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# Human Nature As a New Guiding Philosophy for Legal Education and the Profession

Lawrence S. Krieger\*

*[Universal Order] is called the great mother: . . . it gives birth to infinite worlds. It is always present within you. You can use it any way you want.*<sup>1</sup>

-Tao Te Ching

## I. INTRODUCTION

A distinct progressive energy has begun to pervade the landscape of legal education in the past few years. The movement toward “humanizing”<sup>2</sup> legal education is maturing after less than a decade of organized activity, and other powerful initiatives with broadly humanizing purposes have simultaneously emerged. The Association of American Law Schools (AALS) sponsored a relevant full-day workshop on Balance in Legal Education at its annual meeting in 2006 and approved the formation of the Section on Balance in Legal Education in 2007.<sup>3</sup> Three in-depth studies of the effects of legal education on personality have been published in the past four years,<sup>4</sup> and Washburn University School of Law hosted a two-day symposium on Humanizing Legal Education in

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\* Clinical Professor of Law, Florida State University. I am constantly grateful to the law teachers and administrators that have contributed to the effort to humanize law schools. There are too many to mention individually, but every idea and encouragement you have offered has genuinely helped. We are all grateful to the Washburn University School of Law community for creating and sponsoring a symposium on Humanizing Legal Education; it has served as inspiration for many of the ideas in this paper. I also thank Dean Donald Weidner of Florida State University College of Law for his ongoing support of my work, Professor Michael Schwartz for many thoughtful comments about this paper, and our law library staff for their unflinching, expert assistance.

1. TAO TE CHING 6 (Stephen Mitchell trans., 1988). I have substituted “Universal Order” for “The Tao.” The meaning of “Tao” is difficult to capture simply. It is referred to or described in this text in many ways, including “intelligence of the universe,” *id.* at ix, “Nature,” *id.*, the universal creative force or principle, *id.* at 34, 94, and that which creates harmony or order in the world, *id.* at 37, 39.

2. “Humanizing legal education” is a familiar term for some law teachers currently, and wholly unfamiliar to many others. One of the purposes of this paper is to propose a reasonably precise definition of the term.

3. The Section on Balance in Legal Education was formally approved in June 2007.

4. ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER” (2007); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004) [hereinafter *Undermining Effects*]; Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 J. PERSONALITY & SOC. PSYCHOL. 883 (2007) [hereinafter *Understanding Negative Effects*].

2007. Two major new treatises<sup>5</sup> recommend core changes to legal education in ways consistent with the findings of these recent studies and in other ways that will humanize legal education. These treatises have already stimulated broad discussion in the national legal education community. Substantial support within the academy<sup>6</sup> underlies these landmarks, as law teachers seek ways to improve teaching practices and the outcomes of legal education.

In this paper, I offer a unified conceptual framework to understand and provide guideposts for the adaptive trends beginning to take hold in legal education. I focus on the core qualities of human nature, because human nature is the primary resource with which educators inevitably work. I will (1) propose a definition of “humanizing” legal education by reference to recent, relevant empirical studies and to fundamental qualities of human life; (2) point out various ways in which common law school policies and teaching practices contradict fundamental needs and dynamic tendencies inherent to human nature, and thereby produce unwanted effects in law students; (3) contrast human nature with the current values system guiding most law schools; and (4) propose simple, immediate steps toward harmonizing legal training with the natural needs and tendencies of law students and lawyers.

The current progressive tendency in legal education comes at a time of rapidly expanding scientific understanding about the nature and needs of virtually all people, including those social and psychological factors that contribute to meaning, effectiveness, and enjoyment of life. This emerging scientific understanding, which I explain below, leads directly to the realization that various practices and policies typical of law schools conflict with, and even obstruct, the expression of human nature and the natural development of the person. This realization can clarify our understanding of many concerns with law schools and the legal profession, and simplify our approach to solutions.

As law schools increasingly engage in progressive change, I propose that we begin a process that consciously incorporates human nature as a primary guiding philosophy for our educational responsibilities. The current understanding of human nature provides dynamic, operational information about the nature of our primary resources, our students and ourselves, and, thus, should serve well to guide broad improvements in our law schools. I will, therefore, first describe in some detail the “nature of human nature,” as a backdrop for understanding

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5. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* (2007); WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS* (2007) [hereinafter *CARNEGIE REPORT*].

6. The list serve for humanizing legal education is approaching 400 subscribers. The national response to the calls for proposals for the American Association of Law Schools (AALS) Workshop on Balance in Legal Education (2006) was unprecedented, and similarly, the Washburn University School of Law Conference/Symposium on Humanizing Legal Education (2007) was extended from one to two days based on the number of quality presentation proposals submitted.

the significance of the recent research and the foundational principles for progress.

## II. DEFINING “HUMANIZING” TO PROVIDE DIRECTION

From the beginning of the “humanizing legal education” effort, we have articulated shared concerns about the health, well-being, and life satisfaction of law students and the lawyers they become,<sup>7</sup> but none of us have specifically defined “humanizing.” A functional definition is overdue and increasingly appropriate, particularly in light of the new empirical evidence regarding the actual effects of legal education. Indeed, the recent research summarized in this paper, including a linguistic analysis of eight first-year classrooms, demonstrates harsh, dehumanizing effects of law teaching and stridently calls for attention.<sup>8</sup> In this section, I describe human nature from two complementary perspectives and propose a functional definition of “humanizing” legal education.

### A. *Empirical Observation of Core Human Characteristics*

The following list of human qualities is derived from reflective observation with an eye toward relevance to education and human development. It is intended as a first step toward defining a “humanizing” educational effort more precisely.<sup>9</sup> The relevant, fundamental dynamics organizing human life appear to include:

- (1) a persistent motivation for the experience of “happiness,” contentment, or well-being;
- (2) the capacity and desire throughout life to grow and expand in multiple dimensions, typically including knowledge, understanding, relational fulfillment, and skills and abilities of all kinds;
- (3) virtually unlimited choice regarding our own beliefs, attitudes, and behaviors;
- (4) the need to be with other people in ways that allow for understanding and being understood, helping and being helped, caring and being cared for;
- (5) the desire to exercise acquired competencies fully and in challenging ways;
- (6) the capacity for self-awareness and self-monitoring, which fur-

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7. The Humanizing Legal Education website first articulated these concerns in 1999. See Florida State University College of Law, *Humanizing Legal Education*, [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool.html](http://www.law.fsu.edu/academic_programs/humanizing_lawschool.html) (last visited Jan. 18, 2008).

8. See, e.g., *Undermining Effects*, *supra* note 4.

9. This list of characteristics is intended to be fundamental rather than controversial. It is not intended to be comprehensive, and I do not discuss experience at the extremes of behavior (i.e. sociopaths). Many of these general characteristics also distinguish us from other species, although that is also not the purpose of the list.

ther enable self-regulation and intelligent choice-making;

- (7) awareness of past, future, change, and eventual death;
- (8) consciousness of progress, or lack of progress, across time, based on sensed change in knowledge, competencies, relational/social experiences, overall self/life assessment, and the level of satisfaction they produce;
- (9) finally, and relating back to the introductory quotation, the tendency to make choices for our energy and attention that we believe will maximize our life experience in many of the foregoing ways.

The orientation toward growth is universal and constant. Again, alluding to the introductory quotation, the growth principle embedded in “universal order” is observable in the tendencies of all species, from the submicroscopic to large plants and animals, to preserve, grow, reproduce, and expand until constrained by other natural forces. This principle is manifest in individual physical growth, population growth, and territorial expansion of each species. These universal tendencies are, of course, also intrinsic to humans. However, our greater complexity and freedom of choice enable expression of the same impulses in numerous additional ways. Virtually everyone, every day, wants more happiness and satisfaction, sought in various ways—usually several simultaneously—through basic self-chosen channels such as materialism, hedonism, egotism, altruism, sociality, or spirituality. Ultimately, success in a chosen pursuit produces some proportional increase in the happiness and satisfaction we are seeking, and so we tend to continue that pursuit. Conversely, when our choices and efforts produce negative feelings, we may begin to re-evaluate or question our direction.

As a result of the complexity of our linguistic, cognitive, and social capacities,<sup>10</sup> human growth also takes the form of what I will call “second-level” development. Compared to some of the more basic tendencies listed, these levels of integration and maturation are subtle and layered. They include:

- (1) ongoing assimilation of growing mental, physical, emotional, and social capacities into an expanding, maturing, increasingly integrated self;
- (2) the resultant development of sensitivity to the needs of others, one’s community, culture, and world. This sensitivity, which is experienced as conscience, morality, or a sense of “fairness” or “justice,” provides internal, autonomous frames of reference for judging right and wrong behaviors for one’s self in relation to others and the external world;

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10. Esther Herrmann et al., *Humans Have Evolved Specialized Skills of Social Cognition: The Cultural Intelligence Hypothesis*, 317 *Sci.* 1360, 1360 (2007).

- (3) constant balancing of potentially conflicting needs and desires as the self grows and expands into relationships and communities of interest. Examples include balancing self-care with caring for others; fulfilling personal needs and serving the collective; simultaneously nurturing, exercising, and appropriately limiting the mental, physical, emotional, and spiritual facets of self; balancing relaxation and sensory pleasures with purposeful work;<sup>11</sup> balancing idealism regarding goals for self and contribution to others, with the often frustrating realities encountered when seeking to implement those goals.<sup>12</sup>

1. The Importance of Conscience, Morality, Authenticity, and Growth and Integration

Conscience and morality are critical to the achievement of a thriving individual life within the constraints of social demands. These subjective faculties become primary internal sources of authority that impose frameworks of right/wrong, fair/unfair, decent/indecent, etc., to guide mature behavior. As such, their importance is suggested by their prominence in virtually all religious traditions and by the ongoing training in social and cultural values and mores provided to children and young people in all cultures. Ultimately, these “soft” norms that permit individuals and societies to thrive across generations are accepted by the maturing person, and become fully internalized as guideposts for living and for dealing with others. At the same time, and of equal importance, parental training and religious tenets teach personal authenticity. The mature person will increasingly develop, integrate, and coordinate both capacities in her personality, so that she will be honest and genuine about herself, and also relate to others in culturally appropriate ways (do not hurt people, do not take or harm another’s property, stop for an injured pedestrian, etc.).

While routines and stability are important foundations for life, people thrive on perceived growth or progress, but suffer from the contrary sense of stagnation. Throughout life, the desire to grow, expand, and progress leads to experiences of vitality, meaning, and purpose, whether manifesting as a desire to achieve a grand social end—world peace, social justice—or a modest personal goal—try a new recipe, learn

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11. The greater importance of meaningful, purposeful activity compared to sensory pleasure is demonstrated in recent research. See Kennon M. Sheldon et al., *What Is Satisfying About Satisfying Events? Testing 10 Candidate Psychological Needs*, 80 J. PERSONALITY & SOC. PSYCHOL. 325, 325-27 (2001) (finding the intrinsic need for experiences of self-esteem, competence, autonomy, and relatedness to others to be substantially stronger than the need for pleasure).

12. Indeed, failure to moderate idealism with acceptance of reality is a powerful source of frustration and can lead to early professional burnout. LAWRENCE S. KRIEGER, A DEEPER UNDERSTANDING OF YOUR CAREER CHOICES 8-9 & 17-18 nn.13-19 (2006).

new information or skills, earn more money, meet new people, buy a better car. Growth, or progress, is a powerful source of satisfaction, while the experience of obstruction, being “stuck,” or failing to make progress creates palpable irritation or frustration. As a result, choices for learning, growing, and expanding are frequent and highly significant to human life experience. Further, as mentioned above and further discussed in the research summary below, an important, second-level growth and maturation experience involves the internalization of social and cultural needs within a self that can increasingly appreciate, interact with, and support others and society as a whole. It is these fundamental impulses for growth on various levels that bring people to law school and the legal profession, and, as I will argue later, it appears that these basic life impulses are commonly frustrated as people experience legal education and move into their careers.

## 2. Psychological Well-Being

The term “happiness” is capable of many meanings, including relatively superficial, transitory feelings such as exhilaration or sensual gratification. In this paper, happiness is used synonymously with “subjective well-being,” which modern psychologists often define as satisfaction with self and life combined with a sense of vitality, thriving, or positive feeling/affect.<sup>13</sup> Hence, happiness and well-being will connote a sense of satisfaction with one’s self and life that is relatively constant amidst the inevitable peaks and valleys of physical and emotional experience.<sup>14</sup>

As previously stated, we appear to share a universal impulse toward well-being as a constant guiding principle for choices about our behavior.<sup>15</sup> A thorough understanding of the sources of positive and negative well-being should be pointedly relevant to legal educators, both because of the established tendencies of law students and lawyers toward depression, generalized emotional distress, and life/career dissatisfaction<sup>16</sup> and because, as we will see, performance effectiveness and

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13. See, e.g., BRUNO FREY & ALOIS STUTZER, HAPPINESS AND ECONOMICS 11-12 (2002); DAVID G. MYERS, THE PURSUIT OF HAPPINESS 23 (1992); Kennon M. Sheldon et al., *Does Autonomy Increase with Age? Comparing the Goal Motivations of College Students and Their Parents*, 40 J. RES. PERSONALITY 168 (2006).

14. MYERS, *supra* note 13, at 23.

15. There are other fundamental impulses of course, the most basic of which is survival. For the best-known discussion of human needs, see ABRAHAM H. MASLOW, MOTIVATION AND PERSONALITY 15-30 (1987).

16. I do not believe life and career (dis)satisfaction can be meaningfully separated, since one’s career is such a substantial part of one’s life. I have described this general research in previous papers. See Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 112-15 (2002); see also Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 872 (1999).

pro-social, professional values predictably accompany well-being.

### *B. Core Human Qualities Empirically Measured*

#### 1. Key Sources of Well-Being

The range of potential behaviors, and hence potential sources of well-being, is enormous. The empirical findings of modern psychology, particularly the strongly data-driven Self-Determination Theory (SDT),<sup>17</sup> simplify the consideration by identifying key sources of subjective well-being (SWB). These sources of SWB include specific values, motivations, and needs, many of which mirror the general observations of human nature previously discussed. The findings reflect more than two decades of research on general populations in various countries and cultures, and therefore embody what appear to be fundamental laws of human nature. It is important to note that these sources of well-being also tend to promote more generalized thriving, including internal motivation and effective performance, and that virtually all of these basic human dynamics have been confirmed in law student populations through pilot studies during the past six years.<sup>18</sup> I have discussed some of these dynamics in previous papers,<sup>19</sup> but there are expanded, more recent findings here that are important to our inquiry regarding law schools.

The established sources of well-being and thriving include the following:

##### *a. Need Satisfaction*

The most authoritative study investigating psychological needs found the basic needs to be *self-esteem, relatedness to others, autonomy*, including *authenticity of one's person*, and *felt competence*. A further need, *security*, apparently underlies and enables experiences of these primary needs and hence is also important.<sup>20</sup> Experiences of esteem, autonomy, authenticity, relatedness, and competence tend to produce a sense of well-being, meaning, and thriving in life. When people are deprived of one or more of these experiences, they suffer from angst, low vitality, and loss of meaning in life.<sup>21</sup> Most of the SDT re-

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17. Virtually all of the modern papers cited here encompass the posits and methods of Self-Determination Theory (SDT).

18. See *Undermining Effects*, *supra* note 4; *Understanding Negative Effects*, *supra* note 4.

19. See Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction*, 11 CLINICAL L. REV. 425 (2005); Krieger, *supra* note 16.

20. Sheldon et al., *supra* note 11, at 336-37.

21. *Id.* at 329, 331, 335-36.



search focuses on autonomy, relatedness, and competence,<sup>22</sup> the needs identified in the original theory. Because the measures of *autonomy* include the qualities of authenticity and genuineness, this need corresponds strongly with personal identity, integrity, and the content of one's perceived self. Autonomy is therefore the most important need for the purposes of this article, and is raised repeatedly in the discussions that follow. On the other hand, and also of specific interest to a discussion of the legal profession, this landmark study tested proposed needs for financial affluence and power/influence, concluding that they are *not* human needs since they produce very low or even negative well-being.<sup>23</sup> A summary of the human needs, including their operative definitions, are shown in Figure One.<sup>24</sup>

**FIGURE ONE: BASIC HUMAN NEEDS**

**("Need": experience that reliably produces sense of well-being, thriving, meaning in life; and deprivation of experience generates angst, depressed mood, low vitality):**

--**Self-Esteem** (sense of self-respect, having positive qualities, satisfaction with one's self)\*

--**Relatedness** (feel well-connected to others generally, closeness, intimacy with important others)

--**Autonomy/Authenticity** (choices based on true values/interests, express one's true self; and ability to make choices one prefers, to do things as one wants)

--**Competence** (feel very capable, mastering hard challenges, successful at difficult tasks)

--**Security** (life is predictable, safe; reliable routines): Security is a threshold need, foundational to others rather than providing well-being in itself

\*Parentheticals summarize definitions as measured for each variable

*b. Values*

Values refer to the generalized content of important, overarching goals that a person endorses. Research has shown that "intrinsic" values—for self-understanding and growth, close relationships, helping others, and building community, reliably lead to enhanced well-being, and that "extrinsic" values for wealth, luxuries, power, and fame result in decreased SWB.<sup>25</sup> It appears from very recent research that the in-

22. *Id.*

23. *Id.* at 337.

24. Sheldon et. al., *supra* note 11, at 331.

25. Tim Kasser & Richard M. Ryan, *A Dark Side of the American Dream: Correlates of Financial Success As a Central Life Aspiration*, 65 J. PERSONALITY & SOC. PSYCHOL. 410, 410 (1993); *see*

trinsic values promote well-being primarily because they lead to behavioral choices that satisfy the basic needs for autonomy, relatedness, competence, and esteem.<sup>26</sup> Hence, even if these adaptive values are endorsed by a person, if they are not *acted* on they do not produce experiences of the self-appreciation/esteem, self-expression/autonomy, personal relationships, or community integration needed for well-being and thriving. For example, a busy attorney who strongly values family but regularly misses dinners and meaningful family events will not experience well-being from her intimacy value, because her daily choices express incongruent values and frustrate her needs for relatedness, and possibly self-esteem. The key values and some of their implications in the law school/law practice context are shown in Figure Two.<sup>27</sup>

FIGURE TWO: VALUES AND SOME RELEVANT APPLICATIONS	
<p>I. <u>Intrinsic Goals &amp; Values</u> (Lead to Core Need Satisfaction, Predict Sense of Well-Being, Meaning, Thriving)</p> <ul style="list-style-type: none"> <li>--Self-acceptance, understanding, growth</li> <li>--Closeness, Connectedness to Others</li> <li>--Helping/Altruism</li> <li>--Community (supporting, building)</li> </ul> <p>II. <u>Implications of Intrinsic Goals/Values</u></p> <ul style="list-style-type: none"> <li>--Focus on people and process: self-expression/growth, support of others, community</li> <li>--Being with others to learn, share, enjoy, create</li> <li>--Competing to enjoy the activity, express ability, improve, achieve personal best (mutuality, win-win)</li> <li>--Low stress; realistic, attainable demands within person control; enjoyable, comfortable processes</li> <li>--Express/strengthen integrity, professional/ethical behavior; positive reputation consequences</li> </ul>	<p>I. <u>Extrinsic Goals &amp; Values</u> (Predict Angst, Frustration)</p> <ul style="list-style-type: none"> <li>--Affluence/Rewards</li> <li>--Fame/Prestige</li> <li>--Power/Influence</li> <li>--Appearance</li> <li>--Pleasing/impressing others (or impression on others)</li> </ul> <p>II. <u>Implications of Extrinsic Goals/Values</u></p> <ul style="list-style-type: none"> <li>--Focus on things and outcomes: grades, earnings, rankings, winning</li> <li>--Being with others to earn, impress, feel superior, receive praise, gain advantage</li> <li>--Competing to win, to feel or be seen as better than others, to gain reward or recognition (zero sum, win-lose)</li> <li>--High stress; dependent on uncertain, uncontrollable outcomes; strained processes</li> <li>--Can lead to unprofessional/unethical behavior; negative reputation consequences</li> </ul>

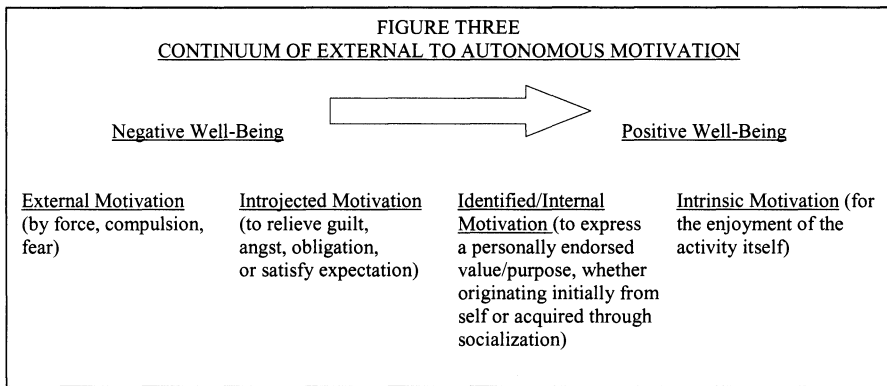
Krieger, *supra* note 19, at 429.

26. See Richard M. Ryan & E. L. Deci, *Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior*, in HANDBOOK OF PERSONALITY: THEORY AND RESEARCH 27-30 (forthcoming 2008).

27. See generally Kasser & Ryan, *supra* note 25.

c. *Motivation*

The psychologically-operative distinctions among motivations relate primarily to the perceived source, or “locus” of the motivation—whether, and the degree to which, the motivation originates from within one’s self (“intrinsic” or autonomous motivation), or is imposed or derived from outside one’s self (“external” motivation).<sup>28</sup> Again, the centrality of need satisfaction is evident here: the experience of thriving expands along a continuum of increasingly autonomous motivations. Least autonomy and least well-being proceed from external motivations—feeling controlled, coerced, or fearful or seeking to define one’s self externally, through wealth, power, rankings/recognition, opinions of others, or competitive outcomes. Greatest well-being is experienced from entirely intrinsic, self-derived motivation—undertaking an action for the joy of doing the action. Maturity, however, brings the realization that many important and potentially satisfying activities are not inherently enjoyable. As the person adopts and internalizes learned, socially and culturally accepted obligations, she increasingly experiences “internal” motivations that become critical for well-being and thriving. Typical examples might include caring for family, voting, helping the disadvantaged, or keeping one’s yard clean. When such obligations are fully internalized so that the person identifies with them as fully self-endorsed and hence genuinely autonomous, they produce well-being much like purely intrinsic motivation.<sup>29</sup> The converse is also true, that the same activities, if perceived as externally imposed, result in decreased well-being—i.e., changing the baby, voting, etc., out of coercion or to satisfy another’s expectation, rather than acting from one’s own conviction about the rightness of the activity. The continuum of internalization of motivation and increasing well-being is shown in Figure Three.



28. Ryan & Deci, *supra* note 26, at 17-20.

29. See Sheldon et al., *supra* note 13; Kennon M. Sheldon et al., *Doing One’s Duty: Chronological Age, Felt Autonomy, and Subjective Well-Being*, 19 EUR. J. PERSONALITY 97 (2005).

These empirical findings regarding the healthy needs, values, motivations, and the tendency toward personality integration largely support the observations of human nature stated earlier. They also point out the importance of the capacity for choice reflected in the opening quotation. Once one is aware of the importance of the basic needs, intrinsic values, and internal/identified motivations for a thriving life, one can seek out and engage in behaviors that maximize meaning and well-being in life and work. I later suggest broad provision of this awareness to law students and lawyers as an important foundation for humanizing law schools and the profession.

## 2. Maturity, Displacement, and Autonomy Support

Three additional, important research findings are not reflected in the initial observations of human nature; they are not as obvious or perhaps not as fundamental. They are, however, critical to our consideration of humanizing law schools.

The first additional finding is that subjective well-being tends to increase as people age.<sup>30</sup> This increasing SWB does not result from age itself, but from the expanding personality and increasing integration gained by people as they mature.<sup>31</sup> People who are maturing experience themselves as progressing in increasingly complex ways that allow for expansion of self, together with increasing integration within their culture. The result is, again, increasing need satisfaction—for autonomy as culturally appropriate behaviors are fully internalized, and probably also for self-esteem, competence, and relatedness, as one grows and thrives in relationships and in communities of interest.<sup>32</sup>

The second finding qualifies the common experience that achievement of personal goals produces well-being. The common experience is that buying a new car and learning a new musical skill are each highly satisfying; achieving a GPA in the top ten percent, receiving a raise in salary, making a close, new friend, and helping others are also highly satisfying. However, while all these achievements likely provide some positive emotion, there is an important difference. When an extrinsic goal is achieved—purchasing the car, attaining the high grades, receiving a salary raise—the longer term effect may not be positive for well-

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30. Sheldon et al., *supra* note 13; Kennon M. Sheldon & Tim Kasser, *Getting Older, Getting Better? Personal Strivings and Psychological Maturity Across the Life Span*, 37 *DEVELOPMENTAL PSYCHOL.* 491, 499 (2005).

31. This set of experiences is part of the “second level growth” described previously. See discussion *supra* Part II.A.

32. It is worth noting that the findings in this series of studies, of increasing well-being, maturity, and social integration reflect the more generalized impulse for growth and actualization described by early humanistic psychologists. See *supra* notes 26, 29-30. For a thorough discussion of the instinctual need for growth and attendant increase in satisfaction, see MASLOW, *supra* note 15.

being.<sup>33</sup> Negative effects may accrue in at least two ways. First, the fulfillment experienced from extrinsic pursuits tends to be relatively fleeting. The new car or the higher salary are habituated after a few weeks or so, and the top grades, which are strongly dependent on outside influences, often generate pressure to continue to excel to maintain esteem and competence. On the other hand, satisfaction from the new skill or friendship may endure literally “forever,” as may the satisfaction of having served or continuing to serve others. Often such intrinsic pursuits, if undertaken with realistic expectations, can continue indefinitely as sources of meaning and well-being. Second, extrinsic goal achievement may lead to further extrinsic striving—wanting more new things, trying to maintain or improve the high class rank, working for another raise instead of for the service or enjoyment that the work provides—and thus “crowd out” or displace more satisfying intrinsic goal pursuits.<sup>34</sup>

The third key finding is related to the importance of autonomous, self-expressive behavior for thriving and well-being previously discussed. This sense of internal direction is in part a reflection of personality.<sup>35</sup> It is also strongly influenced by the degree to which one’s social environment encourages autonomy. Many studies have shown that parents, teachers, and employers who engage in autonomy-supportive behavior increase the felt autonomy of their children, students, or employees.<sup>36</sup> Such autonomy support is the opposite of controlling behavior; it communicates understanding and respect for the recipient, who is often the subordinate person in a relationship of unequal power. It is expressed by the supporting person (1) taking the perspective of the other; (2) providing her meaningful choices; and/or (3) giving coherent explanations for necessary controlling actions.<sup>37</sup> In turn, the recipients of that support experience improvements in a range of key life experiences: need satisfaction, internal motivation, performance effectiveness, and well-being.<sup>38</sup>

### 3. Healthy and Unhealthy Competition from a Human Nature Perspective

For our purposes, it is also important to consider competition in the light of an understanding of human nature and the findings of SDT.

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33. Ryan & Deci, *supra* note 26, at 32.

34. *Id.* at 14-18; see FREY & STUTZER, *supra* note 13, at 105, 182.

35. Ryan & Deci, *supra* note 26, at 25-26.

36. *Id.* at 20-22; see *Understanding Negative Effects*, *supra* note 4, at 883 (summarizing the literature on autonomy support and setting forth findings in law student populations).

37. *Understanding Negative Effects*, *supra* note 4, at 884 (citing Deci et al., *Facilitating Internalization: The Self-Determination Theory Perspective*, 62 J. OF PERSONALITY 119, 124 (1994)).

38. *Id.* at 885-86, 892.

Law students are immediately immersed in a competitive classroom dynamic; many lawyers and virtually all law students must devote major portions of their effort and attention to adversarial activities with sharply defined, competitive outcomes. Competition, with its potential to generate stress, is persistent for many people in the law, and therefore a comprehension of adaptive and maladaptive competition is important for the satisfaction and well-being of law students and lawyers.

In competition, the desire to prevail is natural, but the need to prevail is destructive.<sup>39</sup> For a person with largely adaptive values and motivation, efforts to compete are healthy exercises of intrinsic motivation (simple enjoyment of the activity) that provide experiences of autonomy and competence. They also express the natural impulse for growth. When all competitors are functioning with similarly intrinsic, self-directed perspectives, competition also supports the relatedness need because the competition both depends on the other “players” and leads to appreciation of them.<sup>40</sup> On the other hand, when extrinsic values—for a reward, prize, recognition, or ranking—dominate the person’s consciousness, competition becomes overly intense, focuses on the outcome rather than the process, and undermines well-being. The experience of engagement and enjoyment is replaced by pressure, tension, and often frustration. This phenomenon is commonly observed, among coaches or players, in children’s sports and in televised college and professional sports. It is also painfully obvious in the angst of early teens who attain “only” second- or third-best status in the world rather than winning a gold medal as the best Olympic gymnast.<sup>41</sup> If one’s attention is dominated by a comparative, competitive, or external outcome, intrinsic motivation, healthy need satisfaction, and, hence, enjoyment and fulfillment are all displaced.<sup>42</sup>

#### 4. Values vs. Preferences: Extrinsic Outcomes Are Good Outcomes but Bad Values

We have seen that extrinsic values and motivations, such as financial affluence, competitive standing or results, fame, power, or prestige, tend to produce frustration and angst, even when achieved. This can be confusing, because these achievements typically are initially satisfying, and are broadly seen to be desirable. The important distinction to be

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39. I have stated and discussed this previously, in the context of classical, less empirically supported humanistic psychology. Lawrence S. Krieger, *What We're Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J. L. & HEALTH 1, 11-14, 27-28 nn.103-06 (1998).

40. *Id.* at 28 nn.105-06 and accompanying text (regarding competition “in the ‘spirit of play’”).

41. This is a clearly observable, extreme example of an overly competitive attitude creating many “losers” for a single winner, a phenomenon I discuss later in terms of ten to twenty percent “winners” and eighty to ninety percent “losers” in the law school grading and ranking hierarchies.

42. Ryan & Deci, *supra* note 26, at 14-18; see FREY & STUTZER, *supra* note 13, at 105, 182.

made involves the *priority* that an individual places on extrinsic outcomes—their place in the internal personality dynamic. Gaining affluence or influence, and achieving high grades or winning cases, will certainly not create unhappiness if kept in proper perspective as desirable, preferred outcomes only. Negative influences on well-being and life/work satisfaction arise when one focuses her attention and life energy on extrinsic interests to the point that they operate as dominant values or needs. When this occurs, they determine behavioral choices and displace intrinsically more satisfying experiences. For example, the teacher or secretary that chooses and performs work primarily for high pay will reliably experience diminished life satisfaction, as will a lawyer who chooses her work primarily for the income potential or who litigates with a dominating need to win. On the other hand, a person doing the same work because she finds it intrinsically enjoyable, or because it furthers an intrinsic value such as helping others or contributing to a community or cause, will experience greater satisfaction and will also appreciate recognition or high pay, essentially as welcome additional benefits.

*C. What Is “Humanizing” Legal Education? Core Human Qualities and Well-Being As Markers of Adaptive Education*

Considering the observations and research on core human qualities, we can now describe a psychologically healthy, thriving person: she would experience her activities as chosen and authentic—personally endorsed rather than controlled—and she would have regular experiences of competence and relatedness to others. Her dominant values would be intrinsic; when she competes she would focus primarily on the process and on intra- or interpersonal purposes rather than on extrinsic outcomes and rewards. She would experience ongoing personal growth, maturation, and social integration, with a lively conscience and sense of morality to guide her interactions with others and her world. As a result, although experiencing the typical “ups and downs” of events and circumstances, she would generally feel that both she and her life were good, vital, and meaningful.

We may then define a “humanizing” social environment or social context as one that promotes these experiences of an optimally functioning person. Such an activity or context would incorporate an understanding of human nature and would therefore maximize meaning, positive motivation, well-being, and performance. More specifically, it would *provide consistent autonomy support and encourage intrinsic values and motivations, resulting in (1) needed experiences of autonomy, authenticity, competence, and relatedness to others; and (2) experiences of personal growth and increasing integrity, through the inte-*

*grated expansion of authenticity, conscience, morality, and social awareness.*

As we consider humanizing legal education, two particularly important threads within the recent research should be emphasized. One is the significance of an internal, autonomous and authentic point of reference for choices and experiences. As previously mentioned, autonomy includes authenticity or internal consistency; and hence relates strongly to one's character and integrity. This emphasis on autonomy is therefore critical for professionalism, since morality and integrity are central to professionalism.<sup>43</sup>

The second focus point is the overarching importance of subjective well-being (SWB). If pressed to identify a single feature most characteristic of good life quality, it would almost certainly be a sense of well-being. Life then feels generally pleasant, meaningful, and "right." Beyond that, however, the research demonstrates that every other marker of a life psychologically well-lived—intrinsic (personal and interpersonal) values, internal motivations, a sense of self-esteem, competence, autonomy, and relatedness to others, and ongoing growth and maturation—all contribute to SWB. Therefore, well-being itself is an indicator, and an approximate measure, of life lived according to the fundamental "laws" governing human behavior and experience.<sup>44</sup>

This emphasis on SWB is important because many law teachers are relatively unconcerned about the angst and depression common among law students and lawyers.<sup>45</sup> In part, this may be a natural consequence of our training to "think like lawyers," which generally relegates the misery of others to irrelevance,<sup>46</sup> but the significance of diminished well-being or depression in a population is far greater than simply the unpleasant life experience it reveals. It suggests that the core principles of human life that provide well-being—healthy values, motivations, need satisfaction and/or personal growth—are being ignored or are not sufficiently lively in that population. Indeed, as I will discuss below, the recent research on law students indicates exactly this—that their personalities are narrowed rather than broadened by law training and that the

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43. See, e.g., Neil Hamilton, *Professionalism Clearly Defined*, 18 THE PROF. LAW. 1, 4 (2008); Krieger, *supra* note 39, at 9-10.

44. There are other important influences on well-being not discussed in this paper, notably including "explanatory style"—optimistic vs. pessimistic attribution of setbacks and difficulties—and genetic inheritance for positive mood. The latter creates a set range of potential well-being; through adaptive choices people can maximize their well being but are unlikely to transcend their genetically set range. Hence, some people will naturally tend to be "happier" than others. MARTIN E.P. SELIGMAN, *AUTHENTIC HAPPINESS* 47-48, 279 nn.47-48 (2002) [hereinafter *AUTHENTIC HAPPINESS*]. Optimism can be learned and much like choices to favor intrinsic values or basic needs, would move a person toward the upper range of her potential well-being. See Lawrence S. KRIEGER, *THE HIDDEN SOURCES OF LAW SCHOOL STRESS* 11 (2005). See generally MARTIN E.P. SELIGMAN, *LEARNED OPTIMISM* (1998) [hereinafter *LEARNED OPTIMISM*].

45. See Krieger, *supra* note 16; *infra* notes 175-77 and accompanying text.

46. See *infra* note 67 and accompanying text.



most basic needs are frustrated in law school. For this reason, we should be pointedly interested in the well-being of our students, and particularly alert for decreases in well-being as school progresses.

### III. RECENT EMPIRICAL STUDIES OF LAW SCHOOLS: SELF DETERMINATION IN LAW STUDENTS, AND A LINGUISTIC ANALYSIS OF LAW TEACHING

Three recent studies of law students confirm that the foregoing analysis of human nature applies to law students and the law school environment. They each also demonstrate undermining effects of law school on students and raise constructive ideas for eliminating those negative effects. I will summarize this research, consider typical law school practices in light of this overall understanding of human nature, and then suggest practical measures to readily incorporate this knowledge into our current educational practices.

#### A. *Measuring Personality Effects in Law Students*

Two psychological studies have measured the key constructs of SDT in law student populations across their three years of law school, from early orientation to the final semester. The first study focused on values, goals, motivation, and well-being;<sup>47</sup> the second on need satisfaction and autonomy support measures.<sup>48</sup> Both studies found each basic SDT construct operating in the law student populations as in general populations. Students experienced greater well-being to the extent that their values were more intrinsic, their motivation more internal, and their needs for autonomy, competence, relatedness, and self-esteem more fully satisfied.<sup>49</sup> More intrinsic values and motivation also predicted better grade performance.<sup>50</sup> The second study also confirmed previous general population research on autonomy support: the students that experienced 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 seeking a lawyer position, and were happier.<sup>51</sup> As in general populations, the improved outcomes were mediated by need satisfaction. Autonomy support did not directly produce internal motivation or positive well-being and performance, but it broadly increased need satisfaction, which then produced the other positive outcomes.<sup>52</sup>

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47. *Undermining Effects*, *supra* note 4, at 261.

48. *Understanding Negative Effects*, *supra* note 4, at 883.

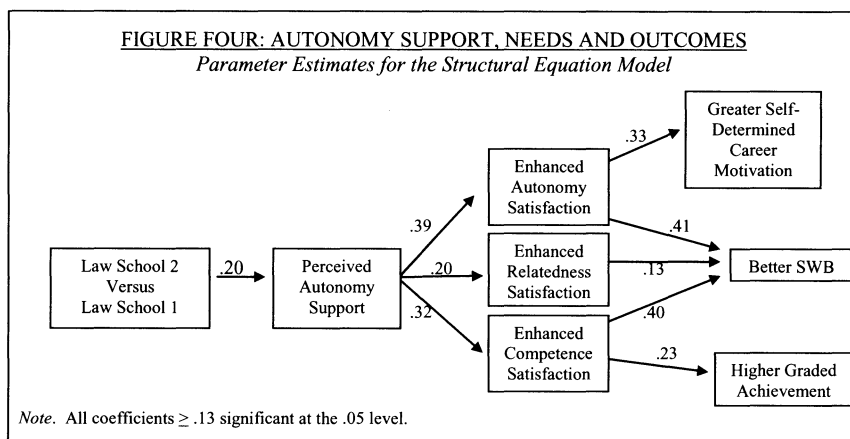
49. *Id.* at 893-95; *Undermining Effects*, *supra* note 4, at 280-83.

50. *See Understanding Negative Effects*, *supra* note 4, at 893-95; *Undermining Effects*, *supra* note 4, at 280-83.

51. *Understanding Negative Effects*, *supra* note 4, at 883.

52. The level of need satisfaction affected all of the outcomes. The strongest effects were from

Figure Four<sup>53</sup> shows the sequence of positive effects in law students resulting from experienced autonomy support.



In addition to confirming the operation of SDT in law student populations, these studies measured various generalized effects of law school on law students. Of first concern, given the centrality of well-being previously discussed, the SWB of the students plunged substantially within the first several months of law school, and did not rebound before graduation.<sup>54</sup> This is a troubling finding, but not surprising given earlier studies of depression and anxiety in law student populations.<sup>55</sup> Additionally, the first study found a significant shift from intrinsic to extrinsic valuing in the first year, followed by a generalized loss of valuing of all kinds by the third year.<sup>56</sup> This again is very troubling, but not surprising given the common observations of initial enthusiasm followed by increasing disengagement of law students.<sup>57</sup> And consistent with previ-

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changes in autonomy/authenticity. This is likely because, as indicated by the Mertz linguistic study, basic law training undermines students' sense of self, integrity, and inner congruence. See *infra* text accompanying notes 64-85; Krieger, *supra* note 39, at 7-9.

53. *Understanding Negative Effects*, *supra* note 4, at 892.

54. *Undermining Effects*, *supra* note 4, at 261.

55. See Matthew Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 55 (1999) (summarizing published studies showing the immediate onset of major depression in law students that exceeds that in medical students and approaches psychiatric proportions); Krieger, *supra* note 16; Schiltz, *supra* note 16.

56. As mentioned previously, the most recent SDT research shows values measures to be predictive of need satisfaction, but not primarily operative in themselves. People must act on their values to experience benefits or decrements in need satisfaction, and law schools may not provide an environment that promotes values-based actions. Values measures for incoming students have been consistent and indicative of good adjustment in the two studies to date, but measured changes during law school have not been as consistent. Values are not reported in the second study because the sequential model at the foundation of self-determination theory tested there does not include values.

57. See ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND 36-50 (1992); Erwin N. Griswold, *Intellect and Spirit*, 81 HARV. L. REV. 292, 300-02 (1967); Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 244-47 (2001); Gerald F. Hess, *Heads and Hearts: The Teaching and Learn-*

ous studies discussed above, data from the second study demonstrates highly significant losses in satisfaction of the basic needs across the three years of law school.<sup>58</sup>

These findings, separately and taken together, clearly demonstrate the need for attention to the psychological dynamics at work in law students. Of equal importance, the findings of causation in the second study indicate an effective, early direction for improving student well-being, motivation, and performance.<sup>59</sup> Perceived autonomy support, the extent to which the students felt understood and respected rather than controlled by their faculty and administration, was the core causal factor in the environment of each of the two law schools in the study.<sup>60</sup> Autonomy support was measured both within each sample and between samples, and in both cases, the positive effects of autonomy support were manifest.<sup>61</sup> The student body reporting greater support from faculty and administrators experienced significantly better well-being and also outperformed the second student body in their grade performance and bar examination scores—a striking result given the importance law schools place on academic learning and bar exams, the substantially higher rank of the second school, and the higher Law School Admission Test (LSAT) scores and incoming GPA of the students at that school.<sup>62</sup> In addition to these enhanced outcomes, the greater autonomy support and need satisfaction at this school resulted in more internal, autonomous career motivation, which further predicts greater well-being and satisfaction in the future lives and careers of the students.<sup>63</sup>

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*ing Environment in Law School*, 52 J. LEGAL EDUC. 75, 75-76 (2002).

The loss of student engagement is an issue of marked interest currently. A survey of engagement has been recently popularized among law schools nationally as a means of evaluating law school effectiveness. INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH, THE LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT 1 (2003) [hereinafter LSSSE]. Dr. Sheldon and I have developed a complementary survey, Dynamic Assessment of Law School Outcomes (DALSO), adapting the measures from our published SDT research to assess the many related factors discussed in this paper. See *infra* note 186.

58. The focus of the second study was more complex and relational than the first. The longitudinal losses in need satisfaction were not per se reported, but were involved in the calculations of sequential causation for the losses in the reported outcomes. The data demonstrate broad losses in need satisfaction. See *Understanding Negative Effects*, *supra* note 4, at 889.

59. See *Understanding Negative Effects*, *supra* note 4, at 894.

60. *Id.*

61. *Id.* at 893-94.

62. The student populations in the study began law school one year apart, with very comparable LSAT and incoming GPAs. However, the bar results comparison required analysis of the same bar sitting to avoid introducing test variables, so the class used in the bar comparison from the higher-ranked law school entered one year later than the class from that school in the main study. The bar comparison students from the higher ranked school had higher LSAT scores (approximately 1.5 points) and higher incoming GPAs than the students in the bar comparison from the lower-ranked school. *Understanding Negative Effects*, *supra* note 4, at 891, 895 nn.4-5.

63. *Id.* at 892, 894.

*B. The Linguistic Study: The Negative Effects of Law School Teaching*

While the psychological studies of students indicate critical negative impacts of law school, a detailed linguistic study completes the picture with complementary findings about the effects of the traditional law school classroom on law students.<sup>64</sup> Elizabeth Mertz, an anthropologist and law professor working as a Senior Fellow with the American Bar Foundation, recorded and analyzed the language in a full semester of contracts classes at eight diverse law schools. The classes included demographically diverse teachers with teaching styles varying from Socratic to open discussion.<sup>65</sup>

The basic findings were consistent regardless of school, teacher, or teaching style,<sup>66</sup> and starkly point to strong dehumanizing effects of the traditional classroom. The recurring, overarching theme of the findings is that, in learning to “think like lawyers,” students are abruptly forced to set aside their sense of morality, fairness, and sensitivity to human suffering.<sup>67</sup> Students are trained to discount the human context, unless it is explicitly relevant according to textual legal standards, by “filtering” it through legal concepts, and are taught to focus on parsing legal authority and forming strategic arguments.<sup>68</sup> Fluidity of position, to enable arguing either side of an issue, is encouraged and further promotes an instrumental, amoral mindset.<sup>69</sup>

Mertz observes that law school has the “goal of changing people’s values,”<sup>70</sup> that our classrooms “erase[] key aspects of social experience,”<sup>71</sup> and replace moral reasoning with “combat dialogue,”<sup>72</sup> thereby encouraging an amoral worldview.<sup>73</sup> This learning process linguistically shapes people’s values and manner of thinking. It creates a formative, developmental social environment similar to that of early schooling that allows and encourages the child to experience emotions, understanding, and a sense of self.<sup>74</sup> In the formative law school classroom, however,

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64. See MERTZ, *supra* note 5, at 22-23.

65. *Id.* at 94.

66. *See id.*

67. *See id.* at 6, 95. Mertz notes that the desensitization to suffering is similar for medical students. *See id.* at 121. This does not, however, explain the consistent findings of greater angst and depression among law students than medical students. *See Dammeyer & Nunez, supra* note 55, at 63. The additional findings of this linguistic study, regarding the setting aside of conscience and morality in law training, would explain that additional angst and depression, as further discussed in this section.

68. MERTZ, *supra* note 4, at 76, 82.

69. *See id.* at 98.

70. *Id.* at 1.

71. *Id.*

72. *Id.* at 4, 6.

73. *See id.* at 1, 6.

74. *Id.* at 21-22; *cf. id.* at 125-26. *See also* CARNEGIE REPORT, *supra* note 5, at 128 (stating that law school is “highly formative” of student identity); WILLIAM M. SULLIVAN, WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA 217 (2005) (emphasizing the formative

making the best legal argument is the yardstick of success,<sup>75</sup> so that winning becomes the only goal in the students' developing minds. While the classroom is open to considerations of policy or social value, such considerations are subtly peripheralized and subordinated by treatment that is occasional, unstructured, speculative, and "loose."<sup>76</sup>

In this environment, students become analytical and emotionally detached.<sup>77</sup> Judgments about what is right or wrong, moral or immoral, reprehensible or ethical, are irrelevant or filtered to become nearly so.<sup>78</sup> The result is insensitivity: "[p]oignant, glaring, pitiful stories . . . sail easily past" in the search for facts and argument.<sup>79</sup> Students learn that fairness is irrelevant, and that their job is to "ignore . . . emotional content, . . . misery, justice, [and] injustice."<sup>80</sup> Students therefore lose touch with justice and helping values that motivated law school attendance in the first place, leading to loss of public service ideals.<sup>81</sup> Having lost their sense of self, students *become* their discursive and strategic ability, resulting in identity-based adversarialness.<sup>82</sup>

While these findings are critical to understanding the dehumanizing tendencies of legal education, others are critical for addressing solutions. Inherent in the new language and cognitive structure is a sense of arrogance about legal analysis and its power. The subtle use of language conveys a sense of superiority about "thinking like a lawyer."<sup>83</sup> This effect flows from the constant, controlling influence of strategic, authority-based analysis and argument, coupled with the forced irrelevance of morality, conscience, and caring, and with the loose, almost off-hand treatment of related social and policy concerns.<sup>84</sup> All of these factors combine to convey a sense of power of abstract legal analysis over real personal experience, morality, and social life.<sup>85</sup>

In *The Hidden Sources of Law School Stress*,<sup>86</sup> I alert students to these very issues:

**Hidden Stresses of Thinking "Like a Lawyer"**

Few of us realize the several levels of stress that learning to "think like a

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power of professional training to "shape the consciousness as well as the character" of students); Krieger, *supra* note 16, at 122 (citing SDT research about character formation and applying it to the law school environment).

75. MERTZ, *supra* note 4, at 100, 126-27.

76. *Id.* at 77, 82-83, 95.

77. *See id.* at 99.

78. *Id.* at 120.

79. *Id.* at 9.

80. *Id.* at 10 (acknowledging additionally that the introductory synopsis of her findings is "stark," and without nuance found later in the report).

81. *Id.* at 11.

82. *Id.* at 100-01.

83. *Id.* at 98; *see id.* at 223; SULLIVAN, *supra* note 74, at 217.

84. MERTZ, *supra* note 4, at 100.

85. *See* MERTZ, *supra* note 4, at 95.

86. KRIEGER, *supra* note 44. This is a booklet for law student assistance that has been used at a large number of law schools.

lawyer” can present. Most immediately, many of you will feel the natural tension about learning anything new and challenging. . . . But a variety of more subtle and more critical challenges to your comfort and well-being lurk around this process.

*Losing faith in your self*

. . . Your clarity of thinking and problem-solving skill will improve . . . . But at the same time, your pre-existing beliefs, values, preferences, and your feelings and emotions will not be engaged in this analysis. Much of your apparent success in class will depend on displaying the relatively narrow analytical skill, often to the exclusion of everything else. The first potential problem is that students begin to discount or ignore their beliefs, feelings, and values as if they no longer matter. This is a huge mistake, because it eliminates the sense of who you are that has developed throughout your life. . . .

*Losing faith in the Law compounds the problem*

[Y]ou may also feel disillusioned to learn that the law is far from fixed in its meaning, and can be used to reach results you feel are wrong, unjust, or simply unpredictable . . . . Indeed, you will be learning the precise skills that lawyers can use to shade the law in favor of virtually any position a client might prefer. If you begin to ignore your sense of right and wrong, even outrage in appropriate situations, . . . you will dampen the ideals and values that brought you to law school in the first place. . . .

. . . When [values, morality, internal motivation and meaning] diminish, anxiety and depression will naturally increase, and you also become ripe for the dishonest behavior that forms a part of the negative lawyer stereotype. . . .

. . . .

*Antidotes: While you are learning to think “like a lawyer,” be very clear that this is a legal skill but not a life skill. . . . It is fine to exercise the clearer thinking/problem solving abilities you have learned, but be careful to also maintain a lively appreciation for your instincts, values, conscience, and feelings in your dealings throughout each day. . . . Stay connected to yourself! And watch the way you relate to others. . . . [B]e attentive to leave the critical, adversarial style in the classroom or practice court . . . [or] you will suffer the degradation of your self esteem and relationships, and your life satisfaction will fall accordingly. . . .<sup>87</sup>*

The Mertz analysis confirms all of these perspectives, emphasizing that legal analysis is not a superior analytical skill or way of thinking, but rather a specialized way of viewing the world denuded of social and cultural influences.<sup>88</sup> Reflection should make it clear that legal analysis is inherently much simpler than the integrated, layered application of cognitive, affective, relational, and moral capacities that the person on the street applies daily to conflict, as well as to virtually any personal choice or interpersonal interaction.

Professor Mertz is keenly aware of the effects of language. The

87. KRIEGER, *supra* note 44, at 7-9.

88. See MERTZ, *supra* note 4, at 3, 6, 98; see also CARNEGIE REPORT, *supra* note 5, at 52 (noting that the facts students learn to consider in case analysis are “satisfyingly simple”).

language she employs to describe the effects of our traditional classroom is disturbing, particularly in the context of a technical analysis. While recognizing the importance of learning legal analysis and expression, she observes the “erasure” of the moral and social contexts that students have internalized before law school, resulting in a “profound moral shift” that is concealed from awareness by the language that is used.<sup>89</sup> Students are separated from social norms, creating a schism between lawyers and clients and sowing “[t]he seeds of citizens’ dissatisfaction.”<sup>90</sup> At times, her expressions convey a sense of violence: students experience a “jarring confrontation” with the legal worldview.<sup>91</sup> The “breaking down of [established] cultural assumptions” creates a “linguistic rupture” that leads to a “new conception[] of morality and personhood.”<sup>92</sup>

Mertz provides numerous examples of the classroom exchanges she and her assistants observed;<sup>93</sup> some are of particular concern from the standpoint of human nature. In one class, Mertz reports that the professor “jovially embraces” the lack of ethics and fairness raised in the discussion, and then goes on to model for students his internal separation and marginalizing of the problem.<sup>94</sup> Another example involves a different professor seemingly belittling a student who is outraged at the unjust result reached in a case under discussion.<sup>95</sup> The teacher avoids the question of ethics and justice raised, by stating as his goal the creation of an agnostic classroom, in which students’ ultimate views are not relevant.<sup>96</sup> Again, the professor models his personality split, explaining later that he is interested only in creating “black belts” in argument.<sup>97</sup> As is typical in the examples throughout the study, the teachers legitimize situations that violate their students’ sense of decency by returning class attention to the “appropriate” universe of discourse through the exercise of legal “filters”—legal authority, relevance of facts, and the formation of strategic argument.<sup>98</sup> This process would appear to train law students, via faculty instruction and modeling, to aspire to amorality and insensitivity—the precise “hired gun” instrumentalism that professionalism efforts are seeking to eliminate. •

A few examples are offered in which professors fully control students by directly usurping their voices and, essentially, their identities.<sup>99</sup>

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89. See *id.* at 99.

90. *Id.*

91. *Id.* at 22.

92. *Id.*

93. See *id.* at 121-30.

94. *Id.* at 121.

95. See *id.* at 122.

96. *Id.*

97. *Id.*

98. See *id.* at 121-30.

99. See *id.* at 125, 127.

In one particularly harsh “turn,” when the student is unwilling to surrender her instinctive reaction to a case, the professor literally imposes new language and an “entire new persona and set of normative orientations” on her, again by refocusing on, above all else, the ability to make arguments transcending emotional and cultural mores via doctrinal filtering and categorization.<sup>100</sup> The implications of such controlling methods for undermining a student’s autonomy, self-confidence, and integrity should be clear, and most teachers probably would not go to this extent to create the desired result. However, as we consider humanizing legal education, we should keep in mind Mertz’s observation that the overall impacts on the mindsets of students were the same across the classes she studied, regardless of differences in teaching styles or personalities.

At its core, the Mertz study describes a systematic loss of student identity imposed by our predominant training in legal reading, speech, and thought. Many of these ideas have been raised in previous articles, some supported by poignant quotes from law teachers and students.<sup>101</sup> The Mertz study confirms those ideas with the force appropriate to a foundation of systematic empirical observation:

Law students . . . under[go] a quiet process in which their very selves are decentered through and in speech; . . . [they] are encouraged to separate inner opinion[] and feelings from the discursively defined legal personae they are learning to embody . . . mov[ing] away from emotion, morality, and context as they create new selves anchored in legal discourse.<sup>102</sup>

Mertz further observes, “A deceptive metapragmatic ideology locates justice and evenhandedness . . . in the unmooring of the self, to create a fluidity of voice and footing and position.”<sup>103</sup> “Students are unmoored from ethical and social identities, attached to new legal roles as adversarial speakers on either side of an argument. This substitutes an amoral attachment to legal form for a situated sense of loyalty to substantive ends and values.”<sup>104</sup> Mertz then emphasizes the importance of training students regarding clear limits on legal language and ideology, encouraging “epistemological modesty” to counteract the “arrogance” of legal thought and to help students balance the “intoxicating appeal” of legal analysis and argument with its realistic limitations.<sup>105</sup>

These findings, based on detailed observation and systematic analysis, are chilling to read. They reveal a broadly shared, developmental, high-stakes learning environment that creates serious unintended consequences. Those consequences include narrowing, desocial-

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100. *Id.* at 127.

101. *See, e.g.,* Krieger, *supra* note 16, at 113, 125.

102. MERTZ, *supra* note 4, at 135.

103. *Id.* at 137.

104. *Id.* at 214.

105. *Id.* at 223.



izing pressures on student personality that call to mind virtually all of the current concerns with a legal profession lacking integrity, social awareness, and interpersonal decency.<sup>106</sup> Professor Mertz bluntly summarizes the effects in the diverse classrooms she studied, finding that they *drain away social and cultural contexts, morality, and emotions, erasing the common bases for forming ethical judgments*.<sup>107</sup> Can we realistically expect a thriving, honorable profession to result from schooling<sup>108</sup> that features such training, often placing it in a hierarchy of status distinctly above any other aspect of the training students receive?<sup>109</sup> In a later section, I recommend techniques that will eliminate the negative effects of this training.

### C. *The Research in the Context of "Humanizing" Activities*

I have proposed a definition for "humanizing" activity that comprehends the basic nature of people, derived from observation and decades of psychological research. That definition centers on the promotion of growth, maturation, and well-being through the provision of autonomy support, satisfaction of basic needs for autonomy, authenticity, competence and relatedness to others, and the encouragement of internal motivations and intrinsic, intra- and interpersonal values. We have seen from the recent studies that law students share the psychological dynamics of the general population, that law students experience significant losses of well-being, need satisfaction, and healthy values and motivations during law school, and that the effects of law school are broadly more positive with increased autonomy support.

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106. See, e.g., Krieger, *supra* note 19; Schiltz, *supra* note 16, at 908-50.

107. MERTZ, *supra* note 4, at 132. Many of these passages describe personality processes that can promote addictions, since they undermine the inner sense of self, encourage the blocking of feeling, and create a need to disjoin perception from environmental realities. See Krieger, *supra* note 39, at 23-26, 30-34, 35 n.142 (defining addiction, discussing the suppression of conscience and feeling, the similarities between legal education and addictive processes, and the tendency of addictions to reverse the natural flow of both psychological and moral development).

108. One may wonder how to understand a legal profession becoming less honorable and more "cut throat" than in decades past, as many lawyers observe. Fundamental law teaching has been unchanged, or has even improved somewhat with the growing, if reluctant, inclusion of skills training and clinical programs in recent decades. I suggest that these negative tendencies have been present since the refinement of the "case analysis" method of teaching, but that the profession previously provided much more mentoring and socialization. This may be attributed to the modern commercialism of law firms, with the attendant, unrealistic billable hour requirements.

109. It is clear to anyone that looks, and certainly to students, that so-called "skills training" and authentic clinical settings are subordinate to "thinking like a lawyer" at most law schools, based on the distribution of available credits, differential grading practices, and the relative status typically afforded clinical and skills teachers. This is likely to have a broad undermining effect on students as well, through provision of negative autonomy support, because these teachers have lower status and benefits than purely academic professors *by virtue of the fact* that they teach and embody in their personal experience the law practice expertise to which students aspire. In other words, the professors most like the students, and who embody the life aspirations shared by almost all of the students, are, as a consequence of those facts, placed in a lower caste in a hierarchical status system within those law schools. The research set forth in *Understanding Negative Effects*, *supra* note 4, is consistent with this observation; see *infra* text accompanying notes 121, 132-34.

The Mertz study illuminates apparent sources of the negative effects of law school on law students; virtually every aspect of the “humanizing” definition is highlighted by her work. It appears, for example, that law students’ sense of authenticity and autonomy is directly, and at times forcefully, undermined by typical classroom teaching.<sup>110</sup> Many, and perhaps most, operative aspects of students’ authentic selves are systematically disapproved and pared away, and deeply internalized sources for their autonomous direction, including their feelings, conscience, and morality, are stripped away and replaced by entirely external, imposed sources of legal authority.<sup>111</sup> At the same time, their sense of competence is undermined as they are taught that virtually nothing they have previously learned is relevant to their critical new undertaking, and that they must mold themselves to an unfamiliar—although narrower and more simplified—mindset and strategic, argumentative manner of discourse to regain their competence.<sup>112</sup> Similarly, their sense of relatedness is likely to suffer from the new emphasis on submerging feelings and sensitivity toward others, from the quest to create new, reasoning and arguing legal personae, and from the overriding, perceived need to compete and win.<sup>113</sup>

What of intrinsic values and the challenge to grow and mature through integration of autonomous behavior with caring for others and society? All are equally neutralized by the new way of thinking, one that promotes the definition and motivation of self according to strategic application of externally-imposed legal rules and authority. Stepping back to view our students as naturally evolving people, we can glimpse a startling phenomenon occurring within the first few months of law school. Students arrive as products of the formative processes we all share—millions of years of neurophysiological evolution, centuries of cultural development, and decades of socialization through family, school, work, religion, and other training. They are capable of high levels of understanding, sensibility, caring, service, and the life satisfaction attending the mature exercise of those human attributes.<sup>114</sup> Almost immediately, however, something fundamental happens to their collective motivation, self-confidence, and sense of connectedness, and their well-being suffers markedly.<sup>115</sup> That “something” appears to be learning to “think like a lawyer” as we currently teach it. Distress is the likely result because, as we have seen, that teaching systematically pares away a life-

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110. See generally MERTZ, *supra* note 4; *supra* text accompanying notes 67-101.

111. See generally MERTZ, *supra* note 4; *supra* text accompanying notes 67-101.

112. See generally MERTZ, *supra* note 4; *supra* text accompanying notes 67-101.

113. See generally MERTZ, *supra* note 4; *supra* text accompanying notes 67-101.

114. Indeed, the research shows new law students to be psychologically healthy and well adjusted in terms of all the key measures discussed here. See *Understanding Negative Effects*, *supra* note 4, at 889.

115. See *supra* note 54 and accompanying text; see also Dammeyer & Nunez, *supra* note 55.

time of learned autonomy, authenticity, and emotional and moral capacity, disrupting and even reversing the natural, life-long flow toward growth and integration of the person. This negative effect is amplified to the extent that students see their new analytical skill as an improved way of thinking generally, because the loss of moral centering and social sensitivity then extends to their interpersonal conduct and outside lives. And as we have seen, there is a sense of superiority inherent in the new style of thinking that would encourage students to adopt it broadly and without reservation.

And so we arrive at a point of overview regarding the plight of law students in the first-year classroom. Simply stated, it appears that many are rapidly and broadly dehumanized by the nature of our training in legal analysis.<sup>116</sup> We see them arrive bright and enthusiastic, and then observe many become “‘the walking wounded’: demoralized, dispirited, and profoundly disengaged,”<sup>117</sup> a situation which even the most dedicated, caring teachers may be unable to prevent or ameliorate. One such law teacher, discussing his primary goal of helping his students leave law school with the same excitement and eagerness to learn with which they arrive, reports: “I don’t think about this very often because I have failed so miserably at achieving this goal with law students. The law school experience systematically beats those feelings and expectations out of many of them.”<sup>118</sup>

#### IV. THE LAW SCHOOL ENVIRONMENT AND HUMAN NATURE: INTEGRITY, INSTITUTIONAL VALUES, AND (IN)COHERENCE

Beyond the classroom, law schools exert powerful influences on the human dimension of students through the values expressed by the institution. Recall that the operative factors for a humanizing activity include, among others, promoting autonomy, authenticity, and integrity, and favoring intrinsic values. We have seen that the values of an individual have a major impact on her well-being and sense of thriving in life, largely because they guide behavioral choices that then determine the extent to which her fundamental needs for autonomy, esteem, relatedness and competence are met. We also noted briefly the phenomenon of incoherent values, using the example of a busy lawyer who endorses certain values but does not actualize them through her behavior. Such dissonance creates angst, low mood, or a lack of meaning and

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116. If it is not this training, it is something else—student well-being drops and depression increases rapidly within the first few months of law school. See 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, 226; *Understanding Negative Effects*, *supra* note 4, at 889.

117. Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2027 (1998).

118. Hess, *supra* note 57, at 75.

thriving in life, for various reasons. First, because the lawyer is ignoring her professed intrinsic values, she has fewer experiences of relatedness with family. She may suffer self-esteem and competence losses as well, relating to not caring for herself and to being a poor parent or spouse. At the same time, the values dissonance itself represents a loss of authenticity and autonomy: she professes one belief system but acts on another, and so senses a break with her own integrity, genuineness, or conscience.

Values and their internal consistency are critical for institutions as well as for individuals. The operative values of an institution impact the output of the institution, the social environment within the institution, and the life experience of the people in that environment. An environment suffused with operative intrinsic values creates greater well-being, dedication, resilience, and performance.<sup>119</sup> It is also common, however, to observe values dissonance in institutions—corporations that profess pro-social goals but create physical or environmental harm to increase profits; political bodies that profess public interest but act to preserve the power and personal interests of the politicians; law firms with “family-friendly” websites that disallow flexible hours and do not extend offers to women expressing the desire to have families. Such values dissonance—often viewed as hypocrisy—creates cynicism both inside and outside the organizations, and contributes to burnout and turnover.<sup>120</sup>

This sort of values incongruence typically consists of stated intrinsic values—helping, community contribution—belied by extrinsic operative values—money, power, prestige, appearance. Unfortunately, law schools commonly display similar values dissonance. Most law schools profess intrinsic values in their mission statements and on their websites: the provision of expert teaching, to train expert lawyers, who will have high standards of professionalism—which also embody intrinsic values<sup>121</sup>—and who will represent clients with distinction and make a positive contribution to society as a whole. The emphasis is typically on values for helping others (the provision of a quality education itself also expresses the helping value) improving society, and inculcating in students a justice mission and similarly positive values. These are also typically the sorts of intrinsic values messages that serve well in students’ application essays and that are raised at orientation. Three years later the selection of graduation speakers predictably assures that students and their families will again hear about the same values, expressed by a prestigious alumnus or other respected person.

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119. KRIEGER, *supra* note 12, at 4-9 (discussing the relationships between values, motivation, and work satisfaction); *see also* FREY & STUTZER, *supra* note 13, at 103-05, 181-82.

120. KRIEGER, *supra* note 12, at 9.

121. *See* Krieger, *supra* note 19 (explaining the intertwining of human needs, intrinsic values and motivations, and professional behavior).

At the same time, however, the policies and practices at most law schools manifest distinctly extrinsic values, focused on student sorting and ranking by number, curved grading that creates angst and forces competition, a learning environment that is combative and competitive in character, career offices that students perceive to cater only to top-ranked students, and, as previously discussed, a predominant pedagogy that downplays justice and morality while training and measuring students primarily for their ability of instrumental analysis and argument. These practices tend to depersonalize the individual, diminish her sense of identity, and therefore undermine rather than support intrinsic values, autonomy, and integrity. At the same time, intrinsic motivation is prone to displacement by a purely extrinsic, ranking-based reward structure.<sup>122</sup>

Those faculties that apply extrinsic values to their students are likely to apply them equally to their own institutions, devoting increasing attention and resources to their own prestige and rankings vis-à-vis other law schools. Typical of extrinsically-directed, competitive pursuits, the strategies employed are often far from honorable, and are often justified by rationalizations reminiscent of those employed by lawyers engaging in unprofessional behavior.<sup>123</sup> Law schools typically place little emphasis on the ability of new faculty hires to provide the promised excellent teaching to students, and too rarely engage in meaningful training for this purpose. Because theoretical scholarship is the primary benchmark for the overriding extrinsic pursuit—rankings and relative prestige of law schools—scholarship typically transcends its original intended role as a balanced part of the law school mission and becomes the dominating concern of the faculty. The likelihood of substantial, meaningful focus on quality teaching—which constitutes service to students—and on other service fades as scholarship becomes the principle requirement for gaining tenure, promotions, and financial benefits.

In this sense, the integrity of many law schools is compromised as intrinsic pursuits are crowded out by extrinsic ones, in much the same way as that of a person who professes positive values but behaves otherwise. Indeed, a recent President of the Association of American Law Schools published a blunt national plea for law schools to “do the right thing” and desist from hypocritical practices intended to improve their rankings.<sup>124</sup> Predictably, the practices decried expressed extrinsic, competitive values or outright dishonesty—skimming students with attrac-

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122. FREY & STUTZER, *supra* note 13, at 105, 182; Ryan & Deci, *supra* note 26, at 15-17.

123. Dale Whitman, *Doing the Right Thing* (Ass'n of Am. L. Sch., Washington D.C.), Apr. 2002, at 1-2 (providing a brief account of dishonorable but common law school practices to gain ranking advantage); *see also* KRIEGER, *supra* note 44, at 14-15 (describing the rationalizations of unprofessional lawyers).

124. Whitman, *supra* note 123, at 1-4.

tive numbers from other schools through targeted admission or transfer practices; manipulating statistics reported to the ranking organization, and others—while the collective public statements of law schools expressed more honorable, intrinsic values.<sup>125</sup> The practices expressing these incongruent values create harm and generate cynicism when typical, commercial corporations engage in them. When law schools, whether public or private, with their responsibility for creating the profession that maintains our justice system and key aspects of our social fabric,<sup>126</sup> have similar values dissonance, the potential for negative effects in the profession and society more broadly is very troubling.

We should begin to acknowledge the distorting, competitive ranking pressures that tend to undermine the integrity of law schools, and also recognize that the competitive pressures we in turn apply to our students through curved grading and ranking are operatively identical. The effects on the integrity and personal balance of students are predictable. Many are likely to experience anxiety and distrust of other students,<sup>127</sup> and some will engage in dishonorable practices for competitive advantage as a result. This direct competitive pressure and the values incongruence in the social/educational environment of law students, so many of whom are already struggling with a classroom-induced “un-mooring of self,” are undoubtedly additional sources of unnecessary stress, erosion of confidence, and cynicism toward their school.

The perspective of human nature points out an additional set of problems when institutional values are contradictory or primarily extrinsic. Given the human tendency to gain in well-being over time by internalizing dominant social and cultural messages, students naturally desire to adopt the values of the institution as their own values—to blend in, belong, and achieve within the constraints of their law school environment. Since these extrinsic values are contrary to the more intrinsic, traditional cultural and social values that most students bring to law school,<sup>128</sup> conflict is experienced. Each student must either reject her former values in order to internalize the contradictory new ones, or retain her former values, reject the new ones, and thus risk disapproval of faculty and/or isolation from peers who are internalizing these values. For those students who are less individualistic and have a higher need to conform, and for those in whom learning to “think like a lawyer” readily attenuates their connection to the beliefs and values that brought them to law school, conflict is minimized and the new, maladaptive values are

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125. *Id.* at 1-2.

126. If we reject the idea of a higher educational or professional calling as institutions, how would we justify our constant pleas for monetary contributions from individuals and granting organizations?

127. By nature, competitive zero-sum systems engender anxiety. See AUTHENTIC HAPPINESS, *supra* note 44, at 180.

128. *Undermining Effects*, *supra* note 4, at 268-71.

internalized relatively easily. Many students adopt the new identity, become absorbed in competing for grades, class rankings, journal positions, and other resume features, and measure themselves thereby. The meaning and purpose in their lives that would naturally accrue from interpersonal, pro-social, and service values<sup>129</sup> is displaced by the focus on rewards, competition, and comparison with others, a reliable source of dissatisfaction and emotional distress among law students and lawyers.<sup>130</sup>

Do such dynamics actually operate in law schools? The recent studies of law students suggest that they do. Internalization of extrinsic values is indicated by the finding that new law students with more highly pro-social, intrinsic values and internal motivations earned high grades—as expected based on their more adaptive goals and motivations—but then shifted toward career choices that emphasize earnings rather than service opportunities.<sup>131</sup> In the study of autonomy support and need satisfaction, the consistently more positive results—need satisfaction, learning and testing effectiveness, intrinsic motivation for career, and SWB—all occurred in the environment that provided greater autonomy support, and occurred as a result of that support.<sup>132</sup> While the study did not determine the precise source(s) of the greater autonomy support, the differences between the two schools are highly suggestive of more intrinsic operative values and greater internal consistency between actual policies and the typically intrinsic, stated values for quality student education and pro-social goals.<sup>133</sup> For example, the school with the enhanced outcomes did not have a mandatory curve for grading; placed substantially more emphasis on teaching quality, both in hiring practices and through regular faculty training; had a much higher percentage of “practical skills” and clinical offerings in its curriculum; had a fully integrated faculty that did not subordinate practitioners; had many doctrinal teachers also teaching skills and clinics; and hired a much larger percentage of faculty with lawyering backgrounds in public service<sup>134</sup> and other client-contact practice settings.<sup>135</sup> Such lawyering

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129. *Id.* at 263-64.

130. *Id.* at 263-64, 268-71, 280 (showing correlation of extrinsic values with diminished well-being). A major study of emotional distress among attorneys found exceptionally high levels of *interpersonal sensitivity*—negative feelings resulting from comparison with others. See Connie J. A. Beck et al., *Lawyer Distress: Alcohol Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J. L. & HEALTH 1, 14, 18 (1995).

131. *Undermining Effects*, *supra* note 4, at 281.

132. *Id.* at 279-82.

133. *Id.*

134. It is interesting to note that many of these differences represent a more egalitarian, less hierarchical world view within the institution. The hierarchical nature of traditional legal education likely manifests extrinsic valuing, and may be another useful focal point for reflection and potential change. See, e.g., Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).

135. *Understanding Negative Effects*, *supra* note 4 at 886, 895 n.2.

backgrounds are, of course, of most direct relevance to law students, and hence, those teachers are most likely to provide autonomy support by personally appreciating and providing relevant information about the students' practice interests. It should be emphasized that, to the extent such "humanizing" practices increase autonomy support, as they are very likely to do, they enhance rather than erode academic quality as many fear. Recall that the students at this lower-ranked school, who had lower LSAT scores and lower incoming grade averages, scored far better on the same multi-state bar examination than the numerically "more capable" students at the higher-ranked school.<sup>136</sup>

Given the known effects of different values systems and the problems among both law students and lawyers currently, it is important that faculties, collectively if possible, analyze the intrinsic and extrinsic nature of the values expressed by the teaching and administrative practices at their law schools. The two schools in the study mentioned above had a different balance of courses and programs, and different policies, practices, and faculty backgrounds that together suggested core differences in institutional values. As predicted, the more intrinsically-oriented school produced superior outcomes. Shifting the values system of a law school that focuses predominantly on extrinsic matters is a medium-term project for any faculty willing to entertain it, but one that should be undertaken if the institution is to make ongoing, substantial progress. In the meantime, the concluding sections here outline immediate and feasible, low- or no-cost steps to ameliorate the impact of common, institutionalized, extrinsic values.<sup>137</sup>

#### *A. A Complementary Perspective: The Unreality of the Current Analytical-Adversarial Philosophy in Law Schools*

Taken together, the narrowing, depersonalizing classroom focus on strategy and argument, the priorities placed on ranking and grades, the forced curve grading systems, and institutional values that consistently funnel most benefits to top-ranking students, are strongly extrinsic and undermining of the needs for autonomy, esteem, competence, and security. Broadly considering the available information about law schools and law students, there is another way to view the "law school problem" and the fundamental source of negative well-being for law students: the disjunction of the academic, analytical-adversarial success paradigms

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136. *Id.* at 891, 895 nn.4-5.

137. The publication for students that provides conceptual framing for "thinking like a lawyer" in a healthy way seeks to do the same thing for these values issues. In a section entitled *The Universal Fallacy: The Road To Happiness Runs Through the Top of the Class*, students are informed of the inaccuracy of the pervasive assumptions about happiness depending on grades and high salaries, and are provided guidance on choosing adaptive values in the quest for a satisfying life as a student and beyond. KRIEGER, *supra* note 44, at 4-6.



from the realities of life and of law practice. The messages that our typical teaching methods and other practices convey to law students about the nature of success are depressing. They are also highly inaccurate, once one steps outside the confined system within which the school creates its own definition of success and confirming rewards system. Since law school is the required entree and introduction to the profession, and law teachers are the role models from whom most students gain their understanding of the profession, the same messages extend to students' understanding of life as a lawyer and of the legal profession itself. The messages are broadly understood by law students, though not often stated explicitly to them:

1. In this school and in the profession there are winners and losers, based on competitive outcomes.
2. Winning is what matters; benefits go to winners.
3. In order to get benefits and be happy, you will need to be a winner.
4. Winning is accomplished by having the best analysis, best arguments, and best grades. There is a curved distribution of "better" and "not so good," but benefits go to the best.
5. The best analyses, best arguments, and highest grades are achieved by the smartest people. Hence, the smartest people win, get the benefits, and are happy.
6. There are many losers. If you are not the smartest, you will probably get by in life, but you will not have the best arguments and highest grades, will not be a winner, and will not be very happy.

These propositions are thoroughly extrinsic and undermine one's potential for security, competence, self-esteem, and relatedness. It is fortunate, therefore, that each of these propositions is incorrect as applied to law practice, and that taken together they are truly gross distortions of the reality of life as a professional. Most experienced lawyers understand that these ideas do not reflect the reality of typical law practice.<sup>138</sup> The problem is that many law schools operate as though all of this were true, and most law students have little reason to believe it is not true, since the messages are so consistently conveyed through classroom training, zero-sum grading, rankings, apparent career office priorities, and other common law school practices.<sup>139</sup>

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138. I handled approximately 15,000 cases to conclusion as a litigator. I have also discussed these matters with other experienced lawyers, and I hear the experiences of prominent lawyers and judges at graduations twice annually as well. Certainly some lawyers, most often those in large firms or who are highly competitive, operate on these principles, but the dissatisfaction and turnover in many of those firms are apparent testaments to the dysfunctionality of these ideas. See *infra* note 143 and accompanying text.

139. "The combination of the competitive and combative structure of the case-dialogue method with the summative assessments used in law school's first year clearly, forcefully, and quite immedi-

This chain of incorrect assumptions is another manifestation of the intrinsic arrogance about legal analysis noted by Professor Mertz. In the traditional classroom, the power of legal analysis and argument is all-important, leading students to believe these abilities will determine the outcome of cases in “the real world.” This then leads to the seemingly logical conclusion that the worth, success, and happiness of lawyers vary in accordance with fine differences in those skills. This belief is entirely inaccurate, however, when applied to actual law practice. An experienced judge, writing about trial skills, states:

I’ve saved the most important observation for last. After presiding over my first dozen or so trials, a startling notion became clear to me: The side with the best case almost always wins, and the performance of the lawyers almost never matters. Some of the best lawyering I’ve ever seen has resulted in spectacular losses. And some of the most bumbling lawyers have had the fortune of attaching themselves to strong, and therefore winning, cases.

If you can get over the humbling effects of this proposition, I think it can be truly liberating. You can relax, you can have fun, and, ironically, you can do a better job.<sup>140</sup>

It is not often that we explicitly tell students that fine differences in analytical ability drive results in the profession, but it certainly is how most law schools work and rarely, if ever, does someone tell law students<sup>141</sup> that this is *not* how the profession works.<sup>142</sup> As a result, stu-

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ately conveys to students a set of priorities and values that, for many, come to define the profession itself.” CARNEGIE REPORT, *supra* note 5, at 183. With regard to career offices, there appears to be broad resentment of the tendency to cater to the top fifteen percent or so of the class. I am told of applause in career offices when students receive high-paying, large firm offers but not public service positions.

140. Morris B. Hoffman, *Top 10 Trial Mistakes*, THE DOCKET, (November, 2001). A recent journal of a clinical student in a prosecution office echoes these observations precisely:

The differences between law school and trial work are large, and welcome to me. In school there is a tremendous amount of importance attached to oral argument; and the message is that the best man wins. In reality oral argument is a conversation like any other, and the judge does whatever he wants regardless of how brilliant your argument was. The result is that the pressure is off. You do your work the best you can, but the judge’s ruling is not a reflection on your abilities as an advocate (in school it is).

Journal of anonymous student (on file with author).

My personal experience, which includes high grades in law school and more than a decade of intensive litigation experience, is the same. It is usually difficult to distinguish “A” from “C” students in court, and even when one can, it is very rare for the outcome of a case to hinge on corresponding differences in analysis and argument. Of course it is true that every lawyer must be strongly competent in these skills; beyond that, little is to be gained.

141. I am clear about these matters in *The Hidden Sources of Law School Stress*, and in my classroom teaching. My clinical students probably cite this aspect of the teaching most often in their observations of litigators, noting with concern the continual stress that lawyers experience when believing they should be able to control outcomes with the “right” or best argument or tactic.

142. There is, in fact, a growing body of balanced, holistic approaches for processing cases that does not rely at all on the zero-sum, adversarial model of case adjudication. Such approaches are almost certainly more effective than the traditional competitive model, if other factors are equal. See the results of recent research comparing cooperative lawyers seeking mutual benefit with adversarial lawyers seeking a “win” for only their side, *infra* notes 145-147 and accompanying text. The Therapeutic Jurisprudence approach developed by David Wexler and Bruce Winick is the first, best-known model, and has been followed by numerous other holistic approaches. See Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPP. DISP. RESOL. J. 1 (2006) (docu-

dents commonly draw these assumptions, and the same assumptions are often seen driving the behavior of attorneys.

The analytical-adversarial paradigm conveys a highly inaccurate, and therefore undesirable, impression of almost every major consideration that is before law students, including their expectations about the role of a lawyer—you must win to be a good lawyer; the sources of a lawyer’s satisfaction—winning and high pay; and the values of the profession—winning creates respect, winning is the right thing for a lawyer to do. This view entirely excludes the role of character, maturity, integrity, humility, interpersonal skills, caring and pro-social values. It also entirely ignores the pervasive lack of control over cases that lawyers experience in reality, replacing all these factors with an over-simplified and inaccurate message about success based on “the smartest person wins and gets the benefits.” This paradigm ultimately predisposes some students to a lifetime of unnecessary stress, resulting from the perceived need to be a consistent winner in a competitive game with many dominant factors that will be truly beyond their control as lawyers.

While the controlling paradigm at most law schools does not represent the reality of most law practice, it does substantially fit the experience of new lawyers in many large firms. It is no coincidence that the positions with large firms are so prized while students are in the law school environment. These positions provide clearly defined, extrinsic rewards, such as a high salary and prestige among faculty, peers, and family, which are available only to “elite” or highly ranked students. It is probably also no coincidence that the realities of these jobs for new graduates most closely simulate the realities of most law schools, employing the same narrow, analytical skill set predominant in the academic setting, while minimizing or excluding client contact, interaction with opposing counsel, ultimate case responsibility, and professional/ethical judgment. It is also no coincidence that these young associates are often unhappy, and that turnover is very high, despite the large salary and desirability of these positions within the law school mindset.<sup>143</sup> These lawyers are now employing the same few skills in new competitive environments typically dominated by extrinsic values and short on meaningful opportunities for autonomous expression, interpersonal interactions, service, or other intrinsic activities that would pro-

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menting holistic approaches); Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES, Oct. 31, 2007, at B9, available at [http://www.nytimes.com/2007/10/31/education/31lawschool.html?\\_r](http://www.nytimes.com/2007/10/31/education/31lawschool.html?_r) (quoting the Dean of Harvard Law School saying that the law school curriculum may be “embarrassingly disconnected from what anybody does”).

143. See *Associate Attrition—As Important Now as Ever*, BULL. (Nat’l Ass’n for L. Placement, Wash., D.C.) Feb. 2006, at 2, available at [http://www.nalp.org/assets/library\\_2/382\\_0206foundation.pdf](http://www.nalp.org/assets/library_2/382_0206foundation.pdf) (last visited Jan. 19, 2008); N. Y. CITY B. ASS’N, LAW FIRM DIVERSITY BENCHMARKING REPORT, 24 (2006), available at <http://www.abanet.org/minorities/docs/FirmBenchmarking06.pdf>; see also Karen Dybis & Michelle Weyenberg, *The Hidden Debt Crisis*, THE NAT’L JURIST, Nov. 2007, at 26.

vide purpose and fulfillment. Basically, students who have excelled in the law school competition earn the right for more of the same—they have won a pie-eating contest and been awarded more pie.<sup>144</sup>

Another reason why the analytical-adversarial, winner-loser paradigm does not realistically apply to typical law practice is that, while “winning” is of course a goal and preference of each client and lawyer, healthy professional values cannot be dominated by winning. Lawyers who excessively value winning create problems for themselves, other lawyers, judges, and often their own client because the lawyers are abrasive, obnoxious, and unable to resolve cases in an advantageous and cost-effective way. Indeed, empirical research is beginning to document this truth as well.<sup>145</sup> Lawyers who are more concerned with themselves or the competition itself, rather than focusing on how the outcome may serve their clients, are “generally ineffective,”<sup>146</sup> leading one researcher to conclude that “[t]he myth of the effective hard bargainer should be destroyed.”<sup>147</sup> In addition, the role of a lawyer requires competent legal analysis and argument certainly, but these activities occupy together perhaps five to fifteen percent of the time and attention of most lawyers who are not law clerks, new associates in large firms, appellate attorneys, and law teachers. And assuming strong competence in analysis and argument, those skills have much less to do with the outcome of cases than the *reality* of the cases—the core facts, circumstances, controlling law, and other factors such as available resources, personalities of the clients, lawyers, judge, and jury if applicable, and many other non-“legal” considerations. Hence, it is common for a more skilled lawyer to “lose” a case to a less skilled lawyer with only basic competence, and sometimes even to one that appears incompetent.<sup>148</sup>

This “reality” viewpoint provides another human nature perspective of traditional legal education that explains why law students and lawyers tend to experience stress, angst, or depression. For the many who adopt the analytical-adversarial paradigm, stress is constant and overwhelming because they believe that they have to win just to feel

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144. See D.M. Osborne, *Rude Awakening: What They Never Told You About Partnership*, THE AM. LAW., Mar. 1998, at 70, 72. The analogy is an apt one.

145. For example, in a recent study of family law attorneys, those attorneys who most embodied adversarial, “must win” values were rated by their peer attorneys as 75% ineffective and only 2% effective, and the remainder were rated “average.” Lawyers most expressing intrinsic, cooperative, mutually respectful values (win-win), received converse ratings: 71.8% effective and 2.6% ineffective. Andrea Kupfer Schneider & Nancy Mills, *What Family Lawyers Are Really Doing When They Negotiate*, 44 FAM. CT. REV. 612, 613 (2006).

146. Andrea Kupfer Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143, 197 (2002).

147. *Id.* at 196.

148. See Hoffman, *supra* note 140 and accompanying text. I saw this often in my previous litigation practice, and my students regularly observe and journal about such trials as part of their clinical experience. The facts, existing law, and other factors beyond the control of the lawyers unquestionably determine most case outcomes.

competent and demonstrate good legal skills. But facts and law, above all else, determine outcomes, and work ethic and decency, above all else, determine professional reputation and standing. Lawyers have little to do with the facts and law, other than to discern them and present them in a clear way and as convincingly as possible. A healthy, reality-based definition of “success” for a lawyer would, therefore, exclude reliance on desired outcomes. It would include factors such as competent fact-law analysis and argument, strong work ethic, dedicated preparation, decency, and respect for others and the legal system. Such a definition results in quality work that has a positive effect on the legal system, the parties, the lawyers themselves, and the profession as a whole. It also minimizes stress and disappointment because it is achievable and consistent with the human needs and capacities of the lawyers.

This shift in shared mindset toward a realistic definition of “success” should be part of any effort to humanize a law school. In his classic work on human growth and motivation, psychologist Abraham Maslow noted that one of the characteristics of fully mature, actualized people is their superior perception of truth and reality.<sup>149</sup> This capacity would naturally contribute to maximum effectiveness, because one is dealing with what *actually* is, rather than one’s *projection* of what is. Maslow noted other characteristics accompanying this strong connection with reality that are highly relevant to this discussion. He observed fully mature people to be strongly ethical, moral, and motivated by conscience,<sup>150</sup> and to have a deeply democratic character structure.<sup>151</sup> Importantly, such people consistently experience well-being by virtue of their maturity, growth motivation, and appreciation for reality,<sup>152</sup> whereas people at earlier stages of maturity experience minimal well-being as a result of their more constant focus on externally-dependent needs—security, belonging, esteem of others.<sup>153</sup> These classic descriptions of human nature, though not supported by data in Maslow’s lifetime, have guided many of the modern trends in empirical research. Many of his observations have been confirmed by the empirical findings discussed here—the direct correlations between well-being, authenticity, and autonomous motivation; the increase in well-being with age, as a result of maturation; and the natural tendency for growth and increasing development of identity and integrity. They further point to the contrary effects of educational practices that narrow the personality, remove autonomous identity, and promote a skewed conception of reality.

The chasm between the law as it is and the law as it is taught is no

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149. MASLOW, *supra* note 15, at 128-30.

150. *Id.* at 140-41.

151. *Id.* at 139-41; *see also* Krieger, *supra* note 39, at 35-36 nn.140-46 and accompanying text.

152. MASLOW, *supra* note 15, at 136-37, 147.

153. *Id.* at 57.

one's fault. It flows, at least in part, from the increasingly central place of theoretical scholarship within the academy, which drives the tenure and promotion practices of law schools and hence the attention of faculty members.<sup>154</sup> The result is that these highly unrealistic messages about law student and lawyer excellence and satisfaction are living truths for most law professors. A professor's work is virtually all about analysis, sources of law, application of law to facts, and argument. Professors were "winners" at their law schools, had the best analytical and expressive skills, earned the best grades, received the most benefits available, and obtained positions that continue to focus strongly on these skills. Now those professors who write the best articles, using the same skills to sharply analyze sources of law and make the most coherent arguments, are most favored with tenure, promotions, salary increases, and other benefits. They also have substantial influence on hiring new faculty, and so the process continues to emphasize excellence in analysis and writing above all else.

This all apparently works well for the professors and the important scholarly mission of the institution. However, faculties need to become clear that *these tenets are untrue for the great majority of law students, and essentially all lawyers*. The need now is for our institutions to mimic the natural maturation process of individuals. Rather than perceive a conflict between established competencies, including scholarship, and other competencies that incorporate human nature and the reality of law practice, we should resolve to grow as institutions by reaffirming the current strengths while integrating the new ones.

Restoring a sense of reality to the messages embedded in law school training and rewards structures is another useful way to view humanizing legal education. Once we are clear about the real and very different needs of law students and lawyers, we can objectively view the messages that our teaching, grading, and other educational practices convey to law students and amend them to conform with realities that are critical to our educational responsibilities. Fulfilling those responsibilities will require understanding and providing information about the reality of human nature itself, the reality of what it means to be a successful and personally thriving attorney, and the reality that, while they are nice if attainable, high grades, law review, and high salary upon graduation will *not* be required for that success. These realities are much more encouraging than the traditional law school messages: they affirm the competencies and traditional values most students bring to

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154. See, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); MARY ANN GLENDON, *A NATION UNDER LAWYERS* 205 (1994) (observing that law professors have become more like other university scholars, increasingly writing for each other and for their promotion and tenure committees).

law school, while, of course, adding new competencies, and they convey a picture of the adversarial system that comports with reality and therefore can work well for the people involved in it.<sup>155</sup>

## V. EMPIRICALLY-BASED, IMMEDIATE STEPS FOR IMPROVING LEGAL

### A. *Humility, Metacognition, and Autonomy Support*

The research and the foregoing discussion points to some directions for rapidly improving the human dimensions of legal education, thereby also improving objective outcomes such as learning, testing, and bar passage. The immediate changes suggested are virtually cost-free, although they are not without inherent challenges. The proposals here are intended as a first line of action that can immediately improve law school outcomes; a more broadly reasoned, detailed planning process is appropriate for deeper, structural solutions.<sup>156</sup>

The first requirements for meaningful change are courage, humility, and open-mindedness among faculty. Each is required to implement, or even consider, fundamental change. These character qualities are particularly needed now, when long-standing beliefs and practices are under scrutiny. Many questions have been raised by *Educating Lawyers* (Carnegie Report) and *Best Practices for Legal Education*, and this paper has pointed out a number of core issues for consideration, including: (1) the analytical-adversarial model of success, and the law school practices that create and affirm it; (2) current methods of teaching and their impact on human development and integrity; (3) the distinct importance of student well-being, both for reasons of common decency,<sup>157</sup> and because it is a marker of effective education; and (4) the appropriate scope of application of the legal-analytical skill, given its specialized, narrow universe of discourse.

Open consideration of these core issues is overdue. Despite the natural resistance to challenging fundamental beliefs and practices,<sup>158</sup> the academy is beginning a serious reflective process, including a number of conferences and symposia as well as presentations about broad educational reform at general AALS events. I confess optimism about the specific proposals I offer here. They are based on considerations of

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155. These matters are discussed in detail in my previous articles. See KRIEGER, *supra* note 44; Krieger, *supra* note 16, at 126-29; Krieger, *supra* note 39, at 36-45.

156. For two sources providing very substantial guidance toward this end, see STUCKEY ET AL., *supra* note 5, and CARNEGIE REPORT, *supra* note 5. *Best Practices* is replete with concrete suggestions for specific methods and practices.

157. Robert Shuwerk has written forcefully about our obligations as teachers. See Robert P. Shuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe Our Students?*, 45 S. TEX. L. REV. 753 (2004).

158. Krieger, *supra* note 16, at 115-16.

human nature and on focused research on law students, and should directly target the problems identified. They are also practical; they can be broadly implemented with little or no cost, and hence, they can have rapid and substantial positive effects. In fact, there is evidence that many law schools have already begun these<sup>1</sup> processes in at least two visible ways, as discussed below.

### 1. First, Do No Harm: Cognitive Framing and Metacognition

The first proposed action is to eliminate, or at least substantially mitigate, the described negative impacts of first year classes. Given the Mertz findings, the teaching environment and focus in these and other traditional law classes is likely one of the most powerful sources of student angst.<sup>159</sup> However, it is also one of the easiest to neutralize. A subtle change in approach to the teaching of legal analysis, through the application of perspective and awareness—*cognitive framing* and *metacognition*—can immediately and substantially accomplish this purpose. The purpose, to be clear, is to interrupt the stultifying, personally narrowing effects of ignoring morality, conscience, and caring, or casting them as “counter-productive relics from [students’] pre-law lives.”<sup>160</sup> If students need to wait to enroll in classes or programs that affirmatively promote their maturing identity, the approaches here will enable them to at least maintain the level of autonomy, authenticity, and personality integration that they bring to law school.

The first recommendations are the provision of contextual, cognitive framing for learning legal analysis, and the promotion of attendant *metacognition* in students—so that they maintain reflective awareness of their mental and emotional processes rather than experiencing these potentially distorting pressures without understanding and monitoring them. The cognitive framing here would convey a basic understanding of human development and personality integration, specifically including the need for a bright connection with conscience and morality, and the fact that legal analysis may tend to suppress that connection. It would also address the need for caution and humility in adopting and applying the “legal” style of thinking and discourse only in appropriate situations.

The capacity for metacognitive awareness is a defining and highly valuable faculty of humans: it allows people to notice how they are doing in various ways, and thereby enables adaptive choice-making regarding behaviors, attitudes, and desired outcomes. This self-awareness is largely synonymous with *mindfulness*, the state of being consciously

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159. See generally MERTZ, *supra* note 4; *supra* text accompanying notes 67-101.

160. John Mixon & Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility*, 58 LAW & CONTEMP. PROBS. 87, 102 (1995).



open and attentive to one's experience.<sup>161</sup> It is the basis of intentional, organized self-regulation,<sup>162</sup> and can also be applied to feelings and emotions.<sup>163</sup> As the founders and leading researchers of SDT note:

By being more aware of their internal conditions—of their needs, feelings, interests, values, desires, and introjects—people can make their own choices even when they are surrounded by pressures and criticisms . . . . In short, people can, through awareness, turn controls into information to be used in making choices that are meaningful and right for them. . . . To act in a self-regulating manner requires that one be aware of what is actually occurring in the moment, as well as of one's personal interests and values, and this is particularly so in situations that are not supportive of the person's need satisfaction.<sup>164</sup>

Thus awareness can confer many of the benefits of a more ideal, supportive environment: “[B]eing aware of and receptive to one's inner psychological experiences and values [is] associated with more autonomous motivation, more positive affect, and greater well-being.”<sup>165</sup>

From the perspective of “reality consciousness,” this open, attentive awareness enhances perception of both internal/subjective and external/objective reality, thereby enabling behavioral choices that more effectively fulfill basic needs for autonomy, relatedness, and competence.<sup>166</sup> By providing direct experiences of self-awareness and internal grounding in the midst of activity, it also supports the crucial needs for autonomy and authenticity that are so challenged by traditional legal-analytical training. A range of additional benefits from increased student awareness may also accrue, including increased integrity, decreased defensiveness, greater openness to community, and decreased out-group prejudice and hostility.<sup>167</sup>

Unquestionably, students need to learn the skills of precise legal analysis and argument, which must be emphasized to them without reservation. However, those skills need not be taught with a singular focus, nor devoid of context for understanding their potentially negative human effects. They also need not be taught in ways that suggest that they

161. Kirk W. Brown & Richard M. Ryan, *The Benefits of Being Present: Mindfulness and Its Role in Psychological Well-Being*, 84 J. PERSONALITY & SOC. PSYCHOL. 822, 822 (2003). This paper also seeks to distinguish the terms *mindfulness*, *consciousness*, *awareness*, and *attention*. *Id.* at 822-23.

162. For applications of self-regulation to law teaching and law students, see MICHAEL H. SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* 24 (2005) and Michael H. Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 479-80.

163. The Carnegie Report, for example, recommends exercises to help students monitor how law school is affecting them. CARNEGIE REPORT, *supra* note 5, at 155.

164. Ryan & Deci, *supra* note 26, at 34-35.

165. *Id.* at 35.

166. Brown & Ryan, *supra* note 161, at 822-24.

167. Christopher P. Niemiec et al., *Being Present When Facing Death: The Role of Mindfulness in Terror Management*, 4, 23, 39-41 (forthcoming 2008) (manuscript on file with the author). This paper surveys the literature relating self-awareness to decreased defensiveness and prejudice, before describing the mortality study. Indeed, these potential benefits are predicted outcomes of growth in Maslow's hierarchy of human need satisfaction, as they proceed from a truly democratic character structure that appreciates difference without concern. MASLOW, *supra* note 15, at 139.

are inherently superior or should broadly supplant more familiar ways of thinking and being. While there are many ways to temper the narrowing effects of basic law training, why not begin by simply “telling it like it is?” What would be more effective to provide the needed awareness than a direct explanation?<sup>168</sup>

There are good reasons for the discomfort that many students experience in learning the craft of legal analysis. Students afforded a clear explanation for that potential discomfort at the outset are prepared for the eventuality and will not become confused by it. In addition, the information provides a beginning awareness that will enable them to monitor their experience and respond appropriately, both in law school and later in law practice when the same challenges present themselves. The benefits of this step alone can be palpably positive. It is wholly autonomy-supportive in that it conveys understanding of, and interest in, the student experience. New law students know that they will be intimately engaged in this process, are already aware of and concerned about potential stress in law school, and are interested in and appreciative of any information provided.<sup>169</sup> It will be striking and also helpful to realize that learning legal analysis, if not accomplished with sufficient contextual understanding, can have a directly anti-evolutionary, anti-growth, and needs-undermining effect. Students need to understand how these effects can proceed from the narrow field of inquiry, the de-personalizing view of human conflict, and the imposition of exclusively external sources of authority to the issues they will be considering. Once they understand this, they are empowered to monitor and minimize those potential effects.

Once a faculty member or dean provides this understanding, she could also briefly offer suggestions for mitigation. Such suggestions can be straightforward by: (1) explicitly acknowledging the students’ healthy level of maturity upon entering law school; (2) encouraging them to maintain their holistic personalities, including their caring, conscience, and morality—essentially to remain subjectively “who they are”—while learning legal analysis and argument; and (3) explaining the importance but also the limited applicability of the new technical-legal skills.

Such perspectives enable and encourage students to remain aware of the operation of their new cognitive skills and their subjective responses—conscience, emotion, perhaps confusion—when applying those skills to the human situations presented by their cases. One benefit is that students will not conclude, as many now do, that their discomfort is

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168. I continue to reference my own publication, as it is the only one to my knowledge currently available for this purpose; it has been used broadly. See generally KRIEGER, *supra* note 44.

169. I have had substantial experience with this approach and have had much positive feedback from my own students and those at law schools across the United States and elsewhere. See *supra* note 4 and text accompanying note 86.

a sign that they are either fundamentally flawed or have chosen the wrong profession. A second benefit is that students begin to spontaneously notice when their growing analytical and argumentative functions are engaged, when their emotions, conscience, and sense of fairness and justice are engaged, when any of these are appropriate, and how to integrate them in the ongoing development of a mature, professional self. These students then also begin to enrich and balance the learning environment of the law school through discussions with classmates or in class, and are better prepared to fully engage in subsequent clinical or other authentic learning opportunities. A third benefit is that students feel affirmatively understood and supported for who they are and what they are experiencing—a powerful experience of the autonomy support that is foundational to their well-being, need satisfaction, learning, and positive motivation for school and career. Overall, students will simply feel better—more understood and appreciated, and more confident and optimistic about their “fit” with law school and the profession. After graduation they will also have a much better foundation for carrying forward their conscience, morality, caring, and other critical subjective faculties to cases, clients, and a profession much in need of them.

These perspectives are not the total answer for law schools, but the awareness they provide, conveyed in a thoughtful way by role models, enables students to soften and balance the effects of legal training by noticing and monitoring their reactions, and making appropriate internal adjustments to maintain their critical autonomous faculties and overall balance. Hence, I suggest teaching legal analysis within an explicit framework of truth regarding human nature, basic human needs, and the importance of humility regarding the appropriate application and limitation of the legal-analytical skill.

I mentioned earlier considerable optimism about these techniques. This is realistic: experience strongly suggests that this approach is effective, although there has not yet been an opportunity to measure the effects in a systematic way.<sup>170</sup> I have used these approaches for many years in my own teaching, have provided materials for this purpose to many law schools, and have received substantial positive feedback from faculty, administrators, and students at many schools in the United States, Canada, and Australia.<sup>171</sup> The approach is straightforward, explanatory, autonomy supportive, and seems to create the awareness needed to achieve the desired result. Assuming willingness among the faculty or the administration, these perspectives are easily conveyed at

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170. Over the next few years we hope to gather sufficient data for this purpose via the DALSO instrument. See *infra* note 186.

171. *The Hidden Sources of Law School Stress* was published for this purpose. KRIEGER, *supra* note 44. Within two years of its creation it has been used at approximately half of the law schools in the United States and Canada.

little or no cost. Further, much can be accomplished by a single administrator or faculty member, although the effect of the message clearly increases as additional role models provide similar messages.

## 2. Faculty Metacognition and Modeling

The open-mindedness necessary for faculty to consider and begin to adopt some of these ideas presupposes substantial humility and awareness. We can enhance our own experience of teaching, and further the humanizing effort generally, by increasing our own self-awareness.<sup>172</sup> We will benefit from paying attention to our own mental and emotional processes to see if we are bringing the “whole package” of human capacity to our teaching and faculty governance responsibilities. Attention appears necessary for various reasons. The first is the historical denial around student well-being issues. Like most people, we are largely caring human beings, yet very little has been done regarding student well-being despite the availability of alarming data for two decades. Are we simply “thinking like lawyers,” with the conscience- and care-sapping effects that Professor Mertz describes? After all, we have all had virtually the same training in legal analysis, and hence been subject to virtually all of the personality-narrowing effects attending that training. Further, we work in academic settings where we constantly teach the same analytical skill set and publish exceptionally analytical articles, and hence we remain focused largely, often exclusively, on this kind of thinking. And so, each law teacher is encouraged to reflect on her *self*: Am I bringing caring and conscience to my work every day? More importantly, do I convey and model that caring and moral side to my students? In addition to individual reflection, this effort would benefit from collective, organized faculty attention, in meetings or perhaps a retreat.

Faculty modeling is an indirect, but pervasive and powerful source of messaging to students about the appropriateness of authenticity, conscience, interpersonal awareness, and humility. As we have seen, law school is a character-formative environment. The first, and usually the most respected, role models for the developing identities of students are their teachers. Those teachers who model a personality devoid of morality or concern for the plight of others teach their students to be lawyers in the same mold, whether they intend this consequence or not. Teachers who have allowed their training, work demands, and/or continuous analytical focus to attenuate their conscience and sensitivity to others teach the same worldview to their students, whether intended or

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172. SULLIVAN, *supra* note 74, at 217 (noting that the institutional effect on formation of character and consciousness extends to faculty as well as students. We are all in this together.).

not. Self-reflection, individually and as a faculty, should lead us to conscious modeling of authenticity, inspiration, and the holistic personality our students will need as professionals dealing every day with the complex interpersonal situations typical of law practice. In fact, it may be that students, and others, respond to authenticity above all else,<sup>173</sup> because the experience of a role model expressing her genuine self encourages others to do the same thing. Such behavior results in experiences of autonomy, integrity, relatedness, and well-being, for the teacher and for students.

Modeling a full, genuine personality at the law school is another cost-free step that requires only willingness and attention. As with most things, this obviously requires balance. Much of the modeling in class simulates proper courtroom behavior, and needs to be relatively formal and constrained by the boundaries of relevant legal analysis. There need to be other times, however, when, by observing a role model, students can gain a realistic perspective on the challenges inherent in engaging with emotionally and morally charged cases in class and later as attorneys. At these times the professor would ideally speak in her genuine, personal style, to model a “whole person” in the law and to connect with the authentic selves of the students. When an assigned case raises questions of justice, fairness, or morality, it is an opportunity for students to see the appropriateness of engaging all of their personal faculties—analytical, affective, moral, and relational—to their eventual casework. As a practical approach, I suggest the teacher acknowledge, in a conversational rather than lecturing tone and style when possible, the following: (1) the personal feelings that naturally arise in such cases, (2) the natural desire to seek and do justice, (3) the need for the rule of law, and the reality of conflict with seemingly just outcomes at times, (4) the desirability of seeking justice and fairness while adhering to the law, and (5) the inevitable impediments to eliminating such conflicts in some cases. Similarly open discussion of other typical, personal challenges that arise in the practice of law, such as conflicts between the values of the client and lawyer, and conflicts between the interests of the client and the broader interests of fairness or justice, are equally helpful. Two consistent principles guide all such discussions—reality and humility—so that students begin to comprehend the truth that there may regularly be situations that challenge their understanding and integrity, and that those situations cannot always be resolved easily. This should encourage a willingness to confront and engage with such situations when they

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173. Educator Parker Palmer observes that people recall with the greatest appreciation their teachers who, regardless of topic, teaching style, or personality, were most fully themselves in front of the class. See PARKER J. PALMER, *THE COURAGE TO TEACH* 21-22, 138 (1998). This classic work for educators focuses consistently on the reality and genuineness of the teacher as the key to positive teaching effects.

arise, in an open, healthy way.

If the teacher has substantial lawyering experience, she could share brief accounts of these kinds of personal conflicts in cases she handled or observed, and whether she found the resolutions satisfactory. If the teacher does not have sufficient lawyering experience to provide personal accounts, she can, nonetheless, provide all of the other information—steps 1-5 above—and then assure students that they will have further opportunities for these considerations later in their courses and/or clinical work. In either case, this is an apt time for genuineness and humility in the face of very difficult potential realities. It also creates a place to encourage reflection, spiritual inquiry, or faith—religious or otherwise, as a student finds personally appropriate—to balance the emotional burden and sense of personal responsibility that will attend real cases.<sup>174</sup>

This general approach allows the teacher to acknowledge and address the emotional challenges and moral conflicts of law practice without becoming mired in them, while at the same time providing autonomy support, a reality perspective about the complexities of practice, and validation of the emotional conflicts students may be feeling around cases under discussion. As previously mentioned, as a teacher employs self-awareness and models a balanced, autonomous approach to cases for the benefit of students, it will enrich the teacher's own work satisfaction as well. This benefit is the result of increasing experiences of personal autonomy, authenticity, and relatedness to students, and perhaps of competence as well. Indeed, the sources of well-being and the other laws of human nature described here are universal, applying to any person or social context.

It is easy to ignore many human qualities given our law school training, the analytical and abstract content of our teaching in most classes, and the ongoing demands for often more analytical and abstract scholarship. The narrow, analytical approach is not difficult to find, and perhaps stands out most in scholarship in which issues of caring and well-being are directly relevant—work focusing on the human problems in law schools or the profession.<sup>175</sup> Also, most professors are unaware

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174. KRIEGER, *supra* note 44, at 9-12 (discussing these issues directly after explaining the inability of an attorney to reliably control outcomes). "It can also be a great help to develop faith in something beyond your own intelligence and ability, because you, like everyone else, will find that things often do not turn out as you or your client prefer." *Id.* at 12.

175. A striking example is seen in a critique of one of the psychological studies described here. See James J. White, *Maiming the Cubs*, 32 OHIO N.U. L. REV. 287 (2006). This article demonstrates both the strengths and weaknesses of the exclusive analytical approach. Here, as in the classrooms studied by Mertz, there is a distinct distancing from the suffering of others, in this case, depressed and anxious law students, filtered through the familiar skills of analysis and argument. The author offers a highly intelligent critique of the study finding law student distress and values shifts, acknowledges the tendency of law school to depress students, but concludes—after stating justifications, including insufficient proof of residual effects after law school—that "[u]ntil better data come forward, I will continue the traditional law teacher's reign of pillage and abuse. I do that happy in the belief that my

of the overarching significance of well-being, including the negative performance and motivation outcomes likely to attend its loss.<sup>176</sup> Nonetheless, with these correlations demonstrated in studies of the general population and studies of law students themselves, it is time for us, without reservation,<sup>177</sup> to add student well-being to our list of factors relevant to the operation of law schools—not just because it “would be nice” if they feel good, but because, if they do not, it is an indication that our education could be much more effective. Further, to the extent that we ignore the quality of our students’ experience, we continue to model behavior that may later be reflected in a schism between our graduates and their clients, and in the unprofessional behavior of lawyers willing to inflict harm on the opposition—including opposing counsel—during litigation.

### *B. Strengthening Autonomy Support and the Metacognitive Message*

Although it is not yet established by data,<sup>178</sup> I have no doubt that a more humble approach to teaching legal analysis, combined with explicit information and modeling to provide supportive perspectives and metacognitive habits to students, will have strong humanizing benefits for the law school community. Ideally, students will be told early, preferably at orientation, of the challenges of learning legal analysis, the importance of integrating it into their lively moral and emotional selves rather than using it to displace such capacities, and the intent of the law school to assist them in both their learning and the maturation of their professional identity.

Maintaining awareness and perspective is a skill, like any other, that improves with encouragement and practice. Beneficial effects will

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hectoring will leave my students better, if momentarily sicker, lawyers.” *Id.* at 303. There is a “jovial” tone to the unconcerned statement about student anxiety and depression, reminiscent of one of Professor Mertz’s observations, and the entire balance of attention between the analytical and human/social context equally reflects the Mertz analysis of the law school classroom. There is sharp attention to detail and structured, powerful arguments on the one hand, contrasted with acknowledgement of the human problem—depression—stated unconcern that it might continue, and obvious disinterest in fostering or engaging in inquiry into its causes. The analysis and argument are all that matter within the “legal” mindset. *See also* Gulati et al., *supra* note 57, at 235-36 (casting law student disengagement as a “happy charade,” but without acknowledgement of the likely depression and loss of meaning predicted by the matters discussed, including disengagement or amotivation, loss of relevance or lack of meaning and purpose, and predominating extrinsic values described in senior law students).

176. *Best Practices for Legal Education* represents a notable exception. STUCKEY ET AL., *supra* note 5.

177. We should certainly be concerned about the well-being of our students, but there is also a balance to be sought. It is important not to advocate or model excessive concern. In fact, I counsel and have written to instruct students on healthy emotional detachment from clients in the practice of law. Krieger, *supra* note 39, at 29-30. This does not, however, translate as *unconcern* about the distress of a client or student. The balance is a critical one, a function of the “second level” growth and maturation of personality discussed in this article.

178. As mentioned previously, we hope to collect such data with the DALSO inventory. *See infra* note 186.

increase as students receive reinforcement of this message, so that it gains credibility and remains lively in their awareness amid the press of law school. Students could be given the explanatory booklet previously mentioned, other material generated for the purpose, or a carefully structured oral presentation, and ideally at least some of their professors would continue to recall these themes in class. Effective “teaching moments” present themselves when legally irrelevant expressions are brought to class attention, perhaps expressions of concern for a party’s personal situation or for the (im)morality or (un)fairness of the factual situation or legal outcome. In the absence of such comments from students, a proactive teacher might also directly ask the class about their personal reactions to such situations or outcomes. This may be done by asking students to share their impressions with the class, or to reflect on them briefly and then write them down and/or discuss them for a minute with a student sitting next to them. In any case, the teacher should affirm any emotional and/or moral reactions rather than dismiss or deride them. She can then remind students of the narrow scope of relevancy for the legal-analytical skill they are learning, but encourage them to remain connected to their feelings and instincts while returning them to the analytical task. Depending on the ongoing course plan and clinical or other integrative programs later available to students,<sup>179</sup> the teacher can then defer by referring students to future opportunities to exercise this new analytical skill within the context of their feelings, conscience, and sense of morality. The teacher can also take a minute or two to discuss that integration if time is available. In this way students are permitted to express themselves, are affirmed and encouraged for those expressions, and also learn the constraints of formal legal analysis by returning to the focused task at hand.

Teachers can also incorporate brief classroom exercises that similarly acknowledge and maintain the liveliness of students’ feelings and conscience. They require only a few minutes.<sup>180</sup> Teachers often avoid these matters because of discomfort engaging students about the “right” moral content.<sup>181</sup> As mentioned in the previous section, avoidance is not necessary, particularly if these considerations are framed appropri-

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179. These and other thoughts in this section are consistent with the emphasis of the Carnegie Report on skills training and the formation of professional identity, and with the *Best Practices for Legal Education* emphasis on authentic and contextual learning of lawyering skills and values. See generally STUCKEY ET AL., *supra* note 5; CARNEGIE REPORT, *supra* note 5. Ultimately, law schools should be moving, as they are able, toward the kind of more integrated curriculum envisioned in these treatises. In the meantime, the proposals in this paper will contribute substantially to many of the desired goals.

180. See, e.g., Hess, *supra* note 57; Krieger, *supra* note 16, at 127-28 nn.56-60 and accompanying text. See generally Laurie A. Morin, *Reflections on Teaching Law As Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227 (2000).

181. See Roger C. Cramton, *Beyond the Ordinary Religion*, 37 J. LEGAL EDUC. 509, 512-13 (1987).



ately at the beginning of the term and again when raised in class. Such discussions cannot, and should not, simulate those about neatly confined legal issues. Determination of the “right” moral or ethical approach is not necessary, and is probably not even possible for many fact situations. The point is to help students *maintain a bright connection* with their autonomous feelings and sense of right and wrong, *not to tell them what they should feel* or decide is right or wrong.

### 1. The “Reality” Perspective

The importance of an accurate perception of reality was discussed above, and provides another useful viewpoint for humanizing legal education. All of the foregoing suggestions provide reality perspectives to students regarding the practice of law and how it relates to their experiences, needs, and integrity. Training students in the fundamental realities of human nature and their chosen profession will guide many away from those common extrinsic misunderstandings about professional success—zero-sum, winner/loser—that create distress and undermine effectiveness. Indeed, the central proposals in this paper have a strong relationship to reality not typical of current legal education. Metacognitive perspectives and skills focus students explicitly on the realities of what they are experiencing as well as learning, and on the potential, very real human effects that can accrue from classroom legal analysis and actual casework. Constructive modeling demonstrates how a full human personality realistically engages in tight legal analysis while appropriately entertaining the complex of natural emotional and moral reactions to the human situations presented. This will provide students greater understanding, comfort, and competence, and will help them later when they are dealing firsthand with the pressing conflicts and needs of their clients.

We can also see that another core task for educators—provision of autonomy support—is grounded in reality. Here, the student’s personality and position are the focus. The teacher creates a lively, supportive connection by understanding and acknowledging the student’s reality—her preferences, beliefs, etc.—and then providing helpful information, choices, and/or explanations. This offers another useful perspective on the law student research cited previously: the more reality-based law school—in terms of practical classes and programs, practice backgrounds of professors, grading based on actual learning rather than comparative performance, and functional equality of faculty—provided measurably greater felt autonomy support and as a result created a spectrum of improved student outcomes.<sup>182</sup>

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182. See generally *Understanding Negative Effects*, *supra* note 4.

### *C. Broadening Autonomy Support and the Metacognitive Message*

Conceptual framing and metacognition can be usefully extended to many topics beyond “thinking like a lawyer.” We have seen that other important aspects of law schools, particularly the expressed extrinsic values, inconsistent values messages, lack of understanding about healthy and unhealthy competition, unrealistic messages about the power of legal analysis and the nature of success, and the resulting expectation that adversarial outcomes will be the measure of competence and self-worth, place additional undermining pressures on students. Even in schools dedicated to humanizing their practices and social environments, creating meaningful shifts in institutional values and the messages that proceed from them will take time. It therefore makes sense to utilize framing and metacognition to keep students alert to these issues as well, in order to defuse the angst and confusion they may otherwise create. The same benefits discussed in the context of legal analysis—perceived autonomy support, increased awareness, and empowerment to avoid potential distress—result when students are given accurate perspectives about values, unhealthy competition, the reality of success, and the other likely sources of distress common to law schools. The material mentioned earlier provides this kind of information.<sup>183</sup> The discussion of these and other issues begins with a description of the current situations on most campuses, provides scientific findings that are relevant to the experience of students, and closes with suggested “antidotes.” The antidotes encourage awareness and self-monitoring; provide practical perspectives on life style, attitude, and career-seeking; and focus students on maintaining healthy values, integrity, wellness, and effectiveness.<sup>184</sup> Feedback from students, faculty, and administrators indicates that the information is effective in itself to generate understanding and metacognitive awareness, relieve confusion and alienation, and provide workable suggestions to students. And of course, if these messages can be provided—whether orally or using this or other written material—regularly and through different voices at the law school, the credibility and impact will increase substantially.

### *D. Metacognition for the Institution—Another Source of Optimism*

Reflective awareness is probably the most unique defining characteristic of human beings. We have seen how its management can assist both students and faculty members. Such awareness and the responsive choice-making it permits are equally effective for institutions. Many law schools have begun to assess their teaching and learning environment in

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183. See generally KRIEGER, *supra* note 44.

184. *Id.* at 3-5, 7, 9, 14-15.

a systematic way. This broad interest in assessment complements the broad efforts to acquire metacognitive materials for students, and serves as a second source of optimism that law schools are beginning to actively address the human issues of their students and graduates. The first widely available assessment instrument is a measure of student engagement,<sup>185</sup> a key consideration for law school effectiveness. A second instrument offers a complementary assessment based on SDT and the law student research described in this article. It measures and correlates the spectrum of human factors discussed here, including perceived autonomy support, need satisfaction, values, motivation for law school, and their effects on outcomes including well-being, learning performance and job motivation.<sup>186</sup>

Much other valuable material is in use and development, including two series of forthcoming law school texts. One will include casebooks that incorporate contextual learning, self regulation, and other approaches to legal education suggested in *Best Practices for Legal Education* and the Carnegie Report,<sup>187</sup> the other is intended to provide practical, “skills and values” applications of the legal theories and concepts covered in its supplementary texts.<sup>188</sup> Additional assessment measures may well also be developed in time. With the increasing dialogue and attention attending publication of the two major reports and the formation of the AALS Section on Balance, it appears that the academy is beginning a broad process of inquiry and reflection that can serve to guide constructive change.

### *E. The New Proposed Philosophy: Some Initial Applications in Law Schools and the Profession*

Since human nature is our primary resource as educators, it simply makes sense to understand it as thoroughly as possible. We can then apply that understanding to each important consideration at the law school, so that the teaching, administrative, and planning functions are increasingly effective in maximizing the potential of law students. This is even more true since recent research and a systematic view of legal education suggest that many of the traditional centerpieces of law schools actually tend to obstruct the progressive development and ex-

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185. See generally LSSSE, *supra* note 57.

186. DALSO is based on the previously cited Sheldon and Krieger research *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, and *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self Determination Theory*. DALSO is available beginning in 2008.

187. CONTEXT AND PRACTICE CASEBOOKS (Michael H. Schwartz ed., Carolina Acad. Press (forthcoming 2009)). Professor Schwartz is a principle contributor to *Best Practices for Legal Education*. See *supra* note 5, at xi.

188. SKILLS AND VALUES SERIES (Scott J. Burnham & Ruth Ann McKinney eds., LexisNexis (forthcoming 2009)).

pression of human nature.<sup>189</sup>

Often administrative and other decisions will be obvious, but in any circumstance, the direction indicated by consideration of human nature should be favored because of the foundational role of human nature for education, law practice, and society. Let us acknowledge that substantial tensions are inevitable when a new perspective begins to direct the operation and decision-making of institutions; change is never without its difficulties. Nonetheless, human nature, and thus the nature of our human institutions, is to progress rather than stagnate.<sup>190</sup> As examples of how a philosophy of human nature may serve to guide law schools and lawyers, I will briefly consider in this light a few salient problems of current interest: grading and student ranking, student loans, and conflicts of morals and values in law practice.

### 1. Grading and Ranking Practices

We have discussed the damaging effects to law schools of involving themselves in the national rankings sweepstakes, how institutional distortions result from giving precedence to extrinsic, competitive pressures, and the precise analogy between those institutional pressures and the pressures students feel when placed in a zero-sum, ranked hierarchy of grades. In this section, I will apply a human nature perspective to the related issues of curved grading, mandatory grade ranges, and numerical ranking of students.

The curve is perhaps the most prominent expression of the analytical-adversarial paradigm in law schools, and it is also perhaps the most powerful factor maintaining the predominance of that paradigm. Curved grading runs afoul of human nature in a number of ways, and the impact is pronounced because grades have exceptional importance within the prevailing “winner/loser” paradigm. The curve displaces straightforward evaluation of learning—an intrinsic, self-development goal motivated by the inherent, natural desire to learn—with a rewards-based evaluation of comparative superiority—an extrinsic goal imposed by external motivation. Both well-being and performance will suffer as a result.<sup>191</sup> As a zero-sum system, a mandatory curve also creates anxi-

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189. In the pilot study comparing law schools of contrasting philosophies and learning environments, the less traditional, lower-ranked school that was more supportive of the inherent nature of its students enjoyed a spectrum of improved outcomes. *Understanding Negative Effects*, *supra* note 4, at 889-91. See generally Dammeyer & Nunez, *supra* note 55; *Undermining Effects*, *supra* note 4 (documenting law student depression and emotional distress).

190. For a cogent historical view of the lack of progress in legal education, see Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 610-31 (2007).

191. The relationships among values, goals, performance, and well-being have been discussed generally in this paper. See also AUTHENTIC HAPPINESS, *supra* note 44, at 181-84 (providing an explicit application to competition and the current legal paradigm); Ryan & Deci, *supra* note 26, at 16-17 (summarizing research finding that competitive environments create shifts toward external locus

ety and undermines the security and relatedness needs.<sup>192</sup> The curve disallows evaluations that reflect the professional reality—that most students are good, and good enough at the basic required skills, and that fine differences will not determine outcomes or success. Instead, it creates a system of forced competition for a few top grades. For the many students who achieve lower grades than they have reason to expect, considering their incoming GPA as a realistic, historical measure of their academic ability, competence and self-esteem needs are likely to be compromised unnecessarily. Zero-sum grading also obstructs the natural impulse for growth through integration of personal authenticity and competence with social connectedness and sensitivity—the maturing personality previously described—because the system sets its primary indication of personal competence in direct conflict with helping and supporting others.

From another scientific standpoint, an imposed curve creates an external locus of control for a student's most primary activity—her learning effort. Recall that thriving and performance increase as motivation moves along a continuum from external and controlled to internal and chosen. It is true that curves simulate the “normal” distribution of performance levels expected whenever groups are measured. However, when our law schools *impose* those results through mandatory curves, students experience the locus of causation of their grades as external. This experience frustrates the autonomy need and displaces the intrinsic motivations to learn and become capable with compelled competition for relative worth.

Essentially, the mandatory curve provides a critical experience of institutional control rather than autonomy support. As a result, learning performance, well-being, and enjoyment of the process are all undermined. Without a mandatory curve, if the same students were to receive the same grades, they would be more likely to experience the locus of causation as internal—relating to their own effort, understanding, and level of achievement. In that case the lack of imposed control and the greater perceived autonomy support would promote a greater sense of personal responsibility, more internal motivation for students to apply themselves, and predictably enhanced well-being and learning performance. This differential in results is not speculative, given the general SDT research and the specific findings of the relationships among perceived autonomy support, need satisfaction, motivation, well-being, and

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of causality, and thus undermine autonomy, intrinsic motivation, performance, and well-being).

192. Security is a foundational need identified in the seminal study. See Sheldon et al., *supra* note 11, at 329. The relationship between zero-sum systems and anxiety is an obvious one when the system determines anything of real significance, since one or more losers are necessarily implied for every winner. See AUTHENTIC HAPPINESS, *supra* note 44, at 181-84 (recommending recasting the zero-sum nature of law practice by focusing on human strengths and virtues); Krieger, *supra* note 16, at 119-20.

learning/testing performance in law students.<sup>193</sup>

There is yet another way to understand the human problems with an imposed curve. Its applicability depends on a patently unrealistic assumption: virtually identical overall learning performance in each class, course, and program subject to the curve. The obvious reality, however, is that different teachers are notably effective and ineffective, and that some courses are highly engaging and others boring or amotivational. Can we rationally ignore such obvious differences with a grading system that presumes identical learning performance in every class, and can we expect students to feel well-motivated when immersed in such a system? If coupled with a required grade range that students perceive to be unrealistically low, a consideration further discussed below, the resulting sense of external control, imposed unreality, lost autonomy and competence, and negative affect will likely be marked in the student body. In fact, in the recent research cited earlier, students with superior LSAT scores and undergraduate grades, but at the law school with a forced low curve, learned and tested more poorly than students at a contrasting school, and the data strongly suggested that their lower reported levels of need satisfaction and perceived autonomy support were the cause of the difference.<sup>194</sup>

A second problem with many law school grading systems is that the set point for the range of grades is perceived by students as unnecessarily and unnaturally low. Students will reasonably experience dissonance, and often anxiety or excessive pressure, if grades at the law school are lower overall than their incoming grades. That negative experience seems appropriate. Virtually all graduate programs are similar to law schools in that they admit selectively and place greater demands on their students for more complex, advanced learning than experienced in undergraduate programs. However, they typically grade in ways that reflect the high capability of their students and that allow all students who learn well to grade well. Law schools with low set points or ranges for grades differ. The message from the faculty is simple: *we presume that you will learn and perform poorly here compared to your previous achievement*. Whether the faculty believe this or not matters little; the perception in students that faculty have low expectations for their learning undermines the very educational purpose of the institution, since perceived autonomy support—which includes a sense of respect—is the primary determinant of basic need satisfaction, positive motivation, well-being, and learning performance.<sup>195</sup> This human nature perspective

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193. *Understanding Negative Effects*, *supra* note 4, at 890-91.

194. *Id.* at 891-93. Further data is needed to confirm these results and to determine whether, and to what extent, these issues of grading and ranking contribute to need satisfaction, perceived autonomy support, and specific outcomes.

195. See *supra* note 53 and accompanying text (Figure Four); *Understanding Negative Effects*,

explains the recognized need for educators to express high expectations for student learning.<sup>196</sup>

The analyses of internal versus external locus of control and autonomous versus controlled motivation that point out weaknesses in grade curves apply similarly to a required, low range of permissible grades. If students feel that they *earned* low grades, the effect is quite different than if low grades appear to be *forced* on them from an external authority. In the latter case, negative feelings resulting from the low grade will likely be directed toward the imposing authority—the law school. By contrast, if the school-imposed requirement of low grades is removed, the source of the unwanted outcome is more likely to be experienced as autonomous and internal, resulting in quite a different, constructive process of self-evaluation and increased effort.

Numerical ranking of students has similar negative effects to those of a mandatory curve. Rankings also place students directly in zero-sum competition with each other, and again substantiate the analytical-adversarial paradigm of most law schools. Rankings highlight comparative grade achievement as the primary, if not exclusive, marker of a successful law student. They tend to “crowd out” the intrinsic desire to learn, and hence undermine learning performance. Rankings are also discouraging for many students, as well as generally inaccurate and unrealistic predictors of actual student ability, because they typically reflect only the traditionally dominant, narrow skill set. To maximize the potential for student outcomes then, a law school would do well to eliminate numerical ranking as well as forced curve grading. On the other hand, for a faculty that does not feel ready to discontinue student rankings, these factors are additive but severable, so that the grading practices may be amended in any case.<sup>197</sup>

These grading and ranking practices all feature comparative, competitive numbering as the principal determinant of worth, strongly promoting the winner-loser paradigm. Further, at the many law schools where the curve or mean is set to force average law school grades lower than average grades before law school, the cadre of perceived “winners” is small—perhaps the most successful ten to twenty-five percent—and

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*supra* note 4, at 892.

196. See, e.g., Hess, *supra* note 57, at 83, 85, 90-92; KEN BAIN, WHAT THE BEST COLLEGE TEACHERS DO 71-73 (2004) (summarizing findings that student learning levels tend to follow the perceived level of expectation of the teacher).

197. It is almost inevitable that some external tensions will arise if numerical rankings are discontinued. Some employers will feel inconvenienced until they develop other ways to determine a student's potential, which in the short term may even create concern that employers will ignore the students on that campus. This should be a surmountable issue; employers can be provided the mean GPA for the student and the overall class or school, and can glean from that a good sense of a student's relative academic success. Change virtually always creates tensions in the short term; if that were sufficient to stop progress we would experience little progress indeed, either personally, professionally, or institutionally.

there are many more perceived “losers”—the remaining seventy-five percent or more of the class. Students often tell me that they resent such grading systems, which effectively create a sense of resignation and mediocrity across a large segment of the class. Such systems encourage some students to “tune out” and stop trying, a classic example of *learned helplessness*.<sup>198</sup> Others feel compelled to compete, often to excess, for the limited cache of good grades and other resume points. The former response, amotivation, can lead to depression;<sup>199</sup> the latter can create distortions in attitude and lifestyle, and reinforces a concept of the profession that may be reflected in the problems of overwork, insensitivity, and hyper-competition among lawyers today. Either response is likely to impair self-identity, inhibiting need satisfaction and displacing genuine personal growth. These effects all occur because our systems do not incorporate an understanding of human nature, effective motivation, or adaptive competition.

Many faculty members are concerned about the potential for grade inflation or deflation if open grading is permitted. Such concerns should be used to stimulate genuine faculty discussion about mission and methods, rather than to rationalize imposition of counterproductive grading systems on students. Faculties should seek to work together to develop trust and a shared vision for the educational environment they create; otherwise the resulting tensions and systemic distortions will be distinct and certainly will be sensed by students. Faculty may also experience negative effects, as a result of decreased autonomy from the imposed systems, and decreased relatedness to other faculty and their students.<sup>200</sup>

One effective approach to clarify grading, and which can also facilitate and support the elimination of a mandatory curve, involves individual faculty members establishing objective criteria for their own grading. The faculty member articulates the criteria that she will use to evaluate a student’s learning, with enough specificity to guide her students’ study and preparation. Such a system demystifies the preparation process for students and allows each to obtain a grade that objectively corresponds to her learning and testing performance. It also guides the teacher in her grading process, and then provides a clear framework for providing feedback after the exam or for explaining a grade if questioned by a student. The same objective framework and explanation process would help dispel concerns about inflation/deflation if raised by an administrator or other faculty member. The process is efficient both for teacher

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198. See *LEARNED OPTIMISM*, *supra* note 44, at 19-28. We noted apparent evidence of this disengagement effect in our first study of law students. See *Undermining Effects*, *supra* note 4, at 281-82.

199. Learned helplessness, is a precursor to depression. *LEARNED OPTIMISM*, *supra* note 44, at 19-28.

200. Although it may be necessary in limited, specific situations, imposing control on faculty has the same detrimental motivational effects on them as it does on any other person.



and students; it communicates high expectations, encourages focus, and generally provides increased transparency and a sense of fairness to grading.<sup>201</sup>

Will student effort wane as a school discontinues curved grading, forced low grades, and/or rankings? For most of the class, the likely results are that effort, subjective well-being, and learning will all increase. With elimination of the zero-sum system, attendant anxiety will abate and intrinsic motivation to learn and achieve will not be crowded out, nor dampened by the sense that the system put in place by the institution makes the achievement of good grades impossible for many students.<sup>202</sup> It may be that a few very high-achieving students will relax some of their effort to remain at the very top of the competitive mix. If so, this would likely provide benefits for their health and adaptive need satisfaction without impairing their learning.<sup>203</sup> Overall, students of all academic abilities would be expected to be less anxious and compulsive and therefore more effective at learning, and would also experience enhanced competence, relatedness, and security need satisfaction.

The recent studies finding adversarial lawyers to be strikingly ineffective<sup>204</sup> provide additional support for reframing the analytical-adversarial “success” messages broadcast by these grading and ranking practices as soon as possible. To maximize our human resources, I would offer four general recommendations for grading systems. First, they should permit and promote realistic results as perceived by the students. This means that the overall grading parameters at a school should be, at a minimum, consistent with the lifetime experience of grade achievement of the students at that school. Second, a student’s grades need to be experienced by her as a product of her own motivation, effort, and learning achievement rather than as a product of a controlling system imposed by the institution. Flexibility and grading based on objective learning standards are therefore appropriate, rather than emphasizing comparative achievement. Third, the school should avoid a mandatory curve, which creates forced competition and anxiety, crowds out the intrinsic motivation to learn, and undermines most of the fundamental human needs. For the same reasons, numerical rankings

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201. See generally Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1.

202. These predictions are supported by the initial findings of improved well-being, learning, and motivation among law students in a more autonomy supportive environment without a mandatory curve. *Understanding Negative Effects*, *supra* note 4, at 889-91. They also conform with previous generalized findings in SDT. With the DALSO assessment, we hope, over time, to gather data from a sufficiently large number of law schools to determine the correlations among various features of grading systems, motivation, well-being, and bar passage. See *supra* note 186.

203. Backing off just a bit and balancing their lives would also provide some sense of reality to prepare top students for life as a lawyer, where few people other than their first employer will be interested in their GPA, and where grades and fine distinctions in analytical skill will rarely, if ever, determine outcomes or success.

204. See Schneider, *supra* notes 145-47 and accompanying text.

should be avoided or strongly subordinated in perceived importance. Fourth, since teaching and learning effectiveness vary substantially across the curriculum, there should be some permitted variance in overall grades from course to course. Once again, these approaches can operate independently, and are severable as deemed appropriate by a faculty.

Most faculties should be able to reach consensus regarding grading practices, perhaps with the adoption of criterion-referenced grading, so that un-curved grading produces general perceptions of fairness. However, at institutions where there continues to be concern with apparent grade inflation/deflation by certain professors, I would suggest that the tensions be addressed by creating a system, as described above, that first honors the critical human components of the students—by emphasizing autonomy support, internal motivation and locus of causation, and realistic, objective standards for grade achievement—but that also incorporates safeguards against substantial grade inflation/deflation. For example, a faculty member with consistent or substantial variations from a normal distribution of grades, or from a realistic grade range, could be required to support those variations and receive approval from the administration or a designated committee.<sup>205</sup> If, as previously suggested, criteria have been articulated for one's grades, defense of those grades becomes relatively straightforward in these situations.

## 2. Sample Applications to the Profession: Identity, Integrity, and Moral and Ethical Conflicts

The proposed new policy to favor human nature in the operation of our schools has equal value when applied to law practice, whether in actual practice or when educating students about that practice. I consider here three salient issues in the profession as examples: loss of integrity, excessive adversarialness, and ethical/moral conflicts. I then discuss the development of professional identity in law schools.

First, the character and integrity that are critical for professional and ethical behavior<sup>206</sup> wholly depend on understanding and satisfying the autonomy/authenticity need in law students and lawyers. In fact, in the context of the research described in this article, autonomy, integrity, and character are inseparable and largely synonymous constructs, be-

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205. The same contextual considerations about motivation and autonomy apply to faculty members. To the extent faculty feel restricted or controlled rather than personally endorsing of the grading system, they will also experience negative affect, impaired autonomy, and decreased motivation. Obviously, each perspective about human nature in this paper applies to faculty as well as students and lawyers; faculty could usefully reflect on their own relative level of need satisfaction, intrinsic valuing, internal motivation, and sense of support for autonomy/authenticity from the administration and other faculty.

206. See KRIEGER, *supra* note 44, at 14-15; Krieger, *supra* note 19, at 431-32.

cause they all refer to the sense of selfhood that is relatively constant and that maintains consistency between one's core values and beliefs, on one hand, and one's behavior on the other.<sup>207</sup> We have seen that traditional law training "unmoors the self" by minimizing one's sense of caring, fairness, and morality. As it does so, it tends to erode autonomy, character, and integrity. The proposals here for applying contextual framing and metacognition to those traditional classes will help restore integrity to the legal profession as it supports autonomy and selfhood in law students. Attorneys already in practice, or who in the future do not receive this information in law school, need to become aware of these relationships and of the inevitable decline in vitality and well-being that accompanies loss of integrity, autonomy, or authenticity.

Beyond the consideration of professionalism and integrity, empirical studies are beginning to reveal the exceptional effectiveness of attorneys who are cooperative negotiators and the exceptional ineffectiveness of the competitive, zero-sum approach. These studies offer an excellent example of how the application of human nature to legal thought and behavior can improve the profession. As shown in Figure Five,<sup>208</sup> an analysis of the research demonstrates many of the sources of human thriving manifested in effective negotiators.

<b>FIGURE FIVE</b>				
<b>ATTORNEY QUALITIES AND EFFECTIVENESS</b>				
	<b>PROBLEM SOLVERS (P.S.)</b>		<b>ADVERSARIALS</b>	
	<b>OPEN (P.S.)</b>	<b>CAUTIOUS (P.S.)</b>	<b>ETHICAL</b>	<b>UNETHICAL</b>
<b>Shared Qualities/Behavior</b>	Honest. Courteous. No derogatory comments/offensive tactics. Zealous for client interest, within limits.		Extreme position, unrealistic demands. No interest in other clients' needs. Aggressive. Arrogant. Irritating.	
<b>Other Qualities/Behaviors</b>	Friendly Reasonable Cooperative Prepared Forthright/Sincere Trusting Seeking mutual benefit		Interested in (his) clients' needs Prepared Trustworthy  Unconcerned with other lawyers' needs Zero-sum-mentality Greedy. Rigid. Deceptive. Insincere. Unreasonable. Inaccurate view of case Narrow view, single conception Inflicted needless harm	
<b>Effective</b>	72%	24%	16%	3%
<b>Ineffective</b>	1%	12%	40%	75%
<b>Predicted Well-Being</b>	<b>High:</b> High integrity, authenticity, self-esteem, relatedness Intrinsic, cooperative values		<b>Low:</b> Low integrity, authenticity, self-esteem, relatedness Extrinsic, competitive values	

These lawyers embody intrinsic, interpersonal and helping values, and they exhibit high levels of satisfaction of the needs for autonomy/authenticity and relatedness—they are described as "friendly," "cooperative," "forthright," "sincere," "trusting," and "seeking mutual benefit."<sup>209</sup> These descriptors also reveal high integrity and honesty.

207. Ryan & Deci, *supra* note 26, at 28; *see supra* text accompanying notes 107-121.

208. *See* Schneider & Mills, *supra* note 145, at 616.

209. *Id.*

The competence need is also well satisfied—these lawyers are “prepared” and “zealous for client’s interests,” and they are likely to experience high esteem as a result of their authenticity, cooperative approach, and enhanced effectiveness.

The results also demonstrate the positive effects of providing autonomy support, in this case in the litigation setting. The descriptors make it clear that the effective lawyers afforded respect to their adverse counsel, and were interested in and open to the perspectives of the “other,” in order to find a mutually supportive solution. By contrast, the least effective lawyers sought to control the other and adopted a narrow, self-only approach that was closed to the needs and perspectives of the other.

A third example applying human nature to guide law practice involves the resolution of the many moral and ethical conflicts inherent in the practice of law. Such conflicts often come up for discussion in my classrooms and clinical work with students. I rarely seek to resolve those conflicts, unless an ethical rule is definitive. Instead, I suggest to students, as I do generally in this article and when speaking to lawyer groups, that when there is doubt about the “right” resolution, consider and give priority to human nature. In the context of values conflicts and morality, this typically will mean honoring the dictates of conscience. In this way the lawyer or law student conforms to her character and strengthens her personality integrity, autonomy, and self-esteem. The many rationales that suggest other resolutions may make sense, but their impact will not match that of supporting, or violating, one’s own nature as a whole person. This has been a reliable benchmark for me through many years of litigation. I do not believe an attorney, or anyone else, should ever violate her conscience. After almost two decades of offering the same suggestion to lawyers and law students, I have received much confirming feedback and, as yet, no objections. Every law student should be told this several times before graduation from law school.

A related, major focus of improvement to legal education is the creation of “professional identity” in law students.<sup>210</sup> This is perhaps the most critical need for our profession. The formation of professional identity need not be as challenging as it may seem when viewing current law school curricula. A combination of *personal* identity/integrity, competence in the necessary analytical and other practice skills, and the maturity that results from their conscious integration in each student’s personality, will form the professional identities we seek. Our first major step is the first priority action suggested previously: “do no harm” to the

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210. See CARNEGIE REPORT, *supra* note 5, at 29-33; STUCKEY ET AL., *supra* note 5, at 275.

identity and level of integrity that students bring to campus when they first arrive. Since the law school experience has undermining tendencies for key components of mature integrity—conscience, morality, and social/interpersonal awareness of many students—our first critical contribution to development of professional identity is to use framing, metacognition, and modeling to eliminate those undermining effects from our teaching and other practices. The additional areas previously recommended for framing, metacognition, and modeling also bear directly on professional identity because they implicate integrity, conscience, intrinsic values, and healthy, supportive competition. Beyond these important, immediate steps, law schools will find comprehensive recommendations for curricular structuring in *Best Practices for Legal Education*.<sup>211</sup>

A good, professional lawyer is fundamentally a well-integrated, mature person with legal skills, and so again, human nature becomes a useful guiding philosophy. The qualities of a professional other than the skills specific to that profession all involve the integrity, broad-mindedness, helping values, respectfulness, and decency that mark most mature and well-motivated people. The foregoing considerations of three current issues in the profession support this perspective and approach. In response to the many potential, rational arguments to the contrary, we should consider the inevitable reality that any lawyer who is not a whole person—who violates her own conscience, integrity, or the other qualities of her evolved human nature—will inevitably suffer resultant losses in self-esteem, authenticity, well-being, and effectiveness. If behavior that predictably creates such negative results is justified because it is “professional,” we need to revisit our definition of professionalism.

### 3. Student Loan Obligations

It is quite feasible to make rapid progress with most of the concerns discussed in this paper. They are largely matters of information, awareness, attitudes, and/or values, and can therefore be amended by conscious choice and perseverance. The concern with law student loan obligations is substantively different; it is a more concrete problem involving established financial realities. Nonetheless, an understanding of human nature may be applied constructively to various levels of this problem.

Some of the current tenets of the analytical-adversarial paradigm contribute to students’ negative experience related to debt, and often to the size of their debt as well. First, the paradigm encourages high earn-

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211. STUCKEY ET AL., *supra* note 5, at 275.

ings for their own sake. This provides a ready rationalization for internalizing the common institutional preference for high earnings over service,<sup>212</sup> but does not factor in the likely human costs. A person can live quite happily with substantial debt, but will experience persistent distress if ignoring the intrinsic desire for service or for a particular kind of work. Second, the paradigm and traditional pedagogy train students to ignore feelings, which leads them to focus on more external, obvious considerations such as finances and to discount considerations of enjoyment, meaning, and satisfaction from their work. Many students believe that their personal preferences and their experience will not be as important as their income, until they have accepted a position for financial reasons and are actually immersed in unfulfilling work. Third, the emphasis on high income as a key part of lawyering success can lead to a lack of care for spending among law students. Living “lean” is not part of the paradigm, and there may be a tacit assumption of high earnings that keeps students from rational efforts to minimize their debt. Fourth, the unnecessary stress generated by the extrinsic, competitive values may lead some students to spend as a distraction from the pressures of law school.

We all need to draw from the research on human nature a clear understanding that money is not the key to happiness. While the student loan problem is very real, a general reprioritizing to de-emphasize the typically extrinsic focus of faculty and students will ease the psychological burden of debt.<sup>213</sup> This means reaching a shared understanding that interest, enjoyment, and meaning in work are substantially more important than income, status, and rapid debt repayment. People can learn to deal with debt realistically but not think about it so constantly, nor attribute so much power to it. In addition, if students realize that high income is not necessarily the “be-all” of success, they may take a more realistic look at their likely income after graduation and moderate their spending in law school, substantially reducing their ultimate debt.

I hasten to add, however, that the disconnect from reality appears lively in this as well as other spheres of law school life. So few students live carefully to minimize expenses during law school, and so few law schools counsel their students on finance and debt management, while in a seeming contradiction, virtually everyone on campus is abuzz with consternation about high debt loads. Why do we not act to help students moderate their debts? We should model less worry about debt, since it achieves nothing, and instead take those constructive actions

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212. Recall that in both recent studies of law students, those with higher grades tended toward “money” careers and away from “service” careers. See *Undermining Effects*, *supra* note 4, at 268-69; *Understanding Negative Effects*, *supra* note 4, at 884-85.

213. See generally KRIEGER, *supra* note 44 (discussing these topics in some length); KRIEGER, *supra* note 12 (same).

within our capacity. For example, we should be certain to provide clear and accurate information to prospective students while they are still considering whether to attend law school, so they do not base their decisions on false assumptions and are not greeted with unpleasant and potentially life-altering surprises after they matriculate. We should provide ample information about average debt loads, average incomes for new graduates, and the actual, typically very small percentage of students from recent classes that received the highest salaries, because unrealistic financial expectations are common among current students.<sup>214</sup> This may diminish interest in law school for some students, an unpleasant prospect for schools perhaps, but one that integrity and decency require. Then, once in law school, students must be given concrete assistance; we should provide broad and practical counseling early in order to minimize the accumulation of unnecessary debt.<sup>215</sup> The message that their life experience after graduation truly will matter must also be conveyed to students, so that extrinsic financial goals combined with wishful thinking do not lead them to seek and accept positions that do not suit them.<sup>216</sup>

When dealing with the reality of the current loan situation, students need to remain keenly aware of the need for intrinsic and autonomous, value-driven motivation, rather than allow major choices to be imposed on them by external pressure. This means that most students will be best served by learning to accept the tension of more debt than they prefer, favoring meaning and purpose in life by maintaining their inherent preferences for the kind of work they wish to do, and constructively financing their debt in ways that are manageable on a modest income—if that is the trade-off necessary to obtain satisfying work.<sup>217</sup> Once provided this information, if students determine that their personal situations do dictate abandonment of a preferred career goal, then they should be further counseled on the realities of law practice settings of many kinds so that they can make the wisest second choice rather than simply taking the highest-paying job without further consideration.

#### F. *The “Perfect” or the Immediately Attainable “Good”*

An ideal law school curriculum may well consist of a seamless, conceptually and structurally integrated educational program as envisioned

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214. I hear from my students the common misperception of high lawyer salaries immediately after graduation. *See generally* Dybis & Weyenberg, *supra* note 143.

215. I have calculated, for instance, that simple things such as deferring on designer coffees and bringing one's own lunch will save a student approximately \$8000 in three years of law school. KRIEGER, *supra* note 44, at 14. For examples of school-wide financial counseling programs, see Dybis & Weyenberg, *supra* note 143, at 26-27.

216. KRIEGER, *supra* note 12 (providing a system for scoring and balancing the many possible benefits of a job opportunity, in terms of both financial benefit and personal fulfillment).

217. KRIEGER, *supra* note 44, at 13-14, 19 n.16.

by the Carnegie report.<sup>218</sup> For most law schools, achievement of this goal will proceed from a fundamental shift in faculty purpose and will require substantial structural changes to the curriculum. However, I have discussed here specific ways that a shift in faculty thinking toward a “human nature” approach to education, with little more, will go far toward improving the various student outcomes of concern. The methods suggested for implementing that approach include more inclusive and realistic conceptual framing, modeling, and the natural broadening of student awareness that will follow.

As the human nature philosophy is increasingly understood and utilized, many schools will progressively move toward a curriculum that integrates the key components of analysis, “practical” skills, and identity/integrity in more contextual classroom experiences and authentic, clinical case work. To avoid boredom and amotivation, students do need to experience a sense of progress from increasingly complex, applied, and therefore challenging and realistic educational experiences, rather than exclusively exercising the same skills of analysis and argument.<sup>219</sup> However, while the Perfect will develop over time, in different ways at different schools, the Good, as embodied in the shift in faculty awareness, teaching practices, and policies, is immediately attainable.<sup>220</sup> This shift can occur now, wherever there is an active interest in maximizing the potential of law students, humility and courage to openly consider change, and a sufficient understanding of the operative principles of human nature to accurately identify and guide any needed change. The quantum of faculty at a given law school required to participate for such a shift to be meaningful is probably relatively small. I am aware of schools where a single teacher or dean has created improvements in the general mindset of students. If fifteen to twenty percent of teachers and administrators adopt these ideas and share them with students regularly, it would likely suffice to create broad improvement to the teaching and learning environment of the school.

It is my hope that the proposals here may serve as a deep, pervasive frame of reference for long-term development according to a new guiding philosophy of human nature, as well as an interim approach to cost-effective, immediate improvements. Many, and probably most, constructive ideas for improving legal education are grounded in an intuitive grasp of human nature,<sup>221</sup> although that perspective is not often

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218. CARNEGIE REPORT, *supra* note 5, at 17-18.

219. See Rubin, *supra* note 190, at 648-49 (observing that traditional legal education involves “three years of second-year courses”).

220. For a potentially invaluable tool for any phase of improvement, see STUCKEY ET AL., *supra* note 5. It contains numerous suggestions that can be immediately applied to improve teaching and learning, as well as a thorough blueprint for deeper change.

221. Many of the references in this paper relate to such ideas. I offer here only a few additional examples that echo themes in this paper; they proceed, notably, from a recent symposium on *The*



articulated explicitly.<sup>222</sup> The scientific, systematic understanding of human nature and human needs offered here should help new initiatives to form and gain consensus, by clarifying those ideas that are likely to be effective and the reasons for their effectiveness.

## VI. CONCLUSION

Traditional law school teaching, grading, and other practices appear to have many negative, though unintended, consequences on the most fundamental human aspects of law students. These negative consequences bear strongly on personal well-being and psychological maturity, thereby also potentially compromising the capacity for professional behavior, ethical competence, and satisfaction in life and career. These effects may be particularly acute because of the formative, developmental environment of legal training. They also reveal a functional incongruence between the educational, pro-social goals of most law schools and the operative effects of their policies and practices.

The current philosophy guiding teaching and policy at most law schools, and defining “success” for the law students and aspiring lawyers in our charge, has taken us as far as it can. The dominating emphases on technical analytical ability, winner-loser thinking, competitive outcomes, comparative worth, and extrinsic valuing have produced law students and lawyers who create much good, but who also struggle under the burden of attitudes and unrealistic beliefs that generate unnecessary angst, frustration, and depression.

We are in a fortunate time, when energy is building toward increasing the supportiveness and effectiveness of law schools for law students. As those processes proceed, faculty members will also experience increased vitality and satisfaction from their work. When broad changes are contemplated, as in the current legal education community, it is wise and most efficient to first adopt a deep theory to provide consistent guidance and ensure coherent, well-reasoned change. The present state

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*Future of Legal Education.* See, e.g., Rubin, *supra* note 190 (focusing on the need to change the law school curriculum). Rubin points to the broad loss of student motivation resulting from lack of purpose in the traditional curriculum, and lack of fit to student interests, *id.* at 650, the need for relevance and meaning to motivate students, *id.* at 647-48, for context and realism, *id.* at 663, concerns for excessive competition, *id.* at 653, and for negative hierarchical implications attached to skills and clinical training, *id.* at 663. See also Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007). These scholars focus on the need to change the law school culture of “competition and conformity,” *id.* at 521-37; and note with concern the competitive and adversarial classroom environment and the problematic win-lose approach to legal culture, *id.* at 526-27, the unrealistic, isolated nature of law school culture, *id.* at 526, and its tendency to create habits of mind and behavior that will be adhered to even when ineffective or counterproductive, *id.* at 529. This latter point is confirmed by the ineffectiveness of the adversarial paradigm in the resolution of actual cases. See Schneider, *supra* note 146 and accompanying text; Schneider & Mills, *supra* note 145.

222. For an ambitious example of a law school course that explicitly incorporates human nature in its design, see Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses As a Context for Nurturing Intrinsic Values*, 13 CLINICAL L. REV. 839, 844-46 (2007).

of scientific research can provide us clear guidance toward the kinds of actions that will promote progress. I have urged human nature as an effective philosophy to guide law schools in maximizing their outcomes, both subjectively in terms of satisfaction and well-being, and objectively in terms of learning, testing, and performing in school and the profession.<sup>223</sup> Consistent with this proposed philosophy, I have suggested a number of immediate steps that involve straightforward techniques and minimal resources.

“Human nature” may seem a vague, even simple-minded, and hence unsatisfying philosophy for professional education. However, an understanding of modern personality and social psychology research brings the realization that relevant aspects of human nature are nuanced, systematically comprehensible, and capable of application to begin addressing the issues of concern on our campuses and in the profession. By contrast, our current analytical-adversarial paradigm is limiting because it obscures critical aspects of human potential and hence restricts the development of our students, our institutions, and the legal profession. As we increasingly implement policies and practices that conform to the human nature of our students, we will observe broadly improving motivation, performance, and well-being; at the same time, our institutions will find their policies and practices to be increasingly consistent with their stated goals and values.

The suggestions here, while focusing in part on the predominance of analysis and the scholarly mission of law schools, are intended to be expansive rather than critical or anti-intellectual.<sup>224</sup> The laws governing human nature, and therefore human institutions, apply unwavering pressure to change, improve, and grow. As we approach fundamental changes in perspective about legal education and law practice, it is important to realize that the natural processes of growth and change are virtually always accomplished on the foundation of previous states of development rather than in opposition to them. Development does not most typically occur because older systems fail, although this can occur if the tendency to progress through modest change is suppressed over time, but rather because human nature dictates growth and existing systems can always benefit from improvement.<sup>225</sup>

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223. While it exceeds the scope of this paper, it would be useful to consider the many constructive suggestions in *Best Practices for Legal Education*, see *supra* note 5, in light of the principles of human nature offered here.

224. A former dean of Harvard Law School, discussing his concern with law students' loss of enthusiasm and “spirit” as they proceeded through law school forty years ago, observed:

[T]he thrust of my point is not anti-intellectual. I am trying to say that we should be more truly intellectual, and take into account all relevant factors, including the inadequacy of many of our premises, and the fact that we are often thinking about the wrong things when we are carrying out our intellectual processes.

Griswold, *supra* note 57, at 302.

225. This is the precise thrust of the Carnegie Report, which proposes creation of a unified cur-

The problems we are dealing with are not new,<sup>226</sup> but there is now sufficient knowledge to begin a coordinated, clearly guided process of improvement. This process, like any involving natural growth and development, implies increasing breadth and complexity—maintenance of the current strengths of scholarship and training in analysis and discourse, but integrated within a broader system of understanding that incorporates the realities of professional practice and the human nature of law students and lawyers. As with any process of growth, the long-term satisfaction attending the greater maturity and effectiveness of our students and our institutions will easily offset the short-term discomfort attending some of the necessary steps. The changes recommended here incorporate an understanding of the nature of all people and the reality of law practice, and consciously embody an adaptive values system. As we implement such changes, we will stop generating students who are depressed because their fundamental human needs are not met, and lawyers who are chasing an image of success that is at odds with their own nature.

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riculum integrating the development of professional identity and skills with the current strength of analytical training.

226. Griswold was troubled by these phenomena forty years ago. *See generally* Griswold, *supra* note 57. At that time there was little scientific interest in the sources of adaptive human motivation and well-being, and hence little systematic knowledge with which to address the problems.