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Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School

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ALTERNATIVE JUSTIFICATIONS FOR LAW SCHOOL ACADEMIC SUPPORT PROGRAMS: SELF-DETERMINATION THEORY, AUTONOMY SUPPORT, AND HUMANIZING THE LAW SCHOOL

*Louis N. Schulze, Jr.**

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I. INTRODUCTION

A problem exists in law schools on the issue of academic support. While some schools now include extensive academic support opportunities within their curricula, many other schools devote few resources to this endeavor while simultaneously advertising to the contrary on their websites. Although many law schools boast of pervasive academic support services for students, oftentimes the truth is that one administrator or faculty member serves as the sole avenue of academic support, and that person's overall duties dwarf the amount of time they spend on support. So why do some schools find it crucial to advertise academic support but fail to fund it adequately?

Perhaps a law school administration's reticence to commit substantially to academic support is predicated upon an inability of those programs to guarantee demonstrable results. Although a dean's definition of the term "results" might differ from that of the faculty, generally both parties want to see two things: better academic performance by the law school's students and an increase in the rate at which the school's graduates pass the bar examination. As a result, proponents of academic support programs have generated articles attesting to demonstrate empirical evidence of such results.¹ Meanwhile, naysayers

1. See Leslie Yalof Garfield & Kelly Koenig Levi, *Finding Success in the "Cauldron of Competition": The Effectiveness of Academic Support Programs*, 2004 BYU EDUC. & L.J. 1, 24 (2004) (arguing that "there was a significant difference between" the first-semester GPA of the participants in the Workshop Series to those of all non-participants); Linda Jellum & Emmeline Paulette Reeves, *Cool Data on a Hot Issue: Empirical Evidence that a Law School Bar Support Program Enhances Bar Performance*, 5 NEV. L.J. 646, 648 (2005) ("[S]tatistical analysis supports the conclusion that a bar support program [housed within the ASP] has improved the University of Richmond School of Law's bar passage rate."); Adam G. Todd, *Academic Support Programs: Effective Support Through a Systemic Approach*, 38 GONZ. L. REV. 187, 189 (2002-2003)

criticize the empiricism of such articles² and suggest that academic support is not cost-effective because it fails to convert *each* underperforming student into a successful one. Setting aside for a moment the important project of empirically proving the impact of academic support, the question arises whether other factors might justify the expansion of these sorts of services. This Article examines alternative justifications for law school academic support programs (ASPs) beyond statistical analyses of grade point average (GPA) or bar passage improvement.

This Article's thesis is two-fold. First, ASPs help humanize the law school environment. By providing a source of encouragement and assistance in an environment too often devoid of any positive support, ASPs can leave students feeling that their law school actually cares whether they succeed. For those in academia who believe that providing a more humane law school environment is an admirable and worthwhile goal, this Article serves to prove that ASPs contribute to providing that environment. Second, ASPs help a law school satisfy conditions of self-determination theory (SDT) and, relatedly, provide "autonomy support." There are three factors generally associated with autonomy support: (1) choice—professors of the law school provide students with as much choice as possible; (2) rationale—when providing choice is not feasible, professors or the law school explain why; and (3) perspective—professors or the law school demonstrate that they care about the viewpoints of the students.³ In a recent study, students who experience "greater autonomy support had greater basic need satisfaction, performed better—as measured by (normalized) grade achievement and passage of their bar examination, had more internal motivation when

("As a result of [Chase College of Law expanding ASPs and other services,] bar passage has improved dramatically.").

2. See Jonathan L. Entin, *Scholarship About Teaching*, 73 CHI.-KENT L. REV. 847, 855–56 (1998) (arguing that "one-shot case studies" and "static-group comparisons" are not reliable in determining internal validity—whether the educational program made a difference—and external validity—whether the results can be reproduced by the general population).

3. Gerald F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, but Our Course*, 47 WASHBURN L.J. 367, 369 (2008) (discussing SDT).

seeking a lawyer position, and were happier.”⁴ As such, if an ASP provides autonomy support, it will indirectly provide an increased likelihood of real learning and thus professional success.

Part II of this Article further explores what is meant by ASP; it chronicles the historical development of law school ASPs and explains some of the methods these programs now employ. Part III discusses the “Humanizing the Law School” movement and describes the general philosophies and goals of the project, allowing a subsequent demonstration of how ASPs fulfill these goals. Part IV focuses on the psychological concepts of SDT and autonomy support. Part V analyzes exactly how the methods of academic support fulfill the goals of the humanizing movement and lead to an increase in perceived autonomy support in students; it refers to specific examples of law school ASP methods to prove this point. Part VI concludes that more schools should adopt or expand ASPs and introduces an empirical study testing the dual theses of this Article that will be published in a subsequent piece.

II. WHAT IS LAW SCHOOL ACADEMIC SUPPORT?

Proving the thesis that ASPs humanize legal education, enhance self-determination, and provide autonomy support requires the initial step of defining these terms. Unfortunately, these three terms may be foreign to many members of the legal academy. ASPs all too frequently are virtually hidden from faculty at many law schools, oftentimes due to ASP professionals’ relatively marginalized position in the hierarchy of the law school structure. This is a disservice to all because, upon closer inspection, many doctrinal faculty would find that ASP professionals share many of the same methods and goals as traditional casebook instructors. As such, with the hope of shedding light on such common ground, this section details the term ASP.

4. Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 262 (2008).

A. Law School Academic Support Programs

The term ASP has come to mean different things to different people. At one school it can include a focus purely on bar passage rate; at another school an ASP can focus almost exclusively on supporting first-year students. The success of an ASP depends largely upon tailoring its structure around the needs and resources of the law school it serves. Accordingly, defining the term ASP is difficult.

Nonetheless, scholars have offered several possibilities. Professor Sheilah Vance defines an ASP as “a comprehensive program designed to help law students succeed academically through a combination of substantive legal instruction, study skills, legal analysis, legal writing, and attention to learning styles.”⁵ This serves as an adequate starting place, but for a more detailed understanding of what ASPs are all about, one must look at their historical development and understand what they offer now.

B. A Brief History of Law School Academic Support

Unlike other sectors of the academy, law schools were slower to adopt academic support. Perhaps this is not surprising given the sink-or-swim mentality of the traditional law school or the hardscrabble attitude of many lawyers. Undergraduate academic support efforts began in the 1960s in an attempt to provide academic counseling to struggling students.⁶ These programs worked with at-risk students, and most in the field urged a one-size-fits-all methodology focused on remedying poor study skills.⁷ After initial reports of favorable results, more thorough empirical analyses demonstrated that most of the success attained by such programs was either short-lived or overstated.⁸

5. Sheilah Vance, *Should the Academic Support Professional Look to Counseling Theory and Practice to Help Students Achieve?*, 69 UMKC L. REV. 499, 503 n.24 (2001).

6. Paul T. Wangerin, *Law School Academic Support Programs*, 40 HASTINGS L.J. 771, 773 (1989).

7. *Id.*

8. *Id.*

In response, undergraduate ASPs went back to the drawing board. Evidence emerged in the 1970s that programs tailored to address students' individual weaknesses and strengths provided actual long-term benefits.⁹ This effort begat the now common practice of beginning academic support efforts with an individualized assessment of the root causes of a student's academic difficulties.¹⁰ Other methods soon developed that led to statistically demonstrable positive results.¹¹ Although debate still exists on the efficacy of undergraduate academic support, it is generally accepted that a sophisticated program using effective methodology can lead to significant and real improvements in students' success.

Law schools finally caught on fully during the 1980s with isolated academic support efforts arising out of legal writing programs, the Black Law Students Association, and other groups.¹² Although other predecessors existed,¹³ academic

9. *Id.* at 773–74.

10. *Id.* at 778.

11. *Id.* at 781–83. For instance, Professor John Roueche of the University of Texas proved that casual programs (those run informally and part-time by professors) showed little effectiveness. *Id.* at 781. Further, faculty participation in such programs had to be voluntary and not compulsory. *Id.* Roueche also showed that successful programs also usually include a course on study skills, provide academic credit to participants, and use the assistance of peer or student tutors. *Id.* at 781–83. See generally JOHN E. ROUECHE ET AL., COLLEGE RESPONSES TO LOW-ACHIEVING STUDENTS: A NATIONAL STUDY (1984) (conducting a national study seeking to discover and report how American colleges and universities organize, staff, and operate various programs to meet the needs of low-achieving students).

12. See Ellen Yankiver Suni, *Academic Support at the Crossroads: From Minority Retention to Bar Prep and Beyond—Will Academic Support Change Legal Education or Itself Be Fundamentally Changed?*, 73 UMKC L. REV. 497, 497–98 (2004) (“Academic support as a concept emerged in the 1980’s, largely as an outgrowth of the influx of minorities into law school and the desire to diversify the legal profession and legal education.”). The literature on the origin of the law school academic support movement is a bit unclear as to the decade when the movement started. Compare Jean Boylan, *The Admission Numbers Are Up: Is Academic Support Really Necessary?*, 26 J. JUV. L. 1, 1–2 (2006) (asserting that law school ASPs began in the 1960s), and Kathy L. Cerminara, *Remembering Arthur: Some Suggestions for Law School Academic Support Programs*, 21 T. MARSHALL L. REV. 249, 252 (1996) (“Law schools began to develop academic support programs to assist students admitted under their affirmative action admissions programs in the 1960s and 1970s.”), with Richard Cabrera & Stephanie Zeman, *Law School Academic Support Programs—A*

support as a movement dawned with the Access 2000 conference,¹⁴ gained momentum with a full day mini-workshop at the Association of American Law Schools (AALS) meeting in 1989,¹⁵ and coalesced in earnest in 1992 with the Law School

Survey of Available Academic Support Programs for the New Century, 26 WM. MITCHELL L. REV. 205, 205 (2000) (“[ASPs] are relatively new phenomena at United States law schools. [ASPs] in law schools began as an attempt to emulate undergraduate programs which began in the early 1960s . . .”). A fair account of the situation would recognize that law school ASPs can trace their roots to responses to the needs created by the affirmative action initiatives of the 1960s. See Leslie Yalof Garfield, *The Academic Support Student in the Year 2010*, 69 UMKC L. REV. 491, 492 (2001). For instance, in 1966, Harvard’s summer program recruited students from southern black colleges and introduced them to the possibility of applying to law school and pursuing a legal career. Albert Y. Muratsuchi, *Race, Class, and UCLA School of Law Admissions, 1967–1994*, 16 CHICANO-LATINO L. REV. 90, 92 (1995). While isolated efforts such as these existed, the academic support movement, per se, really did not get its collective foot in the door, systemically until the 1980s. See Garfield & Levi, *supra* note 1, at 1 (noting the adoption of ASPs at law schools “[f]or the past three decades”).

13. For instance, the first centralized effort at providing academic support by means of a pre-law school program emerged in the Council on Legal Education Opportunity (CLEO) Institutes. Starting in the 1960s, the CLEO Summer Institute could be characterized as the predecessor to the academic support movement in that, like current pre-law school initiatives offered by ASPs, CLEO offered minority students a “rigorous pre-law preparatory summer” experience aimed at introducing students to law school, law professors, and law school exams. Elizabeth Rindskopf Parker & Sarah E. Redfield, *Law Schools Cannot Be Effective in Isolation*, 2005 BYU EDUC. & L.J. 1, 11 (2005) (internal quotation marks omitted); see also Wangerin, *supra* note 6, at 775 (“CLEO administrators invite minority students with inadequate standardized test scores and undergraduate grades to attend free summer programs.”).

14. See Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F. L. REV. 839, 842 & n.12 (1997). *Access 2000: The Challenge to Insure Diversity in the Legal Profession* was the first major conference at which law school ASP issues were discussed. *Id.*; see also Judith J. Devine & Jennifer D. Odom, *Do Academic Support Programs Reduce the Attrition Rate of First-Year Law Students?*, 29 T. MARSHALL L. REV. 209, 214 n.22 (2004) (stating that the Law School Admissions Council “committed funds and personnel for ASP workshops and an ASP guide for law schools”).

15. Lustbader, *supra* note 14, at 842. Other “round table” forums were organized at subsequent AALS annual conferences, all focusing on the emerging field of law school academic assistance. *Id.* Also, the Law School Admissions Council “committee on minority affairs . . . promote[d] the proliferation of ASPs by retaining a consultant who: researched existing programs to collect a variety

Admission Council's five-day institute at the University of Colorado in Boulder.¹⁶

An early goal in this movement was finding a model ASP framework. In hindsight, this appears to be a similar misstep to that taken by undergraduate ASPs, which focused for some time on a "one-size-fits-all" model of academic counseling.¹⁷ Just as undergraduate academic support professionals realized that academic counseling had to be individualized to fit each student's needs, law school academic support professionals realized that each law school "must consider the unique needs of its students, faculty, administration, and institution, as well as the available resources."¹⁸ As the academic support movement solidified, the development of custom-tailored ASPs became a central facet of mainstream thinking.

The ASP movement has flourished in the last decade.¹⁹ Most law schools now have an ASP,²⁰ and many have a multi-faceted program design.²¹ The American Association of Law Schools

of program designs, instructional materials, and administrative models; created a manual for ASPs; [and] traveled to numerous schools to help them develop a program" *Id.*

16. *Id.*; Suni, *supra* note 12, at 498. The Academic Assistance Training Workshop in June of 1992 "was a Mecca for ASP professionals because it gave them the opportunity to break through their respective isolation, and it created a synergy that carried professionals and their programs to unimagined new heights." Lustbader, *supra* note 14, at 842; *see also* Suni, *supra* note 12, at 498 (noting that previously many ASP professionals worked in "isolation at their schools" and suggesting the ASP movement emerged "[a]s a result of networking and information-sharing at that conference").

17. *See supra* notes 6–11 and accompanying text.

18. Lustbader, *supra* note 14, at 842 n.13.

19. *See* Suni, *supra* note 12, at 498 (stating that almost all schools now report having some form of academic support).

20. Kevin H. Smith, *Program Evaluation: Defining and Measuring "Success" in Academic Support Programs*, 2003 MICH. ST. U. DET. C. L. L. REV. 177, 178 (2003) ("The number of law schools with [ASP]s increased dramatically over the past decade. The vast majority of ABA-accredited law schools now offer some form of [ASP].").

21. *See, e.g., Academic Advising*, N.Y.L. SCH., http://www.nyls.edu/academics/academic_advising (last visited Oct. 23, 2010) (including a pre-law school summer legal methods course, weekly tutorial meetings with upper-class Teaching Fellows, a writing specialist, and Community Advising Groups); *Academic Year Program*, SEATTLE U. SCH. L., http://www.law.seattleu.edu/Academics/Academic_Resource_Center/Program_Overview/Academic_Year_Pro

includes a section for Academic Support,²² the Law School Admissions Council sponsors a biennial national workshop and more frequent regional workshops,²³ and regional consortiums of academic support professionals have emerged.²⁴ The next section explores the curricular design of these relatively new ASPs.

C. The Current Methodologies of Providing Academic Support

As previously mentioned, law schools must choose the academic support methods that best suit their students, faculty, and curricula. As a result, law school academic support methods around the nation are diverse. Nonetheless, some methods have become mainstream, while others are more innovative.

The methodologies of the law school academic support community can be sorted into four temporal categories: (1) pre-law school academic support, (2) first-year academic support, (3) upper-class academic support, and (4) post-law school academic support.²⁵ These categories will be discussed briefly in turn.

gram.xml (last visited Oct. 23, 2010) (including first-year orientation workshops, the use of second and third-year Teaching Assistants, and a bar exam strategy workshop); *Support*, NEW ENG. L. | BOS., <http://www.nesl.edu/exceptional/support.cfm> (last visited Oct. 23, 2010) (including a first-year “Academic Excellence” class, a for-credit second year “Legal Analysis” class for students who underperformed in the first year, and a for-credit bar preparation course in the final semester of law school).

22. See *Association of American Law Schools Section on Academic Support*, UMKC SCH. L., <http://www.law.umkc.edu/faculty/profiles/glesnerfines/asp/asp.htm> (last visited Oct. 22, 2010).

23. See Suni, *supra* note 12, at 498 n.11. The biennial conferences included Boulder in 1992, William & Mary in 1993, Hofstra in 1997, Kansas City in 2000, Seattle in 2002, Las Vegas in 2005, Miami in 2007, and St. Louis in 2009. *Id.* (Boulder in 1992, William & Mary in 1993, Hofstra in 1997, Kansas City in 2000, Seattle in 2002, Las Vegas in 2005); *LSAC Academic Assistance Training Workshop Update*, LAW SCH. ACAD. SUPPORT BLOG (Apr. 28, 2009), http://lawprofessors.typepad.com/academic_support/2009/04/lsac-academic-assistance-training-workshop-update.html (St. Louis in 2009); *Great ASP Workshop in Miami*, LAW SCH. ACAD. SUPPORT BLOG (June 25, 2007), http://lawprofessors.typepad.com/academic_support/2007/06/great-asp-works.html (Miami in 2007).

24. See, e.g., BY-LAWS OF THE NEW ENGLAND CONSORTIUM OF ACADEMIC SUPPORT PROFESSIONALS (NECASP) (2009) (on file with author).

25. See Ricardo Villarosa & Ruth Ann McKinney, Conference Presentation: The Five W’s of Strong Academic Support Programs 2 (2008) (on file with author).

1. Pre-Law School Academic Support Methods

Pre-law school academic support methods usually include programs that occur prior to the regular law school orientation. These programs introduce students to the various concepts they will face in the near future: how law school classes are conducted, how legal problems are analyzed, how legal reasoning is achieved, etcetera.²⁶ Studies of these programs show mixed results. Shorter pre-orientation programs usually show little evidence of impact on students' law school grades.²⁷ More expansive programs, by contrast, such as the CLEO Summer Institute,²⁸ show better results.²⁹ Regardless of any impact upon grades, these programs often have intangible yet important, consequences such as community-building, easing the apprehension of starting law school, providing a substantive

26. See Cabrera & Zeman, *supra* note 12, at 210; see also Jean Boylan, *Crossing the Divide: Why Law Schools Should Offer Summer Programs for Non-Traditional Students*, 5 SCHOLAR 21, 27–30 (2002) (describing the types of in-house summer programs as: (1) those focusing on legal skills; (2) those including substantive classes; and (3) those providing mini-introductions to the law school environment).

27. See Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 172–73 (1995) (“[T]he summer program [at one law school] clearly ha[d] no important effect on the academic performance of students after their first semester of law school . . .”).

28. See *What Is CLEO*, CLEO SCHOLARS, <http://www.cleoscholars.com/index.cfm?fuseaction=Page.viewPage&pageId=498&parentID=482&nodeID=2> (last visited Oct. 22, 2010). CLEO was founded in 1968 “as a non-profit project of the ABA Fund for Justice and Education to expand opportunities for minority and low-income students to attend law school.” *Id.* CLEO offers a six-week, Pre-Law Summer Institute at a number of law school campuses. *Id.* The Summer Institute is described as follows: “[d]esigned to evaluate the student’s capacity for learning the law while simultaneously acclimating them to the law school process, the curriculum is taught by full-time law professors and simulates the rigors of the first year of law school.” *What Is CLEO?*, A.B.A., <http://www.abanet.org/cleo/whatis.html> (last visited Oct. 22, 2010).

29. Eulius Simien, *The Law School Admission Test as a Barrier to Almost Twenty Years of Affirmative Action*, 12 T. MARSHALL L. REV. 359, 383–84 (1987) (focusing on law school graduation rate of CLEO alumnae as indicative of its success). *But see* Knaplund & Sander, *supra* note 27, at 183 n.65 (suggesting, based on data admittedly lacking statistical significance, that the CLEO Summer Institute did not provide measurable academic improvement to participants).

head-start, and supporting non-traditional law students.³⁰

2. First-Year Academic Support Methods

First-year academic support methods are myriad. Some programs focus initially on students with academic indicators showing a potential for the need for assistance.³¹ Other programs focus primarily on minority or non-traditional law students.³² Still other programs take a different approach, remaining open to all students and slowly narrowing in on students whose law school performance indicates the need for support.³³

Oftentimes, the decision of which style of program to implement depends upon the individual law school's philosophy regarding the potential stigma students might feel as a result of the ASP.³⁴ For instance, a program focusing strictly on students

30. See Boylan, *supra* note 26, at 26 (calling for all law schools to adopt pre-law school programs to offset the disadvantage suffered by students lacking cultural exposure to the Socratic method).

31. See Garfield, *supra* note 12, at 494–96.

32. See *id.*; see also Paula Lustbader, *Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice*, 4 SEATTLE J. SOC. JUST. 613, 629 (2006) (noting that the ASP at Seattle University School of Law is for non-traditional students).

33. Dionne L. Koller, *Legal Writing and Academic Support: Timing Is Everything*, 53 CLEV. ST. L. REV. 51, 54–55 (2005–2006). For instance, many ASPs provide weekly or occasional workshops in the first semester, open to all students, which focus on study skills all students need, such as outlining, case-briefing, reading cases, etcetera. See, e.g., *id.* at 55. These programs often employ individual counseling only at the behest of the student or if a professor refers a student due to the observation of the need for support. *Id.* In the second semester, though, these programs may begin to target students for individual counseling of other remedial measures based upon a student's underperformance on mid-year exams. *Id.* In this way, any stigmatization effect is not an artificial “self-fulfilling prophecy” because the student received deficient grades prior to individual targeting for academic support. See Cynthia Schmidt & Ann L. Iijima, *A Compass for Success: A New Direction for Academic Support Programs*, 4 CARDOZO PUB. L. POL'Y & ETHICS J. 651, 680–81 (2006) (“[T]eachers’ expectations of students are communicated to the students by various cues, and that students respond to those cues by performing up or down to those expectations.”).

34. Chris K. Iijima, *Separating Support from Betrayal: Examining the Intersections of Racialized Legal Pedagogy, Academic Support, and Subordination*, 33 IND. L. REV. 737, 773 (2000) (noting the stigma associated

with lower academic indicators, such as LSAT scores or undergraduate GPA, may run the risk of sending the message to those students that the law school believes they are unlikely to succeed or that such students have a history of failing at the law school.³⁵ As a result, some ASPs will eschew this approach to avoid any potential “self-fulfilling prophecy”³⁶ that students tagged with the stigma of working with a “remedial” program ultimately might fail because the school implicitly told them they would fail.

Philosophy aside, first-year ASPs employ a myriad of different methodological techniques. These include tutoring or guided study groups by successful upper-class students, workshops on study or exam skills, academic counseling, regularized classes, advising or mentoring programs, resource libraries, and faculty-provided feedback on student work.³⁷

with participating in ASPs as a critical issue).

35. See Koller, *supra* note 33, at 54–55 (discussing the stigma potentially created by targeting students for academic support prior to signs of need); Todd, *supra* note 1, at 190 (arguing that a poorly run or underfunded ASP can actually harm students and hinder improvement in the legal academy).

36. Schmidt & Iijima, *supra* note 33, at 680. This phenomenon occurs when a student receives implicit or explicit input from the law school, causing the student to believe that he or she has been “diagnosed” as likely to fail. See *id.* at 681. This student then internalizes this message, made all the more powerful by the fact that professional educators (themselves trained in law) have come to this conclusion. The internalization of this message leads to the belief by the student that, regardless of their hard work, they are destined to fail. As a result, the student works less diligently or, in the alternative, simply encounters a diminished self-esteem regarding their academics; in either case, the student underperforms not due to any real deficiency they possessed entering the law school, but instead due to the perceived belief that they have been tagged as destined to fail. See *id.* (suggesting that “the stigma of offering academic support” can cause students to “perform down to their own lowered expectations and to their perception of the law school’s expectations”).

37. Cabrera & Zeman, *supra* note 12, at 209–10. An initial decision to be made is whether to employ large classroom academic support, individual academic support, or both. Large classroom academic support usually includes instruction relevant to all first-year students. Topics often include outlining, case-briefing, reading cases, legal analysis, and others. See Ollivette E. Mencer, *New Directions in Academic Support and Legal Training: Looking Back, Forging Ahead*, 31 S.U. L. REV. 47, 51–54 (2004). The theory is that instead of forcing students to rely on the law school rumor mill to learn these skills, academic support classes provide centralized instruction so as to control the message and lead students towards best practices. In theory, this does away

Once academic counseling is initiated, it still can take many different forms. One format is driven by the philosophy that the goal of academic support should be to help students understand how to teach themselves to learn more efficiently. This sort of academic counseling often focuses on meta-cognition—thinking about thinking,³⁸ focusing students on their preferred learning style,³⁹ and creating “self-learners”—students able to teach themselves.⁴⁰ This approach plays into the notion of autonomy

with the competition for the “best” outlines because all students have access to the methodology of outlining. This, in turn, then humanizes the law school. See Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN L.J. 313, 316 (2008) (“Legal education cannot truly be humanized while so many faculty members are wedded to an educational philosophy grounded in a competitive ethos.”); Michael Hunter Schwartz, *Humanizing Legal Education: An Introduction to a Symposium Whose Time Came*, 47 WASHBURN L.J. 235, 235–36 (2008) [hereinafter Schwartz, *Humanizing Legal Education*] (“[L]aw schools should demonstrate respect for students, provide a supportive environment, encourage collaboration, produce graduates who ‘nurture quality of life,’ ‘support student autonomy,’ provide increased practice and feedback, meet the needs of all students by varying teaching methodologies, teach ‘self-reflection and lifelong learning skills’ and ‘self-directed learning skills,’ and produce graduates who demonstrate self-efficacy.”).

Individualized academic support, by contrast, focuses on a student’s particular strengths and weaknesses, thus necessitating an initial discussion with the student aimed at discerning where academic support measures can be targeted. As a matter of resource conservation, many programs must choose to make individual counseling available only to students with a demonstrated deficiency, such as underperformance on mid-year exams. See Mencer, *supra*. But see Todd, *supra* note 1, at 192 (“Focusing solely on those students at the bottom of the law school class, unfortunately, has a tendency to marginalize them.”). Otherwise, if academic counseling was available to all students, those at the top of the class, who are always hungry for any source of an edge, might monopolize the time of the academic support faculty at the expense of the more evasive students at the bottom of the class who are more in need of such counseling.

38. “Metacognition is a learner’s awareness of the learning process itself.” Jacquelyn H. Slotkin, *An Institutional Commitment to Minorities and Diversity: The Evolution of a Law School Academic Support Program*, 12 T.M. COOLEY L. REV. 559, 569 (1995); see Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 2 (2003) (encouraging law professors to vary their teaching styles to encompass active learning).

39. See Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 245–46 (1998).

40. See Paula Lustbader, *Construction Sites, Building Types, and Bridging*

support because it posits the student as the party ultimately responsible for decision making in the learning process.⁴¹

Another form of individual academic counseling is based on the view that many underperforming students may need an authority figure to hold them accountable for keeping up with the studying and practicing techniques employed by students at the top of the class. In this model, the academic support professor “assigns” the student study or practice work, indicating the “due date” for such work. Obviously, the goal is not to add additional work to the student’s schedule,⁴² but to assign the work that other students are doing on their own initiative. For instance, a student needing this sort of support might be required to attend her next academic support meeting having completed her Torts outline, ten multiple choice questions in each class, and one Contracts essay. These are study methods other students are—or should be—completing, but some students might need to hear this message explicitly or have a set due date for motivation. When students complete these assignments, they then see the improvements they have made in terms of their ability to process law, analyze legal problems, and teach themselves how to impact the efficiency and effectiveness of their studies. In this way, academic support provides students with the ability to achieve competence, a central facet of SDT.

Another consideration in sculpting the methodology of the first-year component of an ASP is the degree to which the program should integrate doctrinal material.⁴³ The normative

Gaps: A Cognitive Theory of the Learning Progression of Law Students, 33 WILLAMETTE L. REV. 315, 319–30 (1997); Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 452 (2003) [hereinafter Schwartz, *Teaching Law Students*]; see also Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349, 373–77 (2006) (suggesting law professors vary traditional teaching methods to reach students with attention deficit disorder).

41. See *infra* Part V.A.2.

42. In fact, it has been noted that assigning additional work to the schedule of underperforming law students can be detrimental to their likelihood of success. See Mencer, *supra* note 37, at 53, 74.

43. See Elizabeth M. Bloom & Louis N. Schulze, Jr., *Integrating Doctrinal Material and Faculty into Academic Support Courses*, LEARNING CURVE (Am. Ass’n of Law Sch. Section on Academic Support), Fall 2009, at 13, available at

question this issue raises—should we integrate doctrinal material in academic support?—is easily answered. Empirical evidence suggests that academic support is more effective the closer an ASP works with the actual cases and rules covered in doctrinal classes.⁴⁴ The problem arises, however, because integrating substantive law sometimes raises objections from doctrinal faculty.⁴⁵ It has been stated that academic support professionals often receive a “subtle” message from doctrinal faculty: “Do what you need to help students, but don’t interfere with my teaching.”⁴⁶ Sometimes this message is not so subtle.⁴⁷

Dealing with this political situation often depends upon one’s status at the institution. If the academic support professional is tenured or has the strong support of the faculty or administration, integration of doctrinal materials into the ASP may be possible notwithstanding objections from some individual faculty members. If the academic support professional is not so situated, then he or she should consider adopting methods that dispel objections but nonetheless accomplish the goal of establishing an effective program. Such methods might include co-teaching ASP classes with doctrinal faculty who advocate for

<http://www.aals.org/documents/sections/academicsupport/LearningCurve200912Fall.pdf>.

44. See Knaplund & Sander, *supra* note 27, at 177 (discussing the statistical improvements in the ASP program at UCLA when “Professor A” tied the substance of her ASP class more closely “to the specific problems her students were grappling with in their other courses”). One method to achieve this goal includes using in-class practice exams based upon cases students recently covered in their other courses. *Id.* Another method would be to have a workshop or guided study-group in which the members of the academic support class must explain to the academic support professor a certain area of law they recently learned.

45. See Suni, *supra* note 12, at 504–05 & n.54. On the other hand, many law schools and many professors are showing an increased acceptance of the importance of academic support and in breaking the hierarchical structures that once impeded pedagogical improvement. Anecdotally, many academic support professionals report that doctrinal professors are willing to assist in ASP problem-drafting, co-teaching of classes, and fully integrating the resources of the ASP. The Academic Excellence Program directed by the author has benefited from the full commitment of the faculty and administration of the law school.

46. *Id.* at 505 n.54.

47. *Id.* at 505 n.53.

academic support, teaching an elective class that incorporates academic support methods, or coordinating materials with doctrinal faculty who approve of academic support.⁴⁸

Nonetheless, the notion of providing contextualized or integrated academic support supplies the notion of “competence.” Relatedness is one of the facets of SDT. Part V explains how academic support helps fulfill this as well.

3. Upper-Class Academic Support Methods

Many schools focus their academic support methods on the first year. The justification for this focus likely is that the ASP will help students transition into law school and successfully pass the first year. However, many schools have started to offer academic support in the subsequent years of law school. For instance, schools such as Northeastern University Law School, the University of Connecticut School of Law, and New England Law | Boston offer upper-division courses specifically aimed at students who underperformed in their first year of law school.⁴⁹ These classes are often directly linked with doctrinal courses, such as Professional Responsibility, Remedies, and Evidence.⁵⁰ The goals of such a class are to continue to provide support to students throughout law school, thus improving their practice skills, raising their GPAs,⁵¹ and increasing the students’

48. See Bloom & Schulze, *supra* note 43, at 14; Todd, *supra* note 1, at 200–01.

49. See *Academic Success Program*, NE. U. SCH. L., <http://www.northeastern.edu/law/academics/curriculum/asp/index.html> (last visited Oct. 21, 2010); *Guide to Student Services*, U. CONN. SCH. L., <http://www.law.uconn.edu/student-handbook/guide-student-services> (last visited Oct. 21, 2010); *Academic Excellence*, NEW ENG. L. | BOS., http://www.nesl.edu/exceptional/academic_excellence.cfm (last visited Oct. 21, 2010).

50. See Melinda Drew, *Academic Success Program: Guide to Academic and Disability Services*, NE. UNIV. SCH. L., 4 (2009–2010), <http://www.northeastern.edu/law/pdfs/academics/aspguide.pdf>; *Course Descriptions*, NEW ENG. L. | BOS., http://www.nesl.edu/students/registrar_courses.cfm (last visited Oct. 21, 2010); *Advanced Legal Methods*, U. CONN. SCH. L., <http://www.law.uconn.edu/academics/courses/1098-7550-10> (last visited Oct. 21, 2010).

51. At New England Law | Boston, the first year of the “Legal Analysis” course met these goals. Students who chose to enroll in the course outperformed similarly situated students in several ways: in the grades they received in their Evidence course (which all second-year students take

likelihood of passing the bar exam.⁵²

A related issue is on the rise. Law school ASPs have started to offer bar preparation courses for seniors. The American Bar Association recently abolished its rule banning such courses from receiving credit,⁵³ and more changes are likely on the way. Thus,

contemporaneously); in overall GPA; and in terms of whether they improved their GPA. See Memorandum from Louis Schulze, Assistant Professor of Law & Dir., Academic Excellence Program, New England Law | Bos., to J. Greenberg, Assoc. Dean, New England Law | Bos. (Jan. 30, 2010) (on file with author) (documenting Legal Analysis course statistics). As a result, the next year the class was offered saw a 60% increase in enrollment of eligible students. *Id.*

52. One difficult decision arises, however. ASPs often must struggle with the question whether to grade such courses, to provide academic credit for them, or both. See Lustbader, *supra* note 14, at 841 n.11 (describing the various ASPs schools utilize). Many argue that the role of an academic support professional should be to provide supportive assistance to students as they work towards mastery of the law and success in law school—in other words, being in the students' corner. *Id.* at 841. Providing academic credit and grading these courses, by contrast, posits the academic support professional as less of an advocate and more of a traditional law school professor—objectively and neutrally grading students without regard to any notion of assistive goals. See *id.* at 859 (advocating a student-centered pedagogy).

On the other hand, providing credit for the course allows students to receive academic support within their course load rather than on top of it. Some of the most effective academic support is that which provides students with in-depth legal analysis opportunities and extensive feedback. Requiring students to write essays, complete numerous multiple choice questions, or other projects will likely result in half-hearted efforts unless that work leads to credits and grading. The students take the assignments and feedback much more seriously if they will affect their GPAs. Furthermore, graded and for-credit academic support classes also lend implicit *gravitas* to the ASP. Grading and crediting an ASP class leave students with the impression that the law school values the class and the efforts of the ASP professional. See Todd, *supra* note 1, at 190 (citing Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 484–88 (1996)); see also Leah M. Christensen, *Enhancing Law School Success: A Study of Goal Orientations, Academic Achievement and the Declining Self-Efficacy of our Law Students*, 33 LAW & PSYCHOL. REV. 57, 81 (2009) (“Minimally, the curve increases competition and devalues learning over performance.”); Louis N. Schulze, Jr., *Balancing Law Student Privacy Interests and Progressive Pedagogy: Dispelling the Myth that FERPA Prohibits Cutting-Edge Academic Support Methodologies*, 19 WIDENER L.J. 215, 243–45 (2009) (“[G]raded, for-credit, upper-class academic support courses violate [the Family Education Rights Privacy Act] . . .”).

53. The American Bar Association, which governs law school accreditation, resolved to delete Interpretation 302–7 of the *Standards for Approval of Law Schools* concerning bar examination preparation courses. See SECTION OF LEGAL

many law schools are implementing for-credit and graded bar preparation courses for students.⁵⁴ California Western School of Law (CWSL), for instance, has implemented such a program.⁵⁵ “CWSL’s pre-bar review course introduces students to the bar examination. It continues to refine students’ essay and multiple-choice exam-taking skills, as well as introducing students to the performance exam.”⁵⁶

EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES, at 1, 1 (2008), available at http://www.abanet.org/legaled/standards/noticeandcomment/%2044118_%201.DOC. That interpretation had provided that: “If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation.” *Id.* at 2. With its deletion, schools are now free to provide credit for such courses and require them for graduation. See Leigh Jones, *More Schools Offer Bar Prep Courses*, NAT’L L.J. (Sept. 10, 2008), <http://www.law.com/jsp/article.jsp?id=1202424397151>.

54. See E-mail from James A. Janda, Dir., Peer Mentoring & Bar Preparation Programs, Suffolk Univ. Law Sch., to author (Aug. 4, 2009, 12:17 CST) (on file with author) [hereinafter Janda E-mail]; see also Schulze, *supra* note 52, at 245 (“[M]any schools have created for-credit and/or graded bar courses . . .”).

55. *California Western Bar Review Program*, CAL. W. SCH. L. | SAN DIEGO, http://www.cwsl.edu/main/default.asp?nav=academic_support.asp&body=academic_support/BarReviewHomepage.asp (last visited Oct. 21, 2010).

56. *Id.* Through various ASP contexts, many schools require or strongly recommend ASP courses to students who have struggled academically in law school. This raises the issue of whether requiring struggling students to take an ASP class will lead to stigma, thus leading to the self-fulfilling prophecy effect discussed previously. See *supra* notes 34–36 and accompanying text. Although bar preparation courses are unlikely to face this problem because students across the GPA range are likely to enroll in the class, ASP professionals teaching for-credit or graded courses open only to those on academic probation must deal with the “stigma” issue. See Schmidt & Iijima, *supra* note 33, at 675–76 (suggesting law professors focus on students’ analytical skills to decrease the remedial nature of the program and reduce the associated stigma). If such a course is open only to students in the bottom of the class, simply entering the classroom discloses to all other participants the academic status of every other participant. In other words, everyone in the room knows that everyone else is in the bottom of the class.

As a result, some ASP professionals shy away from required ASP classes or those open only to students on academic probation. Many schools instead focus on private, individual academic counseling for such students, thus ensuring confidentiality and a lack of institutionally created “outing.” On the other hand, the classroom environment has distinct advantages which

4. Post-Law School Academic Support Methods

Most post-law school academic support measures consist of continued assistance for students as they prepare for the bar exam. For many schools, this occurs between graduation and a graduate's first bar exam.⁵⁷ A growing area of concern, however, is law schools' efforts to assist graduates who failed the bar exam.⁵⁸ Many schools attempt to reach out to such graduates, but a desire to not be identified as having failed the bar prevents many graduates from using these services.

III. WHAT IS "HUMANIZING LEGAL EDUCATION"?

To understand how ASPs benefit law students in ways other than just academic success, an investigation into these "alternative justifications" is necessary. Here, the first such alternative justification—humanizing legal education—will be discussed. "Humanizing legal education" refers to a growing movement within the legal academy to study and improve the

individual academic counseling lacks. For instance, group work is inherently impossible if an ASP avoids classroom work. Second, the classroom environment allows the ASP professional to teach concepts to large numbers of people rather than having to repeat the concept dozens of times in individual academic counseling. Furthermore, in an interactive classroom, students can learn from each others' questions and thoughts; while in individual academic counseling, students learn only from the ASP professional, thus reinforcing the common misperception amongst law students that the professors are the holders of knowledge, while students are not capable of self-directed learning. See *id.* at 676 (noting that "a focus on legal doctrine may create dependency problems" making students feel they need tutoring or should depend on someone to help them learn); Christensen, *supra* note 52, at 82–83 (encouraging cooperative learning). Like first-year academic support methods, upper-class academic support requires an examination of these complex issues.

57. See, e.g., *Bar Exam Preparation*, ST. LOUIS U. SCH. L., http://law.slu.edu/academics/bar_exam/index.html (last visited Oct. 21, 2010); *Bar Preparation*, U. RICH. SCH. L., <http://law.richmond.edu/academics/upper-level/bar.html> (last visited Oct. 21, 2010) (offering a bar preparation course during the semester as well as weekly bar preparation counseling and tutoring during the bar study period).

58. See Memorandum from William R. Rakes, Chair, Am. Bar. Ass'n Section of Legal Educ. & Admissions to the Bar, to the Deans of ABA-Approved Law Sch. 4 (June 18, 2007), available at http://www.abanet.org/legaled/standards/Proposed%20Standards%20Commentary/Prop%20New%20Int%20301-6_June192007.pdf.

negative impact that law school has on many students.

A. A Brief History of the Humanizing Movement

The humanizing legal education movement likely had its genesis in 1986 when Andrew Benjamin first documented the role of legal education in psychologically harming its students.⁵⁹ Legal scholars then began examining not only whether law school tended to cause distress in students, but also the causes of that distress. These efforts included notable articles by Professors Barbara Glesner Fines and Lawrence Krieger.⁶⁰ Momentum began to build, which culminated in several galvanizing events. First, the AALS created a section called “Balance in Legal Education.”⁶¹ Second, the section initiated a Listserv designed to expand communication about humaneness between like-minded educators.⁶² Finally, in 2007, Washburn University School of Law held a symposium focusing on humanizing legal education.⁶³ Instead of a few isolated scholars focusing on this subject, now large groups of legal educators cutting across all genres of the law work together to move toward

59. See Schwartz, *Humanizing Legal Education*, *supra* note 37, at 235 (citing 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). The Benjamin study empirically demonstrated the psychologically harmful effects of law school. The psychopathological symptom responses of students prior to law school were similar to the normal population. During law school and after graduation, however, symptom levels elevated significantly.

60. See B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 630 (1991) (noting that the “extreme pressure of legal education interferes with learning, teaches inappropriate interpersonal skills, and encourages counterproductive behaviors and attitudes among students”); 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, 112–13 (2002) (noting faculty denial of law student depression and suggesting “individual and collective faculty approaches” to remedy the situation).

61. Bruce J. Winick, *Greetings from the Chair*, EQUIPOISE (Ass’n of Am. Law Sch. Section on Balance in Legal Educ.), Dec. 2009, at 1, *available at* http://www.aals.org/documents/sections/balance/BalanceInLegalEdDec_09.pdf.

62. *Humanizing Ideas*, FLA. ST. U., <http://humanizingideas.law.fsu.edu/default.asp> (last visited Dec. 13, 2010).

63. See Schwartz, *Humanizing Legal Education*, *supra* note 37, at 236.

the goal of providing an environment more conducive to the healthy study of the law.

B. What Is “Humanizing Legal Education”?

Finding a universal definition of what constitutes humanizing legal education has proven elusive. Perhaps the most comprehensive definition of the term, really more of a mission statement, comes from the Web site which serves as the epicenter of the movement. It states that:

Humanizing legal education is an initiative shared by legal educators seeking to maximize the overall health, well being and career satisfaction of law students and lawyers. We find cause for concern in our observations of law students and in the research on, and reports of, problems in the legal profession—including dissatisfaction, depression, excessive work, substance abuse and eroding professionalism. We are interested in the ways legal education is conducted, the impact those choices may have on the attitudes, values, health and well being of law students, and the possible relationship between each of those matters and the problems experienced by our graduates in the profession. Through scholarship, Web-based discussion, empirical research and conferences, we hope to inform the development of innovative teaching methods when appropriate.⁶⁴

Professor Glesner Fines incorporates three principles into her definition of humanizing legal education: (1) “do no harm”;⁶⁵ (2) “teach students, not . . . subjects”;⁶⁶ and (3) “peace and justice.”⁶⁷ The first principle is that law schools should “do no harm”: “[L]aw schools need to identify negative stressors in the law school environment, reduce or eliminate those as much as possible, and help the students to manage those that cannot be eliminated.”⁶⁸ Implicit in this principle is the notion that some

64. *Humanizing Law School*, FLA. ST. U. C. L., http://www.law.fsu.edu/academic_programs/humanizing_lawschool.html (last visited Oct. 21, 2010).

65. *Id.*, *supra* note 37, at 313–17.

66. *Id.* at 318–21.

67. *Id.* at 322–23.

68. *Id.* at 313–14.

stressors cannot be eliminated. Thus, one might say that law schools should eliminate stressors that are pedagogically unnecessary while empowering students to cope with the stressors that are necessary for a rigorous education. For instance, exams cause stress, but they certainly cannot be eliminated. Furthermore, frequent formative assessment⁶⁹ might cause stress, but it is actually a method pedagogically preferable to one exam at the end of a course representing the totality of one's grade. In that instance, frequent formative assessment, while increasing the number of stressors students face, will ultimately reduce the aggregate quantity of stress created by one summative assessment. It also provides a more rigorous education because students are tested more frequently. In this way, humanizing can both prevent psychological harm to students and provide rigorous training.⁷⁰

Professor Glesner Fines's second principle of humanizing is the notion of teaching students, not subjects.⁷¹ Put another way, law schools should move—like most of the rest of the academy—toward a student-centered educational model. Initiatives in this area include training students how to teach themselves,⁷² teaching students to discern their preferred learning style,⁷³ understanding generational differences in learning,⁷⁴ and

69. "Formative assessment is the evaluation of student performance during a learning process of prescribed term, while final [or summative] assessment is evaluation at the end of the term." Jay M. Feinman, *Law School Grading*, 65 UMKC L. REV. 647, 647 (1997); see also ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 255 (2007) (encouraging the use of formative assessments throughout the semester).

70. Another more subtle example of the principle of "do no harm" could include expanding this to "permit no vicarious harm." For instance, Professor Rebecca Flanagan details how law school bullying undermines learning and creates an emotional impediment to successful legal education. See Rebecca Flanagan, *Lucifer Goes to Law School: Towards Explaining and Minimizing Law Student Peer-to-Peer Harassment and Intimidation*, 47 WASHBURN L.J. 453, 453–57 (2008) (discussing the impact of student bullying in law schools and explaining faculty or administration-based solutions).

71. Fines, *supra* note 37, at 318–22.

72. See generally Schwartz, *Teaching Law Students*, *supra* note 40 (explaining the process of Self-Regulated Learning).

73. MARTHA M. PETERS & DON C. PETERS, JURIS TYPES: LEARNING LAW THROUGH SELF-UNDERSTANDING 9–10 (2007).

74. Susan K. McClellan, *Externships for Millennial Generation Law*

training students to reflect consciously about what it means to be an ethical and moral lawyer.⁷⁵ Law school education should focus not only on the substance of the law, but also upon giving students the tools to develop as professionals.⁷⁶

Professor Glesner Fines's third principle of the humanizing movement centers upon problem-solving and justice.⁷⁷ To

Students: Bridging the Generation Gap, 15 CLINICAL L. REV. 255, 259–61 (2008) (describing the varied learning traits of Millennial, Generation X, Baby Boomer, and GI generation members and applying those traits in the context of externship).

75. Steven K. Berenson, *Educating Millennial Law Students for Public Obligation*, 1 CHARLOTTE L. REV. 51, 66–70 (2008).

76. Illustrating this principle leads one to consider a frequently discussed quirk about law school learning. For decades, first-year students complained that legal education forced them to divorce themselves from emotion, morality, and their intrinsic sense of what is just. See Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 379 (2009). Instead, they were told that proper legal argumentation eschews “feelings” or “emotions” and instead requires reliance upon pure, objective, rational justifications. See *id.* Indeed, legal thinking does require one primarily to assert arguments directly related to purely objective justifications—focusing upon the plain meaning of a statute, or upon case precedent. But, that mandate does not require resort *solely* to objective rationalism, to the exclusion of arguments based upon “justice.” For decades, law schools have churned out lawyers too devoid of any connection to common sense or to a community's sense of justice. This has led to absurd examples of lawyers presenting arguments with strict adherence to objective rules, but ignoring the fact that their non-lawyer clients or non-lawyer jurors still retain common sense.

For instance, a few years ago, the lawyers representing the Archdiocese of Boston in litigation alleging sexual abuse by priests included in their Answer to the Complaint an affirmative defense that garnered widespread condemnation. The Answer stated that the plaintiffs' damages, if any, were caused by the negligence of the plaintiff—an alleged victim of child sexual abuse—or his parents. Although there is no doubt such an affirmative defense would serve most defendants in a tort action well, in this case it was a questionable tactic, and Cardinal Bernard Law receded from it both in deposition and by amending the Answer to strike the affirmative defense. See *Deposition of Cardinal Bernard Law*, BOSTON GLOBE (Oct. 16, 2002), http://www.boston.com/globe/spotlight/abuse/shanley/law_deposition/101602_en_tire.htm.

A humanized legal education both attempts to indoctrinate the classical view of the (allegedly) rational, objective nature of law, and helps to develop a student's sense of practicing law with a retained sense of decency and morality (albeit subjective).

77. Professor Glesner Fines actually uses the phrase “Peace and Justice.”

demonstrate this principle, consider a pedagogy lacking a focus on these values. The traditional law school pedagogy deals almost strictly with the “zero-sum game” model of litigation, leaving students with the sense that every legal matter results in a clear winner and a clear loser. This situation emanates from the casebook model of teaching, where students learn everything they know about law by reading the details of litigated cases in which, ultimately, one party was the conqueror while the other was the vanquished. Even in conflicts with subtle shades of gray, where several parties may be somewhat blameworthy, the classical view would declare one party the winner and one party the loser often based upon a hyper-technical classification of the party’s actions into one legal doctrine or another. Often neophyte law students (and even experienced attorneys) are aghast at the seemingly random results of cases that seem contrary to their initial sense of the morally correct outcomes. We teach them, though, that law is the all-knowing and objective source of neutral, principled decision making, which allows and requires straight-thinking lawyers to abandon that initial subjective, morality-based sense of outcome that might lead their analysis astray.⁷⁸

Instead, students need to learn that the practice of law, even at the highest level, is filled with problem-solvers and “fixers.” Classes like Alternative Dispute Resolution, Negotiation, and clinical courses show students that a lawyer’s role often is to negotiate with opposing parties to create a solution to a conflict that bears less risk and expense than submitting the dispute to the sometimes random outcomes generated by litigation. In so doing, this educational model mitigates the effect of the casebook

Fines, *supra* note 37, at 322. Perhaps some would prefer an alternate wording of this principle. Just as the AALS Section on Humanizing Law Schools changed its name to “Balance in Legal Education” due to unwanted perceptions, defining the humanizing movement with the terms “peace and justice” may be off-putting to some who would otherwise be predisposed to support humanizing law schools. As a result, one might argue that humanizing legal education schools should include a focus upon “problem-solving and justice.”

78. See M. H. Sam Jacobson, *The Curse of Tradition in the Law School Classroom: What Casebook Professors Can Learn from Those Professors Who Teach Legal Writing*, 61 MERCER L. REV. 899, 908–14 (2010) (listing the many disadvantages of a purely casebook method of legal education).

method's seemingly monolithic message of zero-sum gaming and instead posits the soon-to-be lawyer as someone able to draw upon her skills to fix problems rather than exacerbate them through winner-take-all litigation. This would humanize legal education.⁷⁹

C. Why Humanize Legal Education?

Scholars have noted numerous reasons why legal education would benefit from humanizing efforts. These reasons include: (1) improving student learning, (2) creating an environment less psychologically harmful to students, and (3) providing an environment more open to female law students and students of color.

1. Improving Student Learning

The first justification for humanizing law schools is the effect of legal education upon students' learning. Humanizing techniques can include slight modifications of the Socratic Method that undermine its negative effects while still capitalizing on its benefits.⁸⁰ For instance, Dean Jennifer Rosato of Northern Illinois University College of Law posits that simply providing positive reinforcement in a classroom discussion using the Socratic Method can create rigorous discussion in which students must find their own answers, while simultaneously recognizing good ideas.⁸¹ Furthermore, cooperative work can be included within a Socratic dialogue to alleviate the intimidation factor of classroom interrogation, while also modeling the professional behavior of group problem solving that students must master to be successful lawyers.⁸² Finally, Dean Rosato

79. See Fines, *supra* note 37, at 319 n.28 ("Several scholars advocate for a more client-centered approach to lawyering, wherein the lawyer exercises an 'ethic of care' in her role as counselor.").

80. See Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37, 59–62 (1997) (advocating on behalf of retaining the Socratic Method but modifying it to include more humane features).

81. See *id.* at 60.

82. See *id.* at 60–61. For example, imagine that a professor poses a

also asserts that humanizing the Socratic Method can help demystify the learning process.⁸³ The Socratic Method, she claims, has the tendency to “mystify the learning process” by creating a hide-the-ball mentality, in which the professor knows the answer to the line of questioning but withholds it.⁸⁴ A better technique is to “debrief” the students after a Socratic discussion by explaining why the professor asked certain questions, thus better illuminating the logical steps the students may have missed.⁸⁵ In this way, the professor achieves the Socratic Method’s goal of student self-enlightenment, while at the same time providing a clear, less mysterious process.⁸⁶ This is just one of the countless ways that humanizing legal education can

hypothetical. Rather than calling on a student to solve the hypothetical immediately on the heels of its description, a professor can give the class two minutes of “conference time” to discuss the analysis with colleagues. Thus, instead of wasting five minutes of class time flailing around trying to coax mediocre answers out of shell-shocked students, the two minute conference (which is very similar to the professional skill of conferencing with other associates or partners) gives students a few seconds to compose their thoughts and provide strong answers. Far from wasting time, this tactic allows a class to move into deeper waters at an even faster rate. See Christensen, *supra* note 52, at 81–82 (providing examples of reform that would increase “collaborative or cooperative learning experiences”); Patricia Mell, *Taking Socrates’ Pulse: Does the Socratic Method Have Continuing Vitality in 2002?*, 81 MICH. BAR J. 46, 46 (2002), available at <http://www.michbar.org/journal/pdf/pdf4article442.pdf> (“[L]essons [regarding how to problem solve as a lawyer] are ill suited for Socratic [M]ethod classrooms and are most effectively learned in small group settings.”).

83. Rosato, *supra* note 80, at 61–62.

84. *Id.*; see also Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1555 (1993) (describing the law school version of the Socratic Method as a game of “guess what I’m thinking”).

85. Rosato, *supra* note 80, at 62. Some might say that this “debriefing” could take up a lot of class time, and that time ought to be devoted to substance. See *id.* This concern is easily solved by Academic Support. See Bloom & Schulze, *supra* note 43, at 13. Many ASPs include programs in which successful upper-class law students serve as Teaching Assistants or Study Group Guides to first-year students. Garfield & Levi, *supra* note 1, at 7. These TAs or Guides could easily conduct the “debriefing” in the study group setting, thus saving valuable class time. This technique helps prove that ASPs can be critical in humanizing the law school environment. See Garfield & Levi, *supra* note 1, at 8 (discussing TA programs at Denver Law School, Santa Clara School of Law, UCLA Law School, Miami Law School, and Hastings College of Law).

86. Rosato, *supra* note 80, at 62.

enhance learning.

2. Creating an Environment Less Psychologically Harmful to Students

Another justification for humanizing law schools is to curtail the negative psychological ramifications that the traditional law school environment has upon law students. Many in the field of teaching law posit that change is unnecessary because it would soften an environment where students must be prepared for the hard life of the practice of law.⁸⁷ In addition to ignoring the fact that humanizing the law school can actually make the learning process more rigorous rather than less,⁸⁸ the argument also ignores two things: (1) it is the traditional law school environment that has made the practice of law increasingly less collegial,⁸⁹ and (2) documented evidence shows that pedagogically unnecessary psychological trauma is the result of the traditional law school methodology.⁹⁰

87. Robert M. Lloyd, *Hard Law Firms and Soft Law Schools*, 83 N.C. L. REV. 667, 677 (2005) (“Unfortunately, today’s [s]oft law schools do not prepare their graduates for . . . reality. In most law schools, performance is optional. While the practice of law has been getting [h]arder, law schools have been getting [s]ofter.”). Professor Lloyd takes issue with the wholesale abandonment or watering-down of the Socratic method in law school. *Id.* at 680–83. He notes that while this method was rejected because it was too intimidating and adversarial, the practice of law has actually become more intimidating and adversarial. *Id.* at 681. In sum, one can presume that Professor Lloyd might reject the “humanizing” movement as one that “softens” the law school experience.

88. After all, the Socratic Method keeps only one student on the hot seat, while the others may relax. Imagine a pedagogy that, while less intimidating, still forces the *entire* class to engage in rigorous legal analysis.

89. See Paul T. Hayden, *Applying Client-Lawyer Models in Legal Education*, 21 LEGAL STUD. F. 301, 320 (1997); Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LEGAL ETHICS 367, 381 (1997). *But see* Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955, 993 (2005) (pointing out that lawyer incivility has increased while use of the “traditional” Socratic method has declined).

90. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 261 (2004).

For instance, Professors Sheldon and Krieger established that, although law students enter law school with levels of depression, anxiety, and drug and alcohol abuse similar to those in other fields of graduate study, the first year of law school changes this.⁹¹ First-year law students' levels of depression, anxiety, and substance abuse increase at a rate well beyond that of those in other graduate studies.⁹² Sheldon and Krieger's analyses "showed that participants experienced large reductions in positive affect, life satisfaction, and overall [subjective well-being], and large increases in negative affect, depression, and physical symptoms" in the first year of law school.⁹³ Unlike other researchers, Sheldon and Krieger did not attribute the causation of these psychological manifestations to the Socratic Method alone. Instead, they traced these problems to a far wider array of negative factors in the law school education: (1) the lack of formative assessment, feedback, or both; (2) competition for academic superiority due to rigidly imposed grading curves; (3) purely hierarchical markers of worth; (4) teaching methods that are isolating; and (5) average GPAs far lower than undergraduate norms.⁹⁴ The study found that even while the students' mental health worsened, students moved away from intrinsic motivation—making oneself happy—toward extrinsic motivation—proving oneself to others.⁹⁵

This shift and its correlated effects upon mental health seem to dovetail with the negative aspects of legal education. Humanizing the law school environment would, obviously, directly affect intrinsic and extrinsic motivation and help to offset the negative elements of a law school environment.

91. *Id.* at 262.

92. *Id.*

93. *Id.* at 272.

94. *Id.* at 262, 281. One might argue that the fifth factor is a function of grade inflation at the undergraduate levels. As undergraduate institutions fight for better scores in the all-important U.S. News & World Report rankings by making student-consumers happy with high grades, rigorousness and actual learning decline. Law schools will soon catch on to this trend, as already we see evidence of grade inflation at the law school level. Catherine Rampell, *In Law Schools, Grades Go Up, Just like That*, N.Y. TIMES (June 21, 2010), <http://www.nytimes.com/2010/06/22/business/22law.html>.

95. Sheldon & Krieger, *supra* note 90, at 281.

3. Providing an Environment More Open to Female Law Students and Students of Color

A further justification for humanizing law schools is to counterbalance the traditional law school environment's negative impact upon women and students of color. Scholars have challenged legal education, claiming that it disproportionately negatively impacts women, students of color, and lesbian, gay, bisexual, transgendered, or questioning students.⁹⁶

For instance, a comprehensive study using both qualitative and quantitative methods⁹⁷ found that despite similar entering credentials,⁹⁸ female students at Yale Law School spoke less often in class,⁹⁹ were less likely to form professionally beneficial relationships with professors,¹⁰⁰ and were treated differently in general.¹⁰¹ Thus, if a law school employs the Socratic Method exclusively, or even pervasively, then excluding groups of students from speaking in class undermines that group's likelihood of attaining an education as rigorous as those groups who are encouraged to speak in class.

Bashi and Iskander suggest humanizing legal education, without calling it such, to remedy this situation by "invest[ing] in pedagogy."¹⁰² They point out that the traditional law school environment with its zero-sum game model and a singular focus on case law rewards only the students who best digest the litigation model of conflict resolution.¹⁰³ Despite the fact that

96. See Janice L. Austin et al., *Results from a Survey: Gay, Lesbian, and Bisexual Students' Attitudes About Law School*, 48 J. LEGAL EDUC. 157, 164–67 (1998); Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 YALE J.L. & FEMINISM 389, 391–92 (2006); Morrison Torrey, *Yet Another Gender Study? A Critique of the Harvard Study and a Proposal for Change*, 13 WM. & MARY J. WOMEN & L. 795, 796 (2007); Morrison Torrey et al., *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267, 275 (1998).

97. Bashi & Iskander, *supra* note 96, at 400.

98. *Id.* at 397.

99. *Id.* at 405.

100. *Id.* at 415, 422.

101. *Id.* at 391.

102. *Id.* at 434.

103. See *id.* at 435–36.

modern practice requires mastery of other modes of dispute resolution, such as mediation, settlement, and negotiation, none of these skills are rewarded in the traditional law school.¹⁰⁴ Thus, “law schools neglect cognitive skills traditionally associated with women, including contextual reasoning, relational skills, and narrative intelligence.”¹⁰⁵

Furthermore, Professor Carole J. Buckner notes that:

Most African American students are highly parent and teacher motivated, and [they] prefer collegial authority figures present while learning. The academic achievement of African American students improves when teachers use cooperative rather than competitive learning strategies because such approaches parallel the context for learning found in their cultures. With cooperative learning groups and more symmetrical teacher-student interaction, classroom discussions increase in degree and intensity.¹⁰⁶

She further states that:

The Hispanic cultural emphasis on cooperation in the accomplishment of goals can leave Hispanic students feeling uncomfortable in a traditionally competitive style classroom. Hispanic students benefit from instructional methods including cooperative or group learning, *and through techniques of humanizing the curriculum* through use of humor, fantasy, or drama, personalized rewards, modeling, informal class discussion, and global emphasis on concepts rather than attention to details. Both Hispanic and African American learners prefer a highly emotive, dramatic style of instruction which may result from the prominence of storytelling and the use of affective expressions and communal values of their traditional cultures. Hispanic learners benefit from de-emphasis on the question and answer format and the

104. *Id.* at 435.

105. *Id.* at 435–36.

106. Carole J. Buckner, *Realizing Grutter v. Bollinger’s “Compelling Educational Benefits of Diversity”—Transforming Aspirational Rhetoric into Experience*, 72 UMKC L. REV. 877, 911 (2004) (footnotes omitted) (internal quotation marks omitted).

avoidance of debating as an instructional technique.¹⁰⁷

Thus, a pedagogy that focuses solely on the Socratic Method ignores the field of learning styles and inherently ignores Hispanic and African-American learners. Humanizing the law school environment, however, recognizes all members of the law school community.

IV. WHAT ARE SELF-DETERMINATION THEORY AND AUTONOMY SUPPORT?

Self-determination theory (SDT) is “a meta-theory for framing motivational studies, a formal theory that defines intrinsic and varied extrinsic sources of motivation, and a description of the respective roles of intrinsic and types of extrinsic motivation in cognitive and social development and in individual differences.”¹⁰⁸ SDT generally holds that when students experience competence, autonomy, and relatedness—when they understand and appreciate the motivation for an educational task that might seem unhelpful and uninteresting—they tend to learn better from that task.¹⁰⁹ The related concept of autonomy support, in turn, holds that students who perceive a greater degree of support from their teachers and schools—in that they feel that they have active control over choices in their educational pursuits—fare better in learning.

A. What Is Self-Determination Theory?

According to SDT, all human beings need to experience autonomy, competence, and relatedness to thrive and maximize their potential.¹¹⁰ Put another way, people need to feel that they

107. *Id.* at 906 (emphasis added) (footnotes omitted) (internal quotation marks omitted).

108. *Self-Determination Theory*, U. ROCHESTER, <http://www.psych.rochester.edu/SDT/theory.php> (last visited Oct 22, 2010).

109. See Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being*, 55 AM. PSYCHOLOGIST 68, 76 (2000).

110. Marylène Gagné & Edward L. Deci, *Self-Determination Theory and Work Motivation*, 26 J. ORGANIZATIONAL BEHAV. 331, 336–37 (2005).

are working or learning in a manner of their own choice (autonomy); they are good at what they do or at least can become good at it (competence); and their work or learning has purpose and allows them to relate meaningfully to others (relatedness).¹¹¹ All three of these factors of SDT are relevant to legal education, but autonomy support seems to provide the most fertile ground for result-oriented law school pedagogical reform. This will be discussed further below.

Regarding SDT, in a recent study of the impact of externally provided motivation for learners, Dr. Hyungshim Jang demonstrated the importance of this concept.¹¹² One hundred thirty-six undergraduate students were given a relatively uninteresting lesson for twenty minutes.¹¹³ Some received a rationale for the lesson, others did not.¹¹⁴ Those who received a rationale prior to the lesson showed “greater identified regulation, interest-enhancing strategies, behavioral engagement, and conceptual learning.”¹¹⁵ Therefore, connecting students to an understanding of why they must learn using the method chosen actually results in better learning.¹¹⁶

111. Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 885 (2007), available at http://www.immagic.com/eLibrary/ARCHIVES/GENERAL/SAGEP_UK/S070504S.pdf.

112. Hyungshim Jang, *Supporting Students' Motivation, Engagement, and Learning During an Uninteresting Activity*, 100 J. EDUC. PSYCHOL. 798, 798 (2008), available at <http://psycnet.apa.org/index.cfm?fa=main.doiLanding&uid=2008-16034-006>.

113. *Id.*

114. *Id.*

115. *Id.*

116. See Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 886–88 (2009) (noting a general shift in students' motivations during the disorienting first year of law school). Self-determination theorists' solution to this age-old dilemma would be to demystify the process. Sheldon & Krieger, *supra* note 111, at 884. A student swimming in a sea of disconnectedness would learn the material better if someone simply explained that, by reading the case, you are forced to learn the legal analytical method of arguing two sides of a legal problem. *Id.* While indirectly learning the substance of the law from reading the case, you also learn the dialectical *process* of the law by reading the court's analysis of both parties' arguments. Boyle, *supra* note 38, at 14–15. Rather than alienating large swaths of a class, self-determination theorists

This theory translates to legal education in a meaningful way. Students often come to law school thinking that they will learn “the laws,” perhaps in some sequential order of importance. They are soon dismayed when their syllabi direct them to complete tasks seemingly unconnected with the goal of learning descriptive definitions of each law. The student that thinks he will learn “what the law is” is frequently disoriented by a flood of tasks focused more on rewiring the student’s analytical methodology. Thus, many students in the first semester find the majority of law school tasks to be inconsistent with what they thought they needed to learn to practice law. They may ask: “Why read this case about a contract from 1889 when I could just

would recommend explicitly explaining this process to students to demystify the learning process, create greater learning motivation, and engage students to be more cognizant of their mission. See Zimmerman, *supra*, at 909 (recommending instruction which promotes a feeling of connectivity between law students and their work to cultivate intrinsic motivation); Lustbader, *supra* note 14, at 844 (arguing that ASP faculty work “to help students retain a sense of self-worth and to demystify the learning process”).

Professors set in their ways might posit two objections. First, with all the material on the first-year agenda, how can doctrinal professors possibly devote time to something which, for decades, has been left to students’ implicit learning? See Bloom & Schulze, *supra* note 43, at 14–16 (discussing challenges to getting faculty on board with integrated learning). See Jacobson, *supra* note 78, at 900–05 (noting the external and internal influences contributing to the lack of change within law school pedagogy). That answer leads to the thesis of this Article: Instead of having doctrinal professors change their ways, simply include an ASP whose central purpose is to demystify the process of learning law.

Second, what of the age-old tradition of law student self-enlightenment? See Lloyd, *supra* note 87, at 677 (arguing that law schools have been shifting away from “hard” law school teaching methods). Should we abandon the project of forcing students to teach themselves of the macro-organization of law school learning? Should they not figure out for themselves the nature of law school pedagogy? Should we spoon-feed this generation, because understanding the big picture is just too in-depth for such a “give-me-what-I-need-now” generation? The answer is “no.” See *id.* at 681–84; Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 487 (1996). I am not suggesting that we reduce all legal learning to lectures on what the law “is.” What I suggest is that instead of playing a strict game of pretending that nothing in law school is all that different from other learning, we give students the tools to unravel this mysterious new learning method. SDT and autonomy support would provide a sensible middle ground in this respect, which is discussed next.

read my state's statute on how contracts are formed?" Like autonomy support, law schools' failure to comport with SDT results in frustration, disconnectedness, and ultimately less-than-optimal pedagogy.

B. What Is Autonomy Support?

Krieger and Sheldon assert that autonomy support has three facets:

(a) choice provision, in which the authority provides subordinates with as much choice as possible within the constraints of the task and situation; (b) meaningful rationale provision, in which the authority explains the situation in cases where no choice can be provided; and (c) perspective-taking, in which the authority shows that he or she is aware of, and cares about, the point of view of the subordinate.¹¹⁷

In the law school setting, these three factors translate to: (1) faculty or administrative actions that provide as much meaningful choice to students as possible; (2) where meaningful choice is not pedagogically sound or is otherwise unavailable, then the students should receive an explanation as to why choice is not available; and (3) the overt demonstration of respect and understanding for student perspectives and preferences.¹¹⁸

Sheldon and Krieger have demonstrated the positive effects of law school environments that provide autonomy support and the negative effects that are unnecessarily controlling. In one study, they empirically compared the autonomy support at two very different law schools.¹¹⁹ At the first law school, faculty hiring criteria focused upon scholarship, not teaching skills.¹²⁰ By contrast, the second law school focused on practice experience and demonstrated teaching ability.¹²¹ Also, in contrast to the

117. Sheldon & Krieger, *supra* note 111, at 884.

118. See Justine A. Dunlap, "I'd Just As Soon Flunk You As Look at You?" *The Evolution to Humanizing in a Large Classroom*, 47 WASHBURN L.J. 389, 402 (2008).

119. Sheldon & Krieger, *supra* note 111, at 883.

120. *Id.* at 886.

121. *Id.*

first school, the second provided more seminars for faculty on teaching skills, had many more faculty teaching skills courses, and integrated both skills and theory teachers within one faculty—as opposed to a rigid hierarchy favoring the non-skills teachers.¹²² The second school also offered more skills courses in the curriculum and included a co-curricular requirement which focused on students' professional development and their emotional and mental health concerns.¹²³ In short, the second law school focused more blatantly on the interests and priorities of its students.

Sheldon and Krieger demonstrated in their rigorous empirical study, controlling for a number of demographic variables, that students at the second law school reported greater perceived autonomy support.¹²⁴ The students at that school performed better in law school (as measured by GPA) and bar passage rate despite being a lower-ranked law school with lower incoming indicators.¹²⁵ Sheldon and Krieger postulated that students at the second school simply learned more as a result of feeling more support.¹²⁶ They noted that “[s]uch an interpretation would be consistent with past SDT experimental findings that autonomy-supportive educational contexts produce greater cognitive flexibility and conceptual learning.”¹²⁷

A simple example highlights the power of autonomy support. In most American law schools, the first-year curriculum is uniform for all students. Obviously, this deprives students of choosing their classes, something to which they have likely become accustomed in college. To a degree, this undermines students' sense of autonomy, presumably a negative repercussion of mandating the first-year curriculum. However, law schools could provide autonomy support by explicitly explaining rationales for this situation—these are the core courses that all students must learn to become lawyers—and somehow

122. *Id.*

123. *Id.*

124. *Id.* at 888–90.

125. *Id.*

126. *Id.*

127. *Id.* at 891 (citation omitted).

expressing respect for students' opinions regarding this constraint—by providing legal writing sections devoted to certain doctrinal concentrations and then allowing students to choose their legal writing section. Except for a few schools, concerted efforts towards providing autonomy support are rare.

V. ANALYSIS: HOW ACADEMIC SUPPORT HUMANIZES THE LAW SCHOOL, FULFILLS SELF-DETERMINATION THEORY, AND INCREASES AUTONOMY SUPPORT

Just as ASPs are diverse, so too are the justifications for humanizing the law school environment, enhancing self-determination, and providing autonomy support. This Part discusses how ASPs contribute to these goals.

A. Academic Support's Role in Humanizing the Law School

This section details the ways in which academic support humanizes the law school environment. Recall the three basic tenets of humanizing: (1) do no harm; (2) teach students, not subjects; and (3) peace and justice.¹²⁸ “Do no harm” means identifying sources of negative stress, reducing or eliminating those stressors, and helping students manage those stressors that cannot be eliminated.¹²⁹ “Teach students, not subjects” means altering the law school environment from a focus on doctrine to a focus on students; this includes teaching holistically by valuing students' differences, their diverse intelligences, and their common needs.¹³⁰ In short, it means moving from a one-size-fits-all pedagogy towards to a utilitarian theory of optimizing the learning potential of many individuals in a group. Finally, “peace and justice” means shifting towards a focus on problem solving and away from the implicit message of law as inherently a zero-sum game.¹³¹ Thus, it provides a connection between doctrine and what students can do with doctrine as lawyers.

128. See Fines, *supra* note 37, at 313–22.

129. *Id.* at 314.

130. *Id.* at 318–22.

131. *Id.* at 322–23.

1. Humanizing Tenet Number One: “Do No Harm”

Under the principle of “do no harm,” many commentators analyze how the negative side of competition in law schools creates psychological harm.¹³² Mandatory grading curves, the law school rumor mill, class rankings, limited access to law review, and preferred access to career services are common themes in this discussion.¹³³ ASPs combat these problems in several ways.

a. ASP Skills Workshops Helping to “Do No Harm”

Students suffer substantial amounts of stress from having to play the “information access” game in law school.¹³⁴ Because many law schools fail to provide information on study skills, but faculty occasionally comment on the importance of such skills, students compete for access to the “best” resources. The purchase and possession of the “perfect” study aid, creation and possession of the “perfect” outline, and access to a professor’s mindset regarding the “perfect” construction of an essay answer often occupy a great deal of students’ time. The law school rumor mill is often the only source of information on these resources.

Providing ASP classes on these topics takes that process out of the law school rumor mill because all students have access to the methods of creating strong outlines, thus ending the competition for best sources. For instance, at New England Law | Boston, the Academic Excellence Program classes include a session on proper outlining techniques and explain that it is the process of outlining, not the mere possession of a good one, that leads to success.¹³⁵ It also includes instruction and feedback on

132. Lynn C. Herndon, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809, 810 (2010). “[N]egative perceptions” about law school “include the overwhelming workload, intimidating classroom dynamics, excessive competition, astronomical debt, personal isolation, lack of feedback, and the nearly exclusive emphasis on linear, logical, doctrinal analysis.” *Id.* (internal quotation marks omitted).

133. Christensen, *supra* note 52, at 81 (“Minimally, the curve increases competition and devalues learning over performance.”).

134. *Id.* at 78–79.

135. See Louis N. Schulze, Jr., *Academic Excellence* (Fall 2010) Syllabus (on

how to write a proper essay response and coordinates these classes with doctrinal professors to provide students with enhanced opportunities to get the official word on the fundamentals of proper legal analysis.¹³⁶ Finally, the Program holds a mock exam just prior to first-year midterm exams to give students a first-person experience with expectations of law school exams.¹³⁷ Thus, because students have an opportunity to experience the practice of examinations in a consequence-free environment, the stress they encounter during real exams is reduced.

In this way, these methods typify the notion of “do no harm.” They identify competition over access to information as a negative stressor and attempt to eliminate that stressor by providing the information that fills the information access gap. In so doing, these programs advance the first principle of humanizing.

b. ASP Career Advice as Helping to “Do No Harm”

Another way that ASPs alleviate the negative psychological impact of law school is by providing outlets of understanding for underperforming students. In the conventional law school environment, those who underperform during the first year often are left to fend for themselves in terms of future employment. By contrast, the limited resources of such outlets—including career services, law review, and judicial clerkship advising—are usually reserved for students at the top of the class. This “disappearing career services effect” leaves underperforming students with the implicit message that their lower grades result in the law school not really caring about their future employment.

An example of a program mitigating this problem is the Academic Achievement Program (AAP) at The University of Iowa College of Law.¹³⁸ The program director, Brian Farrell, conducts a workshop for students at the beginning of their second

file with author).

136. See Bloom & Schulze, *supra* note 43, at 13–14.

137. *Id.* at 14.

138. *Academic Achievement Program*, UNIV. IOWA COLL. L., <http://www.law.uiowa.edu/academics/academic-achievement.php> (last visited on Oct. 23, 2010).

semester entitled “Defining Success.”¹³⁹ This presentation is geared towards students whose grades after mid-year exams might not put them at the top of the class.¹⁴⁰ Rather than leave these students alone to deal with the anxiety of facing an uncertain employment future, Iowa’s AAP attempts to equip them with skills to move forward.¹⁴¹ In this joint program between the AAP and the career services office, students are first encouraged to recognize and accept their situation rather than rationalize about it.¹⁴² At the same time, students are reassured that their grades do not define them as people.¹⁴³ Hearing this message explicitly from the law school likely avoids the dehumanizing impact of facing these grades in the absence of such a comment.¹⁴⁴

Second, students are counseled on what exactly their grades might mean; while many students might be worried that a few *Bs* could result in the termination of their efforts towards being a lawyer, the workshop instead paints a more realistic picture of the possibility of future employment.¹⁴⁵ It also provides encouragement in the form of data on the possibility of “grade mobility” and on the fact that many students graduating toward the bottom of the class still find lucrative employment.¹⁴⁶ The presenters then ask students to consider what career goals are practically available to them and what measures they can take in the next twenty-four hours, and in the longer term, to make it more likely that they can reach these goals.¹⁴⁷ Students are explicitly given the opportunity to meet individually with the AAP director, the career services office, or both.¹⁴⁸ The strategic partnership between the AAP and career services specifically

139. See Telephone Interview with Brian Farrell, Dir. of Academic Achievement, Univ. of Iowa Coll. of Law (June 14, 2010).

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

negates the “disappearing career services” effect.

This program typifies the goal of “do no harm.” Recognizing that underperformance is a stressor related to future employment and knowing that this stressor cannot be eliminated (after all, by definition 50% of students must be in the bottom half of the class), Iowa Law attempts to provide students with the skills to manage this negative stressor. In so doing, this program advances the goal of humanizing the law school experience.

c. ASP Community Building as Helping to “Do No Harm”

An additional means by which ASPs help alleviate the negative psychological impact of law school is by providing learning in an environment more encouraging to many women and students of color. For instance, the primary purpose of Seattle University School of Law’s Academic Resource Center (ARC) “is to help diverse and non-traditional students adjust, succeed, and excel in law school.”¹⁴⁹ Its mission “involves acculturating and empowering those who may or do feel disenfranchised by the law school experience.”¹⁵⁰ The ARC achieves this goal by providing a for-credit, seven-week course in the summer before a student’s first year, combining criminal law, legal writing, and study strategies.¹⁵¹ The program continues assisting these students through the academic year by means of study sessions, workshops, and work with student teaching assistants.¹⁵² The students in the program report that “it provide[s] them with a safe haven, which enable[s] them to retain a sense of themselves and feel there [is] a place for them in the legal community.”¹⁵³

In this way, the Seattle Law ARC program contributes to the humanization of the law school environment. By providing a

149. *Program Overview*, SEATTLE U. SCH. L., http://www.law.seattleu.edu/Academics/Academic_Resource_Center/Program_Overview.xml (last visited Oct. 20, 2010).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

resource for diverse and non-traditional law students to integrate into the legal community, ARC counteracts the problems discussed previously of the alienation of women and minority students by traditional law school methodologies.¹⁵⁴

2. Humanizing Tenet Number Two: “Teach Students, Not Subjects”

Fundamentally, the notion of “teaching students, not subjects” means refocusing the delivery of knowledge from one-size-fits-all to pedagogy more focused on reaching individuals. It means making the learning process more accessible to as many students as possible, instead of distributing knowledge in the way most preferred by the one person in the classroom whose task is not to learn—the teacher.

One way in which academic support “teaches students, not subjects,” is by its focus on individual students. The conventional law school, it can be argued, focuses on a teacher-centered classroom:¹⁵⁵ The professor is the leader, the source of knowledge, and the person who requires answers and analysis from students. If a learner does not understand a concept, questions often receive the response of another question. Although this may force students to think for themselves and to be self-taught learners, taken to its extreme, it deprives students of an important facet of the learning experience. ASPs counteract this problem in several ways.

a. Individualized Academic Counseling as “Teach Students, Not Subjects”

The academic support method of providing individualized academic counseling focuses on students, not subjects. One example of this method occurs in Suffolk University Law School’s Academic Support Program. That program prioritizes an academic support method focused on individual academic counseling. Each ASP faculty member is available to all students

154. See *supra* Part III.C.3.

155. See Herndon, *supra* note 132, at 813.

in the law school for such counseling, but the majority of individual meetings are with underperforming students, students referred to the ASP by professors, or students on probation.¹⁵⁶ The purpose of such meetings is to help students create an Individualized Learning Plan (ILP).¹⁵⁷

This process starts with an intake meeting in which the ASP faculty member mainly listens to the student describe what she is doing to study, what she is not doing to study, and what her fears and concerns might be.¹⁵⁸ After assessing the strengths and weaknesses of the student's study methods, the ASP faculty member gives the student one small task to accomplish prior to the student's next meeting.¹⁵⁹ The purpose of such a modest start, which often includes simple tasks such as recording a "study diary" or spending an hour a day on post-class review, is to give the student an easily achievable initial success upon which to build future successes of a broader nature.¹⁶⁰

In a subsequent meeting, the SUASP faculty member works with the student to create an ILP.¹⁶¹ This ILP will focus on counterbalancing the student's weaknesses while capitalizing on her strengths.¹⁶² Emphasis is placed primarily on creating an individualized daily study schedule, which guides the student in applying important skills like properly reading cases, taking effective notes in class, and post-class review.¹⁶³ The rest of the semester, the student returns on a regular basis—anywhere from weekly to monthly, depending on the student's needs—for feedback on assignments, review of whether the student is properly following the plan, and insight into the level of improvement.¹⁶⁴ Oftentimes, the ASP professor will need to

156. See Telephone Interview with Herb Ramy, Dir. & Professor of Academic Support, Suffolk Univ. Law Sch. (June 25, 2010).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* Another important facet of the SUASP professor's role is to discern whether a student is suffering from personal, emotional, or psychological issues.

provide either critical feedback, if the student's work ethic or methods are lacking, or positive feedback if the student is making progress.¹⁶⁵ In this way, the ASP professor carefully provides feedback aimed at ensuring that the students are working to their optimal potential.¹⁶⁶

At the end of the semester, the ASP professor meets with the student prior to exams.¹⁶⁷ In this meeting, the professor cites specific examples of how the student improved over the semester.¹⁶⁸ The professor might compare the student's first practice essay of the semester to the student's final essay, showing the vast amount of improvement in the student's skills.¹⁶⁹ In this way, the ASP provides the student with positive encouragement and a sense of optimism as she enters the examination period.¹⁷⁰

This type of individual academic counseling demonstrates academic support's impact in achieving the "teach students, not subjects" goal and humanizing the law school environment. First, by working individually with students, academic counseling mitigates the negative impact of the one-size-fits-all tendency of the rest of the law school environment. For instance, Suffolk Law is one of the biggest law schools in the country, and its status as an urban school might result in students feeling the impact of large class sizes.¹⁷¹ The ASP provides students with

Id. If so, the SUASP professor can choose to work directly with the student or to refer him to centralized professional counseling resources. *Id.* This decision is fraught with challenges. For instance, if the SUASP professor does not refer the student to professional help, the risk exists that the student's condition will deteriorate without treatment. In the alternative, if the SUASP professor does refer the student, students can sometimes misperceive this referral as the SUASP professor "washing his hands" of the student. *Id.* To counteract this, Professor Ramy explicitly tells students that he will continue to meet with the student on academic issues, but that the referral is to ensure that the student receives resources that might be beyond the expertise of the SUASP professor. *See id.*

165. *Id.*

166. *See id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *See id.*

171. *See id.*

the resource of one-on-one meetings with a faculty member, thus connecting the student more intimately with the law school. Second, by working with students to develop their own ILP, the ASP focuses on the student's learning as an individual, not just another member of the herd who should be able to learn in the exact same way as the other students in her section. Finally, by providing encouragement and feedback—both positive and constructively negative—to struggling students, the ASP signals the law school's sincere dedication to its students' success.¹⁷²

b. ASP Collaborative Methods as “Teaching Students,
Not Subjects”

Although the conventional law school's teacher-centered classroom forges a self-reliant mentality under the auspices of mimicking the learning process in the practice of law, in truth this is a misconception. In the practice of law, lawyers often learn by means of collaboration, not isolation. So, another way ASP focuses on “students not subjects” is through the use of collaborative and cooperative methods to a greater degree than doctrinal classes.¹⁷³ Specifically, many schools provide academic support through peer-learning methods, thus providing cooperative and collaborative learning.

The University of Miami School of Law offers extensive peer-facilitated study sessions through its Academic Achievement

172. *Id.* Professor Ramy specifically brought up a negative trend in academic support methods. As ASPs become more plentiful throughout the nation, many schools seek to provide academic support to more students with the same amount of (or fewer) resources. *See id.* This resource crunch forces academic support professionals to eliminate or minimize the amount of individualized academic counseling in favor of one-size-fits-all large classroom academic support. *Id.* While it is encouraging that academic support has become so mainstream that law schools are comfortable with ASP professors teaching entire first-year classes, the impact of individualized academic counseling on humanizing law schools is minimized. *See id.* He urges, therefore, that law school ASPs retain as much individualized academic counseling as possible, noting that an ASP professor is much more likely to obtain important information about a student in an individual meeting than in a classroom filled with dozens of other students. *Id.*

173. *See Herndon, supra* note 132, at 825.

Program.¹⁷⁴ Through “Dean’s Fellows Study Groups,” first-year students have the opportunity to work weekly in study groups facilitated by academically successful upper-class students.¹⁷⁵ These Dean’s Fellows receive training in active learning techniques and in learning styles theory,¹⁷⁶ (a topic addressed below).¹⁷⁷ The selection of the Dean’s Fellows is a collaboration between the program director and the doctrinal professor to whom the Fellow will be assigned.¹⁷⁸ The Dean’s Fellows attend the class sessions of that course and then subsequently meet with first-year students in a less formal environment.¹⁷⁹ Importantly, the law school supports this program to the degree that it is open to every first-year student, and about 90% of those students actually participate.¹⁸⁰

This program demonstrates the humanizing ideal of “teaching students, not subjects.” Rather than leaving novice learners alone to struggle through their misunderstanding of the law, the Dean’s Fellows provide a less intimidating environment so that students can work through their conceptualization of legal doctrines in a forum that fosters interactive questioning, focuses on individual learning aptitude, and provides cooperative and collaborative support. Commentators assert that peer-teaching benefits both the tutor and the novice learner.¹⁸¹ It builds confidence and empathy, reduces the social isolation of the Socratic Method, and promotes active learning rather than passive learning, which is less effective.¹⁸² In this way, the Dean’s Fellows program at the University of Miami School of

174. See *Dean’s Fellow Study Groups*, U. MIAMI SCH. L., http://www.law.miami.edu/aap/aap_02.php?op=2 (last visited Oct. 20, 2010).

175. See E-mail from Joanne Harvest Koren, Dir., Academic Achievement Program, Univ. of Miami Sch. of Law, to author (June 15, 2010, 16:40 CST) (on file with author) [hereinafter Koren E-mail].

176. *Id.*

177. See *infra* Part V.B.3.

178. Koren E-mail, *supra* note 175.

179. *Id.*

180. *Id.*

181. See Herndon, *supra* note 132, at 819. Ms. Herndon discusses student learning groups, and asserts that they enhance humanizing, self-regulated learning, collaborative learning, and cooperative learning. See *id.* at 822–29.

182. *Id.* at 819.

Law is an example of another academic support method that advances the goal of humanizing law school.

c. ASP Focus on Learning Styles Theory as “Teach Students, Not Subjects”

Another academic support method that fosters the “teach students, not subjects” mentality is the focus on individual learning styles. Learning style theory relates to “the way in which an individual begins to concentrate on, process, internalize, and remember new and difficult academic information or skills.”¹⁸³ Relating to the field of metacognition, learning styles theory has led many educators to understand better that each student in a classroom learns differently. For instance, the VARK instrument, created by Neil Fleming, “is a questionnaire that provides users with a profile of their learning preferences. These preferences are about the ways that they want to take-in and give-out information.”¹⁸⁴ Although very simple, VARK generally informs respondents whether they are visual, auditory, read-write, kinesthetic, or multimodal learners.¹⁸⁵ It also informs respondents whether their preference for one or two particular learning styles is particularly strong.¹⁸⁶ Other learning styles models include the Myers-Briggs Type Indicator; David Kolb’s Learning-Style Inventory; Howard Gardner’s Multiple Intelligence Theory; Daniel Goleman’s Emotional Intelligence; and the Dunn and Dunn Learning Style Model.¹⁸⁷

Regardless which theoretical model is used, academic support’s adoption of a philosophy of focusing on an individual

183. Joanne Ingham & Robin A. Boyle, *Generation X in Law School: How These Law Students Are Different from Those Who Teach Them*, 56 J. LEGAL EDUC. 281, 282 (2006).

184. *Frequently Asked Questions*, VARK, <http://www.vark-learn.com/english/page.asp?p=faq> (follow “What is VARK?” hyperlink) (last visited Oct. 23, 2010).

185. *See The VARK Categories*, VARK, <http://www.vark-learn.com/english/page.asp?p=categories> (last visited Dec. 13, 2010).

186. *Understanding the Results*, VARK, [http://www.vark-learn.com/english/page.asp?p=understanding results](http://www.vark-learn.com/english/page.asp?p=understanding%20results) (last visited Dec. 13, 2010).

187. Ingham & Boyle, *supra* note 183, at 283.

student's preferred (and often subconscious) learning style thus focuses on teaching students rather than subjects. For instance, at Oklahoma City University School of Law, the Study for Success Program includes several elements using learning styles theory to enhance students' success and individualize the law school learning process.¹⁸⁸ In the Foundational Skills Series, a series of workshops open to all students with a target audience of the first-year students, attendees learn the scientific basis and theories behind preferred learning styles.¹⁸⁹ They then use either the VARK instrument¹⁹⁰ or [learning-styles-online.com](http://www.learning-styles-online.com)¹⁹¹ to determine whether they are visual, auditory, read-write, kinesthetic, or "multimodal" learners.¹⁹² The instructor then explains examples of how to accomplish certain law school study tasks in a more effective way, using one's preferred learning style.¹⁹³

Rather than teaching all students to outline in the traditional way—a hierarchical written system organizing doctrinal material using roman numerals, then capital letters, etcetera, the academic support professional shows different methods of outlining which accommodate each learning style.¹⁹⁴ While read-write learners are taught the alpha-numeric, hierarchical outlining method, visual learners are taught how to create a "mind map" of course material in a way that comports with their absorption style that leans towards visual representations.¹⁹⁵ These students are also referred to software such as FreeMind or Mind Manager.¹⁹⁶ Auditory learners are taught how to "talk through" doctrinal material and even to

188. E-mail from Chelsea M. Baldwin, Assistant Dir., Academic Achievement, Okla. City Univ. Sch. of Law, to author (July 7, 2010, 14:55 CST) (on file with author) [hereinafter Baldwin E-mail].

189. *Id.*

190. See VARK, <http://www.vark-learn.com> (last visited Dec. 13, 2010).

191. *Discover Your Learning Styles—Graphically!*, LEARNING-STYLES-ONLINE.COM, <http://www.learning-styles-online.com> (last visited July 28, 2010).

192. Baldwin E-mail, *supra* note 188.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

record this information by means of a digital voice recorder.¹⁹⁷ Finally, kinesthetic learners are taught how to write an outline as a series of flashcards or how to make a master outline on a giant scroll of butcher paper.¹⁹⁸ Underperforming students who work with the Study for Success Program in the spring are urged to journal the ways that they tweak their study methods to comport with their preferred learning style.¹⁹⁹

This type of instruction demonstrates an academic support method that humanizes the law school environment by “teaching students, not subjects.” By teaching students both how to determine their preferred learning style and how to alter their study methods to create better absorption of material, this method customizes the learning environment for each individual student. This stands in contrast to the traditional law school environment, in which students learn through the law school rumor mill that there are only two ways to study law: reading cases (or hornbooks) and outlining. That traditional approach, which focuses strictly on read-write learners, ignores all other learners—visual, audial, kinesthetic, or multimodal—who might turn out to be outstanding lawyers if not forced to digest the one-size-fits-all mentality of the traditional law school. This method humanizes the law school and increases the likelihood of students’ success.

3. Humanizing Tenet Number Three: “Peace and Justice”

The definition of “peace and justice” might best be described as follows: “The call to humanize legal education is part of a much larger call to humanize the profession by recapturing the essence of professional values—peacemaking, problem solving, and justice work.”²⁰⁰ As discussed previously, each of these values gets little to no mention in the traditional law school curriculum, and specifically during the first year. Peacemaking is virtually ignored, as students’ primary vision of law practice is

197. *Id.*

198. *Id.*

199. *Id.*

200. Fines, *supra* note 37, at 322.

through the lens of appellate decisions—a venue in which litigants are making war, not peace. Problem solving is given short shrift as well, given that students are inundated with zero-sum game analysis and never given the opportunity to solve clients' problems—except perhaps in a clinic. Finally, “justice work” is a term completely absent from the traditional law school environment, as it is viewed as a subjective, irrational enterprise best stamped out early in one's law school career.²⁰¹

On this same front, Professor Paula Lustbader identifies three dimensions of justice that impact law school learning: distributive, commutative, and social.²⁰² She argues that law schools violate distributive justice in their admissions practices, merit scholarship practices, and pedagogical practices.²⁰³ She argues that the traditional law school environment violates commutative justice (fundamental fairness) by providing no learning choices in the first year; forcing students to ignore their learning styles; providing little, if any, feedback and only one formal assessment of their learning; and abstracting the discourse so as to ignore the particulars of many students' lives,

201. See Lustbader, *supra* note 32, at 613–14 (detailing the alienating experience of a first-year law student encouraged to divorce herself from her beliefs).

202. *Id.* at 615. Distributive justice considers whether the distribution of opportunity is equitable. *Id.* Commutative justice focuses on whether the relation between one party and another is fundamentally fair, particularly when there is a power imbalance between the parties. *Id.* at 618. Social justice means that “persons have an obligation to be active and productive participants in the life of society and that society has a duty to enable them to participate in this way.” *Id.* at 620.

203. *Id.* at 617–18. Granting merit scholarships on the grounds of high LSAT scores violates distributive justice: less wealthy students are less likely to be able to afford an expensive preparation course and they are less likely to receive a scholarship. *Id.* at 617. These students need to earn money during law school: they must have a job during law school, thus limiting the time available to study. *Id.* at 617–18. Maintaining a job means they have less study time, impacting their grades. *Id.* at 618. Finally, on-campus interviews go to students with strong GPAs, so less wealthy students thus have less access to the better jobs. *Id.* She also argues that the traditional law school environment violates distributive justice by favoring students who can excel in a pedagogical context focusing on the Socratic Method, limited feedback, and a single examination. *Id.*

values, and interests.²⁰⁴ Finally, she argues that the traditional law school violates social justice by lacking diversity, failing to foster civility, and suppressing the classroom participation of certain groups.²⁰⁵ The upshot with each of these dimensions of justice is that the traditional law school environment fails to create a learning community to promote a pedagogy of justice.

ASPs can help to remedy this problem. At Seattle University School of Law, the Academic Resource Center (ARC), for instance, focuses on creating “learning communities,” an “intentional grouping[] of students for the purpose of creating positive learning environments that support learning and encourage a sense of belonging among the group members.”²⁰⁶ “An effective learning community respects and values diversity, includes an integration of knowledge and learning, practices active learning, provides assessment and reflection, and supports community.”²⁰⁷

To effectuate these ideals, the ARC provides a seven-week summer course and a tutorial program during the academic year available to students admitted through an alternative admissions program.²⁰⁸ The alternative admissions program admits students who do not meet the law school’s traditional requirements for LSAT or undergraduate GPA; students “who have been culturally, economically, or historically disadvantaged; who have not been in an academic setting for a number of years; or who have learning or physical disabilities.”²⁰⁹

By giving a path of access to non-traditional students, the ARC comports with distributive justice.²¹⁰ It comports with commutative justice (fundamental fairness) by changing the

204. *Id.* at 618–20.

205. *Id.* at 620–21. Professor Lustbader details two alienating experiences she witnessed while in law school and remarks on how those experiences impinged upon her ability to learn. *Id.* at 621–23.

206. *Id.* at 625.

207. *Id.* at 626.

208. *Id.* at 629. The summer course, which occurs pre-matriculation, focuses on criminal law, legal writing, study skills, and legal analysis. *Program Overview*, *supra* note 149.

209. Lustbader, *supra* note 32, at 629.

210. *Id.*

learning environments for its students by providing more feedback, contextualizing learning into more individualized messages, and promoting (rather than repressing) students' understanding of their preferred learning styles.²¹¹ It comports with social justice by promoting diversity (both in the law school and the profession), promoting civility by supporting community, and encouraging class participation by empowering students to vocalize their learning in a more comfortable environment.²¹² The ARC gives students an object-lesson by showcasing role model lawyers who practice their craft with justice in mind. In this way, this method humanizes the law school and increases the likelihood of students' success.²¹³

B. Academic Support's Role in Empowering Student
Self-Determination and in Increasing Perceived
Autonomy Support

This section details the ways academic support helps provide an environment of student self-determination and helps increase perceived autonomy support. To review, self-determination is a theory of human motivation "concerned with supporting our natural or intrinsic tendencies to behave in effective and healthy ways."²¹⁴ It holds that education methods providing learners with a sense of competence, autonomy, and relatedness are more effective and more psychologically sound in terms of the impact on students.²¹⁵ Regarding competence, SDT supports pedagogical methods which permit students to feel that they are good at what they learn or at least can become good at it.²¹⁶ Autonomy refers to the psychological need to feel in control of

211. *See id.*

212. *See id.*

213. *See id.* at 630. In fact, the ARC has been tremendously successful. About 650 students admitted under the program are now practicing law, despite traditional entry indicators indicating that they would not succeed. *Id.* Two ARC students have been named faculty scholars, one graduated first in his class, and many have ended up in the top twenty percent of their classes. *Id.*

214. *Self-Determination Theory*, *supra* note 108.

215. *See supra* Part IV.

216. *Id.*

one's learning outcomes.²¹⁷ Relatedness focuses on the degree to which the pedagogical method promotes the feeling of interconnectedness with others and that the learning will lead to a greater ability to use the skills to interact with other people.²¹⁸ This section analyzes academic support's impact on these factors.

1. Self-Determination Theory Facet Number One: Competence

Providing competence in pedagogical methods cuts both ways in the legal academy. While many students report that law school empowers them, many others report being made to feel incompetent and unable to grasp legal doctrine.²¹⁹ It may be fair to say that legal educators spend too little time pondering how to instill in students the feeling of competence. This lack of positive feedback, coupled with many forms of implicit negative feedback, may hinder students' success and negatively impact their psychological well-being.

Studies have shown that positive feedback promotes a person's intrinsic motivation to succeed at a given task,²²⁰ while negative feedback has the opposite effect by undermining peoples' need for competence.²²¹ Thus, because positive feedback is so lacking in most law schools while negative feedback is far more common, any law school pedagogy supplying positive feedback would be valuable in terms of supporting students' intrinsic motivation to succeed.

Traditionally, law school exams, once finished, provided only summative—not formative—assessment.²²² The opportunity is

217. *Id.*

218. *Id.*

219. Lustbader, *supra* note 32, at 614.

220. Edward L. Deci, *Effects of Externally Mediated Rewards on Intrinsic Motivation*, 18 J. PERSONALITY & SOC. PSYCHOL. 105, 114 (1971).

221. See Robert J. Vallerand & Greg Reid, *On the Causal Effects of Perceived Competence on Intrinsic Motivation: A Test of Cognitive Evaluation Theory*, 6 J. SPORT PSYCHOL. 94, 99 (1984).

222. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 164 (2007). Summative assessment is feedback that serves only to inform a student of his or her proficiency in a subject after the completion of study. *Id.* Formative assessment, by contrast, is feedback in the intermediate stages of learning seeking to provide learners with guidance on

lost, therefore, to provide students both with an idea of what they did well and what they could have done better. ASPs remedy that problem by turning summative assessment into formative assessment, without a time-cost to doctrinal faculty, by providing both positive and constructively critical feedback on students' work.²²³

At the University of Connecticut School of Law and New England Law | Boston, for instance, students meet with academic support professors for feedback on their mid-year exam essays.²²⁴ Students are required to obtain, read, and critically analyze their mid-year essays before submitting the essays to academic support faculty with whom they later meet.²²⁵ During that meeting, ASP faculty work with the student to identify strengths and weaknesses in the student's work.²²⁶ Because the purpose of such a meeting is not to reteach doctrine,²²⁷ the aspects of critique usually focus on isolating examples of the

their current proficiency in a subject as well as what they must do to improve. *Id.*

223. See Bloom & Schulze, *supra* note 43, at 14–15.

224. See *id.* at 13; E-mail from Rebecca Flanagan, Coordinator, Academic Success Programming, Univ. of Conn. Sch. of Law, to author (June 29, 2010, 15:08 EST) (on file with author) [hereinafter Flanagan E-mail].

225. See Bloom & Schulze, *supra* note 43, at 13 (New England Law | Boston); Flanagan E-mail, *supra* note 224 (University of Connecticut School of Law).

226. See Bloom & Schulze, *supra* note 43, at 13; Flanagan E-mail, *supra* note 224.

227. See Bloom & Schulze, *supra* note 43, at 14–15. A debate exists in the academic support field regarding the role of doctrine in law school academic support. While it is widely acknowledged that there is significant peril in “re-teaching” doctrine, the wholesale schism between doctrine and skills is equally questionable. See *id.* As such, many in the field advocate for “contextualized” or “integrated” academic support, meaning that academic support attempts to improve students’ skills by means of problems and activities in the context of subject matter recently learned in doctrinal courses. See *id.* at 16. A related thesis is that academic support professionals should avoid methods that focus on “tutoring” students. *Id.* at 14–15. There are two reasons for this. First, tutoring may implicitly place the responsibility for learning in the hands of the tutor, rather than the student. *Id.* This is especially detrimental for the study of law, since a substantial part of legal education is teaching students how to teach themselves the law. *Id.* Second, tutoring by an instructor other than the student’s professor could fail to account for crucial doctrinal nuances constituting an important part of the professor’s grading. See *id.* at 16. Further scholarship on these issues is warranted.

student's skills and weaknesses.²²⁸ These examples can include a failure to use specific facts to analyze the problem, a failure to argue both sides of an argument, or an instance where the student otherwise jumped to a conclusion without sufficient analysis.²²⁹

Professor Paula Manning of Western State University of Law writes in a forthcoming article that these sorts of academic support feedback can:

- (1) build students up by showing appreciation, respect and understanding for their work;
- (2) develop students' self-understanding and reflection skills—helping students to focus on non-competitive, achievable learning goals, i.e., doing their best and learning the material rather than on beating everyone else; and
- (3) to build self-efficacy, instilling in . . . students the belief that success was within their grasp, so long as they persisted in their efforts.²³⁰

In this way, ASP methods provide students with competence in an environment otherwise unlikely to meet this crucial psychological need.

2. Self-Determination Theory Facet Number Two: Autonomy

Autonomy support has three separate aspects: (1) "choice provision, in which the authority provides subordinates with as much choice as possible within the constraints of the task and situation;"²³¹ (2) "meaningful rationale provision, in which the authority explains the situation in cases where no choice can be provided;"²³² and (3) "perspective-taking, in which the authority shows that [he or she] is aware of, and cares about, the point of view of the subordinate."²³³ The traditional law school

228. See *id.*; Flanagan E-mail, *supra* note 224.

229. See Bloom & Schulze, *supra* note 43, at 13; Flanagan E-mail, *supra* note 224.

230. Paula Manning, *Affective, Effective Feedback*, LEARNING CURVE (Am. Ass'n of Law Sch. Section on Academic Support) (forthcoming 2010) (on file with author).

231. Sheldon & Krieger, *supra* note 111, at 884.

232. *Id.*

233. *Id.*

environment basically is an object-lesson in how not to provide autonomy support. There is little, if any, choice provision in the first year:²³⁴ students may not select their courses; they are presented with one method to learn the law—read cases, read hornbooks, write outlines; and they are even taught that there is just one way to think about law. Possibly of more importance, the second aspect of autonomy support is absent: Students usually never learn why there is no choice provision. If students were given an explanation as to why classes are all mandatory—because the bar exam focuses on these subjects and they are the universally foundational subjects—at least that would provide some autonomy. Instead, students are expected to do as they are told, even if it means studying five subjects in which they have little interest. Finally, in the traditional law school environment, students often lack any indication that authority figures (faculty) care about their points of view.

Once again, ASPs go a long way in ameliorating this situation. In terms of choice provision and the traditional law school implicitly telling students that there is just one way to learn the law, ASPs provide students with a deeper understanding of alternative ways to learn the law. As discussed previously, ASPs' focus on learning styles theory provides choices to students in terms of how they learn law:²³⁵ visual, auditory, read-write, and kinesthetic learners can all tweak their study procedures to work with, rather than against, the way that their brains process information.

Some ASPs take this a step further by providing instruction to students not only on how best to work with their individual learning styles, but also how to determine and study in accordance with their personality typology.²³⁶ The essence of personality typology, perhaps best typified by the work of C. G. Jung, Katherine Briggs, and Isabel Briggs Myers, is that “much seemingly random variation in . . . behavior is actually quite orderly and consistent, being due to basic differences in the ways

234. Lustbader, *supra* note 32, at 618–19.

235. *See supra* notes 188–99 and accompanying text.

236. *See* Telephone Interview with Martha Peters, Professor of Legal Educ., Elon Univ. Sch. of Law (June 29, 2010) (on file with author).

individuals prefer to use their perception and judgment.”²³⁷ Briggs and Briggs Myers developed the Myers-Briggs Type Indicator (MBTI), which some ASPs use to help individuals understand their basic preferences “of each of the four dichotomies specified or implicit in Jung’s theory” and to identify and describe “the [sixteen] distinctive personality types that result from the interactions among the preferences.”²³⁸ In using this instrument in law school, ASPs give students an even deeper understanding of how they, as individuals, learn new material, interact with others, and process information.

For instance, at Elon University School of Law, the Academic Skills Program incorporates personality typology in the law school orientation program.²³⁹ During a half-day program, students focus on understanding the results of their MBTI test, which they have completed prior to the orientation.²⁴⁰ A student also has the opportunity to self-assess his personality type and consider why his self-assessment might differ from his MBTI results.²⁴¹ Dr. Martha Peters, the Director of the Academic Skills Program, then conducts a series of exercises related to law school skills to demonstrate the utility of meta-cognition based on personality typology in law school studies.²⁴² For instance, she separates the introverts from the extroverts in the law school lobby, and, as the introverts wait quietly for the exercise while the extroverts all talk with each other, Dr. Peters then discusses the impact on law study of being either an introvert or extrovert.²⁴³ Students are then further divided based upon the other personality dichotomies, such as intuitive versus sensing, and Dr. Peters discusses the impact of that particular personality type.²⁴⁴

237. *MBTI Basics*, MYERS & BRIGGS FOUND., <http://www.myersbriggs.org/my-mbti-personality-type/mbti-basics> (last visited Oct. 23, 2010).

238. *Id.*

239. Telephone Interview with Martha Peters, *supra* note 236.

240. *Academic Skills Program*, ELON U. SCH. L., <http://www.elon.edu/web/law/development/default1.xhtml> (last visited July 30, 2010).

241. Telephone Interview with Martha Peters, *supra* note 236.

242. *Id.*

243. *Id.*

244. *Id.*

Upper class students representing the various personality types speak to the new class about what adjustments they made to their studies due to their personality types, and Dr. Peters subsequently works with individual students to help them understand what strengths and weaknesses might help or hinder their performance.²⁴⁵ For instance, dominant intuitive personalities focus on patterns, not details.²⁴⁶ Students with a strong intuitive personality type, therefore, can miss specific facts in a multiple choice question because those facts do not match with the pattern they are observing.²⁴⁷ Dominant sensors, by contrast, often fail to connect with the big picture; they take cases one at a time, and the doctrine stays within those cases without being related more broadly to other areas.²⁴⁸ Dr. Peters works with students in the area of personality typology, through the Academic Skills Program's orientation sessions and subsequent "LET's Study" program, thus helping students proactively choose an optimal study method to optimize their learning based upon their individual personality types.

In this way, Elon Law's Academic Skills Program enhances students' autonomy. Rather than having to face law school in a one-size-fits-all mentality, students receive the explicit message in the first days of law school that their individual learning skills are important. This provides the "choice provision" aspect of autonomy support.

Furthermore, this program also fulfills autonomy support's "perspective-taking" aspect. It does so by demonstrating explicitly to students that the law school is aware of and cares about each student's point of view towards learning. By providing this autonomy support, Elon's Academic Skills Program enhances the likelihood that students will succeed by connecting them with intrinsic motivation—the satisfaction achieved through competence and mastery—rather than forcing them to rely on the less efficacious extrinsic motivation—fear of low grades or low class rank.

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

3. Self-Determination Theory Facet Number Three: Relatedness

Relatedness in education means providing learners with a sense that “they are relating meaningfully to others in the [learning] process, that is, connecting with the selves of other people.”²⁴⁹ Like competence and autonomy, relatedness is a fundamental need of humans that has been compared “to a plant’s need for sunlight, soil, and water.”²⁵⁰ In an educational setting, it means the connection to others in the learning process; in the legal education setting, it could mean connection to others in the lawyering process.

a. How Law Schools Traditionally Fail at Providing Relatedness

Law schools traditionally do a poor job of providing either of these types of relatedness. Mandatory grading curves and competition for the “prizes” of law school—law review membership, clerkships, and career services assistance—alienates students from one another and undermines a law school’s ability to capitalize on the potential of human interaction in learning. Furthermore, law schools’ devotion to the case method and to doctrine at the expense of skills divorces students from their natural inclination to engage in lawyering; students spend the better part of a year of law school utterly separated from fundamental lawyering skills—counseling, interviewing, and negotiating—that might connect them to practice and thus people. This section demonstrates how ASPs mitigate that problem.

b. Academic Support Methods’ Role in Providing Relatedness

ASPs frequently employ methods that connect students to other learners and to the practice of law. This Article already discussed peer teaching methods used in ASPs and argued that such programs help humanize the law school environment.²⁵¹ These methods also promote relatedness as they link students to

249. Sheldon & Krieger, *supra* note 111, at 885.

250. *Id.*

251. *See supra* Part V.A.2.b.

one another, thus providing an essential nexus of compassion and shared understanding between two learners. Other ASP methods have the same impact.

For instance, at Capital University Law School, the Academic Success Program spearheads a two-week pre-matriculation program designed, in part, to humanize the law school environment.²⁵² In addition to sessions on law school skills, the program offers a series of sessions ultimately serving to provide students with a sense of relatedness.²⁵³ First, the ASP runs a “Networking Bingo” collaborative exercise that forces students to work on a skill set—interpersonal relations—mostly ignored in law school.²⁵⁴ Not only does this exercise allow students to relate better to a skill they must employ in practice, but it also allows students to meet one another in an in-depth way, forging bonds that will carry them through their challenging years in law school.²⁵⁵

Second, the Academic Success Program Director teaches a class session during the pre-matriculation program on how to write a proper handwritten thank you note and the benefits of doing so.²⁵⁶ Each student is instructed to bring the name and address of someone who helped them get to law school.²⁵⁷ Students write the thank-you note, address it, and the ASP mails it for them.²⁵⁸ Students then form working groups; each student tells the story of the person who helped them get to law school and why they chose that person to receive their note.²⁵⁹ Not only

252. See E-mail from J. Joseph Bodine, Jr., Dir. & Professor, Academic Support Program, Capital Univ. Law Sch., to author (June 25, 2010, 06:07 EST) (on file with author) [hereinafter Bodine E-mail].

253. *Id.*

254. *Id.* This exercise derives from one created by the National Association for Law Placement, Inc. (NALP). See *What Is NALP?*, NALP: ASS’N FOR LEGAL CAREER PROFS., <http://www.nalp.org/whatisnalp> (last visited Oct. 22, 2010) (“NALP is dedicated to facilitating legal career counseling and planning, recruitment and retention, and the professional development of law students and lawyers.”).

255. See Bodine E-mail, *supra* note 252.

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

does this session teach an important skill in lawyering—communicating with those who have given assistance—students become more connected to each other by hearing how each student struggled to make it to law school.

The final session in the series is intended to train students on a skill they will need in law school and which many lawyers will need in practice: how to deal with difficult language and subject matter.²⁶⁰ Students receive group training, using George Carlin's infamous list of words not permitted on television,²⁶¹ on how to communicate with others even when doing so requires socially impolite language.²⁶² Students are then asked to pair with a student they do not know and work through an explanation of a very short case that requires them to quote the testimony of a forensic pathologist who testified about injuries in two terrible sexual assault cases.²⁶³ Although students initially approach this exercise tentatively, they soon develop the ability to converse professionally on the subject matter and establish friendships that connect them throughout law school.²⁶⁴ In the three years Capital has been running this session, the Director has needed to add an hour to the exercise because students were so engaged by the process of working on real-life lawyering skills.²⁶⁵

Each of the sessions in Capital Law's pre-matriculation programs serves the needs of relatedness. In each activity students work with other students on exercises designed to bring them together in a learning environment of collaboration, rather than the traditional law school environment of competition, detachment, and solitude. By connecting the students with each other, these exercises allow students to tap into the intrinsically motivating sense of interpersonal connectedness that will help them persevere through law school. In so doing, this cooperative learning exercise cultivates students' investment in each others'

260. *Id.*

261. *FCC v. Pacifica Found.*, 438 U.S. 726, 751–55 (1978) (containing a transcript of Carlin's monologue entitled "Filthy Words").

262. Bodine E-mail, *supra* note 252.

263. *Id.*

264. *Id.*

265. *Id.*

success, a concept called positive interdependence.²⁶⁶ This is the crux of relatedness, and recent studies have proved that collaborative learning is more effective than competitive learning.²⁶⁷

Also, these exercises connect students to an ultimate sense of purpose in their learning that allows them to see how they will relate in the future to clients, jurors, and other professionals by exposing students to practice skills usually ignored in law school: Professional communication. Instead of being sequestered for a year away from these aspects of a lawyer's professional life, exposure to methods of professional communication allows students to see how the concepts covered in their doctrinal classes might be expressed to their constituents in the future. Unlike the traditional law school's tendency to deflate students, this aspect of relatedness empowers them to succeed.

VI. CONCLUSION

This Article set out to demonstrate the multiple academic and quasi-academic benefits of law school academic support. For those in the academy genuinely concerned about the well-being of our students, this Article establishes that ASPs instill self-determination, promote autonomy support, and contribute to the goal of humanizing the law school environment. As such, students will be more successful, both academically and personally, if law schools implement and expand ASPs.

To prove this thesis empirically, I conducted surveys of students at the law school where I teach.²⁶⁸ The survey instrument questions separated students into three groups: those who participated substantially in our ASP classes, those who somewhat participated in those programs, and those who barely participated or did not participate at all. The initial results from this study show that those who participate substantially in

266. See Roger T. Johnson & David W. Johnson, *An Overview of Cooperative Learning*, in CREATIVITY AND COLLABORATIVE LEARNING: A PRACTICAL GUIDE TO EMPOWERING STUDENTS AND TEACHERS 31, 33 (Jacqueline S. Thousand et al. eds., 1st ed. 1994).

267. See *id.* at 38.

268. I will detail this study and its results in a subsequent article.

academic support classes show higher levels of perceived autonomy support, a greater degree of perceived self-determination, and a higher likelihood of perceiving our law school as humane. This is despite the fact that many of our programs focus on students who have underperformed in law school—a group one would expect to show lower degrees of the classifications above.

In the meantime, I conclude with the following: “Legal educators, it seems, are quite willing to assume that traditional Socratic classes are cost-effective, but they want tangible evidence to justify academic support.”²⁶⁹ This double-standard is all the more vexing given the studies showing that traditional law school methods—including the Socratic Method—are weaker in pedagogical value; harmful to women and minorities; and probably the source of unlimited stress, mental health problems, alcohol and drug dependence, and unhappiness.²⁷⁰ Nonetheless, the double-standard exists, and although reform efforts are gaining momentum, the status quo continues to persist. Despite this, ASPs can serve as a vital source for offsetting the negative aspects of law school, helping to foster a more efficacious learning environment, and leading to healthier, happier graduates.

269. See Knaplund & Sander, *supra* note 27, at 162.

270. See Morrison Torrey, *You Call That Education?*, 19 WIS. WOMEN'S L.J. 93, 104–08 (2004) (criticizing the Socratic Method).

