox Film Corporation 1973).
⁵ LEGALLY BLONDE (Metro-Goldwyn Mayor 2001).
⁶ 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 (“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 students.”).
Scholars focused on student well-being have demonstrated law students’ sense of balance and autonomy support declines throughout law school,\(^8\) that law students’ values are narrowed over the course of their three or so years of study,\(^9\) and that students’ sense of well being plummets soon after entering law school, leveling off only in the early years of practice, a time that, many in legal education believe, ought to be the most stressful part of an emerging lawyer’s career.\(^10\)

These trends in law student psychology are well-documented and they suggest that, for those students who will go on to make up the substantial portion of the legal community that experiences depression, job dissatisfaction, substance abuse, and related ills, 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 more appealing attorneys we have met on movie screens, research suggests that law schools are increasingly turning out graduates who suffer depression\(^11\) and related psychological ills at a rate that warrants, if not widespread institutional change, then at least further scholarship and scrutiny.

Some have suggested possible explanations for the phenomenon of law student distress; a lack of autonomy support,\(^12\) the employment of an academic language that challenges students’ most basic and closely held values of justice and equality,\(^13\) and environmental features that push students to value extrinsic motivators, grades, money, power, and status, in lieu of intrinsic values, justice, fairness, equality, and balance, 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) (describing the studies of two samples of law students).

\(^8\) Krieger, *Dark Side*, Id. at 114.


\(^10\) Id.

\(^11\) Id., supra note 7, at 114.

\(^12\) Krieger, *Human Nature*, supra note 9, at 263 (“T]he SWB of the students plunged substantially within the first several months of law school, and did not rebound before graduation.”).

\(^13\) 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).
have all been cited as possible explanations for depression that law students are experiencing in schools around the country.\textsuperscript{14}

This article argues that one possible explanation for law student depression lies in the institutional organization of law schools themselves, in an organizational model that promotes a belief in a fixed, or entity theory of intelligence.\textsuperscript{15} The entity theory of intelligence is, in its essence, a belief that one’s intelligence cannot be increased and that one’s performance cannot be improved; a belief that, this article will argue, in-turn leads to learned helplessness, inaction, and depression. More specifically, 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 belief in the deterministic qualities of innate academic ability in turn encourages students to view themselves through an entity-minded lens.

First, this paper 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. The paper will then define the entity theory of intelligence and the related theory of attribution style, and will explore the way that law schools promote the two theories. The paper will go on to 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, the paper will explore tactics that can be employed at both the institutional and classroom level in order to work against entity-mindedness, pessimistic attribution and law student depression.

\textsuperscript{14} KENON 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. & Law 261, 270 (2004) (writing, “[a]lthough 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 (see Deci & Ryan,1985, or Deci, Koestner, & Ryan, 1999, for a review”).

I. THE CONCEPT

A. AN ENDEMIC DEPRESSION

A growing body of research has established that law schools are unique producers of psychological distress. Research suggests that students are experiencing psychological harm in the law school environment, and that this harm is produced by the law school experience itself. We now know that students are experiencing a decline in psychological health in law schools, and that this decline is marked by a change in the well-being, attitudes, and behaviors of law students. The cause of this decline in psychological well-being is difficult to pinpoint, but 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.

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 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 to take on the world around them. In fact, one finds quite the opposite…by third year, a disturbingly high number of students come to convey a

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17 Krieger, *Human Nature* supra note 9, at 247 (writing that “. . . law students’ . . . personalities are narrowed rather than broadened by law training and . . . the most basic needs are frustrated in law school”).
18 Id.
strong sense of impotence and little inclination or enthusiasm for meeting the world’s challenges head on…one must look to the institution itself for an explanation.20

Working with the Subjective Well-Being Index (SWI)21 Krieger and Sheldon22 provide empirical support for that student’s observations.23 Krieger and his research team administered the SWI 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,25 and, in the aggregate, their profile looked better than the profile of a large undergraduate sample.26 Over the course of the law school experience,27 however, student measures of subjective

20 Krieger, Undermining Effects, supra note 7 (quoting from Note, Making Docile Lawyers: An Essay on the Pacification of Law Students, 111 Harv. L. Rev. 2027, 2027 (1998)).
21 Id. at 261.
22 Their work builds on the findings of psychologists from the University of Arizona who studied law students and found that “the incidence of clinically elevated anxiety, hostility, depression, and other symptoms among [law] students ranged from eight to fifteen times that of the general population.” Krieger, supra note 7 (relying on the work of Andrew H. Benjamin, supra at note 6, and Matthew Dammeyer and Narina Nunez, Anxiety and Depression Among Law Students: Current Knowledge and Future Directions, 23 Law & Hum. Behav. 55, 61 (1999)).
23 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 (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.” 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).
24 Krieger, Dark Side supra note 7. See also Krieger, Human Nature, supra note 9, 247.
25 Id. at page 270 ( writing that, “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 measure, the law students also evidences 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 Id.
27 Krieger, Dark Side supra note 7 at 152 (writing that “The longitudinal study that Ken Sheldon and I have completed confirms these conclusions in all respects. We measured
well-being plummeted. From these findings, Krieger and Sheldon conclude that 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 increased vulnerability to depression and related psychological problems. Furthermore, law student distress is not isolated to certain kinds of schools. Krieger writes:

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

Thus, we are told, law schools are negatively affecting significant numbers of students, that the changes in well-being experienced by those students occurs soon after students are integrated into the law school environment, and that those changes have real, measurable, psychological outcomes. Krieger and Sheldon note, in particular, the problems associated with students’ shift from intrinsically held values to extrinsically held values, especially their focus on the perceptions and judgments of others. 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 them in terms of their appearance

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” and that “[T]he SWB of the students plunged substantially within the first several months of law school, and did not rebound before graduation”).

Id. (“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. . . ”).

Krieger, Dark Side supra note 7.

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).

Krieger, Undermining Effects supra note 9, at 273 (writing “[i]n the language of [self-determination theory], this suggests a classic undermining effect, in which initial positive motivations are eroded or usurped” and that “students 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”).

28 Id.
29 Id. (“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. . . ”).
30 Krieger, Dark Side supra note 7.
31 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).
32 Krieger, Undermining Effects supra note 9, at 273 (writing “[i]n the language of [self-determination theory], this suggests a classic undermining effect, in which initial positive motivations are eroded or usurped” and that “students 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”).
and perceived status, is close to the core of the problem of what is happening in law schools. 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 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.

In order 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.

**B. Mindset**

Mindset Theory, or a belief that what you think about your ability to learn matters, evolved as a result of Carol Dweck’s decades-long

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33 See generally Krieger *supra* note 9.
34 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 paper does not seek to explore, endorse, discount, or otherwise investigate that assertion. Instead, this paper seeks to deepen the discourse by introducing additional psychological constructs into the law school pedagogy conversation.
35 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 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.
research. Deweck’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. Mindset theory looks at the ways in which beliefs shaped by our schools, families, and teachers, either limit or expand out abilities and, as a result, control our actions, thoughts, and subsequent academic successes.

Dweck demonstrates that those 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 prevent their growth. On the other hand, those 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 challenge and even defeat, and, because they are willing to fail and to learn from their failures, over extended periods of time will outperform their fixed-minded counterparts.

C. Ability Praise

I. Incremental vs. Entity Mindedness

Dweck writes, “whether human qualities are things that can be cultivated or things that are carved in stone is an old issue. What these beliefs means for you is a new one: What are the consequences of thinking that your intelligence…is something you can develop, as opposed to something that is a fixed, deep-seated trait?36

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.37 Krieger and Sheldon suggest that one of the features of law students’ psychological decline is a reframing of student values. 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.38 As

37 Mangels supra note 15, at 75 (writing that “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).
38 Krieger, Undermining Effects, supra note 9 at 264.
a result, law students believe that grades, and the perception that one “is smart,” are more useful than a willingness to explore, struggle, and 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 perceive the Socratic dialogue that takes place in many law school classrooms, as well as the final exam, as a contest of minds in which the “smart” people will be rewarded, both with grades and social desirability.

Dweck’s research suggests that this 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. Both the process and the labels, Dweck writes, are damaging to the learning process.\(^{39}\) 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.\(^{40}\) Her research pursued those polarized responses to difficult tasks and evaluated the motivation and behaviors of individuals who engaged with challenges differently.\(^{41}\) Those who responded to challenges by giving up, she found, were the same people who believed that intelligence was a fixed trait, that performance could not be improved, even with instruction and training.\(^{42}\) Those subjects did not work to get better because, quite simply, they did not believe that they could.\(^{43}\) Dweck calls these people entity theorists, or those who believe that intelligence is a fixed entity. She 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 gave up, they also responded 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 ex-

\(^{39}\) Dweck, supra note 36 at 16, 18, 141.
\(^{40}\) Id. at 180.
\(^{41}\) Id. at 72, 82.
\(^{42}\) Id. at 112, 114, 148.
\(^{43}\) Id.
posed, they will often forego remedial opportunities that could be critical for future success. (Chiu et al., 1997).\textsuperscript{44}

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. Reinforcement that supports, and creates a belief in the entity theory of intelligence,\textsuperscript{45} occurs when a good performance on some academic task is linked to high intelligence\textsuperscript{46} through a praising process that reinforces the belief, “I am smart,” in the mind of the student or performer. A public ranking system may have the same effect. Describing an environment designed to promote the entity-mindset, Dweck writes:

Unlike Alfred Binet, [Mrs. Wilson] believed that people’s IQ\textsuperscript{47} 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.\textsuperscript{48}

Though perhaps more damaging due to the fact that this class was filled with sixth graders and that the ability praise and entity-mindset encouraging circumstances were reinforced on a daily basis, this rank-ordering of students looks suspiciously like the rank-ordering that many law schools use to designate top students—and to designate non-top students. Anecdotally, I have heard some students say things like,

\textsuperscript{44}Mangels supra note 15.
\textsuperscript{45}Carol S. Dweck and Claudia M. Mueller, Praise for Intelligence Can Undermine Children’s Motivation and Performance, 75 Journal of Personality and Social Psychology, 33, 48 (1998) (writing that, “children 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”).
\textsuperscript{46}Id. at 33.
\textsuperscript{47}DWECK supra note 36 at 5 (writing, “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”).
\textsuperscript{48}Id. at 6.
"When I go to class, I am afraid to participate," "If I say the wrong thing, people will think I’m stupid," "Everybody treats me like they’re smarter than I am.” These statements are resonant with ability-labeling and suggest 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 the perception of others, and a tendency to value material or other indications of achievement over an intrinsic sense of learning and mastery are the key features of the entity theory of intelligence⁴⁹ and it is likely that law schools, albeit inadvertently, are encouraging such an orientation.⁵₀

Even well-intentioned ability praise, like that given when the praiser is trying to encourage performance on a designated task, is damaging. That kind of praise may seem intuitive,⁵¹ but it is detrimental to learning.⁵² “You are smart,” or the commonly communicated message, “You did well because you are smart,” actually undermines the ability to grow or learn from the experience itself, ultimately discouraging further effort.⁵³

Ability labeling sends the message that labeled people, “smart” students, must live up to their markers or else suffer a fall from grace.⁵⁴

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⁴⁹ See generally DWECK supra note 36 (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 the entity theorists’ deficiencies).

⁵₀ 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.

⁵¹ 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.

⁵² Dweck supra note 52, at 33 (writing that, “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”). See also, DWECK, supra note 3.

⁵³ Id. at 48 (writing that, “children who were explicitly told 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”).

⁵⁴ Id.
Dweck also finds that ability marked students are typically\textsuperscript{55} unwilling to set difficult learning goals and engage in tasks that, because of extraordinary challenge level, present a threat of failure. Of course, these challenging situations also present learners with the environments carry with them the greatest opportunity for learning and growth.\textsuperscript{56}

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 interfacing with them believe that the entity-minded students had lived up to their “smart” labels.\textsuperscript{57} 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.”\textsuperscript{58} Dweck concludes:

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.\textsuperscript{59}

This paper does not intend to argue, as some might, that gifted tracking, student ranking, and related practices are themselves outright damaging to students. On the contrary, this paper means to argue that these rankings and sorting systems serve a practical purpose. The goal of this paper, 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,

\textsuperscript{55} Though not always.
\textsuperscript{56} DWECK, supra note 36 (writing that “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”).
\textsuperscript{57} DWECK, supra note 36 at 73.
\textsuperscript{58} Id.
\textsuperscript{59} 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.
approach their studies with a mindset that will allow them to reach, and indeed to grow, their potential.

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. But too often grades and rankings 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, even if a student is not at the very top of his class, his learning process is still worthwhile, that he can improve, and go on to a fulfilling career in the law. Instead, either overtly or accidentally, it seems law schools and legal employers are telling students that those who “get it” receive A’s right away, while those who are less intellectually agile will not only have to struggle to receive A’s, they are also less worthwhile as students and as future practitioners. Even if they do start earning A’s, the story goes, they may only do so in the second and third years when grades count for less and when the curriculum is easier.60

If Dweck tells us anything, it is that grades should not be “scarlet letters” of either pride or shame.61 Instead, they should be taken for what they are: indications of how a particular student performed on a particular exam or set of exams.62 Depression, a decline in self-worth, a disinclination to want to work to improve one’s grades,63 and an inclination to slack off and skate by doing the bare minimum64 are the key behaviors Dweck noticed in entity-minded grade school and middle school students who were confronted with less than their desired grades.65 Krieger and Sheldon’s work tells us that, with respect to depression and well-being in the law student population, these are exactly the kinds of

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60 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.

61 http://volokh.com/posts/1138056460.shtml

62 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.

63 DWECK supra note 36 at 35-36 (writing, “seventh 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?”).

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

65 Id. See also Dweck and Mueller supra at note 45.
attitudes that are manifesting themselves in our law students. A the same time that law students are experiencing a decline in subjective well-being, they are also manifesting an increased incidence of depression, substance abuse, and interpersonal sensitivity. Might these trends 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 as our law students do.

D. Attribution Style

The theory of entity-mindedness is, I believe, closely related to the concept of attribution style, a theory that has grown out of positive psychology research, and one that is particularly applicable to the law school context. Unlike the old science of the mind, positive psychology asks probing questions to discover what makes human life work well, seeking information about the methods by which healthy people

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66 See generally Krieger, Dark Side supra note 7 (of course, correlation does not necessarily indicate causation. Further empirical work is necessary to prove an exact fit).
68 Id.
69 DWECK, supra note 3 at 35–36.
71 See MARTIN 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.”); Martin E.P. Seligman et al., Why Lawyers Are Unhappy 23 CARDOZO L. REV. 33 (2001) (“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.”).
72 SELIGMAN, Id. at 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…. 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”).
avoid problems like depression\(^{73}\), and redefining the way the scientific community thinks about human cognition and behavior.\(^{74}\) 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.”\(^{75}\) That concept of optimal functioning, or “thriving,”\(^{76}\) has become a new goal for psychological health.\(^{77}\) In the law school environment, where depression is an increasing problem,\(^{78}\) an understanding of the psychology of thriving could play an especially important role.\(^{79}\)

Explanatory style, or 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 to them.\(^{80}\) Optimistic or pessimistic\(^{81}\) attribution style is identified through key phrases that carry the indicia of one or another particular outlook.\(^{82}\) For law students struggling with a competitive environment, attribution style studies may help us to understand who experi-

\(^{73}\) Id. at 19-20 (Seligman first began to examine depression when he accidentally discovered learned helplessness, an outcome of experiments in conditioning dogs).

\(^{74}\) See Martin E.P. Seligman & Mihaly Csikszentmihalyi, supra at note 70.

\(^{75}\) Todd David Peterson & Elizabeth Waters Peterson, supra at note 71.

\(^{76}\) 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.”)

\(^{77}\) See generally Seligman (for the principle that 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 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).

\(^{78}\) Krieger, Dark Side, supra note 7, 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”).

\(^{79}\) Id.

\(^{80}\) SELIGMAN, supra at note 71 at 14-16.

\(^{81}\) 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.

\(^{82}\) SELIGMAN, supra at note 71, at 44.
ences depression and who sidesteps it, who falters and who never gives up.

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

B. PESSIMISM

As he worked to understand the processes that make some people more resilient than others, Martin Seligman 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 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, who in the 1960’s theorized that some people achieve more than others because some people think about achievement differently than others do. Weiner’s essential theory, mirrored in Seligman’s work, 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. 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.

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 that could be used to analyze habitual thinking and which could be traced in written or spoken patterns.

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83 See http://www.ppc.sas.upenn.edu/bio.htm
84 SELIGMAN, supra note 71, at 40-43.
85 See http://lieber.bol.ucla.edu/Weiner/Weiner.html (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 paper).
86 SELIGMAN, supra note 71, at 40.
87 Id.
88 Id.
89 Id. at 14, 16.
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, an election, or even a lifetime. This new explanatory style framework explicitly established two kinds of thinkers; those who predominately used what Seligman and his team termed an optimistic explanatory style tended to be more resilient in the face of obstacles, while those who used a pessimistic explanatory style tended toward lower resilience, helplessness, and depression.

In 2001, Charles S. Carver and Michael F. Scheier researchers in the fields of optimism and pessimism neatly summed up those terms’ colloquial definitions. According to them, most people think that “optimists are people who expect good experiences in the future. Pessimists are people who expect bad experiences.” 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.” Seligman’s research took that folk wisdom into the scientific realm and reoriented it, demonstrating, 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, and, as a result of their thought and speech habits, are more likely to experience depression.

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

Pessimists also 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. Examples of this sort of thinking include the phrases “all women are impossible to talk to,” 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. As such, the pessimist extrapolates individual, bad events, or groups of bad events, out to the broader world, expecting those bad events to reproduce themselves indefinitely.

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,” or “I’m ugly.” When good things happen to the pessimist, she sees them as the result of some unusual, perhaps

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100 See Jane E. Gillham et al., Optimism, Pessimism and Explanatory Style, in OPTIMISM AND PESSIMISM: IMPLICATIONS FOR THEORY, RESEARCH, AND PRACTICE 55 (Edward C. Chang ed., 2002), SELIGMAN, HELPlessness. Seligman and fellow researchers used the labels, “internal, stable, and global.” Those labels were later morphed into the alliterative tags, “permanent, pervasive, and personal.” See SELIGMAN, OPTIMISM, 58. I will use this second phrasing throughout the remainder of the paper).
101 Id. at 42; see also SELIGMAN, OPTIMISM, supra note 71, at 44-49.
102 Id. at 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).
103 Id. at 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).
104 Gillham et al., supra note 100, at 54; see also SELIGMAN, OPTIMISM, supra note 71, at 52, 58, 76.
105 Id. at 44-49.
106 Id.
107 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.
random, confluence of events. 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.” In sum, pessimistic attribution style is that habit of thought in which a person, presented with a bad event, regards that event as 1) arising out of some permanent failing in the individual, 2) as arising out of a set of circumstance so pervasive as to surround him with similar negative progenitors, and 3) as having a personal origin, so that the aspect of himself that caused the failure can only be attributable to a feature that is part of the very make up of that individual, a permanent characteristic that could never be changed.

An optimist, by definition, thinks about things in a way that is directly opposite. When seeking to understand negative past or present events, the optimist has a positive attribution style. It is in thinking about the good things that happen to him that the optimist identifies with permanent, pervasive, and personal qualities. For example, 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. In terms of negative events, the optimist has a forward-looking explanatory style. When she encounters a setback or a negative event, the optimist views the event in terms that are temporary, specific and hopeful. 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. For example, the

\[\text{Id. at 43-51.}\]

\[\text{See generally Seligman. The pessimist’s attribution style for understanding positive events parallels the optimist’s attribution style for negative events. The pessimist sees good things that happen to him and temporary, isolated, and specific, while the optimist thinks about negative events in that way. Thus, optimism and pessimism reveal themselves as mirror images.}\]

\[\text{Id. at 44-48, 76-77 (The pessimist’s attribution style for understanding positive events parallels the optimist’s attribution style for negative events. The pessimist sees good things that happen to him and temporary, isolated, and specific, while the optimist thinks about negative events in that way. Thus, optimism and pessimism reveal themselves as mirror images).}\]

\[\text{Id.}\]

\[\text{Id.}\]

\[\text{Id.}\]

\[\text{Id.}\]
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, 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, 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,” he will bend his world as much as he can to reflect the truth of that internal reality.

D. 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 narrows this definition and suggests that learned helplessness is the process by which animals and people come to the conclusion that no effort on their part can mitigate their circumstances. Learned helplessness and depression are linked experiences; seldom does one appear without the other. In fact, learned helplessness is tied to depression and the two share symptoms.

Research also demonstrates that learned helpless can be taught. 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, phys-

119 Id.
120 Id.
121 Id.
122 See id. at 95 (noting the experience with an optimistic “gabby one” on a plane). See also 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).
123 PETERSON, ET. AL., LEARNED HELPLESSNESS, 4 (2002).
124 Id. at 19-32.
ically possible, and easy to understand.\textsuperscript{125} 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 protect them from harm, even though there were no obstacles to such action.\textsuperscript{126} In short, subjects learned to allow themselves 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.\textsuperscript{127} It is not difficult to observe the phenomenon in the anecdotal descriptions of law student behavior offered by both professors and students.\textsuperscript{128} If a student’s overall law school experience causes the student to believe that nothing she does can change her circumstances,\textsuperscript{129} she is helpless, academically speaking. If law schools are encouraging such an outlook then 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 experienced by law students.

\section*{II. THE CONVERGENCE}

\subsection*{A. DISTINCT}

The entity theory of intelligence and pessimistic attribution style are not, of course, 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. Later, this paper will argue that pessimistic attribution style and fixed mindedness are related and, in some situations, such as those presented in the law school learning environment, a fixed mindset and pessimistic attribution style for understanding negative academic events may in fact operate in the same way and may, in effect, be the same thing.

In this section, however, this article seeks to establish not only that these theories, while interrelated, stand on their own, but also that some of the institutional features that encourage problematic thought

\begin{itemize}
\item\textsuperscript{125} \textit{Id.}
\item\textsuperscript{126} \textit{Id.}
\item\textsuperscript{127} \textit{See Id. at 8-16 (for a description of the way helplessness and passivity are manifested as aspects of unipolar depression).}
\item\textsuperscript{128} 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.
\item\textsuperscript{129} This is the essential belief that characterizes learned helplessness. \textsc{Seligman supra note 171}. \textit{See also} Peterson supra note 123.
\end{itemize}
patterns may also serve purposes apart from and independent of their promotion of student ideas about success and failure. Four major features of the law school environment, the ranking of first year law students, awareness of large firm hiring preferences, peer-to-peer stigmatization, and professor feedback, work together, in the worst cases, to promote both the fixed mindset and pessimistic attribution style. However, each of these is also integral, in some ways, to the very structure of what a law school is, and in this section I will set out the aspects of these features that I recognize are ingrained and, perhaps, also necessary.

The first of these, the ranking of first year students, is tied to the second item on the list, large firm hiring preferences. As such, I will take these two 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%, have won, while the others, presumably the bottom 90%, 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 partnership 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.130

Because ranking is directly tied to hiring, students take a marked interest in assuring, or competing for, a top place in the 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% 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% 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 be able to sort the most successful first year law students from the body of the class. This is true. Grades and rankings at the end of the first year are a reflection of who was the most competitive that year. In addition, law schools have long used ranking systems to cater to the hiring needs of large law firms; it seems unlikely that law schools are going to change that practice now. Perhaps it is also true that the utility of a system that gives employers access to valuable hiring information is not one that ought to be changed.

130 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, January 8, 2011, at BU1.
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. 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 professors 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. Later in this paper, I will explore feedback methods that can be used to point out the failure of the answer while simultaneously encouraging the student respondent to believe in his ability to work hard and succeed.

B. RELATED

In order 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, Keith James Holyoak writes that, “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 incre-

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132 However, as this paper will point out, not all negative professor feedback is created equal—some negative feedback actually plays a constructive role in student learning, while other feedback is overtly destructive.
mental mindset believe their abilities can be extended through step-by-step effort, so they persist."\textsuperscript{133}

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, is itself a kind of pessimistic statement. This 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.”

In attribution style theory, we see that a person who believes, pessimistically, that her intellectual abilities are permanent, pervasive, and personal, (I’m not really smart, but they all think I am. If I’m not careful, I’ll trip up and they’ll see how stupid I can actually be, and there is nothing I can do to make myself more intelligent), is expressing a pessimistic view—and, when we compare the expression of that view with the expression of a belief in the fixed mindset, we see that she is also expressing a belief in the entity view of intelligence; she believes that her intelligence is a fixed trait, one that she can never improve. So, it seems, the entity mindset is really an expression of a specific pessimistic attribution: “I’m really not that smart. Everyone knows I’m not that smart. (Or, if I take on a real challenge, everyone will see that I’m not that smart.) And I’m always going to be this way.”

C. ESSENTIAL

Although natural variation in mindset tendencies and susceptibility to external forces is surely present in law student attitudes, anecdotal evidence suggests certain institutional features encourage students to believe that they can do little, if anything to alter their academic fates once first semester, first year grades are in.\textsuperscript{134} 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

\textsuperscript{133} Ron Ritchhart and David N. Perkins, \textit{The Challenges of Teaching Thinking in THE CAMBRIDGE HANDBOOK OF THINKING AND REASONING}, 786(Keith James Holyoake ed., 2005).

\textsuperscript{134} 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.
part in shaping law students’ mindsets and in encouraging particular patterns of attribution. Evidence suggests that law students who score below their expectations in the first year often give up, resigning themselves to academic mediocrity throughout the law school experience. These students are probably responding to their grades through the lens of a belief that no matter what they do, they will not be able to improve as legal minds — a fixed or entity theory mindset. Alternatively, they may believe that improving as a legal mind is possible, but not particularly important or helpful, since only their first semester or first year grades matter — both a pessimistic and fixed mindset idea. While I do not believe 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, 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, 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, they are also students 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 1L 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?

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135 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.

136 DWECK, MINDSET, supra note 15. Her research confirms what my experience has shown: even the most promising students, i.e. those with high index scores, give up easily when they receive lower first semester grades. 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.

137 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.
Eugene Volokh 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.138

And yet we know that, apart from those who elect or are forced to participate in academic success programs, few law students take this advice. In response to Volokh’s admonition, one student responded:

I saw very little variation in grades after 1st semester. It seemed like wherever people's grades were 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.139

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.140

Still another student responded: “Grades are the only way to discern some tendency for competence...unless you want to submit your

139 Id.
140 Id.
Anecdotal evidence suggests that many students, even those who go on to become lawyers that 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. 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. If law schools are teaching those students to believe that their grades are a proxy for their IQs, 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; they are implicitly telling students that they are powerless over their learning.

These students’ statements reflect an entity-minded orientation, and the statements employ the language of fixed intelligence, communicating the idea that, at least for these learners, performance cannot be improved. Instead of using the language of fixed intelligence, Dweck writes, we ought to use “growth language,” or language that reflects effort and achievement rather than language that encourages the belief...

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141 Id. (Spelling and punctuation corrected.)
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 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.
144 DWECK, MINDSET supra note 15, at 5 (writing, “[w]asn’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 intellect.”).
145 Id.
146 Id. at 7-28.
147 In their study, Praise for Intelligence Can Undermine Children’s Motivation and Performance, Dweck and Muller write, “Findings from previous work that compared the effects of effort praise and ability praise do not, at first glance, appear to follow the proposals outlined above….Miller found 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...
that intelligence or lack of it are immutable attributes. This language supports an incremental-theory of intelligence, of a belief that people intelligence or ability increase in increments and that performers can become better, smarter, and stronger through a process of practice and feedback. 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…” 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...this is exactly what we found in the minds of champions.” If feedback is given in terms of growth, instead of in terms of static labels, setbacks can be motivating and informative. In addition, no matter what their grades or place in the class, students who receive those messages are more likely to take charge of their own learning, to become responsible and invested in their educational processes. This investment in process rather than outcome, Dweck finds, is what distinguishes the champions from the also-rans.

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

If law schools stand in a position of influence with respect to the way students view their own academic performance, then it seems law


148 Dweck, supra note 15, at 5 (writing, “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”).

149 Dweck, Mueller supra note 45. See also Dweck, supra note 15.

150 Id.

151 Id. at 99.

152 Id.

153 Id.

154 Id. at 101.

155 Id.
schools have an imperative: discourage the fixed mindset for those who entered with it and for those who have learned it from the legal academy, combat pessimistic attribution style, and graduate lawyers who have both the intellectual and psychological skills necessary to work in a challenging field.

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, a culture marked by flexible optimism and the growth mindset. Law schools are not likely to choose not 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.¹⁵⁶

As an institution, law schools do not yet go far enough in articulating a worldview in which students are learners who can be taught, and in which grades are indications of progress. Though the curve and law firm hiring processes may be staple features of the law school environment,¹⁵⁷ but it is still possible for law school 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 the optimists in our student body, like Dweck’s growth-minded students, will better survive a challenging

¹⁵⁶ Such a revision is possible. See generally Dweck.
¹⁵⁷ 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 accomplish ent 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.
task like law school.\textsuperscript{158} Medical\textsuperscript{159} and economic evidence\textsuperscript{160} suggest 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.

Krieger tells 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.\textsuperscript{161} This, Krieger writes, is attributable at least in part to the reduced sense of control students have. It may also be attributable to the kind of negative, pessimistically minded feedback many students believe they are receiving in the law learning environment. Thus, promoting incremental mindedness at

\begin{footnotesize}
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\item[158] 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. 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. There, the top academic performers had explanatory styles that were extraordinarily pessimistic. For those students, pessimism was a predictor of success, not of failure. 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. 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. 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. See Jason M. Satterfield et al., Law School and Performance Explained by Explanatory Style, 15 BEHAV. SCI. & LAW, 95 (1997).
\item[159] 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. 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, available at http://online.wsj.com/article/SB119454102049486710.html; See also David T. Robinson, Optimism and Economic Choice, 86 JOURNAL OF FINANCIAL ECONOMICS, 71 (2007).
\item[160] See SELIGMAN, supra at note 71. See also Benjamin, supra at note 6. See also Puri and Robinson, supra at note 159.
\item[161] See Krieger, Dark Side, supra note 4, at 123.
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the institutional, global level may set the stage for academic excellence, but teaching students to think about their efforts through the lens of optimism is also important.

B. THE MESSAGE

At the institutional level, we can work to defeat entity-mindedness and the pessimistic attribution style that entity-minded thinking embodies; we can encourage growth-mindedness by sending a message that difficulties can be overcome. To do this, law schools must take affirmative 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 are so because they are inherently smart. Instead, schools should move to a model that incorporates praise for hard work, so that students can see that the law school task is a learnable one and that, yes, some students may be more innately talented than others, but, with the appropriate academic guidance and sufficient hard work, others can still compete and succeed.

This shift in encouragement need not be dramatic. We need only, as Dweck says, send a different message, one that discourages the belief that intelligence and achievement cannot be improved. Such a message will encourage a flexible approach to learning. In considering 1L rankings, law schools can communicate to students that law school has academic value beyond the first year and that, especially for those students who are not yet performing up to their academic potential, law school, in the second and third years, will 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 1L year is over. If, however, law schools encourage students to view rankings and large firm job placements as indicative of a mastery that, if not already achieved, can be obtained through learning and hard work, then law schools will graduate students who have learned more during their three year tenure and are better situated to take on the challenges of law practice.

At the classroom level, entity mindedness seems, at first glance, harder to root out. In this context, in particular, 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 praise, for example, telling a student, in front of the class, that she is smart, or the smartest of all the students in the room, in the extreme. Instead, it is more likely that professors will give feedback to lower performing students through the lens of a pessimistic attribution style, which in turn encourages the student receiving, and all those witness the professor-student exchange, that he is helpless to improve his academic fate.

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.) 162 “All those study aides are worthless. Not one of them can do you any good.” (Pervasive.) 163 “Maybe law school just isn’t for you.” (Personal.) 164 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 development. Language that encourages students to think about their intelligence through the lens of a pessimistic attribution style encourages the belief that “I’m not smart enough to master this. Everyone can see that I’m not smart enough. This is all a lost cause.” In other words, when students are encouraged to view their learning through a pessimistic lens, they simultaneously cultivate the entity mindset.

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. 165 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. 166 But we know that humans have the ability, through self-talk and other techniques, to refute the cognitive process that give rise to pessimism, 167 to make ourselves more optimistic and, as a result, to lead longer, happier, and more productive lives. 168

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

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162 SELIGMAN, supra note 71.
163 Id.
164 Id.
165 Id.
166 Id at 5.
167 Id.
168 Id.
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.169

In order to give helpful feedback that helps students to build flexible optimism into their responses to struggle, professors should re-orient themselves to the language of optimism and give constructive responses to incorrect answers 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.)

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 that to be helpless, so that 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 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 done a poor job, but I can learn to improve

169 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.”
and will perform better next time.” If they 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, professors can teach students to employ flexible optimism, 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 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, to improve their grades, and to 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 arguments are these: although we recognize that law student depression seems to be increasing, we have no 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, there is no empirical proof that mindset or thought habits are motivating the 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 thought and habits of thought lie at the root of depression. In effect, depression is a pattern of thought, a belief or set of beliefs about oneself in the

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170 See generally Seligman.
171 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. Examples include discovering that the plane you are flying has run out of fuel, anticipating enemy movements in the theater of war, and deciding how much food to take on a survivalist journey. In such situations, a slight pessimism may produce more cautious behavior and may in fact be helpful in securing a safe landing, shoring up one’s defenses, or planning for the future. SELIGMAN, supra note 71, at 209.
172 Id.
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’ habits of thought with respect to their performance in school should provide them some relief.

The second critique is one likely made by those who believe that once a person has embraced a mindset, he cannot change his beliefs about success. 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. To this argument, I have two responses. First, this paper, 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, Dweck shows, 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 help combat the destructive mindsets and thought processes that contribute to those problems. At the institutional level, law schools can and should encourage a 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 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.