

Feeling Inadequate: Reframing the Mindsets of Legal Education to Promote Mental Health

EDWARD BÉCHARD-TORRES*

ABSTRACT

Law students suffer from staggeringly high rates of anxiety and depression. Although several causes have long been surmised, scholars have recently focused on the role that mindset plays in shaping mental health outcomes. In particular, some suggest that certain features of the “law school experience” steer students towards a sense of inadequacy and even hopelessness.

This article identifies two trends that can lead students towards these harmful internal narratives. First, law faculties are saturated with accounts of how difficult legal education is and just how much raw talent it takes to succeed. Second, members of the learning community often fail to contextualize the difficulties that law students face. As a result, many students come to believe that their encounters with difficulty and complexity reveal a lack of innate ability. This undermines their wellness, motivation, and perseverance.

Bridging the gap between psychology and legal education, this article argues that members of our learning communities can proactively steer students towards healthier interpretations of their experience, drawing them away from feelings of inadequacy. Drawing on the concepts of “attributional retraining” and “story editing,” law teachers can shift

* DCL Candidate, McGill University Faculty of Law. The author thanks Shauna Van Praagh and the Legal Education Seminar for providing a fruitful space to undertake this work; the author also thanks Robert Leckey, Terry Skolnik, Amy Preston-Samson, Michael Beauvais and the anonymous reviewers for their comments.

students' internal narratives about learning in ways that can improve wellness and foster resilience. More fundamentally, this paper invites mental-health interventions that recognize the relationship between law students' high rates of distress and the workings of law faculties' learning environments.

I. INTRODUCTION

Law students suffer from startlingly high rates of anxiety and depression.¹ Recent findings suggest that as many as 40% of Canadian law students “may have significant levels of depressive symptoms.”² These rates of distress echo studies conducted in the United States and in Australia.³ These rates are higher than those reported in

¹ For a more detailed review of the literature on the incidence of distress among law students, see Sue Shapcott, Sarah Davis & Lane Hanson, “The Jury Is In: Law Schools Foster Students’ Fixed Mindsets” (2018) 42:1 L & Psychol Rev 1 at 5; some of the leading studies include the following: Leonard D Eron & Robert S Redmount, “The Effect of Legal Education on Attitudes” (1957) 9:4 J Leg Educ 431; Stephen B Shanfield & Andrew H Benjamin, “Psychiatric Distress in Law Students” (1985) 35:1 J Leg Educ 65; G Andrew H Benjamin et al, “The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers” (1986) 11:2 American Bar Foundation Research J 225; Marilyn Heins, Shirley Nickols Fahey & Roger C Henderson, “Law Students and Medical Students: A Comparison of Perceived Stress” (1983) 33:3 J Leg Stud 511 at 511-514; Kennon M Sheldon & Lawrence S Krieger, “Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being” (2004) 22:2 Behav Sci & L 261; Brian S Clarke, “Coming Out in the Classroom: Law Professors, Law Students and Depression” (2015) 64:3 J Leg Educ 403; Lawrence S Krieger, “Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence” (2002) 52:2 J Leg Educ 112.

² Mental health statistics for Canadian law students are hard to come by. The statement quoted above comes from *Mental Health and Wellness in the Legal Profession*, a program sponsored by the Canadian Bar Association, Bell Let’s Talk & Mood Disorders Society of Canada, “Module 1: Mental Health and Addiction” at 15, online: <mdcme.ca/courseinfo.asp?id=176> [perma.cc/YKP3-28A3], cited in Thomas GW Telfer, Book Review of *The Wellness Doctrines for Law Students & Young Lawyers* by Jerome Doraisamy, (2017) 54:2 Osgoode Hall LJ 645 at 646; see also Lynda L Murdoch, “Psychological Distress and Substance Abuse in Law Students: The Role of Moral Orientation and Interpersonal Style” (PhD dissertation, Simon Fraser University, 2002) [unpublished], cited in Todd David Peterson & Elizabeth Waters Peterson, “Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology” (2009) 9:2 Yale J Health Policy L & Ethics 357 at 359 (concluding that 44% of law students meet the criteria for clinically

other graduate or professional programs,⁴ and are considerably higher than those reported in the general population.⁵ When these statistics are coupled with the known costs of anxiety and depression, what emerges is a harrowing picture of the law faculty's learning environment.⁶

significant levels of psychological stress).

- ³ See Clarke, *supra* note 1 at 405 (finding that 32% of law students reported depression after first year, and as many as 40% reported depression by graduation); compare with Jerome M Organ et al, "Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns" (2016) 66:1 J Legal Educ 116 at 136-37 (finding that 37% of law students reported symptoms of prolonged anxiety, but only 17% reported depression); for Australia, see Adele Bergin & Kenneth Pakenham, "Law Student Stress: Relationships Between Academic Demands, Social Isolation, Career Pressure, Study/Life Imbalance and Adjustment Outcomes in Law Students" (2015) 22:3 Psychiatry, Psychology & L 388 at 390-392, 399 (finding that over 50% of law students in the sample reported moderate to severe levels of depression and anxiety); and Norm Kelk et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners* (Sydney: Brain & Mind Research Institute, 2009) at 12 (finding that 35% of students suffer from disabling symptoms of depression).
- ⁴ Shanfield & Benjamin, *supra* note 1 at 69 (writing that "law students have higher rates of psychiatric distress than either a contrasting normative population or a medical student population"); Abigail A Patthoff, "This Is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students" (2015) Utah L Rev 391 at 424 (writing that "[l]aw students regularly top the charts as among the most dissatisfied, demoralized, and depressed of graduate-student populations"); Heins, Fahey & Henderson, *supra* note 1 at 511-514 (comparing relative levels of stress and alcohol consumption among law and medical students); Natalie K Skead & Shane L Rogers, "Do law students stand apart from other university students in their quest for mental health: A comparative study on wellbeing and associated behaviours in law and psychology students" (2015) 42:1 Intl J L & Psychiatry 81.
- ⁵ According to the Mental Health Commission of Canada, one in five Canadians will experience mental health difficulties in any given year; see Telfer, *supra* note 2 at 645.
- ⁶ These are varied, but include increased sickness, trouble maintaining relationships, agitation, aggression, lethargy, substance abuse, social withdrawal, disengagement, feelings of debilitation, fluctuations in weight, difficulty maintaining focus, impaired memory and learning, procrastination as well as lower productivity: see e.g. Debra S Austin, "Positive Legal Education: Flourishing Law Students and Thriving Law Schools" (2018) 77 Md L Rev 649 at 657, citing Bruce S McEwen, "The Brain on Stress: The Good and the Bad" in Maurizio Popoli, David Diamond & Gerard Sanacora, eds, *Synaptic Stress and Pathogenesis of Neuropsychiatric Disorders* (New York: Springer, 2014) at 7; Talitha Best & Louise Dye, "Good News Story: Nutrition for Brain Health" in Talitha Best & Louise Dye, eds, *Nutrition for Brain Health and Cognitive Performance* (Boca Raton: CRC Press, 2015) at 4; see also BA Glesner, "Fear

Law teachers and faculty administrators in North America have mulled over a variety of responses. Faculties have begun to rely extensively on external sources of assistance, such as improved access to on-campus counselling, mindfulness training, relaxation spaces and even therapy dogs.⁷ Some have instead turned towards pedagogical reforms, targeting heavy student workloads, intimidating “Socratic” exchanges, and curved grade distributions that can distort students’ sense of achievement.⁸

This paper builds on a relatively unexplored approach, one that focuses on law students’ mindsets. Mindset approaches recognize the connection between how students interpret their experiences, on the one hand, and their emotional health, on the other. I argue that two common features of the law school learning environment encourage students to adopt harmful interpretations of their experiences. First, law faculties are saturated with accounts of how difficult legal education is and just how much raw talent it takes to succeed. Second, members of the learning community often fail to properly contextualize the difficulties that students face – challenges that often stem from design choices that have been baked into the delivery and assessment of legal education. As a result, the law school learning environment may be encouraging students to believe that the difficulties they experience represent a lack of innate talent. Feelings of inadequacy and even hopelessness can ensue.

This damage is far from inevitable. Indeed, a focus on mindset points the way towards a few novel, low-cost mental-health interventions. I argue that members of the learning community can play a proactive role in reshaping students’ interpretations of their experience, destabilizing harmful internal narratives through what social psychologists call “attributional retraining” or, more simply, “story-editing.”⁹ These

and Loathing in the Law Schools” (1991) 23:3 Conn L Rev 627 at 631, 635, 638.

⁷ See Jordana Alter Confino, “Where Are We on the Path to Law Student Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey” (2019) 68:3 J Legal Educ 650; Cynthia Macdonald, “The road to mental health” (2016), online: Nexus <law.utoronto.ca/news/nexus/nexus-archives/nexus-fallwinter-2016/road-mental-health-0> [perma.cc/7S5Q-J35Y]; Julian Aiken & Femi Cadmus, “Who Let the Dog Out? Implementing a Successful Therapy Dog Program in An Academic Law Library” (2011) 21 Trends in L Library Management & Technology 13.

⁸ See e.g. Austin, *supra* note 6 at 649-50.

⁹ See *infra* notes 49-51; see also Timothy D Wilson, *Redirect: Changing the Stories We Live By* (Boston: Little, Brown Spark, 2015) at 11-12.

interventions involve providing students with “a better interpretation” of what they are experiencing,¹⁰ “redirect[ing] their interpretations in healthier directions.”¹¹ Students who struggle with feelings of inadequacy can be steered towards greater self-confidence, motivation, and resilience.

This article is structured as follows. I start by considering how the workings of law faculty learning environments can contribute to a sense of inadequacy. I then contextualize these insights in the broader literature on social and educational psychology. In the last section, I chart the many ways that members of the learning community can help “edit” students’ internal narratives in ways that can steer them towards healthier ways of thinking.

II. THE LEARNING ENVIRONMENT

Any attempt to chart student mindset has to confront a few methodological limitations. It is impossible to get inside students’ heads, and it is difficult to take stock of all the messages that students are subjected to in both the classroom and in the informal spaces of the “hidden curriculum.”¹² Nevertheless, this section identifies two trends that may be steering students towards feelings of inadequacy.

First, law faculties are saturated with accounts of how difficult legal education is and just how much raw talent it takes to succeed. We need to look no further than the entire industry that has been made of law school anxiety. The difficulty of the law school experience has been relayed in harrowing accounts,¹³ “survival guides” and self-help books.¹⁴ These works

¹⁰ Wilson, *supra* note 9 at 14.

¹¹ *Ibid* at 10-12.

¹² The “hidden curriculum” refers to the “norms, values and social expectations indirectly conveyed to students” and it “permeates the culture of both classroom and school, and [...] socializes law students to the values of law practice”: see Austin, *supra* note 6 at 654, citing Philip W Jackson, *Life in Classrooms* (New York: Holt, Rinehart & Winston, 1968) at 33-34; see also Elliot W Eisner, *The Educational Imagination: On the Design and Evaluation of School Programs*, 3rd ed (New York: Pearson, 2001) at 87-97.

¹³ See e.g. Scott Turow, *One L: The Turbulent True Story of a First Year at Harvard Law School* (New York: Putnam, 1977); John Jay Osborn Jr, *The Paper Chase* (Boston: Houghton Mifflin, 1971).

¹⁴ See e.g. Andrew J McClurg, *1L of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School* (St. Paul: West Academic, 2009).

speak to the immensity of the task of undertaking legal education, and it is hard to think of any other academic discipline that receives this kind of attention. Indeed, the market for law school self-help materials may be so oversaturated that Andrew McClurg's recent *The Companion Text to Law School* angles its prescriptions not to law students, but to their family members, friends and romantic partners who bear the burden of supporting them.¹⁵

This sense of difficulty (and its attending anxiety) become a familiar feature of the learning environment. Students get used to hearing statements like “[t]his is the hardest thing I’ve ever done in my life,” “I’ve had more homework in the first six weeks of law school than I had in the last two years of undergrad combined” or “[this is] harder than anything [I have] ever attempted.”¹⁶ Educated and accomplished adults fear failure and seriously ask themselves, “[h]ow can I possibly get through this?”¹⁷ During a first-year exam preparation session, I was warned that the upcoming test would be “the hardest one you will have ever written.” The same kind of hyperbole is also directed towards classmates. Asked to describe his initial impressions of law school promotional materials, one student expressed anxiety about “sitting next to people who already had a PhD thesis published, and people who are 55 and have a law degree from another country!”¹⁸

The signal that law school grades should be lower than those of other academic disciplines may also contribute to this phenomenon. Students with high grades from their previous university studies are made to expect a drop during their first year in law school.¹⁹ Students are regularly told

¹⁵ Andrew J McClurg, *The Companion Text to Law School: Understanding and Surviving Life with a Law Student* (St Paul: West Academic, 2012) [McClurg, *Companion Text to Law School*].

¹⁶ *Ibid* at 111-12, 147; see also Patthoff, *supra* note 4 (describing common cautionary tales propagated by students, law teachers, and members of the profession).

¹⁷ See excerpts from student journals reproduced in James R Elkins, “Rites de Passage: Law Students ‘Telling Their Lives’” (1985) 35:1 J Leg Educ 27 at 38.

¹⁸ Bridget Wayland, “The McGill Program Turns 10” (Fall 2012), online (pdf) at 13: McGill Faculty of Law <publications.mcgill.ca/droit> [perma.cc/EKS6-MMXD].

¹⁹ At McGill University’s Faculty of Law, for instance, the average incoming student will have obtained a first-class honours result in their previous university degree(s). Students are then explicitly warned that, at the Faculty of Law, less than 1% of first-year students will obtain a cumulative grade point average of 3.7 or higher: see “Grading” (last visited 10 July 2020), online: McGill Faculty of Law <mcgill.ca>

that this is normal: the study of law is special, harder, and only the brightest and most efficient will succeed. As one student has put it, “[i]t seems [...] law school is *designed* to make the student feel unsure of himself and inadequate.”²⁰

Too often, law teachers can exacerbate these anxieties. Cynically, professors may have been among the few to flourish during their time as law students and may have some vested interest in maintaining legal education’s myth of extreme difficulty. This dynamic is in its fullest display during those ceremonial moments when faculties celebrate one of their own. There is often a tendency to flatten what is surely a complicated and checkered story of success and setback into a smooth and uninterrupted path, cleared by the force of sheer brilliance. The same practice is put into motion in law school promotional materials that celebrate the successes of students and professors alike.

More innocently, teachers can (inadvertently) project overweening confidence, authority and mastery, qualities that can further estrange students and make the professor’s prowess seem unrelatable. Unfortunately, many students remain unaware that professors also struggle with difficult questions and are commonly haunted by a nagging sense of doubt. As Roderick Macdonald frankly concedes, “law teaching is a lesson in personal vulnerability.”²¹

Those with the benefit of experience and hindsight know that this collective mentality misses the mark in important ways. For instance, those initiated to the craft of legal reasoning come to know that it usually comes down “to careful reading, to rhetoric, and to common sense,”²² three skills that should be accessible to any intellectually humble and hardworking student.

Second, members of the learning community often fail to properly contextualize the difficulties that students face. This dynamic is especially unfortunate because some of the difficulties that students experience are not rooted in the intricacies of the subject matter. Instead, they reflect

[perma.cc/Q7FV-K4AW].

²⁰ McClurg, *Companion Text to Law School*, *supra* note 15 at 128.

²¹ Roderick A Macdonald, “Academic Questions” (1992) 3:1 Leg Education Rev 61 at 68.

²² Richard A Posner, *Reflections on Judging* (Cambridge: Harvard University Press, 2013) at 104.

design choices that have been baked into legal pedagogy. As Eric Johnson has persuasively argued, legal education's historic turn towards the case method and the Socratic exchange represents a conscious choice to make law school more challenging than it need be.²³ Committing students to a casebook deprives them of the context and basic groundwork that a textbook provides.²⁴ Today's courses can also feel overstuffed and unfocused,²⁵ reflecting the law's lacking of a confident disciplinary core.²⁶ Meanwhile, current trends towards more active learning in classrooms – while valuable in so many other respects – limit the amount of time for lectures that can help systematize knowledge and provide historical and comparative context.²⁷ The pacing of the semester is also notoriously gruelling and neglects to afford students time to mull new information over.²⁸ For their part, final exams worth 100% or 75% of students' grades are not designed to be “formative,”²⁹ and they deny students “structured opportunities for reinforcement throughout the learning process.”³⁰

²³ See Eric E Johnson, “A Populist Manifesto for Learning the Law” (2010) 60:1 J Leg Educ 41.

²⁴ Johnson, *supra* note 23 at 42.

²⁵ See e.g. Melissa Castan & Ross Hyams, “Blended Learning in the Law Classroom: Design, Implementation and Evaluation of an Intervention in the First Year Curriculum Design” (2017) 27:1 Leg Education Rev 143 at 144.

²⁶ Pierre Schlag, “Ten Thousand Cases, Maybe More – An Essay on Centralism in Legal Education” at 6, online: <agora.stanford.edu/agora/volume2/schlag.shtml>; see more generally Mathias M Siems & Daithí mac Sithigh, “Mapping Legal Research” (2012) 71:3 Cambridge LJ 651; Christopher Tomlins, “Framing the Field of Law's Disciplinary Encounters: A Historical Narrative” (2000) 34:4 L & Soc'y Rev 911 at 966-67.

²⁷ Active learning refers to a variety of pedagogical techniques which involve student interaction and participation, and collectively represent a turning away from the traditional lecture: see generally Chet Meyers & Thomas B Jones, *Promoting Active Learning: Strategies for the College Classroom* (San Francisco: Jossey-Bass, 1993).

²⁸ Stephen Brookfield, *The Skillful Teacher* (San Francisco: Jossey-Bass, 1990) at 50 (writing that this pace neglects the “period of mulling over” that is “needed for learners to make interpretive sense of what is happening to them”); see also Philip Kissam, *The Discipline of Law Schools: The Making of Modern Lawyers* (Durham: Carolina Academic Press, 2003) at 83.

²⁹ For information on formative assessments, see Steven I Friedland, “Rescuing Pluto from the Cold: Creating an Assessment-Centered Legal Education” (2018) 67:2 J Legal Educ 592 at 594.

³⁰ Rita Shackel, “Beyond the Whiteboard: E-Learning in the Law Curriculum” (2012)

Taken together, these represent real burdens that can thwart students from flourishing. Worse still, many of these burdens are not properly identified and contextualized. Some teachers do not consciously reflect on their teaching choices and instead replicate the pedagogical methods they would have been exposed to as students. Others might see problems in the status quo and aspire to innovate but may be constrained by teaching and assessment requirements imposed by their faculty, university or provincial bar association. Furthermore, those teachers that do reflect carefully on their curricular decisions tend to only convey to their students the benefits, and not the costs, of the decisions they make. There are also few spaces in the existing curriculum for students to consider the rich critical literature on legal education. Instead, students are often left with the impression that the important decisions that guide their learning and assessment represent some confident pedagogical consensus.

The combined effect of these trends is easy to intuit. Having been steeped in a myth of extreme difficulty and lacking perspective on what *actually* makes legal education challenging, students who are confronted with obstacles and setbacks are at risk of believing that they simply do not have the talent it takes to succeed. They internalize a limited perception of their abilities, feelings of inadequacy, and a sense of lacking control over outcomes they value. The next section considers how this insight aligns with findings in social and educational psychology.

III. THE IMPORTANCE OF MINDSET AND CAUSAL ATTRIBUTIONS

A recent empirical study of six American law schools found that as students progressed through their degree, more of them became disposed to thinking that their potential was limited and fixed, and that they had little control over their future.³¹ This paper has already sketched one

12:1 Queensland U Technology L & Justice J 105 at 119; see also Richard Cozzola, "The ChildLaw Trial Practice Course: An Evolving Model for Interdisciplinary Education" (1996) 16:4 Child Leg Rts J 23 at 24 (observing that students learn best when they are evaluated frequently and receive prompt feedback).

³¹ See Shapcott, Davis & Hanson, *supra* note 1 at 28; see also Peterson & Peterson, *supra* note 2 and Ruth Ann McKinney, "Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution" (2002) 8:2 Leg Writing: J Leg Writing Institute 229.

possible explanation for this phenomenon. These kinds of harmful thought patterns can become difficult to destabilize. Students begin to interpret every new experience in ways that can be accommodated within their existing “structures of thought.”³² They can thus settle into rigid ways of understanding themselves and their experience.³³

Intuitively, this process will be familiar to many law teachers. These thought patterns also align with the findings of rich literature in social and educational psychology. Scholars in these fields have stressed that the stories that students tell themselves *about* themselves can be an important cause of feelings of inadequacy, hopelessness, and suppressed motivation.

This insight represents one of the key contributions of attribution theory, which suggests that the ways that students explain their successes and failures influence their relationship to learning and motivation.³⁴ Student explanations (or “attributions”) for failure will be *least* damaging when they rest on factors that are “unstable” and “controllable,” such as the amount of effort a student invested in preparing for an examination.³⁵ By contrast, student explanations for failure will be most harmful when they rest on qualities perceived as stable and uncontrollable, such as an innate lack of talent.³⁶ In the latter case, students may react to their encounters with difficulty with a sense of “hopelessness and shame,” resulting in “decrease[d] motivation, achievement striving, test performance, and class attendance.”³⁷

Instead of seeing negative events as “local and short-lived,” these students will understand them to be “pervasive and permanent,”³⁸ even

³² Meyers & Jones, *supra* note 27 at 24; on the concept of structures of thought, see Jean Piaget, *The Grasp of Consciousness* (Cambridge: Harvard University Press, 1976) at 119.

³³ See Piaget, *ibid* at 119.

³⁴ See generally Bernard Weiner, “An Attributional Theory of Achievement Motivation and Emotion” (1985) 92:4 *Psychological Rev* 548; Bernard Weiner, *An Attributional Theory of Motivation and Emotion* (New York: Springer, 1986) [Weiner, *An Attributional Theory*]; Bernard Weiner, *Judgments of Responsibility: A Foundation for a Theory of Social Conduct* (New York: Guilford Press, 1995).

³⁵ See generally Weiner, *An Attributional Theory*, *ibid* at chapters 3, 6.

³⁶ See the literature review in Nathan C Hall et al, “The Role of Attributional Retraining and Elaborative Learning in College Students’ Academic Development” (2004) 144:6 *J of Soc Psychology* 591 at 592.

³⁷ *Ibid*.

³⁸ Peterson & Peterson, *supra* note 2 at 396-97.

possibly as a sign of “severe personal failure.”³⁹ They experience distress and hopelessness because they lack a sense of control over outcomes they value.⁴⁰ Not surprisingly, the more optimistic “explanatory style” is a strong predictor of happiness, perseverance and academic success.⁴¹

Attribution theory also helps explain the importance of two related concepts, high “self-efficacy” and a growth-oriented mindset. “Self-efficacy” relates to our perceptions of our ability to perform certain tasks.⁴² A “growth” mindset is an implicit theory of intelligence that assumes that aptitudes can be nurtured and grown, as opposed to being innate and “fixed.”⁴³ Empirical studies have already demonstrated that students with high self-efficacy and a growth mindset are happier, more motivated, embrace feedback and are better able to persist in the face of adversity.⁴⁴ Meanwhile, students with a fixed mindset generally report being less

³⁹ McClurg, *Companion Text to Law School*, *supra* note 15 at 128.

⁴⁰ See James E Maddux, “Self-Efficacy Theory” in James E Maddux, ed, *Self-Efficacy, Adaptation and Adjustment: Theory, Research and Application* (New York: Plenum Press, 1995) at 12-13; Christopher Peterson & Martin EP Seligman, “Causal Explanations as a Risk Factor for Depression: Theory and Evidence” (1984) 91:3 *Psychology Rev* 347 at 369; Christopher Peterson & Lisa C Barrett “Explanatory Style and Academic Performance Among University Freshmen” (1987) 53:3 *J Personality & Soc Psychology* 603 at 605-07.

⁴¹ Martin EP Seligman, *Learned Optimism: How to Change Your Mind and Your Life* (New York: Pocket Books, 1998) at 150-54; Peterson & Barrett, *supra* note 40 at 603.

⁴² See generally Albert Bandura, “Self-efficacy: Toward a Unifying Theory of Behavioural Change” (1977) 84:2 *Psychological Rev* 191; for an examination of the concept in the context of legal education, see McKinney, *supra* note 31 at 233ff.

⁴³ See generally Carol S Dweck & Ellen L Leggett, “A Social-Cognitive Approach to Motivation and Personality” (1988) 95:2 *Psychological Rev* 256; David Scott Yeager & Carol S Dweck, “Mindsets That Promote Resilience: When Students Believe That Personal Characteristics Can Be Developed” (2012) 47:4 *Educational Psychologist* 302; Shapcott, Davis & Hanson, *supra* note 1; Lisa S Blackwell et al, “Implicit Theories of Intelligence Predict Achievement Across an Adolescent Transition: A Longitudinal Study and an Intervention” (2007) 78:1 *Child Development* 246.

⁴⁴ For the mental health and motivational benefits of high self-efficacy, see Maddux, *supra* note 40 at 12-14 and Dale M Schunk, “Self-Efficacy and Educational Instruction” in James Maddux, ed, *Self-Efficacy Adaptation and Adjustment: Theory, Research and Application* (New York: Plenum Press, 1995); for the mental health and motivational benefits of a growth mindset, see Shapcott, Davis & Hanson, *supra* note 1 at 9-10.

happy, less motivated, and less likely to persist in the face of obstacles.⁴⁵ Attribution theory supplies an explanation: students who begin with confidence in their abilities and their capacity for growth are more likely to explain their failures in terms of a lack of effort or inadequate study techniques, elements that remain within their control to change.

The causal explanations that students reach for will depend, at least in part, on the beliefs and information they absorb from their learning environments.⁴⁶ An environment that fosters a “culture of genius” and a “fixed” talent mindset will encourage students to interpret their failures as an absence of innate ability.⁴⁷ Worryingly, legal education appears to be doing precisely this.⁴⁸

Social psychologists have fruitfully laid out a path for how these harmful causal explanations can be reshaped and redirected. “Attributional retraining” refers to a remedial intervention that encourages explanations of academic failure that are within students’ control to change,⁴⁹ such as “a lack of effort or a poor study strategy.”⁵⁰ By re-writing students’ internal narrative, these interventions have been shown to increase motivation, perseverance, and well-being. In a series of well-known studies, college students were shown videotaped interviews of more senior students explaining that low grades are often the result of a lack of effort and poor study strategies, and generally improve over time. Students exposed to these interviews typically tested higher on the Graduate Record Examination and achieved higher grade point averages, especially when the videotaped interviews are paired with group

⁴⁵ See e.g. Maddux, *supra* note 40 at 12-14 and Shapcott, Davis & Hanson, *supra* note 1 at 9-10.

⁴⁶ For a review of the “antecedents of attribution” see Harold H Kelley & John L Michela, “Attribution Theory and Research” (1980) 31:1 *Annual Rev Psychology* 457 at 460-79.

⁴⁷ *Ibid* at 468.

⁴⁸ The authors, however, did not embark on an explanation as to why this might be the case: see Shapcott, Davis & Hanson, *supra* note 1; see also Peterson & Peterson, *supra* note 2 and McKinney, *supra* note 31.

⁴⁹ See the review in Raymond P Perry et al, “Enhancing Achievement Motivation and Performance in College Students: An Attributional Retraining Perspective” (1993) 34:6 *Research in Higher Education* 687.

⁵⁰ Hall et al, *supra* note 36 at 592, citing Friedrich Forsterling, “Attributional Retraining: A Review” (1985) 98:3 *Psychological Bull* 495.

discussion.⁵¹ The next section considers how these kinds of interventions could be mobilized within law faculties.

IV. REFRAMING MINDSETS

Scholars and legal educators have offered different solutions to legal education's mental health crisis.⁵² Some point towards the need for curriculum reform.⁵³ Semesters might be made longer, for instance, with a period for review separating the end of classes and the beginning of exams.⁵⁴ Reading lists might be pared down.⁵⁵ Courses might be restructured to better accommodate different disciplinary traditions. On this point, Eric Johnson proposes canvassing black-letter law in the first part of the term, and then spend the rest of the term "demanding that students reach beyond," grappling with the challenges of law's encounter with reality.⁵⁶ Teachers could be less rigid in how they grade exams or assignments and might also abandon the final exam in favour of regular formative assessment.⁵⁷ Tuition could also be lowered to reduce the financial anxiety of undertaking studies in law after (what is often) at least one previous university degree.

⁵¹ Timothy D Wilson & Patricia W Linville, "Improving the Academic Performance of College Freshmen: Attribution Therapy Revisited" (1982) 42:2 J Personality & Soc Psychology 367; Frank Van Overwalle, Karine Segebarth & Mark Goldchstein, "Improving Performance of Freshmen Through Attributional Testimonies from Fellow Students" (1989) 59:1 British J Educational Psychology 75; Frank Van Overwalle & Machteld De Metsenaere, "The Effects of Attribution-Based Intervention and Study Strategy Training on Academic Achievement in College Freshmen" (1990) 60:3 British J Educational Psychology 299; Verena H Menec et al, "Assisting At-Risk College Students with Attributional Retraining and Effective Teaching" (1994) 24:8 J Applied Soc Psychology 675; C Ward Struthers & Raymond P Perry, "Attributional Style, Attributional Retraining, and Inoculation Against Motivational Deficits" (1996) 1:2 Soc Psychology Education 171.

⁵² See the review in Austin, *supra* note 6 at 651-52.

⁵³ See e.g. Gerald F Hess, "Heads and Hearts: The Teaching and Learning Environment in Law School" (2002) 52 J Leg Educ 75 at 76.

⁵⁴ On the grueling fifteen-week semester, see Austin, *supra* note 6 at 649-50.

⁵⁵ On the demanding student workload, see *ibid.*

⁵⁶ Johnson, *supra* note 23 at 58.

⁵⁷ See e.g. Friedland, *supra* note 29.

Some teachers, faculty administrators and University-wide initiatives have also emphasized the need for a range of external resources that may improve student welfare.⁵⁸ These include improved access to counselling, exercise, mindfulness training, social activities, initiatives to promote mental health awareness and to de-stigmatize anxiety and depression, as well as visits from therapy dogs to relieve stress during exam time.

Many of these initiatives are valuable, and all of them are at least worth considering. However, some may be too costly, some may sacrifice important learning objectives, some may simply not be feasible, and some may conflict with the faculty, university or provincial bar requirements.

Moreover, if law faculties are leading their students towards a sense of inadequacy, then these “wellness interventions” may not be enough to reverse high rates of distress. Indeed, recent experience suggests that some wellness interventions may be met with limited uptake on the students’ part; students occasionally complain that they can be infantilizing.⁵⁹ Furthermore, counselling services “address the problem only once a student is already fairly seriously distressed.”⁶⁰ It is also unlikely that limited counselling staff can benefit the great majority of students who might need it.⁶¹ More fundamentally, though, these interventions do not attempt to address those distinctive features of legal education that are responsible for law students’ unusually high rates of distress. Instead, they tend to treat mental health as if it were something separate from, and not deeply rooted in, the workings of law faculties’ learning environments. On their own, these interventions can even tacitly encourage students to accept the strain and distress that greets many of them upon commencing their studies in law, rather than explore why they experience these emotions in the first place.

This paper’s emphasis on the importance of mindset points the way towards other paths forward. Social psychologists have pioneered a variety of attributional retraining interventions that can destabilize harmful internal narratives.⁶² Timothy Wilson refers to these approaches as “story-

⁵⁸ See *supra* note 7.

⁵⁹ Interview with anonymous McGill University local wellness advisor (February 2019).

⁶⁰ Peterson & Peterson, *supra* note 2 at 373.

⁶¹ *Ibid* at 372.

⁶² See *supra* notes 49-51.

editing.”⁶³ They are “relatively simple interventions”⁶⁴ that aim to provide students with a better interpretation of their experiences, “redirect[ing] their interpretations in healthier directions.”⁶⁵ They can steer students towards explanations for their own difficulties that are less taxing on their mental health and that help motivate them to persevere. When these kinds of interventions are successful in reshaping mindsets, their benefits are enduring. As mentioned above, showing videotaped interviews of upper-year college students describing how they managed to improve their grades through hard work and better study techniques had a lasting impact on the viewers’ wellness, motivation and success.⁶⁶

Admittedly, this approach is difficult to manage collectively across an entire learning community, one that comprises not only law teachers but also other students, alumni and administrators. Put simply, it is hard to control the kind of messages that are imparted in the informal and unexamined spaces of the hidden curriculum. Moreover, these messages would have to come frequently if they are to have their intended effect of destabilizing students’ unhealthy mindsets and redirecting them towards healthier interpretations of their experience. Nevertheless, in what follows, I sketch a picture of what “story-editing” might look like in practice.

First, law teachers should strive to contextualize the difficulties that students experience so that when students struggle, as most surely do, they will be less likely to explain their shortcomings as reflecting a lack of innate ability and inadequacy. The following fictional scripts demonstrate how a teacher could engage in story-editing by contextualizing certain pivotal moments in the student experience:

[On winter exams] In a few weeks you will write your first law school exams. It will be the first time that you will be asked to write something in this course that will be carefully evaluated. I admit that this is far from ideal. Practicing lawyers might receive constructive feedback within a couple of days of starting a new job. Law faculties

⁶³ Wilson, *supra* note 9 at 10-12.

⁶⁴ *Ibid* at 11-12.

⁶⁵ *Ibid* at 10-12, 14.

⁶⁶ See the studies reproduced in *supra* note 51.

typically wait four months for this kind of constructive evaluation, and it understandably leaves everyone feeling like this is a moment of reckoning – a single, short-lived window to demonstrate your brilliance, a do-or-die encounter with your future careers riding in the balance. No reasonable educator would want that for their students, and I can assure you that this is not by design. Rather, our methods of evaluation depend on being able to canvass the entirety of the term's material. We also cannot be constantly evaluating our students, since we have responsibilities to produce scholarship as well. There are also a lot of challenges involved in delegating grading, and so we insist on evaluating you ourselves. To put it bluntly, we strive to make the most of difficult circumstances, but we do so knowing that structuring evaluation in this way may make things harder for you, may add stress and anxiety, and may limit your opportunities to learn from your mistakes and to improve.

[On reading cases] You will notice that we focus on reading cases and have abandoned the textbook. We feel that cases provide a more stimulating and challenging read – a view of the law as it plays out in the real world, with much of its tantalizing messiness exposed. At the same time, structuring things in this way comes at a steep cost, and it is important to be sensitive to this. For one, you will have to wade through long and dry texts, written in a language that may seem quite foreign, just to extract simple rules. Reading judgments can also be more time consuming than reading a textbook, since you will have to engage with the text on multiple levels: you will have to extract the rules, of course, but you will also have to consider the language, the argument, what the future implications of the decision may be, all while wrestling with different perspectives to make sense of what is actually going on. And while you engage with the judgment in these ways, you will not benefit from the kind of overview or historically-grounded perspective that textbooks normally provide. As a

result, it will not always be clear to you when judges have gotten the law wrong, or when judges stretch the rules to meet the perceived demands of justice. So if you find yourself struggling to grasp everything that is going on, and feel like you have more questions than you have answers, believe it or not that is kind of where we expect you to be.

This kind of emotional intervention sets clear expectations and can help normalize the challenges that students will encounter, making them more aware of their own thought patterns and (hopefully) less inclined to resign themselves to underperformance.

Law teachers should also play their part in dismantling law schools' "culture of genius." They can avoid statements that encourage students to revere brilliance. They can also provide feedback on assessment which encourages "effort instead of talent or intellect" and situate the students' shortcomings as an important step in the learning process.⁶⁷ They can also express humility and make clear the extent to which they struggle with the difficult questions that the law poses. A healthy sense of community comes from knowing that on the truly difficult questions, we are all just wrestling in the mud. Returning to our fictional scripts, a teacher might say something along these lines to a group of students experiencing self-doubt in their first year:

It has been a while since I was a student, but I remember the doubt and the difficulty of it. There's a tendency when looking back at our careers to simplify the story – recounting the tales of success and accomplishment and cutting out the setbacks, the moments of doubt about ourselves and the anxiety over our place in the world. I know of one former Dean who is now known for his ability to keep a room spellbound but who, during his student years, was so reserved he never once intervened in classroom discussion. He is now seen as a luminary, but when he was first hired many of colleagues had their doubts about him – doubts he probably shared! You cannot assume that the struggles and doubts you may experience as you embark on

⁶⁷ Confino, *supra* note 7 at 691-92.

*your studies are your own. So many stellar scholars and lawyers are stalked by the worry that they might be wrong about a whole lot. What we do – and what you will do here – is probably too hard for any one person to have all the answers. Our responsibility is instead more limited: to make sensible contributions to matters of concern, and to play our humble part in bridging that gap between the worlds of thought and action.*⁶⁸

Other students, and especially upper-year students, bear some of this responsibility as well. These community members can have a powerful influence over how less advanced students interpret their “law school experience.” They can do a great deal of harm by perpetuating the myths that excellence in legal education is only available to the brilliant and the supremely talented. They can also do a great deal of good, by recounting stories of how they overcame difficulty and self-doubt, or by insisting that the collective anxiety that greets many incoming law students is pointless noise. To engage in story-editing, they could say the following:

[On participating in class exercises] You should not be too concerned about having little to add during in-class exercises. The way we’re all rushed through so much material means you might arrive in class with many more questions than answers. If there are others pretending that they have got it figured out, you have to assume that they are missing something. Your quiet anxieties on some point might be a signal that there is something there – some premise that needs to be made explicit, or some unexplained part of the law’s history that has led it to an unexpected and confusing place.

[On upcoming assessments] The upcoming exam might feel difficult, but you shouldn’t be frightened. You aren’t expected to have a perfectly worked out answer. In fact, if

⁶⁸ On the bridge between the worlds of thought and action, see Heather K Gerken, “Resisting the Theory/Practice Divide: Why the ‘Theory School’ Is Ambitious About Practice” (2019) 132:7 Harv L Rev Forum 134 at 147, citing Anthony T Kronman, “Welcoming Address” (1997) at 8.

you start to feel uncertain about a question, that might be a good indication that you have actually understood the complexity of the problem. If you can read a fact-pattern and understand not only that a question is complicated, but understand why it is complicated, you have probably mastered the material enough to get a good grade.

It should be clear by now that the ethic that underlies these statements is the same ethic that underlies healthy and supportive communities. Namely, a willingness to be vulnerable and honest, to listen and to support one another through our anxieties, and to provide each other with a sense of belonging. An acceptance of failure and risk-taking also underline these kinds of statements, the kind of mindset that stands precisely opposite to the self-regulation and perfectionism that many students practice, and that are hallmarks of fixed mindsets.⁶⁹

It is worth noting that this kind of messaging could be formalized, hauling these lessons out of the hidden curriculum. As was the case in the studies described above, upper-year students could be videotaped discussing their initial struggles in legal education and how, over time, their difficulties and doubt subsided. These videos could then be incorporated into a first-year course. This kind of messaging could also be introduced in a dedicated segment on legal education in first year. Students could be invited to reflect on the choices that have been baked into legal education's structure and mode of delivery.⁷⁰ McGill University's law faculty has taken a step in this direction by introducing a module contextualizing legal education in some sections of the first-year "Foundations of Law" course.⁷¹ These students consider the role of personal perspective,⁷² and a few critiques of legal education's

⁶⁹ See e.g. Daniel Molden & Carol Dweck, "Finding 'Meaning' in Psychology: A Lay Theories Approach to Self-Regulation, Social Perception, and Social Development" (2006) 61:3 *American Psychologist* 192.

⁷⁰ See, for instance, a history of debates over the case-method in Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1983) at 35-72; see also Schlag, *supra* note 26.

⁷¹ Personal e-mail correspondence from April 2019 [on file with author].

⁷² Students consider Catherine A MacKinnon, "Mainstreaming Feminism in Legal Education" (2003) 53:2 *J Leg Educ* 199 and Shauna Van Praagh, "Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education"

“transformative” impact.⁷³ Even though they may not be centered on mindset, these classes can instill a healthy discipline of reflecting on how legal education influences students’ thought processes. It is also important that these conversations take place during a substantive course, as opposed to the more common suggestion that discussions related to mental health take place in the standard first-year class on legal writing and research.⁷⁴

It is also important to create and nourish spaces where these perspectives can be shared. Some law faculties have experimented with lowering the faculty-student ratio in a designated first-year course, for instance.⁷⁵ Ryerson’s new law faculty would go as far as to formally pair students in second year with a mentor.⁷⁶ Meanwhile, one Australian study paired groups of students with faculty members and asked them to describe the narrative arc of their “law school experience.”⁷⁷ Sure enough, both students and faculty members alike focused on how their first year was marked by self-doubt, uncertainty and even despair.⁷⁸ Foregrounding their vulnerability, some scholars have also drafted “failure CVs.”⁷⁹ These documents highlight applications that did not succeed, providing a healthier and more realistic picture of careers marked by both success and setbacks.

In this same line of thought, faculty members and administrators should be mindful of mental health concerns when selecting and

(1992) 2:1 Colum J Gender & L 111.

⁷³ Students consider Duncan Kennedy, “Legal Education and the Reproduction of Hierarchy” (1982) 32:4 J Leg Educ 591.

⁷⁴ See e.g. McKinney, *supra* note 31 at 247.

⁷⁵ For instance, the University of Toronto Faculty of Law offers first year students one such course, in small groups of approximately 18-20 students: see “Academic Handbook: First Year Academic Program” (last visited 10 July 2020), online: *University of Toronto Faculty of Law* <handbook.law.utoronto.ca/jd-academic-program/first-year-academic-program> [perma.cc/J79T-CQ8K].

⁷⁶ Deb Smyth, “Ryerson Law School sets new precedent” (12 September 2019), online: *Ryerson Today* <ryerson.ca> [perma.cc/VFL7-RJFT].

⁷⁷ Molly Townes O’Brien, Stephen Tang & Kath Hall, “Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum” (2011) 21:2 Leg Education Rev 149 at 172-75.

⁷⁸ *Ibid.*

⁷⁹ See e.g. Johannes Haushofer, “CV of Failures” (last visited 10 July 2020), online (pdf): <princeton.edu/haushofer> [perma.cc/4RGU-ZF3P].

conveying expectations to course assistants. Where these positions exist, they are typically offered to upper-year students, for credit, and their responsibilities often extend beyond assisting teachers and include providing support and mentorship for first or second-year students. Rather than selecting on the basis of the strength of their CV and transcripts alone, faculty members could filter and sensitize their assistants so as to better propagate healthy narratives. Better yet, law faculties can provide training to students interested in peer support. The University of Washington School of Law, for instance, offers a one-credit course to “train members of its peer support program to provide peer counselling to help reduce feelings of isolation in the law school, offer resources to manage stress, and promote health in the student community.”⁸⁰

Faculties can also pair first-year students with alumni, who can play a similarly constructive role in redirecting students away from harmful thought patterns. Many alumni come to recognize the ways in which harmful internal stories gripped their former law school selves. Sharing those personal trajectories can be compelling for those students who do not yet have the vantage point of experience. Indeed, a few American law schools have experimented with curating a library of “alumni growth testimonials” with this purpose in mind.⁸¹

V. CONCLUSION

Many students experience a heightened sense of self-doubt and inadequacy during their studies in law. The consequences are severe. Making a sustained effort to reshape students’ mindsets and to address the failings of the learning environment represents an important front in the campaign to promote mental health. These interventions also help nourish classrooms where students are motivated and resilient. It, therefore, falls on teachers and other members of the learning community to help reshape students’ relationship with complexity, nourishing more constructive narratives of their lives as jurists.

⁸⁰ Confino, *supra* note 7 at 695.

⁸¹ *Ibid* at 669.