

Creating the Optimistic Classroom: What Law Schools Can Learn From Attribution Style Effects

Corie Rosen*

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I. INTRODUCTION

In more ways than you know, you are what you think. This is the essential thesis behind the newest field in psychology: positive psychology.¹ Because the law school experience is a unique producer of psychological distress,² law

* Permanent Instructor in Law, Arizona State University College of Law. B.A., University of California at Berkeley, J.D., University of California at Los Angeles. Many thanks to those who have invited me to speak on earlier versions of this Article: Michael Hunter Schwartz and Gerald Hess at The Institute for Law Teaching and Learning, everyone at The Law School Admissions Council, Susan Chesler and the organizing faculty at The Rocky Mountain Legal Writing Institute, and Doug Sylvester and other coordinators of the Arizona State University Faculty Research Series. I would also like to thank Michael Hunter Schwartz, Paula Manning, and Rebecca Flanagan for listening to me talk, at length, as I developed and refined this idea, Catherine Gage O'Grady, Michael Hunter Schwartz, Art Hinshaw, and Charles Calleros for their advice and feedback on earlier drafts, and Douglas Sylvester, Carissa Hessick, Zachary Kramer, and Marcy Karin for their guidance and support. I thank Eugene Volokh for encouraging me write this and other articles, and Kristin Holmquist for having inspired me to work in this field. Valuable research assistance was provided by Amy Levine.

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

2. 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

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

This Article will address the linked problems of declining subjective well-being and increasing depression among law students, and will explore the way that depression in law students is produced and reinforced by pessimistic attribution style. Next, this Article will address the potential effects of using the language of optimistic attribution in law school classroom feedback, and methods professors might use to access and build that language into their feedback methodology. Finally, this Article will examine the possible effects of an optimistically-oriented learning environment. Perhaps, instead of giving up⁶ or falling prey to depression,⁷ students exposed to the language of optimism in their

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.”).

3. *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.”).

4. *See generally* Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002) (describing research on happiness and life satisfaction); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004) (describing the studies of two samples of law students). This Article does not present the language of optimism as a panacea for the ills associated with law school environments. Rather, this Article presents a method for integrating optimistic language that may facilitate a more positive law school experience. For optimal success, this language should be applied in combination with other techniques described in the law learning literature.

5. Charles S. Carver & Michael F. Scheier, *Optimism, Pessimism, and Self-Regulation*, in *OPTIMISM AND PESSIMISM: IMPLICATIONS FOR THEORY, RESEARCH, AND PRACTICE* 32, (Edward C. Chang ed., 2002). Carver and Scheier suggest that optimism and pessimism are strongly linked to motivation, that “the expectancies with which people return to action are reflected in subsequent behavior” *Id.* at 41. Carver and Scheier “begin with the assumption that behavior is organized around the pursuit of goals,” *Id.* at 32, and go on to tie pessimism to decreased motivation and optimism to increased motivation. They write, “if expectations are for a successful outcome, the person returns to effort toward the goal. If doubts are strong enough, the result is an impetus to disengage from effort, and potentially from the goal itself.” *Id.* at 41-442.

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

7. Krieger, *Dark Side*, *supra* note 4, at 114.

classrooms may develop healthier psychological defenses to a difficult environment. In the face of both perceived and actual failure,⁸ students who have learned optimism⁹ may remain more motivated and, therefore, prove more successful than students who have not been so exposed.¹⁰

A. *Positive Psychology: The Beginnings*

Unlike the old science of the mind,¹¹ positive psychology asks probing questions to discover what makes humans thrive, seeking information about the methods by which healthy people avoid problems like depression and isolation, and redefines the way the scientific community thinks about human cognition and behavior.¹² “[T]he 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.”¹³ This concept of optimal functioning, or “thriving,”¹⁴ has become a new goal for psychological health, one that psychologists working in the positive psychology field can use to supplement the traditional models of psychological research, diagnosis, and therapy.¹⁵ In the law school environment, where depression, triggered by

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

9. See generally SUSAN C. VAUGHAN, *HALF EMPTY, HALF FULL: UNDERSTANDING THE PSYCHOLOGICAL ROOTS OF OPTIMISM* (2000); see also SELIGMAN, *OPTIMISM*, *supra* note 3, at 5.

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

11. SELIGMAN, *OPTIMISM*, *supra* note 3, at 8-9. Seligman explains B.F. Skinner’s theory of Behaviorism as a theory that understood human action as the belief “that people were ‘pushed’ by their internal drives or ‘pulled’ by external events. . . . that behavior was repeated only when reinforced externally.” *Id.* Seligman goes on to explain the shift that precipitated the advent of his theory of positive psychology, writing that, “starting around 1965, the favored explanations began to change radically. . . . So the dominant theories in psychology shifted focus in the late 1960s from the power of the environment to individual expectation, preference, choice, decision, control, and helplessness.” *Id.* 9.

12. See *id.* at 19-20 (noting that Seligman first began to examine depression when he accidentally discovered learned helplessness, an outcome of experiments in conditioning dogs); see also Seligman & Csikszentmihalyi, *supra* note 1, at 13.

13. Peterson & Peterson, *supra* note 3, at 361-62.

14. *Id.* at 362. “Positive psychologists are quick to emphasize that their research is designed to supplement and not to replace traditional psychological research on the causes of psychological suffering. Rather, it is intended to explore areas that have been neglected by traditional psychology. . . . 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.” *Id.* 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.

15. Amy Tardio, *Is the World Ready for a Positive Psychology?*, HUFFINGTON POST, Jul. 15, 2009, available at http://www.huffingtonpost.com/amy-tardio/is-the-world-ready-for-a_b_233741.html (on file with the *McGeorge Law Review*) (writing that “Positive Psychology has the potential to impact our health, energy levels, passion, enjoyment, ability to focus, connect, be resilient, hopeful and loved; otherwise known as our ability to thrive. According to Martin Seligman if Positive Psychology gets its way, a majority of Americans over the next several decades will be thriving.”); SELIGMAN, *OPTIMISM*, *supra* note 3, at vi-vii (explaining that

isolation, extrinsic motivation, and values alienation, is an increasing problem, the psychology of thriving could play an especially important role.¹⁶

One of the most valuable aspects of positive psychology is its understanding of how language may be used to explain events.¹⁷ The presence of optimism or pessimism¹⁸ in a person's habits of thought is communicated through phrases that carry the indicia of one of two outlooks.¹⁹ Studying outlook-defining language—*i.e.*, assessing the articulation of thoughts and the expressions used to explain why life events have unfolded in a particular way—is an inquiry into a process that positive psychologists have termed “attribution style”²⁰ or explanatory style.²¹ Individuals use these methods to understand why things happen or fail to happen to them. Studies of explanatory style suggest that attribution is as important a motivator of behavior as an external incentive or disincentive to act.²² Explanatory style theory, together with the models that have grown out of it, gives researchers²³ new tools with which to examine depression and the qualities that insulate some individuals from its ills.²⁴

thriving is understood as maximizing individual potential in terms of performance and achievement markers, which can be quantified using specific markers). Thriving, and the concepts of cognitive optimism and pessimism have no relationship to the feel-good ideas associated with the self-esteem movement. *Id.* This Article does not advocate the unwarranted inflation of students' self-esteem, but rather suggests a method of encouragement to help struggling students remain motivated in the face of negative feedback. *See also* David Crary, *Study Finds Students Narcissistic: Says Trends Among College Youth Can Harm Society*, ASSOCIATED PRESS, Feb. 27, 2007, available at http://www.boston.com/news/nation/articles/2007/02/27/study_finds_students_narcissistic/ (on file with the *McGeorge Law Review*) (explaining how the self-esteem movement has produced narcissistic students).

16. *See* Krieger, *Dark Side*, *supra* note 4, at 112-18 (discussing the negative effects of law school on law students, during law school and beyond, into their professional lives). 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.” *Id.* at 115.

17. *See generally* SELIGMAN, OPTIMISM, *supra* note 3 (writing that the way we explain events to ourselves indicates the presence of a pessimistic or, alternatively, optimistic attribution style, and that through the use of certain techniques, we can retrain our minds to think more optimistically, to great personal and professional gain).

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

19. SELIGMAN, OPTIMISM, *supra* note 3, at 43-99.

20. *Id.* at 14-16, 40.

21. *Id.*

22. *Id.* at 40-41.

23. The University of Pennsylvania now features a Positive Psychology Center. To view its website see <http://www.ppc.sas.upenn.edu/index.html> (last visited Oct. 30, 2010) (on file with the *McGeorge Law Review*).

24. *See generally* SELIGMAN, OPTIMISM, *supra* note 3 (explaining that therapeutic models of thought-refutation, or idea-refutation, can be used to teach patients to learn to use the language of optimism when attributing negative events in their lives).

II. THE DEPRESSION EPIDEMIC

An increasing number of academics have devoted scholarly attention to the negative aspects of the law school experience.²⁵ Research has established that some event or set of events is producing a decline in perceived autonomy support and well-being amongst students enrolled in American law schools.²⁶ The use of value-defeating or culturally normalizing language²⁷—and its inclusion in a system organized around a lack of student choice—may both be to blame the decline in well-being, attitudes, and behaviors of law students.²⁸ The root causes of law student depression and dissatisfaction may be difficult to pin down, but those writing in the area seem to agree that student distress is produced by the law school experience, and is not attributable to underlying psychological problems unique to the population.²⁹

In his study, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, Lawrence S. Krieger notes the observation of one Harvard Law Student: “Far from brimming over with personal and intellectual self-confidence, by the second (2L) year, a surprising number of Harvard Law students come to resemble what one professor has called ‘the walking wounded’: demoralized, dispirited, and profoundly disengaged from the law school experience.”³⁰

Krieger’s work with the Subjective Well-Being Index (SWB)³¹ proves empirically what was observed anecdotally.³² Krieger and his research team administered the SWB to incoming law students and found that when subjects

25. See *supra* note 4 and accompanying text.

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

27. 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).

28. See Krieger, *Human Nature*, *supra* note 26, at 261.

29. Larry Krieger and Kenon Sheldon’s research has suggested the lack of autonomy support in the law school environment may cause the depression and related problems with values, motivation, and well-being documented in his work. Though the Krieger-Sheldon theory is perhaps the best-tested of all the theories in this area, others do exist and may also be plausible. See Krieger, *Human Nature*, *supra* note 26, at 265-68.

30. Krieger, *Dark Side*, *supra* note 4, at 113.

31. See Krieger, *Human Nature*, *supra* note 26, at 253.

32. See Benjamin, et al., *supra* note 2, at 227. Benjamin’s earlier 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.” *Id.* at 235. 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. *Id.* at 246.

matriculated into law school, their subjective well-being exceeded that of the control population.³³ In the aggregate, the profile of a class of entering law students looked better than the profile of a large undergraduate sample.³⁴ Over the course of the law school experience,³⁵ however, student measures of subjective well-being plummeted, irrespective of academic performance.³⁶ Ultimately, Krieger concludes something significant and distressing is happening to students' sense of well being in the law school environment, causing an increase in depression and related psychological problems.³⁷

Further inquiry suggests that law student depression is not isolated to schools of a particular size, teaching philosophy, or tier,³⁸ but that law students across the country are experiencing equal declines in well-being. This decline also affects students enrolled in the nation's most elite schools, where one might expect students to feel insulated by the caliber of their institutions³⁹ and the suppressed competition for jobs that graduation from these institutions might create. Instead, the emerging picture is one in which negative experiences and sentiments are ubiquitous.⁴⁰ On the nationwide nature of lowered subjective well-being and increased depression, Krieger writes: "Such observations are discouragingly common throughout legal education, and they are confirmed consistently by empirical studies [C]linically elevated anxiety, hostility, depression, and other symptoms among [first year] students ranged from eight to fifteen times that of the general population."⁴¹

Thus, law schools are negatively affecting students in great numbers, the changes in student well-being occur soon after students are integrated into the law school environment, and these changes have real, measurable, psychological outcomes.⁴²

33. *Id.* at 297-308.

34. Krieger, *Dark Side*, *supra* note 4, at 122. ("The longitudinal study of law students that Ken Sheldon and I have completed confirms these conclusions in all respects. We measured values, motivation, and well-being in students just after they entered law school, again toward the end of the first year, and during the following semester. The arriving students showed healthy well-being, values and motives stronger, in fact, than a large undergraduate sample.")

35. Krieger, *Human Nature*, *supra* note 26, at 263 ("[T]he SWB of the students plunged substantially within the first several months of law school, and did not rebound before graduation.")

36. *Id.*

37. Krieger, *Dark Side*, *supra* note 4, at 118 (writing that "The interplay of these dominant law school constructs ultimately teaches many students to put aside their personal life and health and accept persistent discomfort, angst, isolation, even depression at the cost of becoming a lawyer. This is ominous preparation for professional life, and similar constructs apparently do drive many lawyers . . .").

38. *See* Benjamin et al., *supra* note 2, at 227 (noting comparable studies from State University of New York at Buffalo, Brigham Young University, and University of Arizona).

39. Krieger, *Dark Side*, *supra* note 4, at 113 (examining the experience at Harvard Law School).

40. *Id.* at 113-114 (noting that studies have demonstrated that the detrimental effects of legal education are seen at both elite and other law schools and are "confirmed consistently by empirical studies.")

41. *Id.*

42. *Id.*; *see also* Dammeyer & Nunez, *supra* note 2, at 55; Seligman et al., *supra* note 3, at 37.

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 diverse law schools confirms these negative reports If these experiences are common in American law schools, as anecdotal reports and other studies indicate, it would suggest that various problems reported in the legal profession, such as depression, excessive commercialism, and image-consciousness, and lack of ethical and moral behavior, may have significant roots in the law-school experience.⁴³

III. OPTIMISM AND ATTRIBUTION STYLE

A. *Divergent Attitudes*

If human attitude is a spectrum,⁴⁴ with extreme optimism at one end and extreme pessimism at the other, then pessimism can be broadly characterized as optimism's maladaptive twin.⁴⁵ Optimism and pessimism may be two sides of a single coin, but their effects and implications could not be more disparate. It is almost universally true that optimists thrive while pessimists languish,⁴⁶ and that the benefits attributable to an optimistic outlook are manifold. Optimists live longer lives, earn more money, succeed more often in school, enjoy happier marriages, experience better health, and have greater resilience in the face of obstacles.⁴⁷ Pessimists, on the other hand, tend to have shorter life spans, lower earning caps, and lower overall achievement.⁴⁸

43. Sheldon & Krieger, *supra* note 4, at 283. Though the causes of the law student depression epidemic are not entirely clear, some excellent hypothesis have been developed, proposed, and empirically studied by Krieger, Mertz, and others. This Article does not seek to duplicate that research and will not focus on those 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 Article proposes a classroom and written response feedback method that, when integrated into the existing model of legal education, may alleviate depression by breaking students' cycles of pessimistic attribution, particularly with respect to attitudes toward learning and performance.

44. See generally THE SCIENCE OF OPTIMISM AND HOPE: RESEARCH ESSAYS IN HONOR OF MARTIN E.P. SELIGMAN (Jane E. Gillham ed. 2000).

45. *Id.* at 12-13 (human attitude, with respect to optimism, can, of course, range from highly optimistic to highly pessimistic).

46. SELIGMAN, OPTIMISM, *supra* at note 3, at 5 (explaining the effects of these two distinct "habits of thought," Seligman writes, "[I]literally hundreds of studies show that pessimists give up more easily and get depressed more often optimists do much better in school and college, at work and on the playing field. They regularly exceed the predictions of aptitude tests. When optimists run for office, they are more likely to be elected.").

47. *Id.*

48. *Id.*; see also M. Puri, & D.T. Robinson, *Optimism and Economic Choice*, 86 J. FIN. ECON. 71, 79-82 (2007).

It is not surprising, then, that some researchers characterize optimism as a trait imbued with survival value, and that optimism may have been a highly prized trait, naturally selected for during the course of human evolutionary biology.⁴⁹ Optimism certainly appears to have enjoyed some evolutionary help,⁵⁰ but research on the evolutionary value of optimism does not suggest that simply thinking optimistically is a panacea. Those skeptical of evolutionary arguments in favor of optimism are quick to point out the survival value of guarded skepticism, which some researchers associate with pessimism.⁵¹ A closer look at optimism studies suggests thinking optimistically about small things, rather than recklessly expecting good things to happen all the time, regardless of contrary indicators, may lead to certain behaviors and habits. Over time, these small changes in habit and behavior in turn produce health, work, economic, and other survival benefits.⁵² Research in support of the evolutionary defense of optimism may be summed up in this way:

Medical evidence is suggestive [of the way optimism works.] Optimistic people at risk for skin cancer are more likely to report use of sunscreen; optimistic coronary artery bypass patients are more likely than pessimists to be taking vitamins, eating low-fat foods, and be enrolled in a cardiac rehab program five years after surgery.⁵³

Optimists are more likely to believe that, in taking steps, they can improve their odds or prevent a problem.⁵⁴ Economic data supports the idea that there are measurable, if indirect, benefits that flow from an optimistic outlook. These benefits arise out of a series of small choices, which compounded over time, work to make the optimist more successful than his pessimistic counterparts.⁵⁵ Studies suggest that optimists are inclined to work more, both in the form of longer hours and later retirement.⁵⁶ In addition, optimists are more inclined toward saving, resulting in better overall financial health.⁵⁷ Optimists also put more money away for the future and, interestingly, tend to hold more of their money in liquid assets.⁵⁸ Optimists pay their credit card bills more promptly and

49. Robert Lee Hotz, *Except in One Career, Our Brains Seem Built for Optimism*, WALL ST. J., Nov. 9, 2007, at B1.

50. *Id.*

51. SELIGMAN, *OPTIMISM*, *supra* note 3, at 111-112.

52. *Id.*; *see also* Manju Puri & David T. Robinson, *Optimism and Economic Choice*, 86 JOURNAL OF FINANCIAL ECONOMICS 71 (2007).

53. Hotz, *supra* note 49 (Hotz' article draws on the information articulated by Puri & Robinson, *supra* 52, at 75).

54. *Id.*

55. *See* Puri & Robinson, *supra* note 52, at 74, 91.

56. *Id.* at 85.

57. Hotz, *supra* note 49; *see also* Puri & Robinson, *supra* note 52, at 87-89.

58. Puri & Robinson, *supra* note 52, at 80-90.

are also more likely to invest in individual stocks.⁵⁹ Optimists are also less likely to be smokers and are more likely to remarry after a divorce.⁶⁰ These small behaviors, when aggregated, likely give the optimists a distinct advantage by promoting greater financial, personal, and emotional health.⁶¹

As Martin Seligman worked to understand the processes that make some people more resilient and optimistic than others, he set out to understand optimism as a cognitive process.⁶² Seligman and his team identified attribution style,⁶³ 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,⁶⁴ who in the 1960s, theorized that some people achieve more than others because they think about achievement differently than others.⁶⁵ Weiner's essential theory, mirrored in Seligman's work,⁶⁶ was that people who are the most successful see obstacles not as permanent roadblocks, but as temporary obstacles that can be overcome or defeated with hard work.⁶⁷ Weiner introduced the idea of attribution in relation to achievement, arguing the way a person thinks about what happens to her dictates whether she has a pessimistic or optimistic response to obstacles.⁶⁸

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.⁶⁹ The multi-part method could be used to analyze habitual thinking, and could even be traced through written or spoken patterns and extrapolated to yield information about what an individual's cognitive processes were over the course his lifetime.⁷⁰ The new theory established two kinds of thinkers; those who predominately use an optimistic explanatory style tend to be more resilient in the face of obstacles, while those who use another style tend toward lower resilience, helplessness, and, in many cases, depression.⁷¹

59. *Id.*

60. *Id.*

61. *Id.*; see generally SELIGMAN, OPTIMISM, *supra* note 3. The overarching idea propounded by this book is that changing one's attribution style from that of pessimism to flexible optimism is helpful. Such a change should, over time, yield the best of what optimism is believed to facilitate. *Id.*

62. For biographical background on Martin Seligman, see POSITIVE PSYCHOLOGY CENTER, <http://www.ppc.sas.upenn.edu/bio.htm> (last visited Nov. 14, 2010) (on file with the *McGeorge Law Review*).

63. See SELIGMAN, OPTIMISM, *supra* note 3, at 40-43.

64. For background on Bernard Weiner, see BERNARD WEINER, <http://lieber.bo1.ucla.edu/Weiner/Weiner.html> (last visited Nov. 13, 2010) (on file with the *McGeorge Law Review*) (noting that Weiner is widely credited with the development of attribution theory).

65. See SELIGMAN, OPTIMISM, *supra* note 3, at 40.

66. See *id.*

67. *Id.*

68. *Id.*

69. See *id.* at 41.

70. See *id.*

71. See *id.* at 43-51.

In 2001, Charles S. Carver and Michael F. Scheier, researchers in the fields of optimism and pessimism, neatly summed up those terms' colloquial definitions. They wrote that "[o]ptimists are people who expect good experiences in the future. Pessimists are people who expect bad experiences."⁷² This 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."⁷³ Seligman's research took that folk wisdom into the scientific realm and demonstrated 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,⁷⁴ and are more likely to experience depression.⁷⁵

In Seligman's model, pessimistic minds work along a defined spectrum and attribute events along three dimensions:⁷⁶ permanence, pervasiveness, and personalness.⁷⁷ Pessimistic people see negative occurrences as the result of some permanent failing.⁷⁸ Examples of these kinds of thoughts are, "diets never work"⁷⁹ or "professors always hate me." This kind of a thought or speech habit promotes the concept that the issue in question is one that cannot be modified, remedied, or changed in any way.⁸⁰ Pessimists see negative events as attributable to some pervasive problem, one that colors not only the single, negative situation the pessimist seeks to understand, but everything related to that situation.⁸¹ Examples of this sort of thinking include, "all women are impossible to talk to," or "all law professors are unfair."⁸² This kind of attribution allows negativity to permeate out from a single occurrence and into every related occurrence, encouraging the pessimist to give up. The pessimist extrapolates bad events out to the broader world, expecting these bad events to reproduce themselves indefinitely.⁸³ The pessimist also attributes negative events in a way that is highly personal, meaning

72. Carver & Scheier, *supra* note 5, at 31.

73. *Id.*

74. See SELIGMAN, OPTIMISM, *supra* note 3, at 4-5.

75. *Id.*

76. *Id.*

77. 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 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, *supra* note 3, at 58. I will use this second phrasing throughout the remainder of the Article.

78. Gillham et al., *supra* note 77, at 42; see also SELIGMAN, OPTIMISM, *supra* note 3, at 44-49.

79. See Gillham et al., *supra* note 77, at 55; see also SELIGMAN, OPTIMISM, *supra* note 3, at 44-49, 76.

80. Gillham et al., *supra* note 77, at 54; see also SELIGMAN, OPTIMISM, *supra* note 3, at 52, 58, 76.

81. Gillham et al., *supra* note 77, at 54; see also SELIGMAN, OPTIMISM, *supra* at note 3, at 47.

82. See SELIGMAN, OPTIMISM, *supra* note 3, at 47.

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

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”⁸⁴ or “I’m ugly.”⁸⁵ When good things happen to the pessimist,⁸⁶ she sees them as the result of some unusual, perhaps random, confluence of events.⁸⁷ 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.”⁸⁸

An optimist, by definition, thinks about things in the opposite way.⁸⁹ He has a positive attribution style⁹⁰ and sees the good things that happen to him as the result of permanent, pervasive, and personal qualities that he perceives as positive.⁹¹ When the optimist receives a high mark on an exam, he does not think of the event as isolated, but rather as the result of some set of innate qualities. 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.⁹² In terms of negative events, the optimist has a forward-looking explanatory style.⁹³ When she encounters a setback or a negative event, the optimist views the event in terms that are temporary, specific, and hopeful.⁹⁴ When an optimist sees a poor mark on a paper, she thinks of the mark as temporary—a one-time occurrence. The optimist also perceives the bad event as having grown out of something specific, attributable to some particular failing or problem.⁹⁵ For example, the optimist might see that she did not leave enough time to complete an assignment, that she was less experienced than 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

84. MARTIN E.P. SELIGMAN, *LEARNED HELPLESSNESS* 149 (2002). See also SELIGMAN, *OPTIMISM*, *supra* note 3, at 44-48.

85. See *supra* note 84.

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

87. See SELIGMAN, *OPTIMISM*, *supra* note 3, at 43-51.

88. *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. *Id.* Thus, optimism and pessimism reveal themselves as mirror images.

89. *Id.* at 43-51.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

assignment is stacked against him and every professor convinced of his inadequacy—a very broad view of the problem⁹⁶—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,⁹⁷ 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,’ the optimist will bend his world as much as possible to reflect the truth of that internal reality.”⁹⁸

Seligman’s work suggests that the optimists in our student body will better survive a challenging task like law school, and 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.⁹⁹ Puri and Robinson¹⁰⁰ suggest the optimists among our students are better prepared to cope with the setbacks and struggles, both academic and psychological, that law school may present to them. We must ask, then, if optimism is a valuable trait, can, and should, we teach it to our law students?

Optimism is learnable. At least in the context of behavioral therapy, people who naturally gravitate toward a pessimistic explanatory style can be taught to be more optimistic. In the process of discovering whether and how optimism might be cultivated, Seligman and his colleagues studied cognitive therapy.¹⁰¹ They quickly found that optimism can be developed—that the mind can be trained into new habits of thought—¹⁰² and that those who learn optimism can obtain all of the benefits associated with that attribution style.¹⁰³ Accordingly, if optimism were taught to law students, then those students would be better insulated against the ills and challenges inherent in the law school experience.

In order to cultivate an optimistic thinking habit, a person must work to change his or her pessimistic explanatory style to a more optimistic one.¹⁰⁴ We have the ability, through self-talk and other techniques,¹⁰⁵ to refute the cognitive process that gives rise to pessimism, to make ourselves more optimistic and, as a result, to lead longer, happier, and more productive lives.¹⁰⁶

96. *Id.*

97. *Id.*

98. *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).

99. *See* Krieger, *Dark Side*, *supra* note 4, at 123.

100. *See* Puri & Robinson, *supra* note 52, at 75-80.

101. SELIGMAN, OPTIMISM, *supra* note 3, at 183.

102. *Id.*

103. *Id.* at ix, 5.

104. *Id.*

105. *Id.* at 3.

106. *Id.*

If law professors can teach students using the language of optimism, students may learn to attribute their failures and setbacks in a constructive way, and may remain motivated in spite of negative feedback. Thus, professorial speech may itself facilitate the growth and development of students—helping students to meet, and even exceed, their perceived potential.¹⁰⁷

B. Pessimism and Learned Helplessness

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

Like optimism, learned helplessness¹⁰⁸ (the process by which animals and people, through experiential information gathering, come to the conclusion that no effort on their part can mitigate their circumstances) can be taught.¹⁰⁹ In a series of experiments, researchers successfully taught subjects that negative stimuli could not be reduced with behavior modification, even when that behavior modification was simple to execute, physically possible, and easy to understand.¹¹⁰ When later placed in a situation where behavior modification would reduce or eliminate negative stimulation, the subjects who had learned helplessness refused to act in a way that would reduce or eliminate the negative stimulus.¹¹¹ In short, subjects learned to allow themselves to be victims of circumstance because subjects were taught a belief—a habit of thought—and their attribution patterns resulted in the certainty that they could do nothing to improve their situations.

Learned helplessness has been studied, in both animals¹¹² and people¹¹³ as a key process in the development of depression.¹¹⁴ It is not difficult to observe the phenomenon in the anecdotal descriptions of law student behavior offered by both professors and students. If a student's overall law school experience provides continuous negative feedback in a way that cultivates pessimistic

107. SELIGMAN, OPTIMISM, *supra* note 3, at 154.

Which comes first—optimism or achievement in the classroom? Common sense tells us that people become optimistic as a consequence of being talented or because they do well. But the design of our classroom studies clearly establishes that the causal arrow also points in the opposite direction. In our studies Over and above their talent-test scores, we repeatedly find that pessimists drop below their “potential” and optimists exceed it. I have come to think that the notion of potential, without the notion of optimism, has very little meaning.

Id.

108. *Id.*; see also Peterson & Peterson, *supra* note 3, at 397.

109. See generally SELIGMAN, HELPLESSNESS, *supra* note 84 (writing broadly that experiments demonstrated that the belief that one is helpless to change one's circumstances is in fact a learned belief).

110. *Id.* at 77, 86.

111. See *id.*

112. *Id.*

113. See generally Peterson & Peterson, *supra* note 3.

114. See SELIGMAN, HELPLESSNESS, *supra* note 84, at 4-5.

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thinking, or perhaps in a way that fails to intervene in the student's own predisposition toward pessimistic habits of thought, law school may in effect be teaching learned helplessness.

C. Natural Variation

Not all persons in the general population are equally prone to pessimism, and it can be assumed that the same is true of law students. Donald Hiroto was a graduate student at the University of Oregon when he discovered that one-third of people put through learned helplessness experiments did not learn to be helpless and instead resisted the conditioning they received from their experimenters,¹¹⁵ while about one-tenth of people did not need to learn helplessness—they came into Hiroto's studies already helpless.¹¹⁶

If law students enter law school looking roughly like the general population,¹¹⁷ we can expect about one-tenth of incoming students to be suffering from learned helplessness the moment they arrive, and can expect another third of students to be impermeable to the defeatist messages to which others will be susceptible. The remaining students, the susceptible ones, are the people who might benefit from learning optimism.

D. Top Law Students as Unique

Though the majority of students could benefit from learning optimism, research suggests that a small percentage of law students may not be harmed by their pessimism, and may actually benefit from it in the form of enhanced academic performance.¹¹⁸ 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.¹¹⁹ Seligman and his colleagues noted that other researchers had studied undergraduate populations and had concluded that optimism and high achievement were correlated in the examined undergraduate populations,¹²⁰ providing support for the hypothesis that optimism correlates with well-being,

115. SELIGMAN, OPTIMISM, *supra* note 3, at 29.

116. *See id.* at 29-30 (noting that the same results showed up in similar experiments with dogs. One tenth of the dogs were already helpless, while one third of the dogs could not learn to be helpless).

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

118. Jason M. Satterfield et al., *Law School Performance Predicted by Explanatory Style*, 15 BEHAV. SCI. & L. 95, 98 (1997).

119. *Id.* at 96.

120. *Id.*

achievement, and overall success,¹²¹ but the UVA Law School students produced unique results. There, the top academic performers all had explanatory styles that were extraordinarily pessimistic.¹²² For those students, pessimism was a predictor of success, not failure.¹²³

The UVA study presents some strange and ongoing questions. The researchers pointed to the odd fact that only relatively high levels of pessimism had any correlative relationship with law school GPA,¹²⁴ noting:

The pessimists in the law school sample were already high academic achievers and relatively resilient in the face of challenges as evidenced by their high LSAT scores (91st percentile nationally) and high undergraduate GPA's (mean = 3.6). Even if we assume a pessimistic explanatory style predisposes one to Learned Helplessness and depression, the special law school pessimists had already demonstrated some degree of resilience and the potential to compensate for or perhaps even positively utilize their pessimistic styles.¹²⁵

Whatever the explanation for the outcome of the study, there is some reason to believe that, at least for those at the very top of their law school class, a special kind of pessimism is associated with the ability to outperform one's peers. The people who exhibit this type of pessimism, called defensive pessimism,¹²⁶ may have a unique approach to developing expectations about their performance that protects them from the fear and anxiety other students' experience. Defensive pessimism may serve to insulate students from the environmental factors, such as stress, that can affect performance and expectations of performance. Even if these highly pessimistic performers are insulated by a special kind of pessimism, in terms of other measures of success in the law school environment—such as membership on law review, moot court success, and other achievements—special

121. *Id.* at 101. This is an odd finding in light of the fact that law students, especially those attending schools like the University of Virginia, which is among the nation's most competitive schools, are typically students who had high undergraduate GPAs which might otherwise suggest a predisposition toward optimistic thought habits. *Id.* at 100. It may be that law students are somehow displaying a predisposition toward optimistic thinking while engaged in undergraduate study, and then, some time between graduation from college and matriculation in law school, those students modify their outlooks and take on an attitude of defensive pessimism with respect to their law school studies. That hypothesis is unproven. Without some information that explains this strange phenomenon, the UVA study, while important, seems to raise more questions than it answers with respect to the relationship between explanatory style, special pessimism, and success or perhaps self-selection for enrollment in law school. More research has yet to be conducted vis-à-vis fine tuning the outcome of the UVA study. *See generally id.*

122. *Id.* at 100.

123. *Id.* Only severe pessimism produced such a correlation. For all other degrees of pessimism, no predictive value could be found. *See id.* at 100-01.

124. *Id.* at 101.

125. *Id.*

126. *Id.* at 104 (“Defensive pessimism involves setting unrealistically low expectations in a risky situation as a means of harnessing anxiety and enhancing motivation.”).

pessimism does not function as a predictive indicator at all.¹²⁷ Research has not yet shown whether exposure to the language of optimism harms special pessimists in any way. The lack of evidence, together with other evidence that law school causes depression in the majority of students, suggests that perhaps professors should disregard the presence of special pessimists, and import the language of optimism into their classrooms.

Seligman himself argues that the academy might put special pessimists aside, suggesting that he would welcome such change.¹²⁸ He writes about the problems of pessimism, depression, and general unhappiness within the broader legal profession, noting that, “[u]nhappiness and depression are intimately associated with passivity and poor productivity at work.”¹²⁹ He goes on to caution that some of those afflicted with depression may feel a need to achieve more, and climb to greater professional heights, to make themselves feel better—perhaps a desirable outcome.¹³⁰ Yet, he writes, “[l]aw schools are themselves a potential breeding ground for lawyer demoralization and that makes them—as well as law firms—candidates for reform.”¹³¹

Seligman further argues that attorneys might benefit from “flexible optimism,” a learned attribution style that “can be taught to both children and adults to enable them to determine how and in what situations one should use optimism and when to use pessimism.”¹³² Infusing optimism into the law school environment may not solve the complex institutional issues that many researchers have pointed to as detrimental to student psychological health and well-being.¹³³ But, absent other reforms—or perhaps in addition to them—the optimistic classroom may provide students with helpful coping tools.

E. The Limits of Optimism

Critics of the conclusions reached by optimism researchers suggest that some cultures present a strong bias either in favor of or in disfavor of optimistic explanatory styles.¹³⁴ These critics suggest that studies lauding the benefits of

127. *Id.* at 98 (“On other success measures including moot court performance, law review membership, community involvement, or classroom participation our primary composite measure of explanatory style were not predictive.”).

128. *See* Seligman et al., *supra* note 3, at 37 (“[L]awyers are ‘in remarkably poor health.’ They are at much greater risk than the general population for depression, heart disease, alcoholism and illegal drug use.”).

129. *Id.* at 38.

130. *Id.*

131. *Id.* at 39.

132. *Id.* at 43.

133. *See id.* at 43; *see also* SELIGMAN, *OPTIMISM supra* note 3, at 5 (inviting the inference that learned optimism alone may work to solve problems that arise out of a pessimistic explanatory style, but that harms or ills that are not the product of explanatory style, such as the schedule of a student’s law school day, may not be entirely cured by learning optimism). Seligman’s work invites the supposition that a student’s approach to those problems will almost likely be improved by using an optimistic explanatory style.

134. *See* Catherine Gage O’Grady, *Cognitive Optimism and Professional Pessimism in the Large-Firm*

optimism omit the cultural values of a large segment of our global society.¹³⁵ Catherine Gage O’Grady, summarizing the work of these critics, notes “that optimism may be maladaptive for people raised in collectivist cultures, rather than individualistic cultures, where harmonious relationships with others and ‘fitting in’ are so valued and expected that people often have an ‘interdependent view of self.’”¹³⁶

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.¹³⁷ Examples include discovering a plane has run out of fuel in mid-flight, anticipating enemy movements in the theater of war, and deciding how much food to take on a survivalist journey.¹³⁸ In such situations, 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.¹³⁹

However, in terms of basic task motivation, mental health, and life satisfaction, studies suggest that optimism is a powerful tool¹⁴⁰—most of the time. Manju Puri and David T. Robinson’s study of optimism in relationship to financial health and economic decision-making suggests that extreme optimists¹⁴¹ are less effective¹⁴² in making lifetime economic decisions than their counterparts who expressed what the researchers called a more moderately optimistic outlook.¹⁴³ Extreme optimists are more likely to overestimate their life-spans, to take greater financial risks, and to engage in behaviors like day trading and other risky activities.¹⁴⁴ However, despite the rash behavior of this marginal group, Puri

Practice of Law: The Optimistic Associate, 30 LAW & PSYCHOL. REV. 23, 36 n.102 (2006) (explaining the work of Peterson and Chang).

135. *Id.*

136. *Id.* at 36. “Collectivist culture is a term used to designate the cultural trait of giving primacy to the goals and welfare of groups in the view of the world related to relationships with other humans.” Jeanne McNett, *Collectivist Culture*, in THE BLACKWELL ENCYCLOPEDIA OF MANAGEMENT (Gary Cooper ed., 2010), available at http://www.blackwellreference.com/subscriber/uid=428/tocnode?id=g9780631233176_chunk_g97806312349376_ss1-67 (on file with the *McGeorge Law Review*) (extract).

137. SELIGMAN, OPTIMISM, *supra* note 3, at 208-09.

138. *See id.* at 209.

139. *Id.*

140. *See generally* Krieger, *Dark Side*. *See also* SELIGMAN, OPTIMISM, *supra* note 3, at 5 (for the proposition that optimism, if innate or learned, may fight depression, promote career success, increase general likeability, and support greater physical health).

141. Puri & Robinson, *supra* note 52, at 77 (“We use life expectancy miscalibration as our measure of optimism. This involves comparing respondents’ self-reported life expectancy to that implied by actuarial tables.”).

142. “We find, interestingly, that moderate optimism correlates to reasonably sensible economic decisions while extreme optimism correlates to seemingly irrational decisions.” *Id.* at 72. “We find that more optimistic people work longer hours, anticipate longer age-adjusted work careers, and are more likely to think that they will never retire. This holds even after controlling for demographics, health quality, and whether the respondent is self-employed.” *Id.* at 73.

143. *Id.*

144. *Id.* at 74.

and Robinson concluded that optimism was generally a beneficial trait, likening optimism to red wine, which in moderate amounts is quite good for the body, but which in vast quantities will produce alcoholism.¹⁴⁵

Optimism, then, is something that roughly one-third of the population has in seemingly unshakable quantities, while another one-tenth of the population likely has almost none. Some law students may benefit from a special kind of adaptive pessimism that makes them better suited to the competitive law school experience than their similarly high-achieving, yet optimistic peers. For others, reasoned optimism, optimism tempered with reality, is the desired mode.¹⁴⁶ For those people who find themselves in situations likely to produce pessimism, depression, and learned helplessness, optimism must be actively sought and cultivated, because bad events can bring out or heighten pessimism and all of its attendant ills.¹⁴⁷

IV. CREATING THE OPTIMISTIC CLASSROOM

A. *Flexible Optimism*

In a system of flexible optimism, people can learn to call upon optimism and optimism-creating techniques if and when they think optimism would be helpful.¹⁴⁸ That is to say, a pilot flying a plane that has run out of gas ought not to take the most optimistic approach, thinking, for example, that he once heard of a commercial jet that was able to glide for half an hour without fuel, so this jet ought to be able to do the same.¹⁴⁹ Rather, the pilot should choose a more tempered view and try to land the plane as quickly and safely as possible, recognizing a strong likelihood of disaster if he does not. On the other hand, a law student who has fared badly in the first semester of law school, but wishes to improve his grade point average, would be well served to think about his academic situation in a tempered, but optimistic way.¹⁵⁰ The idea that his first semester grades are going to be the cause of some immediate and immutable disaster is not beneficial for the law student, nor is the idea that his grades can

145. *Id.* at 96-97 (“The idea that optimism can be both good and bad straddles two opposing views in the psychology literature. Our results suggest that many of the negative traits associated with behavioral biases may only be salient for those with extreme bias, and that modest amounts of behavioral bias, be it overconfidence, self-attribution bias, or optimism, may indeed be associated with seemingly reasonable decision-making.”).

146. *Id.* at 96.

147. See generally SELIGMAN, HELPLESSNESS, *supra* note 84; SELIGMAN, OPTIMISM *supra* note 3.

148. SELIGMAN, OPTIMISM, *supra* note 3, at 115.

149. See *id.* at 114 (“[P]essimism serves the purpose of pulling us back a bit from the risky exaggerations of our optimism . . .”).

150. Optimism in this context will help the student see the task as one that is within his grasp. A pessimist, on the other hand, would give up, taking the first semester grades as an indication that some permanent flaw in him the system, or the world (and perhaps in all of the above) will always prevent him from excelling academically in the law school environment. Such thinking is unproductive and prevents student growth and achievement.

never be improved, that he is helpless to become a more effective learner and test-taker. Instead, a strong belief that he can improve his grades, that the law school exercise is learnable, and that he can take affirmative steps to change his grades in the future, will help the student to discover why he did poorly and to redouble his efforts when a new semester begins. We have a choice to teach students to take a flexible approach to optimism,¹⁵¹ without interfering with the benefits of special pessimism or the general pessimism that evinces itself as prudence in survival situations. Cultivating such optimism is necessary:

Without [optimism] we would never accomplish anything difficult and intimidating, we would never even attempt the just barely possible. Mount Everest would remain unscaled, the four-minute mile unrun; the jet plane and the computer would be blueprints sitting in some financial vice-president's waste basket.¹⁵²

Succeeding in law school, at least for most students, is the epitome of a difficult and intimidating task.¹⁵³ Flexible optimism—a system of attribution that takes the law school learning task in stride—can help students to master that difficult task and achieve learning goals and outcomes at higher levels.¹⁵⁴

Carol Dweck's work has focused on achievement and motivation, providing further evidence that flexible optimism, an optimistic orientation with respect to one's ability to achieve, is essential to success and growth in an academic setting.¹⁵⁵ Early in her career, Dweck noticed when some people are given a difficult task, they give up easily or eschew the challenge altogether, while others relished the opportunity to learn from the exercise even though they realize they might fail.¹⁵⁶ Dweck's research pursued those polarized responses to difficult tasks and evaluated the motivation and behaviors of individuals who engaged

151. SELIGMAN, OPTIMISM, *supra* note 3, at 112.

152. *Id.* at 114.

153. This is based on my personal experience. In the course of my own work with students, I have known many who have complained to me that the law school task is exactly those two things—difficult and intimidating.

154. In many important respects, the goal of employing such language in the classroom is to create “growth mindedness,” or a belief that intelligence can be improved and students can improve their grades and knowledge by working hard and learning from their mistakes. My follow-up to this Article, a paper entitled, “*The Method and the Message*” will explore the interconnectivity between growth-mindedness, attribution style, institutional structures, and individualized feedback methods. (*The Method and the Message*, working paper, on file with author.)

155. See generally CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (2006).

156. Carol Dweck et al., *Implicit Theories of Intelligence Predict Achievement Across an Adolescent Transition: A Longitudinal Study and an Intervention*, 78 CHILD DEVELOPMENT 246, 247 (2007) (“What are the psychological mechanisms that enable some students to thrive under challenge, while others of equal ability do not? Over the past years, one motivational model that has been developed to address this question suggests that core beliefs can set up different patterns of response to challenge and setbacks.”).

156. DWECK, *supra* note 155, at 3-4.

with challenges differently.¹⁵⁷ Ultimately, Dweck's work has shown the fixed mindset, or entity theory of intelligence, is detrimental to motivation and development, and that the growth mindset is essential to achievement, and can be encouraged by instructors and institutions.¹⁵⁸

If we are to help law students respond well to criticism, enabling them to escape the depression that so many law students experience, we must not reinforce the entity theory of intelligence.¹⁵⁹ In developing a flexible optimism that does not reinforce entity-minded conceptions of individual intelligence, it is crucial that instructors avoid ability-praise, telling students that they "are smart."¹⁶⁰ In one study, researchers found that students conditioned by ability praise were more likely to lie about their scores on difficult exams in order to make the researchers interfacing with them believe that the students had lived up to their labels.¹⁶¹

Employing the language of optimism effectively, in a way that promotes "growth-mindedness,"¹⁶² will help professors reorient students to the learning task and, in so doing, increase motivation and improve performance.

B. *The Language of Optimism*

In the law school environment, professors give students feedback, which indirectly communicates either an optimistic or a pessimistic attitude about learning. An extreme example of a pessimistic response to a student's incorrect answer might look or sound something like one of the following: "You always struggle with proximate cause," (Permanent);¹⁶³ "All those study aides are worthless. Not one of them can do you any good," (Pervasive);¹⁶⁴ or "Maybe law

157. *See id.*

158. *See* Dweck, *supra* note 156, at 246-263 (2007) (writing that "some believe that intelligence is more of an unchangeable, fixed "entity" (an *entity* theory). Others think of intelligence as a malleable quality that can be developed (an *incremental* theory). Research has shown that, even when students on both ends of the continuum show equal intellectual ability, their theories of intelligence shape their responses to academic challenge).

159. *Id.* at 250 ("[A]n 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.").

160. DWECK, *supra* note 158, at 74.

161. *Id.* ("So telling children they're smart, in the end, made them feel dumber and act dumber, but claim they were smarter. I don't think this is what we're aiming for when we put positive labels—'gifted,' 'talented,' 'brilliant,'—on people. We don't mean to rob them of their zest for challenge and their recipes for success. But that's the danger."); *see generally* Claudia M. Mueller & Carol S. Dweck, *Praise for Intelligence Can Undermine Children's Motivation and Performance*, 75 J. PERSONALITY & SOC. PSYCHOL. 33 (1998).

162. *See supra* note 158 and accompanying text.

163. *See* SELIGMAN, *OPTIMISM*, *supra* note 3, at 44-49, 52, 58, 76-81, 83.

164. *Id.* at 58, 76-80, 83.

school just isn't for you," (Personal).¹⁶⁵ It has been my observation that those of us charged with teaching law students express our frustration or communicate an answer's failings, more often than we like, in language that is counterproductive to student growth and development.

Perhaps a more common feedback situation is one in which a professor is confronted with a clearly incorrect answer in the course of a Socratic dialog and, not wanting to respond to the incorrect student with targeted criticism, simply ignores the answer, dismisses it out of hand, and calls on another student to tackle the problem before the class. That feedback may be silent, but in many important respects, it is likely just as negative as a directed pessimistic statement. This silent response not only fails to encourage flexible optimism, but likely also serves to defeat and embarrass the student in the same way that pessimistic feedback would.¹⁶⁶ In order to give feedback that helps students to develop flexible optimism, professors should give negative feedback in a way that reflects an optimistic attribution style.¹⁶⁷ Optimistic feedback can guide students to a correct understanding of difficult problems without undermining students' learning processes. 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 one of the following: "You haven't reached the right answer yet," (Temporary); "There is a better answer to this problem," (Specific); "You have the case in front of you—use its exact language, and you can develop a better answer," (Specific/Hopeful); or "This next time around, consider the particular facts before you. Do you see how you can reach a better answer?" (Hopeful).

These more optimistic responses alert 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 pessimistic or silent criticism, optimistic criticism is not broadened out to the entire student or to the student's ability to engage with the subject as a whole. The optimistic line of criticism also encourages the student to be hopeful rather than to be helpless. The message the student hears is not that she should give up, but that her poor performance need not be replicated in the future if she fills in the gaps in her understanding. Relying on the body of optimism research, we can infer that such optimistic

165. *Id.*

166. 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."

167. Because feedback trains students to think about their performance in law school, the way that professors give feedback will shape students thoughts about their performance. Giving feedback that encourages an optimistic attribution style with respect to mistakes, shortcoming, lower-than-expected grades, etc, will help law students to remain resilient in the face of academic setbacks, and that resilience will, in turn, help the students to work to overcome whatever problem(s) they may face.

language should help students to fight pessimism, at least with respect to their attitudes regarding law school exams, exercises, and classroom discussions.

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

Professors can teach students that they ought to employ flexible optimism,¹⁶⁸ turning on their optimism when they consider the academic tasks that make up a legal education, and off when they find themselves in situations better handled with a healthy dose of pessimism. Law professors, who in many ways teach law students what and how to think, can model task-oriented optimism during both in-class discussion and in written feedback. That way, professors can help students to think optimistically about their performance, helping students to improve their grades and realize their potential, rather than seeing themselves as defeated from the outset.¹⁶⁹

C. *Putting Optimism to Work: A Composite Case Study*

Consider Mandy,¹⁷⁰ a student who came to see me at the beginning of Spring semester. She was not on academic probation, but had performed below her expected range, receiving high “C” and low “B” range grades. Mandy had been an “A” student in a well-regarded undergraduate program. After college she completed a Master’s degree at another well-regarded school, and had also been awarded a prestigious fellowship in connection with the work she did as a graduate student. Mandy came in to ask a question about a class assignment and while in my office, expressed dejection and feelings of worthlessness that she attributed to her grades from the previous semester.

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

168. See SELIGMAN, *OPTIMISM*, *supra* note 3, at 112, 115, 208, 281, 285-92.

169. *Id.*

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

Mandy exhibited typical signs of pessimism, depression, and learned helplessness. I talked frankly with Mandy about her performance, mastery level, exam taking style, and methods of preparation. As we talked, I reframed Mandy's negative ideas about herself using language that was temporary, specific, and hopeful. Where Mandy had said that she was a failure, I reframed her idea in terms of a temporary setback, characterizing her as a student who had not yet mastered the fundamentals of legal learning. Then, I talked with her to find specific targets to work toward; she could learn the material at a deeper level, she could do practice problems, or she could go into the exam expecting that she would be asked to apply the concepts from her class to a novel situation—a legal hypothetical. That task, in turn, would inform the depth and organization of her outlines, which, prior to our meeting, were not very thorough or neat. During our discussion, I was careful to communicate hopeful ideas, reminding Mandy that law school draws on a particular set of skills, and that those skills could be learned with thoughtful study and determined, hard work.

By the end of the semester, Mandy's outlook had changed. Not only did she believe that she could learn to go to law school and to succeed at the particular set of tasks law school required, she was once again enthusiastic about being a law student. All semester long, I noticed that she remained somewhat wounded from her first semester experience,¹⁷¹ but over time, she developed an optimistic belief that she was in control of her fate; that she could excel if she worked hard and applied herself in the right ways. She was no longer helpless and depressed. Instead, she was energized.

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

Regardless of the subject they teach, all law professors can employ the language of optimism in classroom speech, written feedback, and one-on-one meetings.¹⁷² In the doctrinal classroom, students can benefit from the language of optimism, can be encouraged to tackle a question for a second time, and can continue to work at mastering difficult concepts. In the legal writing classroom, students can be encouraged to rework written arguments, to redouble research efforts, and to work harder on later drafts of multi-phase projects.

171. This is an observation based on general comportment, behavior, *etc.*

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

Krieger's research has shown that even top students, those whose performance is the most outstanding, experience depression and suffer a decline in subjective well-being during the law school experience.¹⁷³ If both top students and students whose performances have not met their expectations are experiencing depression (and likely pessimistic thoughts and learned helplessness) then all students, not just struggling or mid-range students, can benefit from experiencing the language of optimism in the classroom.

V. CONCLUSION

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

173. See Krieger, *Dark Side*, *supra* note 4, at 123.