Autonomy-Mastery-Purpose: Structuring Clinical Courses To Enhance These Critical Educational Goals[†]

Leah Wortham,[*] *Catherine F. Klein,*[**] *Beryl Blaustone*[***]

[*]   Leah Wortham, Professor of Law, Columbus School of Law, The Catholic University of America

[**]   Catherine F. Klein, Professor of Law, Columbus School of Law, The Catholic University of America, Director, Columbus Community Legal Services and Families and the Law Clinic.

[***]   Beryl Blaustone, Professor of Law, CUNY School of Law, Director, Mediation Clinic, Main Street Legal Services, Inc.

Table of Contents

"There is a science to what we do."

This article takes its name from the keynote plenary that the authors presented at the 8th International Journal of Clinical Legal Education conference held at Northumbria University in July 2010. The presentation and this article link research on human motivation and well-being to the structure and methods of clinical legal education. The quote above is from a conference participant in response to a question that we posed to small groups at our plenary regarding how the concepts of autonomy support and mastery resonate with their experience in clinical education and legal education more generally.

Autonomy, mastery, and purpose are the "tripod of Type I behavior" formulated by Daniel H. Pink in his 2009 book, DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US.[1] Pink postulates "Type I" behavior as that driven by intrinsic, self-generated motivations as opposed to "Type X" behavior directed toward extrinsic factors outside the self such as imposed production quotas, bonuses, competitions to "best" others, or avoiding punishments.[2] Pink develops a computer-operating-system metaphor to advocate "Motivation 3.0" as an optimal organizing principle for 21st century business built on providing employees opportunities for autonomy, mastery, and purpose as opposed to an outmoded "Motivation 2.0," which assumes a controlling work environment based on the premise that people respond best to carrots and sticks.[3] Pink's book cites examples of businesses structured to support autonomy, mastery, and purpose and describes their successes in enhanced creativity, innovation, retaining valued employees, and productivity.[4] He contrasts such businesses with work places organized around specifically dictated job conditions and traditional structures where workers are subject to externally controlled rewards and punishments.[5]

Pink provides an engaging, easily accessible entry to a body of social science literature on motivation, achievement, and feelings of well-being that also has been applied to legal education.[6] This article seeks to provide user-friendly access to theory regarding the basic human needs for autonomy, mastery, and purpose as well as regarding intrinsic versus extrinsic motivation. The article provides examples of choices clinical teachers can make to promote student learning and feelings of well-being through methods supporting satisfaction of those basic human needs and encouraging students to find their self-driven motivations.

---

1   DANIEL H. PINK, DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US 77-81 (2009).

2   *Id.*

3   *Id.* at 17-21, 85 -141. Carol Wallinger frames the type of contrast Pink makes to that between self-determination theory, outlined in this article, and the behaviorism "made famous by B.F. Skinner." Carol L. Wallinger, *Moving From First to Final Draft: Offering Autonomy-Supportive Choices to Motivate Students to Internalize the Writing Process*, 54 LOY. L. REV. 820, 823, n. 10 (2008).

4   Pink discusses Meddius, a "results-only work environment," as an example of a business structured to support worker autonomy; Green Cargo, a company that provides its employees with "Goldilocks tasks" to create an environment of "mastery;" and TOMS as an example of a company with "purpose." PINK, *supra* note 1, at 86, 118-19, 136.

5   PINK, *supra* note 1, at 99, 101-02 (noting law firms and call centers).

6   Pink, a law graduate himself, cites to Sheldon & Krieger's study of two law schools showing a relationship in differences in perceived autonomy to mental distress and favorable outcomes in grades and bar passage. PINK, *supra* note 1, at 98-99 (citing Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY SOC. PSYCHOL. BULL. 883 (2007)) [hereinafter *Understanding Negative Effects*].

Part I describes the difference in extrinsic and intrinsic motivation and reviews the negative effects of business and educational models assuming extrinsic motivation to be most effective rather than seeking to stimulate intrinsic motivation. Part II describes the Carnegie Foundation's Preparation for the Professions project's call for law schools to focus on law students' sense of identity and purpose as part of their professional education, as well as noting the similar goal that students learn "how to be" as articulated by the Tuning Project of the Bologna process regarding higher education in Europe. Part III provides basics on the theory of human needs for a sense of autonomy, mastery, and purpose on which the rest of the article is based. Part IV applies work contrasting autonomy-supportive teacher behaviors with controlling instructional behaviors to the clinical context. Part V of the article draws on cognitive psychology, neuroscience, and learning theory to suggest four methods useful for assisting novice law students on the steep road to mastery of lawyering competence within the time constraints of clinical programs and the professional demands of client service. Methods identified also contribute to satisfaction of students' need for relatedness, which too often is undermined in other parts of law school. Part VI extends the discussion of clinics' potential contribution to the need for relatedness and focuses on clinical education's capacity to support development of students' sense of how a career in law can contribute to their sense of life purpose in being part of something larger than themselves.

Many of this article's applications of theory to clinical teaching are from the clinics in which students provide client representation or are engaged in transactional legal problem solving under faculty supervision, the type of clinics in which Professors Klein and Blaustone teach.[7] We think, however, that clinical teachers will be able to see applications of the theory presented to the various types of clinical programs that exist around the world, *e.g.*, street law programs in which students teach community members and externship programs in which students work under the supervision of a lawyer in an organization external to the law school.[8] We hope, like Pink's book, to offer an accessible gateway to a body of theoretical and empirical work that can help clinical teachers think critically and creatively about both their clinical program's structure and their teaching and supervision. We hope to inspire teachers to think about ways they might apply this theory toward nurturing the type of life-long self-direction that motivates people to continually seek greater mastery and provides a sense of well-being both now and in the students' future careers.

---

7   Kevin Kerrigan refers to such clinics as "full representation, in-house legal schemes." He describes a number of clinical models in the United Kingdom: simulation clinics, street law/law in the community initiatives, advice-only clinics, representation services, externship/placement programs, mediation schemes, soup runs, campaign teams, letter writing help, innocence projects, and others. Kevin Kerrigan, *"How do you feel about this client?" – A Commentary on the clinical model as a vehicle for teaching ethics to law students*, 2007 INT'L J. CLINICAL LEG. EDUC. 7, 14 & nn. 46-52.

8   See generally THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank S. Bloch, ed., 2011) for discussion of a number of clinical models that have developed throughout the world.

I. INSTRINSIC AND EXTRINSIC MOTIVATION

Our plenary in Northumbria commenced with an excerpt from a "TED Talk" presentation[9] by Daniel Pink on "the candle problem" devised by psychologist Karl Duncker in the 1930s.[10] This often-replicated experiment shows that external rewards like a promised financial payment can impede rather than enhance performance in solving problems requiring innovative, creative solutions.[11] On the other hand, when problems have a clearly defined particular solution, external rewards can be an effective incentive.[12] Pink points out that much success in 21st century business will depend on creative, innovative solutions rather than mere production according to previously set procedures. While legal education requires rote learning of some building blocks of doctrine, procedural rules, and technique, ultimately lawyering requires deep conceptual learning that can be applied flexibly and creatively to new situations.

Lawrence Krieger of Florida State University has done pioneering research and writing in lawyer and law student distress and their relationship, not only to those individuals' unhappiness, but also to unprofessional behavior as lawyers.[13] As a service to law students, he self-publishes two booklets, *The Hidden Sources of Law School Stress and A Deeper Understanding of Your Career Choice*, available to encourage distribution in law schools.[14] While Pink applies the considerable body of research in intrinsic versus extrinsic rewards to business settings, Krieger's pamphlets relate these concepts directly to law students. He challenges "The Universal Fallacy: that the road to happiness runs through the top of the class," which encourages the notion of grades as the ultimate goal and

---

9   TED is "a nonprofit devoted to Ideas Worth Spreading. It started out (in 1984) as a conference bringing together people from three worlds: Technology, Entertainment, Design" and has since broadened its scope. *About TED*, TED, http://www.ted.com/pages/about (last visited Dec. 12, 2011).

10   *Dan Pink on the Surprising Science of Motivation*, TED (Jul-Aug.2009), http://www.ted.com/talks/dan_pink_on_ motivation.html. Pink begins by describing his decision to attend law school as a "youthful indiscretion" and reports never having practiced law. But he frames his TED presentation as a lawyerly case for a reframing of the way we consider motivation. PINK, *supra* note 1, at 42-43, 61 (description of the candle problem and further experiments by Sam Glucksberg).

11   For an application of this theory in contexts from parenting to education and business, *see generally* ALFIE KOHN, PUNISHED BY REWARDS (1999).

12   PINK, *supra* note 1, at 60-69.

13   *See generally* LAWRENCE S. KRIEGER, THE HIDDEN SOURCES OF LAW SCHOOL STRESS: AVOIDING THE MISTAKES THAT CREATE UNHAPPY AND UNPROFESSIONAL LAWYERS (2006) [hereinafter HIDDEN SOURCES]; LAWRENCE S. KRIEGER, A DEEPER UNDERSTANDING OF YOUR CAREER CHOICE (2006); Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASBURN L. J. 247 (2007) [hereinafter *Human Nature*]; Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 4125 (2005) [hereinafter *Inseparability*]; Lawrence S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002); Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, And What We Might Do About It*, 1 J. ASS'N LEGAL WRITING DIRS. 258 (2002); 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 (1998); Lawrence S. Krieger, *Taking Inventory: The Science of Happiness*, 20 GPSOLO 66 (2003); Sheldon & Krieger, *Understanding Negative Effects, supra* note 6; and 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*].

14   These booklets can be ordered online at http://www.law.fsu.edu/academic_programs/humanizing_lawschool/ booklet2.html.

measure of success in legal education.[15] Instead he cites the research that shows:

> a primary focus on external rewards and results, including affluence, fame, and power, is unfulfilling... Instead people who have a more "intrinsic," personal/interpersonal focus – on personal growth, close relationships, helping others, or improving their community – turn out to be significantly happier and more satisfied with their lives.[16]

In his psychology text UNDERSTANDING MOTIVATION AND EMOTION, Professor Johnmarshall Reeve summarizes in five paragraphs considerable research on four benefits of intrinsic motivation for which one easily can see direct application to legal education.[17] First, the higher the intrinsic motivation, the greater the persistence in completing a task. Second, people are most creative when they are motivated by "'the interest, enjoyment, satisfaction, and challenge of the work itself – rather than by external pressures.'"[18] Creativity can be undermined by "being watched,"[19] "evaluated,"[20] "bossed,"[21] or "rewarded."[22] Third, intrinsic motivation "enhance[s] a learner's conceptual understanding of what they are trying to learn... [and] promotes flexibility in one's way of thinking,[23] active information processing[24] and tendency to learn in a way that is conceptual rather than rote."[25] Fourth, "[p]ursuing intrinsic goals (*e.g.*, competence, relatedness, autonomy in life) leads to better functioning and higher psychological well-being than does pursuing extrinsic goals (*e.g.*, financial success, social recognition, physical image)."[26] This positive relationship

---

15   KRIEGER, HIDDEN SOURCES, *supra* note 13 at 4 (citing Sheldon & Krieger, *Undermining Effects*, *supra* note 13).

16   *Id.*

17   JOHNMARSHALL REEVE, UNDERSTANDING MOTIVATION AND EMOTION 112-13 (5th ed. 2009).

18   REEVE, *supra* note 17, at 113 (quoting TERESA M. AMABILE, THE SOCIAL PSYCHOLOGY OF CREATIVITY 112 (1983)).

19   REEVE, *supra* note 17, at 112 (citing TERESA M. AMABILE, THE SOCIAL PSYCHOLOGY OF CREATIVITY 112 (1983)).

20   REEVE, *supra* note 17, at 112 (citing Teresa M. Amabile, *Effects of External Evaluations on Artistic Creativity*, 37 J. PERSONALITY & SOC. PSYCHOL. 221 (1979)).

21   REEVE, *supra* note 17, at 112 (citing Richard Koestner, et al., *Setting Limits on Children's Behavior: The Differential Effects of Controlling Versus Informational Styles on Intrinsic Motivations and Creativity*, 52 J. PERSONALITY, 233 (1984)).

22   REEVE, *supra* note 17, at 112 (citing Teresa M. Amabile et al., *Social Influences on Creativity: The Effects of Contracted-for Reward*, 50 J. PERSONALITY & SOC. PSYCHOL. 14 (1986)).

23   REEVE, *supra* note 17, at 113 (citing Kenneth O. McGraw & John. C. McCullers, *Evidence of Detrimental Effects of Extrinsic Incentives on Breaking a Mental Set*, 15 J. EXPERIMENTAL SOC. PSYCHOL. 285, 285-94 (1979)).

24   REEVE, *supra* note 17, at 113 (citing Wendy S. Grolnick & Richard M. Ryan, *Autonomy in Children's Learning: An Experimental and Individual Difference Investigation*, 52 J. PERSONALITY & SOC. PSYCHOL. 890 (1987)).

25   REEVE, *supra* note 17, at 113 (citing Carl Benware & Edward L. Deci, *Quality of Learning with an Active Versus Passive Motivational Set*, 21 AM. EDUC. RES. 755 (1984)); Ann K. Boggiano et al., *Use of Techniques Promoting Students' Self Determination: Effects on Students' Analytic Problem-Solving Skills*, 17 MOTIVATION & EMOTION 319, 319-36 (1993); Marteen Vansteenkiste, et al., *Examining the Motivational Impact of Intrinsic Versus Extrinsic Goal Framing and Autonomy-Supportive Versus Internally-Controlling Communication Style on Early Adolescents' Academic Achievement*, 76 CHILD DEV. 483 (2005).

26   REEVE, *supra* note 17, at 113.

is associated with less anxiety and depression and lesser use of alcohol,[27] both subjects of considerable concern regarding law students and lawyers.[28]

II. GOALS FOR LEGAL EDUCATION

The Carnegie Foundation's report, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW has stimulated considerable debate about legal education within the United States.[29] The report on legal education is part of a comparative study with regard to several professions. The report posits the goal common across disciplines of "formation of competent and committed professionals."[30] Applying that common goal to legal education, they recommend the teaching not only of legal doctrine and analysis, but also introduction to aspects of practice leading to acting responsibly for clients and formation of professional identity with values consistent with the fundamental purposes of the legal profession.[31]

The Carnegie Report observes that U.S. law schools "[i]n a relatively short period of time... impart a distinctive habit of thinking that forms the basis for their students' development as legal professionals."[32] The Report cites the Socratic method, the "signature pedagogy" for its strengths in rapid socialization, but also addresses its unintended consequences of encouraging simplification of the complexity of problems in the real world to abstract "facts" and obscuring social consequences and ethical aspects of legal practice.[33] The report posits three "apprenticeships" as facets of training important for future lawyers: (1) an intellectual and cognitive apprenticeship focusing on knowledge and ways of thinking of the profession; (2) an apprenticeship of practice; (3) an apprenticeship of "formation" related to a sense of identity and purpose.[34] The Carnegie Report finds legal education to have focused the most attention, and to have the greatest success, in the first. Clinical education and some innovation in classroom courses have directed more attention to the second, although Carnegie finds that the curriculum still suffers from a lack of integration.[35] The report finds legal education most wanting with regard to the third apprenticeship of formation, education related to the ethical and social meaning of the profession.[36]

---

27 REEVE, *supra* note 17, at 113 (citing Tim Kasser & Richard M. Ryan, *Further Examining the America Dream: Differential Correlates of Intrinsic and Extrinsic Goals*, 22 PERSONALITY & SOC. PYSCH BULLETIN 280 (1996) *and* Tim Kasser & Richard M. Ryan, *Be Careful What You Wish For: Optimal Functioning and the Relative Attainment of Intrinsic and Extrinsic Goals*, in LIFE GOALS AND WELL-BEING: TOWARD A POSITIVE PSYCHOLOGY OF HUMAN STRIVING (P. Schmuck & K. M. Sheldon eds., 2001)).

28 *See* data and sources collected 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*, 9 Yale J. Health Pol'y, L. & Ethics 357, 365-371 (2009).

29 WILLIAM M. SULLIVAN ET. AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter The Carnegie Report].

30 THE CARNEGIE REPORT, *supra* note 29, at 13.

31 *See generally id*. 87-161 (Chapter 3 describing the skills to be taught for competent practice and to gain the ability to exercise practical reasoning an judgment and Chapter 4 regarding development of professional identity and purpose).

32 *Id*. at 186.

33 *Id*. at 187-88.

34 *Id*. at 27-29.

35 *Id*. at 194-97.

36 *See generally id*. at 126-161.

An important European initiative regarding higher education similarly articulates three types of educational objectives in higher education. The Bologna Process created the European Higher Education area in which 47 countries in Europe and beyond now participate.[37] A central aim was to create a system to facilitate credit transfer that would encourage students to study at more than one institution and in different countries during their academic career. The process also, however, has become a significant force for pressing an approach to teaching and learning that is focused on student outcomes, a perspective with considerable cogency worldwide.[38] The Tuning Project was developed to facilitate credit transfers among participating universities in the Bologna Process, but it has proceeded to formulate generic competences that should be achieved by all types of higher education and competences specific to particular subject areas.[39] Similar to the Carnegie Report's notion of the three apprenticeships, the Tuning Project identifies three categories of competences, upon which higher education across fields of study and professional training should focus.[40] The first, akin to Carnegie's formulation of intellectual and cognitive apprenticeship, is knowing and understanding: theoretical knowledge, capacity to know & understand.[41] The second, like Carnegie's apprenticeship of practice, is "knowing how to act": practical application of knowledge to situations.[42] The third is "knowing how to be": guiding values, the social context of working with others, which sounds much like Carnegie's notion of formation.[43]

Both of these influential educational visions stress that the educational venture should be measured by student outcomes and that the desired outcomes are more than substantive content and ability to think about and express understanding in particular ways. Higher education should go further and consider what graduates of a particular educational program should be able to do in the practice of their discipline as well as what values graduates should consider in such practice and the interactions with other people that entail.

---

37 *See* http://www.ond.vlaanderen.be/hogeronderwijs/bologna/about/, the official website of the Bologna Process from July 1, 2007 through June 30, 2010 and http://www.ehea.info/, the current official website.

38 JOHN BIGGS & CATHERINE TANG, TEACHING FOR QUALITY LEARNING AT UNIVERSITY 13 (4th ed. 2011).

39 *Id*. at 14. See http://www.unideusto.org/tuningeu/home.html, the Tuning Project's website.

40 INTRODUCTION TO TUNING 20, available at http://www.unideusto.org/tuningeu/images/stories/documents/ General_Brochure_final_version.pdf. With its 122 pages and 785 footnotes, Laurel S. Terry, *The Bologna Process and Its Impact in Europe: It's So Much More than Degree Changes*, 41 VAND. J. OF TRANSNATIONAL L. 107 (2008) provides a comprehensive history of the Bologna process through the article's publication date, an identification of relevant stakeholders, and references to a wealth of source materials. As the article describes, the Tuning Project began as a pilot project by a group of European universities. It remains an independent project that is not part of the EU, Council of Europe, or UNESCO but has sponsored many conferences and produced many documents. Terry, *id*. at 143-145.

41 INTRODUCTION TO TUNING *supra* note 40, at 20.

42 *Id*.

43 *Id*.

III. AUTONOMY, COMPETENCE, RELATEDNESS, AND PURPOSE

Decades of empirical studies have identified three important human psychological needs: autonomy, competence, and relatedness.[44] Theory underlying this research assumes that people interact constantly and dynamically with their surroundings, rather than a mechanistic view assuming that people react in a predictable and automatic way to changes in the environment.[45] The environment in which people function may nurture development of these needs or disrupt and thwart it. Our presentation and later sections of this article focus on "autonomy support" in the manner in which clinical teachers interact with students and programs are structured to enhance students' interest in improvement, ability to formulate self-set goals, gain capacity for self-regulation, and so on. The presentation and article also discuss methods of mastery learning, a form of "competence support." We address clinical education's capacity for "relatedness support," but we also focus on ways that law schools can and should contribute to students' development of a professional identity that contributes to a sense of purpose in their lives.

In the words of Richard Ryan and Edward Deci, pioneering researchers in this field, the needs for autonomy, competence, and relatedness "appear to be essential for facilitating optimal functioning of the natural propensities for growth and integration, as well as for constructive social development and personal well-being."[46] Ryan and Deci developed self-determination theory ("SDT") to study what helps people to thrive and maximize positive motivation.[47] SDT posits that thriving and positive motivation require "regular experiences of autonomy, competence, and relatedness."[48]

Pink's tri-part formulation for the Motivation 3.0 environment that stimulates optimum outcomes on creative tasks taps directly into SDT's identification of autonomy and competence (mastery) concepts of basic needs. For the third component, he identifies a sense of "purpose," which highlights the "authenticity" dimension of autonomy, being able to act in ways that feel consistent with one's core sense of self.[49] From an interview with psychologist Mihaly Czikszentmihalyi, Pink quotes "Purpose provides activation energy for living."[50] Purpose often means working

---

44   Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well Being*, 55 Am. Psych. 68, 68 (2000). REEVE, *supra* note 17, at 144-65.

45   In psychological theory terms, this contrasts organismic theory and a mechanistic one. REEVE, *supra* note 17, at 143-44.

46   Ryan & Deci, *supra* note 44, at 68.

47   *Id*. See also REEVE, *supra* note 17, at 131-35.

48   Sheldon & Krieger, *Understanding Negative Effects*, *supra* note 6, at 885.

49   *See supra* note 75-77 and accompanying text.

50   PINK, *supra* note 1, at 134.

toward something bigger than oneself, an end that will work toward the common good.[51] Pink points out that this may resonate in particular with the Baby Boomers nearing historical retirement age while many of them are still healthy and interested in continuing to work, but also with the population that comprise most law students: those called Generation Y, the millennials, or the echo boomers.[52] In our application of concepts to clinical education, we consider how relatedness, in terms of building and maintaining positive relationships during law school, is important to learning and well-being, but also consider how the clinical experience can offer the activating energy of a sense of purpose.

A. Autonomy Support

In a study now well known to many U.S. legal educators, Kennon Sheldon and Lawrence Krieger applied self-determination theory to data collected from students in two American law schools.[53] The results found that students at both schools "declined in psychological need satisfaction and well being" over the three-year period in law school.[54] Reports from the students at the two schools, however, varied in perceived autonomy support from faculty.[55] Students from the school with more perceived autonomy support reported a less severe decline in psychological need satisfaction over the three years.[56] They also had reported more favorable feelings of well-being in the third year and had better grade performance, better bar exam results, and more self-directed reasons for their choice regarding the job they would seek after graduation.[57]

Autonomy support is not the laissez-faire caricature that some use to dismiss it.[58] It is considered to have three features, which will be described here with application to a teacher-student situation. [59] First, the teacher provides students with as much choice as is possible given the nature of the learning

---

51 Two of the authors teach at The Catholic University of America. The notion of "common good" is one of the basic principles of Catholic social thought. Pope John Paul II, Encyclical Letter, *Sollicitudo Rei Socialis* (Dec. 30, 1987) [hereinafter *Sollicitudo Rei Socialis*] *reprinted in* CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 395 (David J. O'Brien & Thomas A. Shannon eds., 1992), *available at* http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html.

52 PINK, *supra* note 1, at 135.

53 Sheldon & Krieger, *Understanding Negative Effects, supra* note 6.

54 *Id*. at 883.

55 *Id*.

56 *Id*.

57 *Id*. See *id*. at 891 for discussion of interpretation of the grade differences at the two law schools.

58 Johnmarshall Reeve, *Self-Determination Theory Applied to Educational Settings, in* HANDBOOK OF SELF-DETERMINATION RESEARCH 183, 193 (Edward L. Deci & Richard M. Ryan eds., 2002) (citing mischaracterizations of autonomy support as "permissiveness, neglect, independence, or a laissez-faire interaction style"). For such a mischaracterization of autonomy support, see Nelson P. Miller, *An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers*, 87 Mich. B. J. 20, 21 (2008). Despite his distortion of autonomy support, Miller's article resonates with this article because his central thesis relates to Carnegie Report's focus on an apprenticeship of professional identity and a connection between learning and purpose. THE CARNEGIE REPORT, *supra* note 29, at 126-161.

59 Sheldon & Krieger, Understanding Negative Effects, supra note 6, at 884; Reeve, supra note 17, at 148-54. See Wallinger, supra note 3 (application of the three features of autonomy support to a legal research and writing course); Louis N. Schulze, Jr., Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School, 5 Charleston L. Rev. 269, 271 (2011) (application to law school academic support programs).

situation and specific goal.[60] Second, when no choice can be provided given the nature of the task and situation, the teacher gives a "meaningful rationale" for why the task is necessary and no choice can be given.[61] Third, the teacher considers the student's point of view, e.g., learning proper citation may be boring and tedious, keeping careful notations in a client file can be difficult to discipline one's self to do.[62]

Johnmarshall Reeve juxtaposes this definition of autonomy support with structure defined as "giving students clear expectations, optimal challenges, and timely and informative feedback as they attempt to make progress in living up to those expectations and challenges."[63] He describes autonomy support and structure as two different classroom elements that can be complementary and mutually supportive. Autonomy support in legal education can, and likely best should, be combined with a structure of defined expectations, challenges that "stretch" the student, and feedback on performance.

Part IV of this article applies specific teacher behaviors found to be autonomy supportive or the controlling converse to clinical education. In doing so, Part IV uses Daniel Pink's framework of four dimensions of the workplace in which autonomy can be supported or thwarted: Task, Time, Technique, and Team. Part IV considers autonomy supportive behaviors in teacher interactions with students and program design against these "Four Ts."

B. Competence Support

The psychological need for competence refers to being effective in the way one interacts with one's surroundings and the desire to "exercise one's capacities and skills and, in doing so, to seek out and master optimal challenges."[64] Mihaly Czikszentmihalyi empirically derived the concept of "flow," a state of deep concentration, absorption, and involvement generating considerable pleasure.[65] Research indicates that this state is reached when people engage in a task with a level of difficulty and complexity that is precisely right for [one's] current skills and talents.[66] Figure One, which illustrates a TED talk by Czikszentmihalyi, graphically shows this intersection of high challenge and high skill, while also showing the difference in states of being at intersections of lower challenge and skill levels.

---

60 Sheldon & Krieger, *Understanding Negative Effects, supra* note 6, at 884; Wallinger, *supra* note 3, at 839; Schulze, *supra* note 59, at 323-24.

61 Sheldon & Krieger, *Understanding Negative Effects, supra* note 6, at 884; REEVE, *supra* note 17, at 148-54; Wallinger, *supra* note 3, at 839; Schulze, *supra* note 59, at 327-30.

62 Sheldon & Krieger, *Understanding Negative Effects, supra* note 6, at 884; REEVE, *supra* note 17, at 148-54; Wallinger, *supra* note 3 at 839-40.

63 Reeve, *supra* note 58, at 193-94.

64 REEVE, *supra* note 17, at 155 (citing EDWARD L. DECI & RICHARD M. RYAN, INTRINSIC MOTIVATION AND SELF DETERMINATION IN HUMAN BEHAVIOR (1985)).

65 MIHALY CSIKSZENTMIHALYI, FLOW: THE PSYCHOLOGY OF OPTIMAL EXPERIENCE (1990) [hereinafter Flow]; Mihaly Csikszentmihalyi on Flow, TED, (Feb. 2004), http://www.ted.com/talks/lang/eng/mihaly_csikszentmihalyi_on_ flow.html [hereinafter Flow TED talk] (TED talk by Professor Czikszentmihalyi on flow).

66 REEVE, *supra* note 17, at 155-58.

FIGURE ONE: MIHALY CSIKSZENTMIHALYI'S REPRESENTATION OF STATES OF BEING AT DIFFERING DEGREES OF CHALLENGE AND SKILL AND "FLOW" (FOCUSED CONCENTRATED, AUTONOMOUS DEEP ENGAGEMENT)
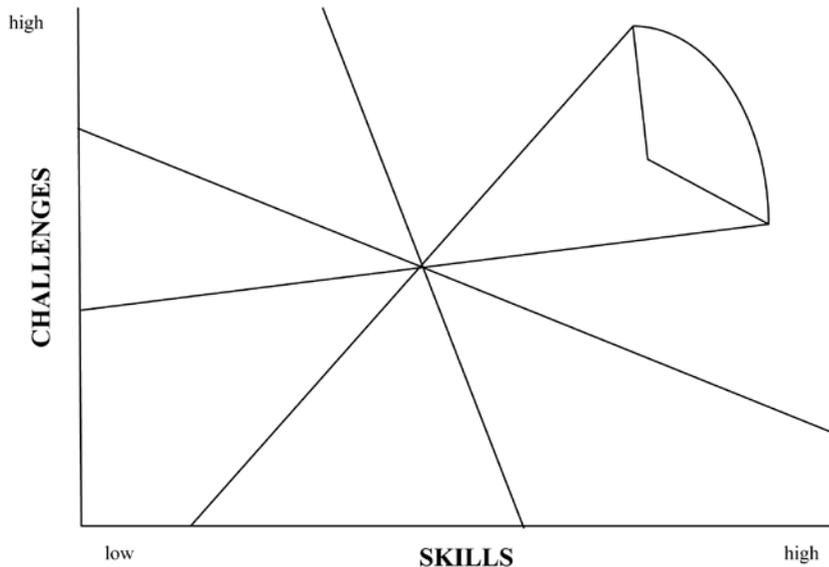
Source: *Mihaly Csikszentmihalyi on Flow*, TED, (Feb. 2004), http://www.ted.com/talks/lang/eng/mihaly_csikszentmihalyi_on_flow.html (TED talk by Professor Czikszentmihalyi on flow).

The capacity to reach the state of engagement in flow requires concerted skill building often including repetition and tedium.[67] As previously discussed regarding autonomy support, a student may be helped by teachers explaining the rationale for why a particular skill must be acquired toward an important practical and challenging use in practice. This skill building may need a structured type of teaching rather than an open-ended one. Structure has been defined as "(1) information about the pathways to desired outcomes and (2) support and guidance for pursuing these pathways."[68] Research also reminds that encouraging people to engage in optimally

---

67 PINK, *supra* note 1, at 124-25 (citing research on necessity of long years of practice on mundane tasks as necessary to building mastery in fields including sports, music, and business).

68 REEVE, *supra* note 17, at 159 (citing J.P. Connell & J.G. Wellborn, *Competence, Autonomy, and Relatedness: A Motivational Analysis of Self-System Processes*, 23 SELF PROCESSES IN DEVELOPMENT: MINNESOTA SYMPOSIUM ON CHILD PSYCHOLOGY 167 (1991); Ellen A. Skinner, *Development and Perceived Control: A Dynamic Model of Action in Context*, 23 SELF PROCESSES IN DEVELOPMENT: MINNESOTA SYMPOSIUM ON CHILD DEVELOPMENT 167-216 (1991); ELLEN A. SKINNER, PERCEIVED CONTROL, MOTIVATION, AND COPYING (1995); Ellen Skinner, et al., *Individual Differences and the Development of Perceived Control*, 63 MONOGRAPHS OF THE SOC'Y FOR RES. IN CHILD DEV. no. 2-3 (1998)).

challenging tasks requires an environment that "tolerate[s] (and even value[s]) failure and error making."[69]

In discussing effective methods for the "cognitive apprenticeship" of law school, the Carnegie report identifies four basic methods identified by cognitive theorists:

1. Modeling – making the way of thinking visible

2. Coaching – providing guidance and feedback

3. Scaffolding – providing support for students who are not yet at mastery

4. Fading – encouraging students ready to proceed independently[70]

While the Carnegie report discusses these four methods in terms of case analysis in a doctrinal course, they have application to working with students on practice applications in a clinical course.

Pink uses "mastery," which of course subsumes competence, but suggests a step beyond to confidence in one's craft. Part V describes Pink's three "laws of mastery" and presents four approaches to teaching to mastery in the professional role as lawyer drawing on work from cognitive psychology, neuroscience and learning theory.

C. Relatedness Support

Johnmarshall Reeve defines relatedness as, "the psychological need to establish close emotional bonds and attachments with other people, and it reflects the desire to be emotionally connected to and interpersonally involved in warm relationships."[71] Some of the application of relatedness to law school entails the reminder to students, and their teachers, not to let work demands crowd out time needed to develop and nurture relationships with friends and family. But relatedness also refers to "gravitat[ing] toward people who *[sic]* we trust to care for our well-being, and… drift[ing] away from those who we do not trust to look out for our well-being."[72]

This notion of relatedness, of course, should apply to students' trust that teachers have their best interests as people, as well as future lawyers, at heart. Particular techniques described in Part V are useful not only in enhancing students' mastery of lawyering tasks, but also promoting students' sense of teachers' commitment to their learning and well-being in their future careers. Clinical structure and teaching methods also often encourage student-to-student support and collaboration as a model for engendering support from colleagues in professional life.

---

69 REEVE, *supra* note 17, at 159 (citing Margaret M. Clifford, *Failure Tolerance and Academic Risk-Taking in Ten-to-Twelve Year Old Students*, 58 BRITISH J. EDUC. PSYCHOL. 15 (1988); Margaret. M. Clifford, *Students Need Challenge, Not Easy Success*, 48 EDUC. LEADERSHIP 22 (1990)).

70 THE CARNEGIE REPORT, *supra* note 29, at 63.

71 REEVE, *supra* note 17, at 162 (citing Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 PYSCHOL. BULL. 5, 5-33 (1995); ERICH FROMM, THE ART OF LOVING 7-34 (1956); Shan Guisinger & Sidney J. Blatt, *Individuality and Relatedness: Evolution of a Fundamental Dialectic*, 49 AM. PYSCHOL. 104 (1994); Richard M. Ryan, *The Nature of the Self in Autonomy and Relatedness, in* THE SELF: INTERDISCIPLINARY APPROACHES 208, 208-38 (J. Strauss & G. R. Goethal eds., 1991); Richard M. Ryan & C. L. Powelson, *Autonomy and Relatedness as Fundamental to Motivation and Education*, 60 J. EXPERIMENTAL EDUC. 49, 49-60 (1991); Harry S. Sullivan, THE INTERPERSONAL THEORY OF PSYCHIATRY 16-20 (1953)).

72 REEVE, *supra* note 17, at 162.

The concept of relatedness also "extends to relationships with groups, organizations, and communities."[73] Students' evolving sense of how their work as lawyers can benefit not only individual clients, but also impact similarly situated people and communities supports this type of relatedness. In addition, this vision of their work's potential impact nurtures the sense of purpose, which Pink highlights as the third important component of environments encouraging deep motivation to tackle difficult tasks.

D. Supporting Students' Need for Purpose

Kennon Sheldon and Tim Kasser, leading authors in motivation and self-determination theory, have linked the body of their empirical work and that of fellow scholars working in positive psychology to the theories of humanist and existentialist psychologists such as Carl Rogers, Abraham Maslow, Eric Fromm, R.D. Laing, and Rollo May.[74] They point out that SDT's contrast in intrinsic and extrinsic motivation mirrors the humanist and existentialist focus on authenticity.[75] SDT theory co-founder, Edward Deci, defines authenticity as "being the author of one's actions – acting in accord with one's true inner self."[76] But SDT does not assume the authentic ideal is the narcissistic person in love with her reflection in the water.[77] Intrinsic motivations often relate to helping others and achievement of some greater good. Furthermore, intrinsic motivation is not static and unchanging. The Carnegie Foundation's study of several professions, including law, assumes that "formation" with regard to a sense of identity and purpose is part of the mission of professional education.

Self-determination theory has developed a continuum of types of extrinsic motivation that can shed light on the process through which a law student might internalize motivation toward professional values. Rather than a sharp dichotomy, Figure Two depicts a continuum of types of extrinsic motivation that lead closer to a sense of self through the psychological process of integration.[78]

---

73   Reeve, *supra* note 17, at 161.

74   Kennon M. Sheldon & Tim Kasser, *Goals, Congruence, and Positive Well-Being: New Empirical Support for Humanistic Theories*, 41 J. Hum. Psych. 30 (2001).

75   *Id*. at 36.

76   Edward L. Deci & Richard Flaste, Why We Do What We Do: Understanding Self-Motivation 4 (1995).

77   Sheldon & Kasser, *supra* note 74, at 45 (disputing the characterization of theories of self-actualization and personal growth as narcissistic to the exclusion of ideas of duty and service to others).

78   *See also* Deci &Flaste, *supra* note 76, at 4-7.

FIGURE TWO: THE SELF-DETERMINATION CONTINUUM, WITH TYPES OF MOTIVATION AND TYPES OF REGULATION.

Type of Motivation	**Amotivation**	**Extrinsic Motivation**				**Intrinsic Motivation**
Type of Regulation	Non-regulation	External Regulation	Introjected Regulation	Identified Regulation	Integrated Regulation	Intrinsic Regulation
Quality of Behavior	Nonself-determined					Self-determined
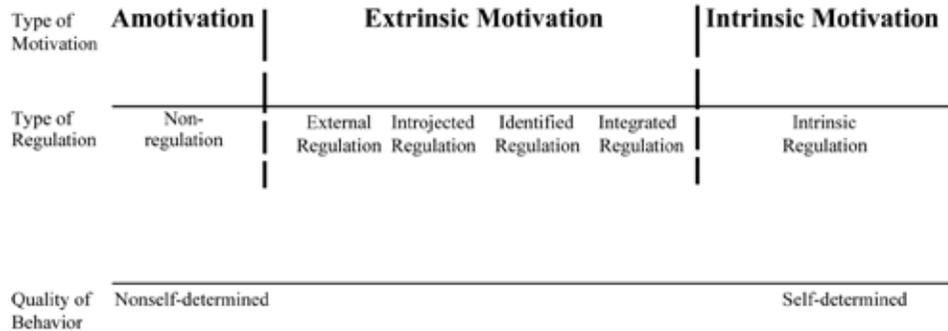
Source: Richard M. Ryan & Edward L. Deci, *Overview of Self-Determination Theory: An Organismic Dialectical Perspective in* HANDBOOK OF SELF-DETERMINATION THEORY 3, 16 (Edward L. Deci & Richard M. Ryan eds. 2002).

From the left of Figure Two, one sees first a state of amotivation in which someone has no motivation toward a particular goal or behavior. Think of students just starting law school who, as yet, have no concept of, or motivation toward, writing in the manner deemed excellent in legal work.

Next we see external regulation, a form of extrinsic motivation with the "classic instance of being motivated to obtain rewards or avoid punishments."[79] Think then of a student in a first-year legal writing course who is motivated by the desire to get a good grade, fears a bad grade, and wants to do whatever the teacher says to achieve these ends. As documented by Sheldon and Krieger's work, external motivations of "impressing others, or gaining status and influence" impose stress and anxiety.[80]

Introjected regulation is one step closer to intrinsic motivation. In this stage, people adhere somewhat to another's demands to "think, feel, or behave in a particular manner."[81] They have internalized the external motivation and are concerned with meeting the expectations of others, but the behavior is not part of the individual's integrated self. In this stage, first-year students might begin to understand and accept the standards for good writing learned in class

---

79 Richard M. Ryan & Edward L. Deci, *Overview of Self-Determination Theory: An Organismic Dialectical Perspective*, in HANDBOOK OF SELF-DETERMINATION RESEARCH 3, 17 (Edward L. Deci & Richard M. Ryan eds., 2002).

80 Sheldon & Krieger, *Undermining Effects*, *supra* note 13, at 264.

81 REEVE, *supra* note 17, at 134.

but still would be adhering to them from guilt or anxiety about how their performance will be evaluated by the teacher rather than accepting the standards and integrating them in their own sense of self.

With identified regulation, people voluntarily decide that behaving or thinking in a particular way is important or useful and accepts those merits for themselves. This involves a "conscious valuing of a behavioral goal or regulation, [and] an acceptance of the behavior as personally important." [82] At this stage, legal writing students would identify reasons why the standards for good legal writing match goals that have become their own. They might consider why this type of writing is persuasive and more likely to achieve desired results for clients. Serving clients well would have become one of their own goals. The student already may be thinking of a type of client they hope to represent and considering why that type of service matches the students' views of the public good. A student would accept that even the nitty-gritty of careful proofing, editing, and correct citation form are the standard to which written legal work is held and meeting them will further achievement of their own goals for client service. The student also may have begun to consider how such conventions, even if tedious, further useful ends, e.g., clarity, convenience for checking authorities cited.

Integrated regulation occurs when people transform values and behaviors into their own. A behavior becomes coherent and congruent with one's own values.[83] So here, behaviors that initially were stimulated by external motivations have become internal. Students understand the indicia of quality writing and adopt those as standards for their own. Students start to gain inherent pleasure in meeting the challenge of expressing legal arguments clearly, logically, and persuasively. When structured practice has helped students to gain mastery of writing tools, applying those skills to a challenging task can trigger the sense of the joy of intense concentration that is "flow."[84]

This continuum from external to increasingly internal motivation is not meant to be a developmental one with people passing through each stage when an external regulator is internalized.[85] The concepts, however, offer legal educators a paradigm for thinking about how we may encourage law students to strive for excellence in performance[86] while also encouraging them to embrace broader public goals to which their skills and support can be directed. The values students bring to law school are not the beginning and end of the process. With this perspective, our job as teachers is to explain why what we seek to teach is of value, provide a vision of ends to which that knowledge and skills could be put, and encourage students to consider if these values are ones congruent with their own sense of self. Doing so contributes to students evolving sense of their own purpose in life and how their careers as lawyers will support their own sense of purpose.

---

82 Ryan & Deci, *supra* note 79, at 17.

83 Reeve, *supra* note 17, at 134-35.

84 Csikszentmihalyi, Flow, *supra* note 65, at 83.

85 Ryan & Deci, *supra* note 79, at 18.

86 Emily Zimmerman develops an "enthusiasm paradigm," as an additional construct to autonomy support for considering ways to encourage law student motivation. Emily Zimmerman, *An Interdisciplinary Framework For Understanding and Cultivating Law Student Enthusiasm*, 58 DePaul L. Rev. 851, 895 (2009). The "enthusiasm paradigm," comprises students' interest and commitment for law study as well as "vitality," defined as "subjective feelings of energy regarding law study." *Id*. at 857.

We can relate this paradigm of supporting and encouragement of students' motivation and sense of purpose with concerns expressed with regard to lawyers and legal education. The Carnegie Report's sharpest criticism of American legal education is its failures with regard to supporting formation of professional identity and purpose.[87] Carnegie quotes the definition of a professional lawyer from a 1996 report of the Section on Legal Education of the American Bar Association on the teaching of professionalism:

A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.[88]

The first paragraph of the Preamble to the American Bar Association Model Rules of Professional Conduct says, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice."[89]

Both these formulations assume that a lawyer should aspire to purposes beyond personal advancement: service to other people in need of help as clients, but also to broader questions of the good of society and the quality of justice that the society provides.

The previously described continuum from amotivation to integrated regulation, which transforms motivations that originated externally into intrinsic ones, assumes that people's motivation and values can change over time rather than being fixed at adulthood. With its challenge for law schools to focus on the third "apprenticeship" of professional identity and purpose, the Carnegie Report disputes the notion that law schools should shy away from engaging students on values questions.[90] Carnegie cites ethics curricula developed in other professional schools that have produced empirically-validated increases in student's ability to exercise moral judgment.[91] One model cited is that of James Rest, Muriel Bebeau, and others who built on Lawrence Kohlerg's work on the development of moral judgment to formulate a four-component process for ethical education programs in the professions.[92] The four components are as follows.

---

87 THE CARNEGIE REPORT, *supra* note 29, at 126-161.

88 THE CARNEGIE REPORT, *supra* note 29, at 126 (quoting AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION & ADMISSION TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE 6 (1996)).

89 AMERICAN BAR ASSOCIATION, MODEL RULES OF PROF'L CONDUCT 1 (2010).

90 *See* THE CARNEGIE REPORT, *supra* note 29, at 129, 135-36 (criticizing a faculty view equating "efforts to support students' ethical development with inculcation, which they see as illegitimate and ineffective").

91 THE CARNEGIE REPORT, *supra* note 29, at 133-34 (citing Muriel J. Bebeau, *Influencing the Moral Dimensions of Dental Practice*, in MORAL DEVELOPMENT IN THE PROFESSIONS: PSYCHOLOGY AND APPLIED ETHICS 121 (James Rest & Darcia Narváez eds., 1994)).

92 For background on this model, *see* Clark D. Cunningham & Charlotte Alexander, *Developing Professional Judgment: Law School Innovations in Response to the Carnegie Foundation's Critique of American Legal Education* in THE ETHICS PROJECT IN LEGAL EDUCATION 79 (Michael Robertson, Lillian Corbin, Francesca Bartlett & Kieran Tranter eds., 2011). The formulations of the Four Component Model in this article draw primarily on Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 115 (2007) (citing James Rest, *Background: Theory and Research*, in MORAL DEVELOPMENT IN THE PROFESSIONS: PSYCHOLOGY AND APPLIED ETHICS 22-25 (James Rest & Darcia Narváez eds., 1994) and Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights From Educational Research in the Professions*, 5 U. St. Thomas L.J. 366, 393 (2008)).

Component 1. Ethical Sensitivity: the ability to recognize ethical issues. This includes "knowing the regulations, codes and norms of one's profession, and recognizing when they apply," as well as "the ability to interpret the reactions and feelings of others."[93] This is both a cognitive and affective process.

Component 2: Moral Reasoning: a capacity to see alternative courses of action, to realize conflicts inherent in various choices, to consider how people would be affected by each and think about which may be more morally justifiable both by individual and collective norms.

Component 3: Moral Motivation: giving sufficient importance to moral values that the professional is motivated to act on such values above self-interested ones such as wealth, status, or self-protection of oneself and one's group.[94] Professional identity, "the degree to which the professional understands and internalizes the concepts of professionalism,"[95] is an important factor in whether a person will be willing to act on those values over self-interest, fear, or other factors.

Component 4: Moral Character and Implementation Skills: This entails:

> whether the professional has sufficient persistence, ego strength, toughness, strength of conviction, and courage to implement his or her moral reasoning. A professional must also be able to determine an effective action plan and to carry out the plan. Creative problem solving is critical for moral character and implementation.[96]

The first component encompasses issue-spotting and knowledge of relevant law, while the second concerns consideration of alternative courses and application, which is most easily made "real" in a clinical setting. The third and the fourth components highlight the importance of professional identity and purpose, not only as factors in motivation for law study, a zest for living, and sense of well-being, but also as requisites to the ability and willingness to act consistent with the standards and public purpose of a profession.[97]

---

93 Hamilton & Brabbit, *supra* note 92, at 115.

94 Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights From Educational Research in the Professions*, 5 U. St. Thomas L.J. 366, 393 (2008).

95   *Id.*

96 Hamilton & Brabbit, *supra* note 92, at 116 (citing James Rest, *Background: Theory and Research, in* Moral Development in the Professions: Psychology and Applied Ethics 22-25 (James Rest & Darcia Narváez eds., 1994)).

97 *See* Hamilton & Brabbit, *supra* note 92, at 115-117 (citing Robert Kagan, The Evolving Self: Problems and Process in Human Development 30, 32 (1982) on stages of identity formulation in professionals).

IV. APPLYING AUTONOMY SUPPORT TO CLINICAL EDUCATION

A. Autonomy Supportive vs. Controlling Teacher Behavior

Considerable empirical work has been done to apply the specifics of self-determination theory to teacher behaviors in the classroom and to consider the outcomes in students in classrooms of teachers who act in greater conformance to the principles of autonomy support. Such research has shown:

> that students with autonomy-supportive teachers, compared with students with controlling teachers, experience not only greater perceived autonomy but also more positive functioning in terms of their classroom engagement, emotionality, creativity, intrinsic motivation, psychological well-being, conceptual understanding, academic achievement, and persistence in school.[98]

Researchers have identified a number of instructional behaviors that differentiate teachers with autonomy-supportive style from teachers with a controlling style.[99] These behaviors appear in Figure Three.

---

[98] Johnmarshall Reeve & Hyungshim Jang, *What Teachers Say and Do to Support Students Autonomy During a Learning Activity*, 98 J. OF EDUC. PSYCH. 209, 210 (2006) (citing Carl Benware & Edward L. Deci, *Quality of Learning with an Active Versus Passive Motivational Set*, 21 AM. EDUC. RES. J, 755 (1984); Aaron E. Black & Edward L. Deci, *The Effects of Instructors' Autonomy Support and Students' Autonomous Motivation on Learning Organic Chemistry: A Self-Determination Theory Perspective*, 84 SCI. EDUC. 740 (2000); Ann K. Boggiano et al., *Use of Techniques Promoting Student' Self Determination: Effects on Students' Analytic Problem-Solving Skills*, 17 MOTIVATION & EMOTION 319, 319-36 (1993); EDWARD L. DECI & RICHARD M. RYAN, INTRINSIC MOTIVATION AND SELF DETERMINATION IN HUMAN BEHAVIOR (1985); Edward L. Deci & Richard M. Ryan, *The Support of Autonomy and the Control of Behavior*, 53 J. PERSONALITY & SOC. PYSCHOL, 1024 (1987); Edward L. Deci et al., *An Instrument to Assess Adults' Orientations Toward Control Versus Autonomy in Children: Reflection on Intrinsic Motivation and Perceived Competence* 73, J. EDUC. PSYCHOL. 642 (1981); Wendy S. Grolnick & Richard M. Ryan, *Autonomy in Children's Learning: An Experimental and Individual Difference Investigation*, 52 J. PERSONALITY & SOC. PSYCHOL. 890 (1987); Patricia L. Hardre & Johnmarshall Reeve, *A Motivational Model of Rural Students' Intentions to Persist in, Versus Drop out of, High School*, 95 J. EDUC. PSYCHOL. 347 (2003); Richard Koestner, et al., *Setting Limits on Children's Behavior: The Differential Effects of Controlling Versus Informational Styles on Intrinsic Motivations and Creativity*, 52 J. PERSONALITY 233 (1984); Marianne Miserandino, *Children Who Do Well in School; Individual Differences in Perceived Competence and Autonomy in Above-Average Children*, 88 J. EDUC. PSYCHOL. 203 (1996); Richard M. Ryan & Wendy S. Grolnick, *Origins and Pawns in the Classroom: Self-Report and Projective Assessments of Individual Differences in The Children's Perceptions*, 50 J. PERSONALITY & SOC. PYSCHOL. 550 (1986); and Robert J. Vallerand et al., *Self Determination and Persistence in a Real-Life Setting: Toward a Motivational Model of High School Dropout*, 72 J. PERSONALITY & SOC. PYSCHOL, 1162 (1997)).

[99] *See* Reeve & Jang, *supra* note 98, at 210 (2006) (citing Edward L. Deci et al., *Effects of Performance Standards on Teaching Styles: Behavior of Controlling Teachers*, 74 J. EDUC. PYSCHOL. 852 (1982); Cheryl Flink et al, *Controlling Teaching Strategies: Undermining Children's Self-Determination and Performance*, 59 J. PERSONALITY & SOC. PYSCHOL. 916 (1990); and Johnmarshall Reeve et al., *Autonomy-Supportive Teachers: How They Teach and Motivate Students*, 91 J. EDUC. PYSCHOL.537 (1999)).

FIGURE THREE: AUTONOMY SUPPORTIVE & CONTROLLING INSTRUCTIONAL BEHAVIORS

Autonomy Supportive Instructional Behaviors	Controlling Instructional Behaviors
(Task) • Asking what student wants--- • Time listening • Time student talking (Time) • Time allowing student to work in own way (also applies to technique) (Technique) • Providing rationales • Praise as informational feedback--- • Offering encouragements • Offering hints (Team) (these apply to technique too; these behaviors help the student feel like her professor/supervisor is working with her on a team and has her back if things get too hard). • Being responsive to student-generated questions • Communicating perspective-taking statements	• Uttering directive/commands • Time teacher talking • Time holding/monopolizing learning materials: • Deadline statements: • Exhibiting solutions/ answers: • Uttering solutions/answers: • Making should/ought to statements: • Asking controlling questions: • Praise as contingent reward: • Criticizing the student

Source: This figure adapts a table appearing in Johnmarshall Reeve & Hyungshim Jang, *What Teachers Say and Do to Support Students Autonomy During a Learning Activity*, 98 J. OF EDUC. PSYCH. 209, 211 (2006).

As previously described the three general features of autonomy-supportive behavior (applied to an educational setting) are (1) providing as much choice as is possible given the nature of the learning situation and specific goal, (2) when no choice can be provided, the teacher giving a "meaningful rationale" for why the task is necessary and no choice can be given,
(3) a teacher's communication to students that the teacher is considering the student's point of view.[100]

B. Applying Autonomy Supportive Behaviors to the "Four Ts"

Daniel Pink's applies the concept of autonomy in the business setting by positing four aspects of work: Task (what people do); Time (when work is performed); Technique (how the work is done); Team (with whom they work).[101] This four-part formulation provides a useful framework for

---

100 *See supra* Part III. A.

101 Pink, supra note 1, at 93-94.

thinking about application of autonomy support to clinical education.

Consider the application of Pink's concept of autonomy's 4T's in a clinical legal education setting along with the autonomy supportive and controlling instructional behaviors identified in Figure Three.

First, reflect on how clinical legal education operates in the client representation and transactional legal problem-solving clinics that are common in the United States, hallmarks being real clients with significant issues, real cases, and real courtrooms and agencies. These courses usually include a classroom component, but the class work is designed to further the application of the concepts, do group work, and provide an opportunity for students to share challenges and solve problems through discussion and case rounds. Collaboration is encouraged. In the clinical setting, there are relatively few students assigned to a professor. The professor acts as the supervising attorney and as tutor, rather than as someone who is professing at or dictating to the student. Students have regular case supervision meetings with their professors where they speak to their professors as colleagues and get critical guidance and feedback on how to direct and manage their cases.

1. Task (the first "t")

Beginning with autonomy of task, on an administrative level, the clinic, at the majority of law schools, is an elective course. CUNY is one of the few U.S. law schools that require a clinical course. Where clinic is an elective, students can choose whether or not to enroll in a clinic. Whether or not a clinic is required, students usually have some choice about the kind of clinic in which they want to work. Most law schools have a number of different clinical offerings. Because of the frequent high demand for clinical courses, students often are allowed to prioritize their top choices.

Once enrolled in a clinic, the structure of a clinical course also promotes autonomy of task. In both CUNY and CUA clinics, for example, most students work in pairs on cases, advocacy projects and transactional work. Clinical supervisors may promote autonomy of task in the clinical setting by asking the students to engage in taking initiative at all stages of their clinical work.[102] Specific ways to promote student autonomy in a clinical setting include giving students choices about what cases/projects to work on. At CUA and CUNY, where case load and work demands permit, we often allow students the opportunity to select the types of cases we will look for in the intake process.

We also encourage and allow students to set the agenda for supervision meetings, as well allowing them to control the order in which issues will be discussed. During supervision, teachers often ask students: "With which issue do you want to start?"[103] Where case load permits, both at CUA and CUNY, we sometimes give students the opportunity to select the types of cases we handle. This also can be done by giving students responsibility for choosing and developing aspects of the clinic classes on topics of interest to them – allowing them to be the "teacher"

A clinical supervisor may also promote autonomy of task through devoting more time to listening carefully and fully attending to a student's speech as evidenced by verbal/nonverbal signals of active and responsive information processing, coupled with allowing more time for the student to

---

102 Reeve & Jang, supra note 98, at 210 (2006).

103 *Id*.

talk.[104] These behaviors communicate to students that they have some control over what they are doing and that the teacher will not be dictating to them or telling them what to do. In a clinical setting there are frequent opportunities for professors to encourage student autonomy. Typically there are regular clinic classes, multiple cases or projects, and frequent supervision meetings, resulting in numerous opportunities for clinical teachers to encourage student autonomy.

Behaviors that undermine autonomy of task include "uttering directives" or commands, and monopolizing the conversation and learning materials.[105] Control over learning materials may be addressed by having centralized student resources in the clinic library or computers system. As observed in our law school clinics the effect of these behaviors is that students are more interested in their work in large part because they had had a voice in choosing it for themselves and because they had the continued ability to direct their own work.

2. Time (the second "t")

In terms of autonomy of time, on an administrative or structural level, a clinical course is typically very liberal and flexible. Of course, this assertion is not absolute. A clinical course usually requires a certain number of hours in the clinic, or "work hours," and class attendance. In the CUA and CUNY clinics, class sessions and rounds are combined into one time period and attendance is mandatory. Nevertheless, in both programs, students are individually responsible for managing their time in the same professional fashion as lawyers manage their time in actual practice. [106]

Teachers may promote autonomy of time through the time a student is allowed to work in his or her own way, or the cumulative time the teacher invited or allowed the student to work independently and to solve problems in his or her own way.[107] In a clinical setting, promoting autonomy of time means allowing students opportunity to set their own time tables and deadlines. Of course, client work often comes with its own deadlines. These can be explained in regard to the second autonomy support indicia of the "meaningful rationale" for why things must be as they are. But imposing arbitrary and meaningless deadlines or continually reminding students of looming deadlines are teacher controlling behaviors rather than autonomy supportive.

Once enrolled, CUNY and CUA students find that their hours are done on the honor system. At both schools, the practice of keeping time-records varies among the clinics but the students are expected to work on the honor system. No one checks to see if students fulfill their required time commitment per week. Students are required to provide the administrative staff and their professors with a schedule, but this functions mainly for the clients' convenience and for the scheduling of clinical supervision. Students also may work in the evenings, the early mornings, the weekends, or whenever their schedule allows. Sitting in one's chair in the law school clinic space is not a substitute for getting casework done. These autonomy-promoting behaviors communicate to students that they have a lot of control over their time. Clinical supervisors guide students through the process of managing and planning their time to enable them to be successful. For example, in CUA's Families and the Law Clinic, after the students have conducted a client intake interview

---

104 *See* discussion *infra* Part V.B.4.

105 Reeve & Jang, *supra* note 98, at 210.

106 *See supra* Part III. C.

107 Reeve & Jang, *supra* note 98, at 210.

and decided with their supervisor to represent the client in a civil protection order hearing, the supervisor will ask them to identify all the tasks that need to be done to prepare the case for trial and then ask them to "plan backwards" from the trial date with deadlines to ensure that all can be done in time.

In the CUA and CUNY clinics, students are not completely free from the tedium that accompanies timekeeping in many legal settings. Students are expected to keep a chronological log that generally explains what they did and how long it took, but this is not nearly as laborious and menial as keeping billable hours in a law firm can be. Because students work in pairs and do not always have the same hours, clinical professors explain, and students understand, that this somewhat boring task helps them move the case along and avoid duplicating work. Chronological logs also provide subsequent students who take over cases with a quick history of the client's case. Students, therefore, have a "meaningful rationale," for what could be a tedious task: quality client service and respect for their partner's time.

Far from shirking responsibility, most students put in more than the required clinic hours because there is a real person and not just a letter grade on the other end of their work hours. In many situations, one can assume that the basic motivation of relatedness is providing plenty of intrinsic motivation to work hard and well for the client.

3. Technique (the third "t")

In terms of autonomy of technique, most clinical professors give students a lot of supervision and thoughtful direction regarding their work on their cases and projects, however with a very long leash, allowing for a lot of room to explore and make mistakes. Students have the sense that they have autonomy over the way they accomplish the goals of the case, even if it is with firm guidance from the supervisor. When students ask their supervisors how to do something or present a case strategy question, supervisors often ask: "What do you think?" "How can you begin to find out the answer to this question?" and other open-ended questions. This allows students to think critically about best practices, to experiment, to develop their own strategies, and to learn by trial and error. Student attorneys can be creative, tenacious, and use methods that practicing lawyers would not because no one told them "that's not how it's done" Several recent examples of students' decisions to act in very persistent ways include: calling the cell phone of the Assistant Attorney General assigned to a clinic client's child support case three times a day until they found out what was going on, students virtually camping out for hours on multiple days in a District Attorney's office until he signed off on a Supplement B form that was required for a U-Visa application and students proposing draft language to attorneys in order to overcome impediments to a settlement. Of course, the supervising attorney will not let the students stray completely off course, but student attorneys perceive that while in the clinic they are the ones directing their work and the ones responsible for their cases. Even the clinic classroom experience has a lot of group discussion and role play rather than lecture. The clinical student can access the law and the goals of the course through the perspectives and lessons learned from other students, as well as through their hands on experience.

In clinic students are giving leeway to experiment with different techniques. Often, in law practice, there is not a right or wrong way to proceed. One example that frequently arises in CUA's clinic is for the student to consider the choice of whether to ask an immigration client to write a first draft of her personal declaration or to have the student attorneys write a first draft themselves in

the client's voice.

4. Team (the fourth "t")

Last but not least, we examine autonomy of team. At both CUA's and CUNY's clinical programs, students in their first clinical semester are assigned a partner and a supervising professor. Students are given the opportunity to say with whom they would not want to work, but the ultimate assignment of teams is left to the professor. So there is not much choice in the initial teaming decision, however, once teamed, the student attorneys may divide the casework as they wish based on each person's skills and interests. At CUA, although student attorneys have a particular supervising attorney, students may ask any of the clinical professors about their case issues. At CUNY, students also are able to approach any of the supervisors in a particular clinic about their case. At both CUA and CUNY, some cases are handled jointed by two clinics and the consultation expands accordingly. By comparison to most doctrinal classes, our clinics are very flat, non-hierarchical organizations. Furthermore, a student's assigned partner is not the only person with whom the student can work on case issues. Students work in communal spaces during their work hours and can swivel around in a chair and ask a question of anyone sitting nearby. Student attorneys also are encouraged to reach out to community partners and relevant listservs to get answers.

What is the result of this experience while the clinical student is in law school?[108] In our clinics, we observe that productivity goes up. The clinical work is usually very interesting. Students again have a full name. Students have a professor who discusses their work and progress with them each and every week. Students are encouraged to share opinions and perspectives with their supervisors and clinical colleagues on substantive issues and on lawyering techniques and strategy. Students are supervised and supported, but most clinical students are given what feels like significant and meaningful control over their casework. Students have real clients with whom they speak and advise. Students build confidence that they can function as a lawyer, and many report that the clinical experience has validated their decision to become a lawyer. Daniel Pink would say that these opportunities for engagement promote autonomy. Students are at least partially acting from the intrinsic motivation that the learning process itself is enjoyable. Furthermore, students want their lawyering skills to get better and better because another person, a client, is depending on them to represent them. Student attorneys want the best outcome for their clients. Finally, the clinical student can experience what it is like to help a person whose life could be changed for the better because that student decided to go to law school! Her work matters. She knows that she is being graded, but the importance of the grade pales in comparison to providing quality representation. SDT would say that students experience competence and relatedness need satisfaction, and the work has supported intrinsic values for personal development and altruism and helping others. In the clinic, students often report feeling tired because of working hard, but happy.

So what is the result when the clinical law student enters the world of real legal practice? One CUA graduate remembers clinic as an "oasis of practical work in a desert of textbooks."

First, the former clinical law student has something relevant to discuss in her job interviews. Second, the former clinical law student can apply the legal practice skills she learned in the clinic, whether interviewing clients or witnesses, drafting pleadings and motions, preparing a trial

---

108 For a student's perspective on the FALC experience, *see infra* Conclusion.

notebook, negotiating a settlement or conducting herself in the courtroom before a judge. She has learned how to interact with real clients, with real problems, and how to cope with clients sometimes breaking down in front of her because of those problems. She also has learned how to collaborate with colleagues and supervisors on legal issues. She is not completely new and inexperienced, and that is a huge advantage when transitioning to actual practice. She probably will not realize how significant until she gets her first job. One recent CUA graduate, who worked in the clinic for two years, reported how exciting it was when she got her first job just after passing the bar, her supervising attorney at a Washington, DC-area nonprofit introduced her to others by saying: "Although she is new to our organization, she is not new to the legal practice."[109] A CUNY graduate observed: "CUNY School of Law was an amazing training ground. Virtually everything I did as a new lawyer (interacting with clients, drafting documents, working closely with colleagues) I had done already within the supervision and support of the law school. My placement through the Health Law Concentration led to a post-graduate Skadden Fellowship project at the same organization. Instead of feeling like the "new" attorney, I walked in on my first day ready to pick up exactly where I'd left off."[110]

V. GUIDING STUDENTS' COMPETENCE AND MASTERY IN CLINICAL COURSES

> "We are what we repeatedly do. Excellence, therefore, is not an act but a habit."
>
> Aristotle

Mastery does not happen in isolation from autonomy or purpose. Autonomy means working on one's own terms in the fullest sense of self-determination. Mastery is dependent upon self-directed effort. In addition, full engagement in practice is dependent upon our sense of purpose or meaning derived from our belief that what we do has significance beyond ourselves. At some point, everyone has had the thought of "having wasted my effort," which is a common reaction to effort that does not contribute to identifiable goals reflecting what we value beyond ourselves. Pink's framework of autonomy, mastery and purpose gives the law teacher/supervisor additional terms of reference when incorporating professional reflection on performance into the law students' learning experience.

A. Understanding the Dynamics of Mastery and Flow: Professional Self-Regulation in Lawyering

1. Mastery as a Mindset

Mastery is a mindset, not an end result. Pink posits three "laws" of mastery: mastery as mindset, pain, and asymptote.[111] We set the groundwork for the mastery as mindset when we focus on our individual learning process while doing a task rather than the reward for a task, e.g., a grade,

---

109 Conversation with Laila Leigh, former Families & the Law Clinic Student and 2010 graduate of Catholic University Law School, in Washington, D.C. (March 17, 2012).

110 Written comments of Rebecca Price, Esq., 2002 graduate of CUNY School of Law (January 29, 2012) (on file with authors).

111 PINK, *supra* note 1, at 120-27.

or only on the achievement of the task itself. From this perspective, learning is viewed as an investigative approach during which people stay open to revising their understanding through a cycle of preparation, doing and reflecting. Usually people develop motivation to repeat this learning cycle because they observe their increased growth when using this open investigative approach. This growth entails increasing our awareness of internal thoughts including subjective reactions along with gaining more comfort in modifying our thoughts and decisions in carrying out tasks.

Pink further describes the mastery mindset as the desire to get better and better at something that matters.[112] Pink discusses Mihaly Csikzentmihalyi's concept of "flow" in which people engage in activities that are self-fulfilling and thus generate motivation to stay involved in the task.[113] Czikszentmihalyi empirically derived the concept of "flow," a state of deep concentration, absorption, and involvement generating considerable pleasures.[114] Research indicates that "flow" is reached when people engage in a task "with a level of difficulty and complexity that is precisely right for [one's] current skills and talents . . ...."[115] People experience flow as the total engagement in the doing of the task without self-consciousness and without a sense of time.[116]

Pink uses Csikszentmihalyi's research to explain that we find flow when we undertake tasks at the appropriate level of intellectual challenge, which is neither too hard nor too easy.[117] Figure One, which appears in previous Section III.B on competence support, depicts the flow state at the intersection of high challenge and high skill. In these circumstances, we are reaching to be better, stretching the boundaries of our capacity. We become more proficient in performing specific tasks in resolving future challenges that differ from what we have encountered in the past. Our capacity to concentrate increases when we revisit a particular challenge with a desire to repeat it. We are able to develop a nuanced understanding of a task when we mindfully repeat it and reflect on each effort. We become more able to resolve future challenges that differ from what we have encountered in the past.

Mastery is what people are referring to when they say they "were in the zone" in a specific activity. The exploration of this mindset has a long history in popular culture – particularly in the arts and athletics.[118] "Being in the zone" requires some level of familiarity with the task as well as sufficient challenge to trigger focused attention and stimulate the feeling of desire to do better.[119] Striving

---

112 PINK, *supra* note 1, at 120-23.

113 PINK, *supra* note 1, at 114-15; CSIKSZENTMIHALYI, *supra* note 65, at 67-70; Flow TED talk, *supra* note 65.

114 CSIKSZENTMIHALYI, FLOW, *supra* note 65; Flow TED talk, *supra* note 65.

115 REEVE, *supra* note 17, at 155-58.

116 This does not mean that pain is absent from the experience of mastery as a mindset. *See* discussion *infra* Part V.A.2.

117 PINK, *supra* note 1, at 115.

118 For an illustration, see BERNIE WILLIAMS, BOB THOMPSON & DAVE GLUCK, RHYTHMS OF THE GAME THE LINK BETWEEN MUSICAL AND ATHLETIC PERFORMANCE (2011). Bernie Williams became a professional baseball player for the New York Yankees, is an accomplished popular guitarist trained in classical methods, and is a music composer. He and his co-authors wrote this book as a guide to mastery in these fields but their observations are universally applicable.

119 *Cf.* DANIEL GILBERT, STUMBLING ON HAPPINESS xiii-xvii, 31-58 (2005). Gilbert explains how we incorrectly make decisions based upon inaccurate assessment of future feeling states. He usefully reframes our understanding of "desire" and explains the growing body of research on "happiness." Gilbert is a social psychologist whose research emphasis in on cognitive bias. He is the Harvard College Professor of Psychology at Harvard University.

for competence in any activity requires deliberate and repeated reflection on how we performed those activities. Thus we are able to fully mentally engage in our learning process because of our heightened sense of self-awareness through reflection. Using analogies like "being in the zone" to discuss the learning process in achieving mastery helps law students understand that becoming a lawyer is a lifelong learning journey.

"Mindful learning" involves the active consideration of different points of view, being sensitive to context, welcoming new experience and making distinctions in resorting our understanding of information.[120] Students are viewed as active participants in the learning process, and they benefit from being prodded to consider their mindset when learning. This prodding actively models that self-awareness is essential for concentration and that learning does not happen when the individual is non-aware or acting on automatic pilot.[121] When these characteristics are present, the individual has the feeling of being more in control of the learning process and a sense of self-direction in the midst of uncertainty in the endeavor.[122] Studies show that students retain more knowledge and are more engaged when instructors present information conditionally rather than in absolute terms.[123] In the legal education context, Krieger describes mindfulness as the state of being consciously open and attentive to one's experience.[124] He explains that mindfulness, or the capacity for metacognitive self-awareness, allows students to notice how they are doing in their learning, which enables more conscious choice in behaviors, attitudes, and identification of outcomes.[125] Krieger points out that maintaining awareness and perspective is a skill that improves with encouragement and practice.[126]

We often observe that law school experience diminishes our students' fuller sense of self as an active agent in problem solving. Many lose touch with the skills that they brought to the study of law. Their self-confidence declines. As a result, law students often find it difficult to fully mobilize their internal resources when starting to perform as a lawyer. And because most traditional legal education does not afford the law student regular opportunity to actively engage in the practice of becoming a lawyer, the student becomes less connected to their learning processes and professional goals.

---

120 ELLEN J. LANGER, THE POWER OF MINDFUL LEARNING 4 (1997); *See generally* Ellen J. Langer, THE POWER OF MINDFUL LEARNING (1997). The principle of mindfulness also is a developed theory in many religious contemplative practices, particularly Buddhism. The Buddhist concept of mindfulness is the heightened attention to both our internal sensations and our perceptions of external reality. Buddhism focuses on contemplative practice which fosters self-awareness by which we gain wisdom. *See generally* ALEXANDER WYNNE, THE ORIGIN OF BUDDHIST MEDITATION (2007); ANDREW WEISS, BEGINNING MINDFULNESS: LEARNING THE WAY OF AWARENESS (2004) [hereinafter BEGINNING MINDFULNESS]; THICH NHAT HANH, THE MIRACLE OF MINDFULNESS: A MANUAL ON MEDITATION (Mobi Ho trans., 1987) (1976).

121 LANGER, *supra* note 120, at 4.

122 LANGER, *supra* note 120, at 4-6.

123 LANGER, *supra* note 120, at 77-81 (discussing a number of studies that show the benefit of conditional framing to priming mindful learning).

124 Krieger, *Human Nature*, *supr*a note 13, at 285-86.

125 *Id*. at 285.

126 *Id*. at 292-93. *See also* Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 7-17 (2003) (discussing metacognition in psychology, education and law); Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 452-83 (2003) (discussing self-regulated learning).

By contrast, clinical legal education is structured to orient students to assume the professional role and to focus on building critical lawyering skills. Students are told that during the clinical course they will learn to act like a lawyer. In supervising students' work, professors demonstrate that they do not expect students to know all the answers. Instead, professors put forth clear expectations that students will use a range of tools including critical thinking skills and that they will learn how to improve those tools by doing a number of different tasks. Clinic students usually are excited by assuming the professional role of lawyer and using their law school studies to do something active. In clinic, students are evaluated or graded on multiple factors. Of course, students normally are motivated to get excellent grades and evaluations, but there is no singular exam and the student is not solely motivated by the external grade or evaluation reward. Rather, students are motivated to give excellent client service and to improve their lawyering skill levels.

A hallmark of clinical legal instruction is that law students are required to reflect on their own performance. Repeatedly, as students complete assignments, they are asked to explicitly and fully unpackage their performance.[127] At both CUA and CUNY we do this in supervision meetings, in reflection memos, assigning students to lead debriefings of their cases in clinic rounds, and in self-evaluations submitted at mid-semester and at the end of the semester. This modeling of assessing one's own thinking and action conveys to students that they will ultimately be professionally responsible to gauge the effectiveness of their choices. A CUNY clinic student reacted to reflection assignments, "As a clinic student I was required to submit a reflection memorandum after every time I met with my client, went to court with my client, or completed a task on my client's behalf. In the beginning of the semester I found this task quite bothersome. However, somewhere in the middle of the semester I began to see the importance and understand the benefit of reflecting on my own performance. If I hadn't taken the time out to sit down and reflect on what I was doing, I would not have realized how what I was doing was affecting my client and her needs. By reflecting on my work I was able to see what a difference I was making for my client. I was also able to see what I needed to improve."[128] When students are expected to take the initiative in appraising their performance, to analyze what was achieved in their work, and observe that their actions made a difference for the client, they will push themselves to improve in all areas. These aspirations go beyond any extrinsic rewards they originally set for themselves.

2. Achieving Mastery Involves Pain

Assuming the role of lawyer means embracing the reality that successfully navigating one difficult situation permits the chance to go through difficult situations and that by doing so, one becomes an excellent lawyer. Learning how to lawyer similarly involves intense, persistent effort, pushing boundaries of discomfort, and living with not "getting it" right away. Indeed, most legal problem-solving is arduous. Pink writes that mastery requires pain, or less starkly, requires perseverance and passion for long-term goals. It requires "grit." "Grit" is the character strength associated with

---

127 Gregory Munro argues that it is essential for law students to have a continuous "feedback loop" for frequent assessment and thus students should be continually exposed to multiple diagnostic tools to assist them to evaluate their learning. GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 60 (2000). *See generally* GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS (2000).

128 Written comments of JeanMarie Krowicki, 2012 graduate of CUNY School of Law (January 21, 2012) (on file with authors).

dogged persistence and intense effort when tackling obstacles.[129] It is not only about working harder, it is also about working longer and with focused, undistracted energy. Studies show that a person who has "grit" is more likely to successfully achieve long term goals.[130] We can liken this idea of pain to the intense effort associated with climbing up the side of a cliff by repeatedly pulling yourself up to the next hold despite the discomfort of wearing your fingernails down.

Active learning by acting as a lawyer under clinical supervision acclimates students to the reality of encountering both success and difficulty in legal problem-solving. The teacher's/supervisor's explicit attention to the students' reflection on their lessons from practice helps to normalize the discomfort associated with real life complex problem-solving and the quest for excellent lawyering performance. Normalizing the expectation of "peaks" and "valleys" in gaining proficiency in lawyering skills increases the students' ability to take corrective action routinely.

Thus our teaching/supervision choices should encourage the law student's desire to try again, do more and improve their level of lawyering skills. Law students are likely to gain the insight that achieving mastery is an incremental process when teachers regularly explore the student's reflection on their preparation and performance. Law students gain greater capacity to navigate ambiguity when they are given structured opportunities to reflect on their approach to handling "messy facts" and changing circumstances.

Teaching to mastery requires the teacher to provide a structured approach to learning for the law student rather than being completely open-ended and non-directive. Providing structure includes articulating a framework for reflection and incorporating these mechanisms into the content of the supervision. Structure has been defined as "(1) information about the pathways to desired outcomes and (2) support and guidance for pursuing these pathways."[131] Setting structure creates an environment conducive to balanced reflection on performance. Students are more likely to internalize a structure for reflection when they are encouraged to identify and correct mistakes. Encouraging people to engage in optimally challenging tasks requires an environment that "tolerate[s] (and even value[s]) failure and error making."[132] One CUNY clinic student explained the value of reflecting on her mistakes: "The reflection memo assignments gave me the opportunity to reflect on my mistakes and explain why I made them and how I planned to correct them. While in other doctrinal classes I was sometimes afraid to admit to my mistakes and unwilling to explain why I had made them, in clinic I was not afraid to discuss the mistakes I had made because I knew my supervisors/professors did not expect perfection. The supervisors were there to help us come

---

129 In his N.Y. Times article Paul Tough discusses Angela Duckworth's early research and her observation that, "People who accomplished great things… often combined a passion for a single mission with an unswerving dedication to achieve that mission, whatever the obstacles and however long it might take. She decided she needed to name this quality, and she chose the word 'grit.'" Paul Tough, *What if the Secret to Success Is Failure?* N.Y. Times (Magazine), Sept. 14, 2011 *available at* http://www.nytimes.com/2011/09/18/magazine/what-if-the-secret-to-success-is-failure.html?pagewanted=all. "Grit entails working strenuously toward challenges, maintaining effort and interest over years despite failure, adversity and plateaus in progress…. [T]he gritty individual stays the course." Angela L. Duckworth, Christopher Peterson, Michael D. Matthews & Dennis R. Kelly, *Grit: Perseverance and Passion for Long-Term Goals*, 92 J. Personality & Soc. Psychol. 1087, 1087-88 (2007).

130 Statistical findings suggest that sustained effort, and not talent alone, is predictive of achieving difficult goals. Duckworth, et. al., *supra* note 129, at 1089-1100.

131 Reeve, *supra* note 17, at 159.

132 *Id*.

to the right solution, not punish us for being wrong. Our clinical teachers emphasized that the purpose of the reflection assignments was to help us, as aspiring lawyers, to make the self-reflective process a regular part of our work as lawyers. They taught me that reflecting on and learning from experience is an essential part of the process of becoming an excellent lawyer."[133] Although on first impression it may seem counter-intuitive, deliberative practice or conscious reflection on performance primes the ability to enter this mastery mindset more often and with greater skill. We want law students to internalize that continued professional development requires their ongoing effort to become more observant of their thinking, choices and actions in the lawyering process. Our students at CUA and CUNY often state on course evaluations that faculty held them to higher standards than they imagined for themselves and that made them gain confidence in their potential/ability to be successful lawyers.

To clarify, the pain involved in mastery for the clinical student is the pain associated with the discomfort and exertion in learning how to lawyer. As clinical teachers, we can reinforce that this discomfort and exertion should not ever go away completely. As they strive in their careers to continually improve and apply their knowledge and skills to challenging situations, moments of uncertainty and self-doubt will continue to be a normal part of the process. Indeed, students should become wary of the mindset that "I'm a good lawyer now so, of course, I'll reach a conclusion about what to do in cases easily." This is not the same pain that many students associate with other aspects of law school when they react to what they perceive as humiliating teaching styles, the disregard for their individual development, being forced to engage in boring hours of memorization, and a sense that the entire academic experience is designed to weed out the weak who cannot "hack it as a lawyer in the real world." That type of pain does not typically lead to "flow." The student does not keep doing the individual tasks required because she wants to or because she believes that the task is critical in order be a good lawyer.

Contrast these counter-productive painful experiences with the discomfort a clinical law student experiences when putting together her first trial notebook for a clinic client's hearing. Typically, she wants to put together a good case because a client is depending on her, and she wants to prove to herself she can do it. She is pretty sure she can do it even though she has never done anything like a trial notebook before. She writes multiple drafts of each part of the trial notebook: opening, direct, cross, closing, and so on. With each draft she gets just a little better. She tells herself that she is going to prepare each step correctly so that the client's story is portrayed in the best possible way. The student works long hours and puts in tremendous effort in producing this trial notebook. She continues to strategize about the hearing and revises her drafts. She continues to refine her trial notebook while also reminding herself to remain flexible because one never knows what will happen in court. Another example comes from a student assigned to be a court evaluator in a guardianship proceeding. The court evaluator must meet with the subject of the proceeding and compile a report discussing her findings. At the guardianship hearing that follows, the court evaluator must get on the stand and testify to her report. In a real sense a person's liberty is in the hands of the court evaluator who acts as the "eyes and ears of the court." She reread and edited her report for several days until she was satisfied with the end result. She knew this proceeding was a serious matter and that her report would help the judge decide whether or not to appoint a guardian, so she wanted my report to be the best it could be. She knew that someone else's welfare

---

133 Written comments of JeanMarie Krowicki, 2012 graduate of CUNY School of Law (January 21, 2012) (on file with authors).

was depending on her and she didn't want to let them down so she pushed herself to perfect her report. Both these students will have the opportunity to do this type of work in other cases during the semester. And with each subsequent case assignment, each student will be able to observe her increasing abilities as she more confidently assumes her identity as lawyer.

3. Mastery as an Asymptote That Will Never Be Fully Reached

"Asymptote" refers to an algebraic concept of a curve approaching but never touching the line above the curve. Pink uses this term to label his third aspect of mastery as a continuing quest toward something that one accepts will never be fully achieved.[134] We may get close to our idea of perfection in our performance, but we never fully realize what we envision. Our mental image of the absolute ideal result will remain slightly out of grasp even though our capacity improves over time and with effort. But with a vision of mastery as an asymptote, this experience need not predominately negative, scary or frustrating. Becoming fully engaged in performing as a lawyer is also exciting, rewarding, and contributes to building professional self-confidence. And these positive reactions lead to greater desire to repeat the experience and further practice the skills. We provide our students with repeated opportunities to explore what they can actually control in a given task and to also identify the many circumstances over which they have no control at all. This explicit acknowledgment helps students to gain greater self-confidence in their professional role as lawyer while at the same time embracing the reality that they will not always achieve their desired outcomes. They develop a deeper awareness that their professional growth is a long path of learning from their successes, mistakes and external limitations. Krieger provides an excellent exercise to use with students to achieve this balanced, long-term positive acceptance that much of what happens is not within our control as lawyers.[135]

Some students may experience frustration, a sense of failure, may "hide out" from supervision and may abandon the task because they have not internalized that full mastery will remain elusive. Articulating what precisely the student has accomplished and what remains to be accomplished reduces the degree to which the students may experience these impediments to their desire for mastery. Teachers should address these challenges in striving for mastery because achieving mastery demands effort to enter the mental state of "flow" and to spend more time in "flow." Students are more prepared to enter "flow" if they understand that "complete" mastery is always out of reach and never a constant state of mind.

Students often are overly harsh on themselves when reflecting on how they could have performed better in the courtroom or in the mediation room. We remind our students that learning how to be a better lawyer is a never-ending process for us all. We take the time to be explicit in our belief that learning from practice should increase our self-confidence rather than diminish it. One CUA faculty member frequently advises students who are being overly hard on themselves after a court appearance: "You are always the best lawyer after the fact. We will always be able to imagine afterwards in our minds how we would have better responded to something in court. There is always something to learn and improve on. Embrace that!"

---

134 Pɪɴᴋ, *supra* note 1, at 126-27.

135 For Krieger's Control Exercise, see Krieger, *Inseparability*, *supra* note 13, at 439 (Appendix I).

B. Teaching to Mastery in Professional Role as a Lawyer

This section identifies four teaching approaches to clinical supervision that enhance students' growth towards competence and mastery drawn from cognitive psychology, neuroscience and learning theory. These four approaches also are derived from our reflections on our experiences as clinical legal supervisors.

1. Affirming Law Students' Capability

Teachers build law students' self-confidence when they deliberately communicate that students are capable of learning how to become good lawyers. This communication makes it explicitly clear to students that the teacher is committed to their individual professional development. Explicitly expressing our belief in the students' ability to act as a lawyer encourages their learning process. Our confidence in student capacity comes from our supervision history and is based upon specific premises from active-learning theory. Feeling accepted by the teacher and supported in one's efforts aid comprehension, retention and skill level.[136] Students can see us as those "we trust to care for our wellbeing" addressing the relatedness need identified by self-determination theory.[137] As mentioned earlier, our student's learning is positively supported when they believe that we are committed to their individual welfare and their success in becoming effective lawyers.[138] Validating capacity helps generate a positive emotional reaction, which stimulates increased commitment to the learning process.[139] Being explicit about capacity helps move the legal intern from the role of student to the role of novice attorney bearing responsibility for the welfare of the client.

We also validate our student's capacity by explicit reference to the common pitfalls in the learning process. It is common, and dare we say normal, for students who strive for excellence to have difficulty in settling for less than perfection in their performance. It is difficult to maintain their confidence that they will become good lawyers when they let unrealistic expectations of success get the best of them. This propensity, if not challenged, may lead to endless disappointment and frustration, which are counter-productive toward achieving mastery. Thus our explicit identification of common pitfalls directs students to sustaining their conscious efforts in their performance and recognizes the hard work, even pain, which accompanies this journey. This is simply one way we demonstrate to students that we are paying attention to their point of view in the learning process. Our teaching efforts to identify these pitfalls in the learning process contribute to the students' perception of autonomy support in the teacher-student relationship.[140] We do this is by incorporating common pitfalls into our classroom exercises, simulating or mooting issues during clinic rounds so that the entire group can discuss how to handle issues such as: how to introduce oneself to the court, how to address the judge, how to effectively use the

---

136 *See* Laurie Barron, *Learning How to Learn: Carnegie's Third Apprenticeship*, 18 Clinical L. Rev. 101, 116, 121 (2011).

137 *See* discussion *infra* Part III.

138 *See infra* Part III.C.

139 *See, e.g.*, JOSEPH B. CUSEO, IGNITING STUDENT INVOLVEMENT, PEER INTERACTION, AND TEAMWORK: A TAXONOMY OF SPECIFIC COOPERATIVE LEARNING STRUCTURES AND COLLABORATIVE LEARNING STRATEGIES 8, 10 (2002). Cuseo explains that students increase their retention of material when the teacher employs active learning techniques in the instruction. The positive emotional reaction to active learning techniques aids retention, integration, synthesis and application of knowledge.

140 *See* discussion *infra* Part III. A.

microphone systems, how to review a retainer agreement, how to make oral recommendations to a Board of Directors, and how to respond to a lawyer's objections in a mediation.

This explicit emphasis on mindfully cultivating incremental gains helps students disabuse themselves of notions of achieving perfection. As explained earlier, we approach but never fully achieve our ideal of perfection in our performance.[141] The teacher emphasizes that all legal problem solving is a learning process that starts with the subjective experience of uncertainty in undertaking each assignment. In clinical supervision, the teacher models adopting a "beginner's state of mind" and provides opportunities for the student to reflect on their individual leaning process. "Beginner's state of mind" refers to adopting the learner's stance that "we know that we do not know" rather than learning from a perspective that "we know what we are learning."[142] This stance primes us to look for what we do not know. We engage in learning being mindfully aware that our understanding will always contain flaws and thus we actively examine our process for those flaws. The starting point of our learning is to wonder whether we know something rather than to assume our knowledge. We approach learning as an individual process of discovery that should not negatively affect the students' core self-concept as to who they are as full human beings with a fuller life's narrative. The teacher reinforces that openness to self-critique keeps the good lawyer open to improving the quality of one's thinking and actions.

We should not confuse the idea of validating the student's capacity with giving of false, excessive, or generalized praise. Validating students' capacity means giving specific remarks reflecting the teacher's acknowledgment of the incremental steps our students are taking toward mastery of the lawyering role. This commitment is apparent when we take the time to validate the student's effort and we examine the specifics of their work without negative character attributions. For example, a discussion reviewing a law student's case theory might sound like, "It is really good to see that you reworked your original case theory. You acknowledged that you originally overlooked a key element to making your claim. After that reflection, you took into account various interpretations of the facts. You explored the pros and cons of alternate theories. You were able to refine your theory of the case by taking all these steps to address your key facts and include all the legal elements of your claim. This work is taxing and can be frustrating. You can be proud that you produced a workable theory on behalf of your client." We avoid narrative character attributions when discussing their work such as, "Apparently you believe you can act as this client's lawyer without fully researching the controlling law before framing a case theory." Just the right amount of genuine validation promotes mental behaviors that encourage mastery. When a teacher communicates to students that they are capable of handling the task, they usually will strive to be even better at that task.

Students take more risk to learn how to function as a lawyer when they observe that we want them to succeed. They observe that we want them to succeed when we take active measures to promote their sense of ownership of their practice along with a sense of full partnership with the

---

141 *See* discussion of asymptote *infra* Part V.A.3.

142 "Beginner's state of mind" refers to the approach of inquiry, not judgment, in gaining self-awareness and knowledge of the external world from deliberative contemplative discipline, without strong ego attachment. *See generally* ALEXANDER WYNNE, THE ORIGIN OF BUDDHIST MEDITATION 1-8 (2007); WEISS, BEGINNING MINDFULNESS, *supra* note 120, at 189-195 (2004); HANH, *supra* note 120, at 27-31.

supervisor.[143] Before students start their clinical assignments, they receive instruction on how the supervisor will engage with these stages of the reflection process. At the outset we address the rationale for our teaching choices and we make transparent our motive of supporting their growth towards competence and mastery. In supervision communications, we first request students' reflections on the specific strengths in their work or to identify what they have accomplished thus far in the assigned task. We expect full discussion of this foundation and we reinforce those points with which we are in agreement. We do not rapidly pass over these reflections in order to emphasize our criticisms of the work. We then note other significant points of their effective practice. When we invest in this type of reflection practice, students observe that we believe in their capacity to learn from their lawyering efforts.

Students feel less vulnerable when armed with the understanding that all their work includes a mixture of their strengths as well as areas for improvement. They are also less distracted by imagined negative assessment by their supervisor when they lead the exploration of where their work needs improvement or is incomplete. This active teaching measure requires the teacher to listen first to students' comments on where their performance fell short before pointing out where the student's performance needs improvement. In every case and with every student, we should consistently probe first for the students' identification of what needs to be revised or improved in the work. Self-generated observations regarding where students believe their work is falling short makes the teacher's feedback less threatening and more familiar.[144]

At both CUA and CUNY, we provide students with explicit, written evaluation criteria to guide their discussions in our mid semester meetings. We distribute critique guides for every debriefing which our students use when they give feedback to or receive feedback from any colleague on their performance. Students are taught to specifically identify aspects of strong performance as well as the aspects of performance that need improvement.

A former student enrolled in the Mediation Lawyering Seminar at CUNY, the prerequisite for enrollment into the mediation clinic, reflected on her introduction to these feedback methods:

> Often feedback sessions begin with what could have been done better, but starting off with the things that worked well is more positive and makes the feedback session less dreadful. I think the six-step feedback model is beneficial because not only does the student get to reflect on her own strengths and weaknesses, she gets input from her classmates as to what worked well and what did not. Sometimes students can be too harsh on themselves, or just the opposite, they are unwilling to see room for improvement. Once you as the student identify your weaknesses, others are more inclined to address these weaknesses as well. This feedback model helps students see their strengths and their weaknesses and helps students better handle critique of their weaknesses. The feedback model helped me see my strengths and helped me identify my weaknesses. It was also very helpful to hear what other law students thought my strengths and weaknesses were. I learned a lot about myself from

---

143 One example of a structured reflection or feedback process premised upon taking these active teaching measures can be found in Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143, 154-59 (2006).

144 Blaustone, *supra* note 143, at 159.

participating in feedback sessions with my peers.[145]

Once students are oriented to these reflection stages in unpacking performance, we do not shy away from identifying important areas for improvement if the student has not articulated the significant weaknesses in their work. We put our effort into reframing the "failure" as an opportunity to anticipate how to handle the challenge better next time. For instance, we might say; "Going forward, you must make sure to address the most recent case law interpretation on all your disputed elements when drafting your argument. Why do you think this observation matters in your approach to subsequent work? What will you do differently next time you are conducting legal research and framing a case theory?" When challenges are framed as surmountable rather than failures, students are more likely to continue their intense effort to more effectively resolve the issues. When students are not validated or even worse when they are not treated as professional colleagues in training, their desire for self-mastery diminishes.

2. Explicit Commitment to Student & Teacher's Joint Responsibility for Learning & Clear Communication about Expectations

Communicating belief in the joint responsibility for the student's professional development promotes mastery. Joint responsibility means that both teacher and student discuss what they are expected to do in the supervision process as well as in the lawyering assignment. Students are expected to take primary responsibility for their learning and teachers are primarily responsible for the quality of the learning environment in supervision. The teacher should make clear from the beginning that she is there to help carry the load, but the student must figure out how to do the majority of the work for themselves. The intended message is that the law student is actively partnering with the supervisor to move towards the goal of reaching lawyering competency. It is the student's journey and the teacher is there to help the student along the way but ultimately it is the student's quest. Jointly, the teacher and the student set the expectations for the student in assuming the role of lawyer and performing their assigned duties.

It is important to give explicit attention to joint responsibility for the student's professional development because students are expected to see themselves as the primary professional responsible for taking action in cases while under supervision. It is understood that the student is accountable for what happens in the case. It is up to the student to become the lawyer or professional the student wants to be. This "learning on the job" is not a passive learning process. At the outset of the clinical experience, the teacher makes clear to students that they have to actively figure out what to do and how to do it. They are placed in "the real legal world" where situations are ever-changing and outcomes are not completely predictable. Setting clear expectations about the students' responsibilities for the clinical learning relationship prepares them to avoid either mindless imitation or sheer replication of previous efforts in solving the next problem. When students and teachers discuss their expectations about how to start assuming the role of lawyer, students are more likely to integrate these concerns into how they individually approach their efforts toward achieving mastery.

In order to promote mastery in the clinical supervision relationship, teachers translate student responsibility for their learning into specific expectations for students' initiative and follow-

---

145 Written comments of JeanMarie Krowicki, 2012 graduate of CUNY School of Law (January 21, 2012) (on file with authors).

through in effectively consulting with their supervisors. Together, both teacher and students articulate specific expectations for student engagement before assigning any individual case work. Both teacher and students continue to identify how these expectations apply to the actual work throughout the duration of the learning experience. For example, if students are expected to identify their questions when consulting the supervisor, the teacher should refer back to this expectation before commenting on the specific questions. Teachers indicate to students that they are expected to carry out their responsibilities to the fullest extent possible. In other words, students understand that they are responsible for the quality of their judgments and their actions in every assignment, all of which impact the welfare of the client and which may be subject to a supervisor's review. There is less "checking out" by the student when the teacher reinforces what is expected throughout the semester. And when communicating in supervision, the teacher regularly addresses the responsibilities of both the supervisor and the students in carrying out the lawyering assignment. When students know from the very beginning that they are responsible for the professional they want to become, they become the driver on the road to mastery.

Students are more inclined to build their understanding of professional competence and mastery when teachers regularly review expectations set by both the supervisor and students during the specific assignment. Students sometimes say that they appreciate the discussion of expectations because they feel uncertain about the norms of professional legal culture. In addition, students often comment that they benefit from being prodded to explicitly state the expectations they are trying to fulfill in taking on specific assignments. They indicate that these discussions remove some of the mystery in understanding the type of effort required in lawyering and the standards by which the work will be evaluated by both the student and the supervisor.

3. Deliberate Attention to Reducing "Fill-in"

Teachers promote mastery when questioning students about their assumptions or the extent of their fill-in undertaking any task. Teachers promote mastery when normalizing the presence of assumptions, our mental fill-in of additional content, in fact gathering, memory and reasoning. Ordinarily, most people cannot tell when they are filling-in gaps with fabricated information or when they are creating gaps by omitting information because this is mostly an unconscious process.[146] "When we imagine future circumstances, we fill in details that won't really come to pass and leave out details that will."[147] The human brain supplies "best guesses" routinely at extraordinary speed and without asking permission. We make inferences about what we know to a greater degree than we commonly acknowledge. Research confirms that individuals confuse their subjective belief in the truth of a statement with the objective truth of a statement.[148] Additional research illustrates the individual propensity to overestimate one's abilities and to overestimate

---

146   Daniel L. Schacter, Joan Y. Chiao & Jason P. Mitchell, *The Seven Sins of Memory: Implications for Self*, 1001 ANNALS N.Y. ACAD. Sci. 226, 227-29 (2003). *See generally* DANIEL L. SCHACTER, THE SEVEN SINS OF MEMORY: HOW THE MIND FORGETS AND REMEMBERS (2001). Daniel Schacter is a psychology professor at Harvard University whose research is focused on neuropsychological aspects of memory and memory distortion. *See also* GILBERT, *supra* note 119, at 83-105.

147   GILBERT, *supra* note 119, at 263.

148 Alison R. Fragale & Chip Heath, *Evolving Informational Credentials: The (Mis)Attribution of Believable Facts to Credible Sources*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 225, 226-27, 233 (2004).

the likelihood of successful outcomes.[149] Our automatic mental processes make us inclined to interpret realities in ways that maintain consistency and predictability even when external factors indicate that our "theory" may not accurately reflect the facts.[150]

We instinctively and subconsciously filter out negative information which does not support our beliefs. We overvalue data that supports our beliefs. Confirmation bias is the subconscious propensity to favor information that confirms our assumptions with no attention to the level of objective accuracy of the information.[151] Ordinarily we mindlessly select and interpret our evidence in biased ways. This propensity is more likely when we are working on issues that are emotionally important to us or reflect our individual values.[152] For instance, we are more likely to credit sources that reinforce our positions and reject as less trustworthy contradictory information coming from sources supporting opposing points of view.[153] This subconscious, automatic method of processing information leads to erroneous reliance and over-confidence in our understanding of most things.[154]

Each of us is unaware that we are naturally prone to being over confident in the narrative we provide ourselves to make our realities coherent. This automatic process often propels students to make poor decisions. Our focus on becoming mindful of this pitfall helps students detach emotional negativity to "getting it wrong" and allows them to internalize the realization that these common challenges face everyone in improving their thinking processes. When students are asked to take the conscious step to look for fill-in, they develop more ability to substitute investigation for their unexamined judgments in creating coherent understanding. We regularly ask our students to explain the basis for their observations or how we would verify the accuracy of what the student is over-confident is asserting. In every assignment, we ask students to reflect on questions such as: "What information may I have overlooked? What are all possible unknown factors or variables that could change my analysis?" This inquiry encourages reflection on the distinction between self-confidence and over confidence in our judgments.

We seek to reinforce our students' belief that they are able to function better because they question what they know and are more able to doubt the validity of their assertions. When we encourage law students to become aware of their own assumptions and how everyone operates with the reality of default fill-in, they become more inclined to question the basis for their assessments. Once students become aware that everyone is prone to make these types of mistakes when lawyering, they pay more attention to making less of them. They are more able to reflect on the consequences of incomplete factual comprehension and inaccurate risk assessment. They

---

149 Avishalom Tor, *The Methodology of the Behavioral Analysis of Law*, 4 Haifa L. Rev. 237, 254-55 (2008).

150 *See* Amos Tversky & Daniel Kahneman, *Extensional Versus Intuitive Reasoning: The Conjunction Fallacy in Probability Judgment*, in Heuristics and Biases: The Psychology of Intuitive Judgment 19 (Thomas Gilovich, Dale Griffin & Daniel Kahneman eds., 2002); Daniel Kahneman & Shane Frederick, *Representativeness Revisited: Attribute Substitution in Intuitive Judgment*, in Heuristics and Biases: The Psychology of Intuitive Judgment 49 (Thomas Gilovich, Dale Griffin & Daniel Kahneman eds., 2002). Kahneman, a Nobel laureate in Economics and a psychologist, developed ground-breaking psychological theories of judgment and decision-making.

151 Jane Risen & Thomas Gilovich, *Informal Logical Fallacies, in* Critical Thinking in Psychology 110, 112-13 (Robert J. Sternberg, Henry L. Roediger III & Diane F. Halpern eds., 2007).

152 *Id*.

153 *Id*.

154 *Id*.

take additional steps to verify their understanding. They are thus more likely to uncover their assumptions.[155] Students become more motivated to consciously check their assertions when they understand these propensities for error. Finally, with repeated reflection on their assumptions, students feel more capable of correcting their choices in the future.[156]

In our supervision experience, many students have commented that becoming more aware of the prevalence of the assumptions-making process helps them to monitor their internal thinking. Several students observed that they did not know they were making assumptions until questions were posed by the supervisor which led to their insight that they need to monitor their inclination to fill-in gaps in the legal stories that they are developing. In the beginning of the clinical experience, students will comment that they were not aware of the extent to which this fill-in process is occurring for them. After opportunities to reflect on this inclination, many students identify specific instances where they are self-correcting to mitigate their tendency to fill-in. For instance, a student remarked that she was able to reflect on her inaccurate inferences about what the witness actually saw when listening to him describe an assault. She further commented that she was pleased that she able to correct for these inaccuracies without negative judging her ability to fully prepare the witness's testimony. She viewed this self-correction as a normal part of clarifying her understanding and did not feel less capable as a lawyer because she had made some inaccurate assumptions. Several students have commented that having this explicit conversation with their supervisors helps them to actively check for omissions and questionable inferences when reviewing their notes from a client interview. And eventually, many students will comment that they are able to catch more of the issues during subsequent interviews.

4. *Taking Time to Verify Understanding from Supervision*

Teachers promote mastery by focusing on what the student actually understands from the supervision rather than only focusing on giving substantive information. The teacher must take the time with the student to determine what the student actually understands from their communication with the supervisor. As teachers who are legal practitioners, we understand how challenging this idea is to our goal of efficiently supervising many students on several cases. Nevertheless, more misinterpretation happens when we fail to regularly probe our student's understanding of our discussion or written remarks. Asking the student to articulate their understanding of what was just covered takes time away from other comments that may be important to the supervisor. Yet when we focus on the extent of the student's grasp of the communication, the supervisor has the opportunity to confirm or correct the student's understanding before they proceed further. Putting a priority on finding out what the student understands from the supervision can alert the supervisor to important issues needing clarification that matter more than the additional information the supervisor wanted to cover. The student integrates the lesson that lawyers need to regularly clarify their understanding of tasks.

This means that the teacher would conclude a supervision session by asking for the student's

---

155 Jeremy A. Blumenthal, *Law and the Emotions: The Problems of Affective Forecasting*, 80 Ind. L.J. 155, 161-64 (2005).

156 Human beings should understand themselves better as self-regulating, thinking actors who are able to deliberately take into account the functioning defaults inherent in our thinking processes. Douglas J. Hacker, *Definitions and Empirical Foundations, in* METACOGNITION IN EDUCATIONAL THEORY AND PRACTICE 1, 10 (Douglas J. Hacker, John Dunlosky & Arthur C. Graesser eds., 1998) (citing R. H. Kluwe, *Cognitive Knowledge and Executive Control: Metacognition*, in Animal Mind- Human Mind 222 (D.R. Griffin ed., (1982).

understanding of the discussion. For instance, after discussing the student's interview plan, the supervisor would ask the student to articulate her understanding of what has been covered. The supervisor may then learn that the student did not register the importance of following up a particular line of inquiry. Now the supervisor is able to take the additional moment to ask the student about the omission of those points. Or the supervisor may learn that the student misinterprets suggestions or misunderstands what the supervisor said about a controlling point of law. Our belief in the importance of verifying the student's understanding from the supervision is reinforced by students' comments that they find it helpful when they are asked to review their understanding of what was covered in the conversation or written remarks. As one law student commented:

> I have learned that the most important thing in law school is being able to understand the rules in order to apply them to various situations. This is also true outside of the classroom. When having a conversation with a professor or supervisor, if you don't understand what she says, you cannot accurately complete the task. It is helpful when all individuals involved are on the same page. Mastery involves understanding – if you don't understand you can't get to the next level.[157]

Law students do not come to the clinical experience already accustomed to actively clarifying their understanding of what the job entails with their supervisors. Although some students may be accustomed to asking questions, that process does not necessarily correspond to the actual level of understanding the student possesses regarding the assigned lawyering tasks. Not all students will ask questions nor will the actual questions posed necessarily lead the student to moving forward in their process towards mastery in becoming an effective lawyer. Additionally, we observe that students' questions may not necessarily correlate to their areas of significant confusion or misunderstanding. We are positing that supervisors may incorrectly correlate the simple exercise of asking questions with a student's progress towards developing lawyering skills. If teachers take the initiative to probe the student's understanding rather than simply respond to questions posed, they actively work to reduce predicable distortion by students as they begin to practice as novice lawyers. Supervisors can do this by asking students how they arrived at their observations or why they arrived at the questions they are now asking. These types of questions help students to explore the extent of their thought processes underlying their comprehension. As teachers, when we pay attention to clarifying the student's understanding from our supervision, we model vigilance against premature judgment when lawyering.

VI. RELATEDNESS AND PURPOSE

In the previously mentioned booklet for law students, *The Hidden Sources of Law School Stress,* Lawrence Krieger discusses three aspects of "hidden stresses of thinking 'like a lawyer,'" which can be attributed to the "intellectual and cognitive apprenticeship" of the first year: losing faith in oneself, losing faith in the law, and losing connections with other people.[158] This formulation helps us think about how clinical programs can counter these losses with supporting the students' basic need for relatedness, nurturing intrinsic motivation by reminding students of personal

---

157 Written comments of JeanMarie Krowicki, 2012 graduate of CUNY School of Law (January 21, 2012) (on file with authors).

158 KRIEGER, HIDDEN SOURCES, *supra* note 13, at 7-9.

values that brought them to law school, and aiding students in forming a professional identity that contributes to a sense of purpose for their lives.

Krieger sees law school classes concentrated on identifying relevant law and applying it to facts without engaging students' "pre-existing beliefs, values, preferences, and... feelings and emotions" as contributing to the students' loss of faith in one's self.[159] He warns this can lead students to "discount or ignore their beliefs, feelings, and values as if they no longer matter" with a resulting feeling of feeling "lost."[160]

Second, Krieger posits that students may have come to law school thinking that "The Law" has a fixed meaning, and courses will teach "The Answer." Instead they learn that the "best answer" in law school often is identifying many possible outcomes. Law school teaches skills that can be used "to shade the law in favor of virtually any position a client might prefer," including ones that conflict with the students' values. Students may ignore their "sense of right and wrong... in order to rationalize any possible outcome," and this loss of faith in the law can "dampen the ideals and values that brought [them] to law school in the first place."[161]

Third, law students can carry over their newly honed skills of finding the weaknesses in other's arguments, making counter arguments, and defending their position into bringing "critical and aggressive/defensive" communication into personal relationships. A heavy law school workload, compounded by worry about avoiding failure and getting good grades, already may press students to neglect connections to friends and family. Interacting in argumentative and critical ways when together can compound the problem of losing one's relatedness to others.

As an "antidote" to these three stresses, Krieger recommends remembering that thinking like a lawyer is "a legal skill but not a life skill."[162] Clinics provide an opportunity for students to use analytical skills, not as an abstract point and counterpoint exercise that is an end in itself, but rather a tool for the important end goal of improving the lives of others

As previously stressed, one dimension of relatedness refers to "gravitat[ing] toward people who we trust to care for our well-being, and... drift[ing] away from those who we do not trust to look out for our well-being."[163] The previous discussion of teaching to mastery stressed the importance of a student's perception that the teacher believes in the student's capacity to become a good lawyer and the reassurance that the teacher is there to support the student's journey to that goal.

In addition to the relationship of student and teacher, clinical programs can offer opportunities for supportive relationships with other students. Much of law school can seem to be about competition with other students – for grades, for jobs, for editorial positions, for spots on moot court teams. Clinics often pair students to work on cases and seek to encourage a sense of mutual

---

159 KRIEGER, HIDDEN SOURCES, *supra* note 13, at 7.

160 See Krieger, *Human Nature, supra* note 13, at 265-270 and accompanying footnotes regarding the a study of language used in law school classrooms by Elizabeth Mertz, an anthropologist and law professor, who conducted a project sponsored by the American Bar Foundation. Mertz's research team recorded a full semester of contracts classes in eight diverse law schools. ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER," (2007).

161 Sheldon & Krieger, *Undermining Effects, supra* note 13, at 282 (research finding that a decrease in all valuing in law school with a "disproportionate initial drop in the healthy 'intrinsic' values").

162 KRIEGER, HIDDEN SOURCES, *supra* note 13, at 9.

163 REEVE, *supra* note 17, at 162.

support among clinic students toward doing the best job for clients, while acknowledging the hard work entailed. Street law programs usually encourage team sharing of ideas and lesson plans and feedback for their improvement.

Law study gives a concrete use for what has been learned with a real client to represent. Clinics also can help students see the relationship of the work to broader communities of people. Like street law programs, representation clinics often combine individual casework with community education efforts and needs assessments providing relatedness to other individuals as well as groups.

As to purpose, clinical teachers can be mindful of what may help nurture the values that students brought to law school and provide a vision for standards of important ends to which service can be directed. The Carnegie Report challenges the position of professors who believe that law schools neither can nor should attempt to influence student values and even take the position that asking students to state their normative positions is a form of indoctrination.[164] The Report cites experience in other professional education showing that well-structured ethics education can make a difference in students' ability to recognize ethical issues, reason through alternatives, be motivated to act consistent with moral principles and public purposes of the profession rather than self-interest, understand how to formulate a course of action consistent with those principles, and have the strength to carry out the plan.[165] This sense of identity based in ethical principles and public purposes of the profession also can counteract Krieger's previously identified loss of faith in oneself and the law.

At the end of the clinical experience at CUA and CUNY, many students reflect in their last class or in their final written reflection that clinic made them remember why they enrolled in law school. Many students describe increased self-confidence in their individual values. They often state that they now feel able to practice law in furtherance of those values.

CONCLUSION

We wrote this article to share how clinical law teachers can harness the power of intrinsic motivation and the theories regarding the human needs of autonomy, mastery and purpose to improve the quality of our law students' learning as well as encouraging habits of being that promote life satisfaction. Perhaps the most effective conclusion we can offer is the following journal from a student who, in her last year of law school, took Leah Wortham's Professional Responsibility (PR) class while being enrolled in the CUA Families and the Law clinic in which Catherine Klein teaches.[166]. Students in the PR class can choose to do five two-page journals for a small bit of extra credit, but they are not required to do so. The guidance gives a long list of types of topics including those chosen by students in the past and concludes with the following instruction.

> Topics can be anything concerning application of the law regulating lawyers or more
> general issues such as the meshing of legal and personal ethics, the role of lawyers in
> our society, public perception of lawyers, professionalism, or other concerns that

---

164 THE CARNEGIE REPORT, *supra* note 29, at 135-36.

165 THE CARNEGIE REPORT, *supra* note 29, at 133-35. *See* discussion *infra* Part III. D.

166 This CUA clinic student was also enrolled in Leah Wortham's Professional Responsibility course.

you have regarding entering the profession. I mainly care that what you have chosen to write about is of significance to you.

Many students choose to write about issues arising in in-house clinics, externships, or situations arising at work or with friends and family. The final class unit, assigned for the last day of class, is called The Profession and Society; The Profession and You. The only reading assigned is Krieger's previously discussed *The Hidden Sources of Law School Stress*. Like the journal that follows, the booklet has prompted many thoughtful, and often poignant, journal responses. The following journal seems to the authors to track much of what this article is about: the frustrations students can feel with a diet of primarily classroom doctrinal courses and a disconnect from any larger purpose in becoming a lawyer.

> This semester has been the busiest and most stressful semesters of my law school career thus far. It is surprising that I would say this, considering how stressed out I was during my first year. When I began law school and friends asked me about my experience, I was never positive. I never voluntarily recommended law school to anyone. When I think back at the Thanksgiving break of my first year, about a week before finals, I remember that I wanted to avoid all conversations having to do with law school. I was invited to a college friend's house, and I was clearly stressed, unhappy, and doubtful of my performance on exams. I had extremely low self-confidence and confusion about my study and grasp of the law. At the time, I wanted to pretend that I wasn't even in law school so that I could at least sit down and enjoy my Thanksgiving dinner. Despite my efforts to keep the topics of conversation flowing, law school immediately and inevitably came up on numerous occasions. My friends wanted to know how it had been and whether I was enjoying it. It was troublesome for me because I felt that I did not have many outlets during the semester to discuss what I was learning or even apply it in real life. I was intimidated by the other students in class, and I rarely volunteered to speak. Furthermore, I never had an opportunity to reflect on what I was learning and how it applied to my life, which I think would have been extremely helpful for me.

> Thinking back, I realize that the only class that I enjoyed and did "well" in, at least during my first year, was my Lawyering Skills class. Despite the fact that it was the busiest class with the heaviest workload and a high amount of stress (for only 2 credits), it was a class for which we wrote several memos each semester that reflected our understanding of the law, a set of facts, and the application of the law to the facts. We got constant feedback from our professors, and we were able to make significant improvements in our writing skills as well as our analytical skills. Overall, it was our first glance at the actual practice of the law through researching and advising on an issue to a hypothetical client that we had throughout the semester. We learned not only legal writing skills, but also how to write a letter to the client about a complex legal issue. The class prepared us for real-life legal representation. Unfortunately, my second year courses – which were mostly substantive bar courses – did not allow me to reflect on and apply my understanding throughout the semester in a way that is most helpful for me.

> This semester, as I stated, has been the busiest and most stressful semester thus far. However, it is important to note that it has been one of the most rewarding and

happiest semesters for me as well. I leave the semester with a higher sense of self-confidence as a future lawyer and a positive outlook to my legal career. I believe that not only have I learned to appreciate the ways in which I can take advantage of my law school experience to suit my needs and interests, but I have also been able to recognize my highest demands and moderate my response to them (as noted in *The Hidden Sources of Law School Stress* book you handed out) in a way that reduces the negative effects of the stress and allows me to maintain a sense of enjoyment. My clinic experience and Professional Responsibility journals have really provided me with an outlet to reflect on my experiences. Specifically in PR journals, I have really taken advantage of them to think back on my past externship and current clinical experiences to assess various situations that I have encountered. By having a conversation about my understanding of a Rule or factual situation, I have been able to balance my stress levels by bringing all aspects of my law school and personal experiences together. Overall, taking the time to reflect, whether it is in class or in clinic or in real-life, and having someone read it and respond to it, has been extremely helpful for me to legitimize my worries and concerns as well as motivate me to trigger my thoughts and build confidence in my observations and analyses. Now, I recommend law school to almost every undergraduate student or young professional that I encounter with great enthusiasm, and I hope that I will not have to feel the way I did my first year during even the points of highest stress in my professional legal career.[167]

---

167 Melissa Nonaka, Journal #5 Submitted for Leah Wortham's Fall 2010 Professional Responsibility course (December 6, 2010) (unpublished journal on file with the authors). When Wortham contacted Ms. Nonaka for permission to reprint the journal in this article, she learned that Ms. Nonaka is now working at a well-respected immigration firm. Ms. Nonaka said "I have always wanted to pursue a career in immigration law (since before law school) so I am happy to be doing what I love!" E-mail of Melissa Nonaka to Leah Wortham (June 16, 2012) (on file with the authors).