FEMALE LAW STUDENTS, GENDERED SELF-EVALUATION, AND THE PROMISE OF POSITIVE PSYCHOLOGY

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INTRODUCTION

Despite the ranks of women entering law school every year, a significant proportion of them seem to consider legal education a uniquely difficult experience that shakes their self-confidence to a severe extent not seen in other fields. And perhaps more troubling, attention paid to gender in legal education by scholars has not eliminated the gendered divide. Several top legal minds such as Professors Lani Guinier1 and Linda Hirshman2 have written books discussing the issues women face in law school, and scores of students and lawyers have published articles in law reviews discussing the experiences of female law students and how practices might be improved.3 Yet in the decades since serious academic inquiry began, the problems of gender in legal education have made surprisingly little progress.

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At the same time that a substantial number of female students under-perform in law school, however, a smaller number succeed. It appears that one source of ongoing difficulty is due to the self-criticism and self-judgment of female students who recognize the gendered nature of law school, which cause them to self-select out of activities. A large number of women—perhaps a majority—believe that they do not match the paradigm of the successful male-coded law student, and therefore do not seek out achievements such as publication in law reviews and prestigious clerkships. A smaller number, on the other hand, compare themselves favorably to the male standard and excel. Recognizing their equal potential, they apply for prestigious activities and honors and see disproportionate success. An evaluation of methods to improve the experience of female law students, therefore, should focus on this internal process of self-evaluation in addition to reforming the larger environment and pedagogy. The field of positive psychology, studying what traits make people happy (rather than studying what makes people unhappy), holds particular promise in identifying what makes the difference between a female law student who is fulfilled and satisfied with her performance and one who feels alienated from her legal education.

Part I reviews the literature discussing the experiences of female law students. Part II outlines the existing proposals for reform to legal education in order to address some of the sources of unhappiness and underperformance by female students. Part III describes the paradox of a subset of overachieving female students and proposes an explanation: female students compare themselves to an overwhelmingly male model student. Some female students feel alienated from the gendered model, and are more likely to be harshly self-critical of their capabilities and performance, whereas others look past the gendered model and judge themselves as equal to the ideal. Part IV asks how to move more female students from the former category into the latter and proposes techniques drawn from positive psychology to improve the self-assessment of female students.

I. THE EXPERIENCE OF FEMALE LAW STUDENTS

The first woman was admitted to an American law school in 1869. It was not until the late 1960s, however, that the numbers of female students rose above a token 3 or 4%. Female law students reached 20% of total law

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4. See infra text accompanying notes 108-12.
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students in 1974,8 40% in 1985,9 and only became a majority of law students nationwide in 2001.10 The experiences of pioneering women law students were a study in extremes: on the one hand, the treatment of female law students was markedly sexist. Professors refused to call on female students except for specific days designated as “Ladies Days,” or only to discuss issues perceived as female such as sexual assault.11 Even the formal curriculum was misogynist: a property casebook issued in 1968 stated that “‘land, like woman, was meant to be possessed.’”12 Despite this overwhelmingly antagonistic environment, female law students performed better than male students, receiving higher average grades.13

Modernly, the most overt elements of sexism in law schools have been almost entirely removed. And to some extent, the achievement of gender parity in law school is unsurprising. One persuasive reason for the higher average performance of the early female law students is that they were “‘an unusually determined group and unfazed by discrimination, having experienced it earlier on.’”14 As barriers to law school admissions fell, more than the select and most ambitious female students had the opportunity to attend law school, and performances of the sexes consequently became more congruent.

There are two reasons, however, for continued concern. First, scholarly discussions have increasingly characterized law school as a damaging experience for large numbers of students.15 Research shows that law students are unhappier than students in other professional schools, even compared to medical students (often viewed as the most overworked graduate students in 1974,8 40% in 1985,9 and only became a majority of law students nationwide in 2001.10 The experiences of pioneering women law students were a study in extremes: on the one hand, the treatment of female law students was markedly sexist. Professors refused to call on female students except for specific days designated as “Ladies Days,” or only to discuss issues perceived as female such as sexual assault.11 Even the formal curriculum was misogynist: a property casebook issued in 1968 stated that “‘land, like woman, was meant to be possessed.’”12 Despite this overwhelmingly antagonistic environment, female law students performed better than male students, receiving higher average grades.13

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8. Neumann, supra note 7, at 314.
9. Id.
One study showed that "44% of law students meet the criteria for clinically significant levels of psychological distress." Other studies show a striking increase among law students over time in depression and drug or alcohol abuse, "rising from 8–9% prior to matriculation to 27% after one semester, 34% after two semesters, and 40% after three years, and persisting after students pass the bar and begin practicing law."

In addition to the harmful impact of law school on its students generally, there is a second reason for worry that applies particularly to female law students: it is clear that for the last few decades, female law students have a markedly different and more negative experience in law school than do their male counterparts.

One of the most well-known gender-related differences in the law student experience is the comparative reticence of female law students to speak in class. This is not a phenomenon unique to law school: there have been examples of male students speaking more in class at every level of the educational process. The law school classroom, however, seems to be particularly gendered in this respect. As one of the most immediately visible aspects of student life, classroom participation sparked some of the earliest scholarship assessing the performance of female law students. From the early 1970s, scholars noticed lower rates of classroom participation by female students. A group of students at Yale created a support group to study and discuss gender in the classroom after each noticed that "women’s participation in class was declining to almost nothing." A survey given to students confirmed this perception, finding that male students self-reported more frequent class participation than female students. Those students later wrote an article published in the Stanford Law Review that described the law school classroom as "the crucible of our criticisms of ourselves and of the law school."

In the early 1990s, surveys of Ohio law students found that male students were twice as likely to ask frequent questions (at least

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22. Taber et al., *supra* note 10, at 1239.

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once a week) in class,24 and 13% more female students than male students reported never contributing to class discussion.25 In 1996, Paula Gaber conducted interviews with twenty female students at Yale Law School, in which she asked several questions about the classroom environment.26 The students reported that male students participated more in class, and described the classroom as “overtly masculine”27 and as “a stage for performing” where students showed off their intellect, trying to competitively prove their intelligence.28 Five years later, at Northern Illinois University College of Law, half of the male students filled out a survey indicating they asked questions at least once a week in class.29 Only 16% of female students gave the same answer.30 The largest proportion of female students reported asking a question in class only once a month.31

In 2004, a study at Harvard used monitors to count the number of comments by students of each gender in class rather than relying on self-reported data.32 According to the monitors’ reports, male students were 50% more likely to volunteer at least once in class and 144% more likely to volunteer three or more times in one class meeting.33 Two years later, student observers similarly counted participants in class sessions at Yale.34 At the time, male students made up 6% more of the student body than did females, but participated in class 38% more.35 Participation by female students was more proportional in classes taught by female professors, but was even more disproportionately small in large classes and classes with higher general participation.36 Sari Bashi and Maryana Iskander noted that most of the difference in participation by gender was due to differences in the rates of voluntary participation, rather than professors calling upon male students more than female students.37 Six years later, the student organization Yale

25. Id. at 334.
27. Id. at 183.
28. Id. at 188.
30. Id.
31. Id.
32. WORKING GRP. ON STUDENT EXPERIENCES, STUDY ON WOMEN’S EXPERIENCES AT HARVARD LAW SCHOOL 3 (2004), available at www.law.harvard.edu/students/experiences/ExecutiveSummary.pdf.
33. Id.
34. Bashi & Iskander, supra note 5, at 405-06.
35. Id.
36. Id. at 406.
37. See id.
Law Women performed a similar study of class participation and found that after adjusting for the proportions of each gender, 57% of class participation was by male students.\(^{38}\)

Class participation alone is one of the most visible contributors to the atmosphere of law schools, but might not be problematic in itself. Tangible markers of student performance, however, demonstrate gendered differences as well. In Lani Guinier's landmark article (and later book) *Becoming Gentlemen*, she noted that by the end of the first year of law school, male students at the University of Pennsylvania Law School were three times more likely than female students to be in the top 10% of the class as determined by grades.\(^{39}\) The female students were later similarly underrepresented in awards at graduation, such as Order of the Coif.\(^{40}\) A study of twelve years of data at the University of Texas noted that although female students entering law school had a higher grade point average than male students, the female students' grades in law school were lower,\(^{41}\) particularly in the first year of law school, which had a strong effect on female students securing law review membership, prestigious summer jobs, and (at that time) judicial clerkships after graduation.\(^{42}\) The same paradox of undergraduate versus law school grades was found in a statistical analysis of all ABA-accredited law schools.\(^{43}\) Multiple studies of academic performance have found that female law students receive lower grades on average than male students.\(^{44}\)

At most law schools, law review membership is determined at least in part by grades, so it is unsurprising that female law students are underrepresented on mastheads. In the 1960s, law review membership at fourteen "elite" law schools was 95% male, declining to 83% in the 1970s, 68% in the 1980s, and 64% in the 1990s.\(^{45}\) In the earlier decades, this can be ex-
plained largely by the relative lack of females in the student body, but modern law review mastheads have failed to catch up. From 1990 to 1993 at the University of Pennsylvania, female students were on average 43% of the student body eligible for law review membership, but only 23% of the law review editors.46 In Texas, law review membership was the most disparate “performance indicator[4]” recorded, finding that the percentage of female law review members was only 71% of what their numbers in the general student body would predict.47 An analysis of slightly over fifty law schools over a period of ten years found consistent underrepresentation of female law review editors: the average female student population was 47% of the student body, but only made up 39 to 43% of law review members.48 Even The Yale Law Journal, which admits students solely through tests independent of class performance, was found to have disproportionately low numbers of female editors by Bashi and Iskander.49

Along with lower numbers of law review editors relative to their population in the student body, female law students also publish fewer notes in those same law reviews. In the years 2005 through 2008, only 36% of student notes published in the law reviews of the top fifteen law schools50 were written by female students.51 In a comprehensive analysis performed by Jennifer Mullins and Nancy Leong evaluating a decade of data from fifty-two schools, only 39.6% of student notes were written by female authors.52 Possible reasons for the lack of female-authored notes raise more questions. For example, a Texas study indicated that female students received lower scores on the law review writing competition than male students.53 Female law professors sometimes face difficulty in placing their own professional work in student-edited law reviews, which has been hy-

46. Guinier et al., supra note 39, at 28-30, 30 n.82.
47. Bowers, supra note 13, at 148.
49. Bashi & Iskander, supra note 5, at 424. But see Cassman & Pruitt, supra note 44, at 1268 (finding proportional numbers of female law review editors at UC Davis, which similarly awards membership without reference to grades).
52. Mullins & Leong, supra note 48, at 398.
pothesized as due to rigid preferences for writing styles and topics. It seems logical that the same phenomenon is occurring as early as law review writing competitions and note selection. Additionally, there is some evidence that, as will be discussed further below, female students self-select out of opportunities such as publishing a student note. The study at Yale authored by Bashi and Iskander examined the note publication practices at The Yale Law Journal. From 1996 to 2003, women wrote 36% of notes published in The Yale Law Journal, despite constituting on average 45% of any given class. Significantly, the difference is in large part a consequence of women’s failure to submit the same piece more than once. When a piece is submitted to The Yale Law Journal, rejected pieces receive a “Revise and Resubmit” letter, in which the paper is evaluated, editing suggestions are outlined, and the votes, on a scale of one to five, are anonymously tallied. A significant portion of notes—often a majority—are accepted on the second or third submission. Female students, however, do not submit their notes for a second or third time as frequently as male students do, leading to a striking imbalance in acceptances: while women submit notes on the whole at a slightly lower rate than their representation in the student body, in the years covered by the Bashi/Iskander study, women’s notes were accepted 8% of the time, compared to 35% for ultimately successful male submissions.

A lack of self-confidence may also contribute to female law students not taking advantage of a more intangible, but extremely important, opportunity: mentoring relationships with their professors. Although relationships with professors cannot be quantified as easily as grade point averages, developing connections with professors who will write letters of recommendation, serve as references, and otherwise provide valuable advice significantly impacts students’ achievements well beyond graduation. Female students, however, are not making these connections. At the University of Pennsylvania during Lani Guinier’s study, male students were more likely to report feeling “very comfortable” in interactions with professors outside of the classroom. Female students reported feeling reluctant to approach faculty members during office hours without “friendliness ‘cues’” from the profes-

55. See infra notes 128-131 and accompanying text.
56. Bashi & Iskander, supra note 5, at 425.
57. Id.
58. See id.
59. Id.
60. Id.
61. Id. at 423.
62. Guinier et al., supra note 39, at 35.
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At Columbia Law School, female law students were nearly twice as likely to report that they had never or rarely contacted their professors. Female students at UC Davis were less likely than male students to visit professors during office hours, go to a professor's office without an appointment, or to approach a professor after class or during a break. Yale female law students similarly reported to Bashi and Iskander that they were likely to ask for letters of recommendation from their professors at a rate lower than male students.

Finally, there are marked differences in the quality of life for female and male students. Law school is a stressful time for many, but female students often report higher stress levels. Some of this may be due to gender expectations that have nothing to do with law school. For example, one study reported that male students who had a wife or girlfriend living in the same area spent more time than single students preparing for class. Married or cohabiting female students, however, received no such advantage. One implication explaining the discrepancy is that the "second shift," or household work performed by women in addition to their professional responsibilities, frees time for married male students to devote to additional coursework. This explanation does not fully explain, however, the stark discrepancy in a survey conducted at UC Davis in which students were asked to assess how often they felt stress, from one ("never") to five ("always"). Although male students on average reported an extremely high level of stress, highlighting that all law students are feeling overworked, female students responded on average half a point higher.

Other markers of psychological distress also indicate greater problems for female than male students. In the same survey at UC Davis, female students also reported higher levels of depression and that they cried significantly more often than male students. One Yale student reported in 1998 that when she attempted to volunteer an answer in class or was called upon by the professor, she experienced painful back spasms.

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63. Id. at 72.
64. Schwab, supra note 3, at 324.
66. Bashi & Iskander, supra note 5, at 422.
68. Neufeld, supra note 3, at 546.
70. Cassman & Pruitt, supra note 44, at 1272.
71. Id. (reporting that male students responded on average with 4.48, female students 4.92).
72. Id. at 1271.
73. Gaber, supra note 26, at 186-87.
of Pennsylvania, women were "significantly more likely to report eating disorders, sleeping difficulties, crying, and symptoms of depression or anxiety."74 Not only should these reports cause concern for the emotional and mental wellbeing of students, but unhappiness can itself contribute to the discrepancies in academic markers. As Ann L. Iijima explained in an article assessing the emotional health of law students, "There is an intimate relationship between students' psychological state and academic performance. . . . [H]igh levels of hope, optimism, perseverance, and motivation may be stronger predictors of academic achievement than SAT scores or previous grades."75

The most abstract reason to be concerned with the status of female law students is a term that comes up repeatedly in existing literature: alienation. Lani Guinier's metaphor of expecting all law students to "become gentlemen"76 is an apt description:

Our data suggest that many women do not "engage" pedagogically with a methodology that makes them feel strange, alienated, and "delegitimated." These women describe a dynamic in which they feel that their voices were "stolen" from them during the first year. Some complain that they can no longer recognize their former selves, which have become submerged inside what one author has called an alienated "social male."77

Alienation, in other words, is the name given to depersonalization. Many female law students feel they are being forced to change into people they are not in order to fit into a system they feel ambivalent about joining. In a 1988 article describing a support group for female students at Yale Law School, the students discussed "four faces of alienation: from ourselves, from the law school community, from the classroom, and from the content of legal education."78 Female law students consistently report "alienation, disillusionment, and silencing in law schools, more so than their male classmates."79 The silencing of female students, echoing the problems of class participation rates, is underscored in the Bashi and Iskander study,

74. Guinier et al., supra note 39, at 44.
75. Ann L. Iijima, Lessons Learned: Legal Education and Law Student Dysfunction, 48 J. LEGAL EDUC. 524, 526 (1998); see also Guinier et al., supra note 39, at 62 ("Along with a formal link between classroom participation and examination success, we suspect that there exists a psychological link between self-confidence, alienation, and academic performance. Students who are alienated by the formal classroom methodology, hierarchy, and size are arguably not psychologically prepared to succeed on the formal examinations. Those who doubt themselves or doubt whether they belong in the Law School do not perform as well." (footnotes omitted)).
76. Guinier et al., supra note 39, at 1.
77. Id. at 4 (footnotes omitted).
78. Weiss & Melling, supra note 3, at 1299.
which concludes that low female class participation "fosters and is a product of alienation from and even hostility toward law and law school." Even as students feel hostility toward their law school, law school changes their plans and possibly their values. At the University of Pennsylvania, first-year female students expressed interest in entering public service careers at three times the rate as first-year male students. But by their third year, the female students' plans to enter public service dropped to the same level as their male counterparts. In Guinier's words, "over three years at the Law School, women students come to sound more like their male classmates, and significantly less like their first-year 'selves.' Catharine MacKinnon summed up the law school experience with harsh words: "What law school does for you is this: it tells you that to become a lawyer means to forget your feelings, forget your community, most of all, if you are a woman, forget your experience."

II. EXISTING REFORM PROPOSALS

In parallel with the broad-ranging study of how female students are performing and feeling as they move through their three years of law school, scholars have formulated a variety of prescriptive proposals. As a threshold matter, all scholars reject the expectation that all female students "become gentlemen" and assimilate to the existing law school world. As a practical matter, women who do not conform to gender expectations and take on stereotypically masculine characteristics are often criticized for behavior that is unremarkable when engaged in by men. More problematically, expecting all students to conform to one ideal of the model student "is also to accept the premise that legal education as it currently exists is the only and best formulation of how law schools should operate." Most scholars evaluating the gendered nature of law school propose a shift in pedagogy that would help not only female students, but all students to have a richer, more diverse educational experience.
To the extent that calls for pedagogical reform broaden the subjects and skills taught in law school, such proposals are very much in line with recent proposals to rework the law school curriculum. The MacCrate Report,\textsuperscript{88} Carnegie Report,\textsuperscript{89} and Best Practices report\textsuperscript{90} all call for a greater focus on skills-based training for law students, either in addition to or instead of scholarly or intellectual subjects. Both the Carnegie and Best Practices reports also call for more inclusion of purpose or a commitment to justice.\textsuperscript{91}

Similarly, multiple commentators propose including more practical skills in the curriculum as part of gender-focused reform.\textsuperscript{92} Courses in mediation, negotiation, and client relations have been singled out by some as particularly suited to or enjoyable for female students.\textsuperscript{93} Another broad pedagogical change is to shift the tone of the classroom away from the adversarial Socratic dialogue in which professors single out one student to be on call, answering question after question. As Deborah Rhode points out, due to “patterns of gender socialization,” female students have had less practice in the skills exercised in Socratic dialogue, “such as defending a position in the face of aggressive challenge, and arguing dispassionately about emotionally weighted issues.”\textsuperscript{94} Valuable though those skills may be, the inequalities in gendered performance indicate that throwing students into a Socratic exchange is not succeeding in making female students better or more comfortable with impromptu verbal argument. One proposed modification is to simply jettison the truest, most confrontational forms of Socratic dialogue and make the classroom less adversarial across the board.\textsuperscript{95} Another, more compromising approach is to continue adversarial education as one of many pedagogical methods.\textsuperscript{96} Bashi and Iskander argue that in modern legal practice, “settlement, mediation, and negotiation are at least as im-

\textsuperscript{88.} See Lauren Carasik, Renaissance or Retrenchment: Legal Education at a Crossroads, 44 IND. L. REV. 735, 740 (2011).

\textsuperscript{89.} WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

\textsuperscript{90.} ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007).


\textsuperscript{92.} Weiss & Melling, supra note 3, at 1357-58.

\textsuperscript{93.} See id. at 1358; Morrison Torrey, Jennifer Ries & Elaine Spiliopoulos, What Every First-Year Female Law Student Should Know, 7 COLUM. J. GENDER & L. 267, 308 (1998).


\textsuperscript{95.} See Weiss & Melling, supra note 3, at 1358-59; Morrison Torrey, You Call That Education?, 19 WIS. WOMEN’S L.J. 93, 94 (2004).

\textsuperscript{96.} Guinier et al., supra note 39, at 93.
portant as trial preparation and practice,” such that vigorous verbal battle is merely one part of zealously representing one’s client.97

Other reform proposals focus more specifically on gender. An early approach was to counsel law schools to admit more female students.98 Although gender balance among students has almost reached parity with the larger population, law faculties are still dominated by men,99 so it is unsurprising that a common suggestion is for law schools to hire more female faculty members.100 In a survey at Chapman Law School, Judith Fischer found better student reports of mentorship with faculty members as well as higher student self-esteem as compared to other student surveys, and attributed the better student quality of life at least in part to a more diverse faculty.101

Other proposals related to student and faculty interactions include diversity training for faculty members so that professors are aware of the particular challenges and stresses facing their female students.102 Both professors and students have argued that schools should better connect students and faculty, particularly creating mentorship relationships.103 Bashi and Iskander also argue that professors should do a better job of not only communicating expectations, but giving greater feedback to students and affirmatively reaching out to students, creating the “friendliness cues” that female students sometimes need in order to feel comfortable contacting

97. Bashi & Iskander, supra note 5, at 435.
98. Krauskopf, supra note 24, at 318. But see Bowers, supra note 13, at 160 (arguing that in years with the highest percentage of female students, “women’s overall performance has not been better than an average year”).
99. Neumann, supra note 7, at 322 (finding that in the years 1996-99, only 9% of law school deans and 26% of tenured or tenure-track faculty were female); Bashi & Iskander, supra note 5, at 394-95 (noting that in 2006, females “comprise one-third of law school faculty members, where they are concentrated in non-tenured positions”).
100. Cassman & Pruitt, supra note 44, at 1282-83; Kevin R. Johnson, The Importance of Student and Faculty Diversity in Law Schools: One Dean’s Perspective, 96 IOWA L. REV. 1549, 1550 (2011); Torrey, supra note 15, at 813; Weiss & Melling, supra note 3, at 1356-57; Bashi & Iskander, supra note 5, at 429-31; see also Meera E. Deo, Maria Woodruff & Rican Vue, Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum, 29 CHICANA/O–LATINA/O L. REV. 1, 26 (2010) (arguing that faculty of color and female faculty are more likely than white male faculty to incorporate discussions involving race and gender into first-year core courses); YALE LAW WOMEN, supra note 38, at 63-64. See generally Kathleen S. Bean, The Gender Gap in the Law School Classroom—Beyond Survival, 14 VT. L. REV. 23 (1989) (providing a trenchant analysis of the difficulty of being a female law professor dealing with the gender gap between male ideal and female reality).
102. Dowd, Nunn & Pendergast, supra note 87, at 42-44.
103. Iijima, supra note 75, at 533-35; YALE LAW WOMEN, supra note 38, at 6-7.
professors outside of the classroom.104 (At the same time, however, more than one article also recommends that schools have clear sexual harassment policies that regulate relationships both among students and between students and faculty.)105

Finally, and unsurprisingly, multiple individual studies call for continued examination of the status of gender and the classroom.106 Further analysis would not only help to identify effective reforms, but as Celestial Cassman and Lisa Pruitt discovered when they surveyed students at UC Davis, simply being asked how they were doing made students feel better: "[T]here is value in the very exercise of consulting one's constituencies. We were struck by students' enthusiasm for the survey because it represented the opportunity to voice their opinions and, essentially, to give feedback to the law school."107

It is troubling, however, that there are so many studies over so many years with such similar findings. As Marsha Garrison pointed out eight years after Becoming Gentlemen was published, "Our data thus support the efficacy of the reforms urged by the Penn researchers, but cast doubt on their sufficiency."108 It seems beyond dispute that legal education has improved for female students, and that there is much to learn from existing literature and its prescriptions for educational reform. But it is not enough.

III. EXCEPTIONS TO THE RULE

In order to broaden the perspective to identify additional responses to the gender problem in the classroom, it is important to note a fascinating paradox embedded in all of the statistics showing underperformance or unhappiness in female law students: a subgroup of female law students do very well in law school. To some extent, this is likely a regression to the mean: numbers of female students increased, law schools began to address some of the most explicit expressions of sexism, and female students, in the words of a Columbia law student, begin to "get the hang of things" as much as male students do.109 Furthermore, no study has found that all female stu-

108. Garrison, Tomko & Yip, supra note 19, at 539.
dents perform worse than expected or are unhappy in law school. Many
students succeed in, as Lani Guinier put it, becoming gentlemen.110

There is a distinct cohort of successful female students who seem to
perform particularly well, yet whose performance can be masked in averag­
es. In the Bashi and Iskander study at Yale, as outlined above, female stu­
dents were found to be generally less likely to speak in class.111 Yet break­
ing out the population of students who are willing to speak in class removes
the gendered pattern: looking only at students who spoke in class at least
once, there was no difference in how frequently male and female students
spoke.112 Similarly, when assessing academic performance in law school,
female students on average perform worse than male students—unless the
group of students with the highest undergraduate GPAs is broken out.113

Among students who graduated college with a GPA between 3.76 and 4.0,
the female students earn higher grades in law school than their male coun­
terparts.114 Although Bashi and Iskander found disproportionately low fe­
male membership on The Yale Law Journal, women served as Editor-in­
Chief in numbers equal to men.115

What, then, is the difference between women who perform better than
expectations in law school and those who are alienated by their experience?
One hypothesis is that high-achieving female law students are simply “most
like men,”116 and thus thrive in an environment that is ill-suited to the major­
ity of their fellow women. This solution is deeply unsatisfying to scholars
such as Deborah Rhode, who argue that “efforts to claim an authentic fe­

110. Guinier et al., supra note 39, at 59-60.
111. Bashi & Iskander, supra note 5, at 409-12.
112. Id. at 406-07.
113. WIGHTMAN, supra note 44, at 19.
114. Id.
115. Bashi & Iskander, supra note 5, at 424 & n.120 (“In five of the last ten years, women have held the journal’s most senior post.”). Because only one person serves as Editor-in-Chief at one time, this figure can change very quickly. Bashi and Iskander do not refer to a specific ten-volume span, but the only pre-publication range with five male and five female Editors-in-Chief is Volumes 104 through 113, reaching through 2004. A similar count is possible with Volumes 108 (1998-99) through 117 (2007-08), for which I served as Editor-in-Chief. The Editor-in-Chief for all four Volumes since then has been male.
116. Weiss & Melling, supra note 3, at 1301. Multiple commentators cited above refer to Carol Gilligan’s book In a Different Voice, which argues that men and women generally understand rights differently (through a rights-based for men or care-based for women lens), and concludes that legal education should offer a different approach that is more hospi­
table to this theoretically female perspective. See Taber et al., supra note 10, at 1212 & n.26; Guinier et al., supra note 39, at 15-16; see also Krauskopf, supra note 24, at 316 (“Much of the literature, both empirical and anecdotal, postulates fundamental differences between females and males that could cause the same educational experiences to be understood dif­
derently by men and women. Whatever the cause of these differences (and opinion is divided), many agree that a significantly higher percentage of females than males in our culture are relationship-oriented rather than rights-oriented.”).
male voice illustrate the difficulty of theorizing from experience without homogenizing it. To divide the world solely along gender lines is to ignore the ways in which biological status is experienced differently by different groups under different circumstances."\(^{117}\)

It is the contention of this Article that most existing analysis of the gendered impact of legal education misses one critical step: it is not that most female law students are faced with legal education and find it disadvantageous across the board. Rather, many female law students are faced with a specific model of the ideal law student, who is male, and unfavorably compare themselves to that model.

Professor Guinier compares the ideal law student to an absolute height requirement for police officers in New York City: because the actual height requirement was drawn from a conception of the police officer as male, the absolute requirement resulted in two immediate effects.\(^{118}\) First, almost no women qualified to be police officers because they didn’t meet the requirement.\(^{119}\) But more insidiously, the relatively arbitrary height requirement became a defining characteristic: it “defined the job of police officer as something only tall people are capable of doing, and normalized a particular type of officer—tough, brawny, macho.”\(^{120}\)

In the same way, law school privileges a certain set of characteristics because they are partly typical of some of the historically successful students in a student body that used to be exclusively male. The circle is then completed when those characteristics are institutionalized as defining what a successful law student looks like. These characteristics include being willing to speak up aggressively in class, voicing half-formed arguments and verbally sparring with other students and the professor. Such a student is eager to explicitly compete with his peers, such as vying for limited spots on the school’s law review either through academic performance or successful execution of a writing competition or other admissions mechanism. He “rushes the podium” to speak with his professors after class, and visits their office hours frequently enough to feel confident asking them for letters of recommendation for his clerkship applications.

These characteristics are not the only ones necessary to be a successful law student—indeed, given the widespread derision of “gunners,” such traits are recognized as negative ones when exhibited to excess. Neither are these characteristics universally male—there are plenty of male students who are intimidated by the Socratic method, or do not feel comfortable going to a professor’s office hours. But because every model of a successful law student in previous decades has been male—because virtually every

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117. Rhode, supra note 94, at 1551.
118. Guinier, Fine & Balin, supra note 1, at 18-19.
119. Id.
120. Id. at 18.
portrait hanging on the wall is of a male figure—the most visible characteristics of law school success have become conflated with traditional indicia of masculinity.

So what happens when women compare themselves with that male ideal? Much of the time, female students rate themselves unfavorably, predicting their abilities as well below their actual performance. Female students assessed themselves as, in the words of Adam Neufeld, "alarmingly lower than men in skills like legal analysis, quantitative reasoning, and ability to think quickly on one's feet." 121 For example, in a survey of law students, 33% of men believed themselves to be in the top 20% of their class as rated by legal reasoning skills. 122 Only 15% of women had the same confidence. 123 Forty percent of men believed themselves to be in the top 20% by quantitative skills, versus only 11% of women. 124 Such discrepancies still appeared when controlling for undergraduate major, and more strikingly, even after controlling for grades in their first semester of law school. 125 In other words, female students who were actually performing at the same level as their male counterparts still assessed their legal reasoning skills as lower than the men. 126 Furthermore, this gap in self-assessment may only appear after legal studies begin: at one survey of students attending law school in Ohio, 41% of female students, but only 16% of male students, said "that they often feel less intelligent and articulate than they did before law school." 127 Female students are often aware of their lower participation in activities such as speaking in class, leading to greater feelings of frustration and low self-esteem. 128 The Twenty Women support group at Yale wrote plainly: "We are disappointed with ourselves for not always being active and engaged members of our academic community because we thereby

121. Neufeld, supra note 3, at 514; see also Sandra R. Farber & Monica Rickenberg, Under-Confident Women and Over-Confident Men: Gender and Sense of Competence in a Simulated Negotiation, 11 YALE J.L. & FEMINISM 271, 291-92 (1999) (finding that female students rated their own competency as lower than male students following a negotiation exercise); WORKING GRP. ON STUDENT EXPERIENCES, supra note 32, at 4 ("Given the opportunity to rank their abilities in various areas, women gave themselves significantly lower scores in skills like legal analysis, quantitative reasoning, and ability to think quickly on one's feet, even after controlling for demographics and undergraduate major.").

122. Neufeld, supra note 3, at 548.

123. Id.

124. Id. at 548-49.

125. Id. at 548.

126. See id.

127. Krauskopf, supra note 24, at 314.

128. See Cassman & Pruitt, supra note 44, at 1249-50 (reporting that female students perceived male students as speaking more in class and that female students were less likely than male students to say they were satisfied with their rate of class participation).
frustrate our opportunities to gain the power of law and we perpetuate our subjugation to its use by others.”

This frustration and low self-assessment then perpetuates itself as female law students self-select out of other opportunities. Yale Law School established a 1995-96 Dean’s Ad Hoc Committee on the Status of Women at Yale which studied the success rates of female clerkship applicants and found that while women applied less frequently than men, the success rates of female law students were higher than those of their male peers—and explicitly theorized that the difference was “because they self-selected to a greater degree.” As discussed above, female students at Yale are markedly less likely to resubmit notes for publication in the law review. Students who believe their skills are below average are more likely to take less traditional classes such as clinics or negotiation courses—obviously not problematic in themselves, but to the extent such students opt out of traditional markers of achievement and courses taught by professors whose mentorship would further benefit them, those students are disadvantaging themselves.

Similarly, female students who feel that they are underperforming in the classroom are less comfortable reaching out to their professors outside of the classroom, either for advice or to request letters of recommendation.

As discussed above, a smaller number of female law students do not share this experience of poor self-assessment and subsequent opting-out of traditional paths to achievement. An individual in this smaller population takes stock of the traditional markers of law school success, compares herself to the ideal, and judges herself favorably. It is unclear, and probably unimportant, whether such a student does not perceive or simply does not judge significant the gendered nature of the traditional law student. It is enough that she is able to disregard the gendered elements, and accurately take stock of her intelligence, initiative, and willingness to be assertive.

IV. POSITIVE PSYCHOLOGY’S LESSONS

The key question, then, is whether it is possible to identify why this subgroup of female law students is relatively unaffected by the gendered

129. Weiss & Melling, supra note 3, at 1319.
130. Bashi & Iskander, supra note 5, at 422 n.110.
131. See supra notes 57-60 and accompanying text.
132. Neufeld, supra note 3, at 547. Interestingly, the Women, Leadership and Equality program at the University of Maryland School of Law offers a course called Gender Negotiation that focuses on personal (as opposed to client-generated) negotiation, giving students practical experience in contexts such as salary negotiation. See Nina Schichor, Mitigating Gender Schemas: The Women, Leadership & Equality Program at the University of Maryland School of Law, 30 HAMLINe J. PUB. L. & POL’Y 563, 572-79 (2009). The course has received universally positive feedback from students. Id. at 579.
133. Bashi & Iskander, supra note 5, at 422.
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aspects that hamper the larger group of her fellow students. One answer might lie in the application of positive psychology. Positive psychology is in contrast to a "disease model" of psychology, which examines problems with an eye to fixing or removing them. Rather than focus on the problems, positive psychology identifies behaviors and characteristics that make people happy and healthy in order to promote those traits in others. In other words, it is not simply a lack of depression that makes someone happy, so focusing on removing negative elements of a patient's life is not enough. In addition, psychology can identify "a whole host of states, traits, and emotions that combine to make life worth living." It might be argued that because law students are generally overworked and overstressed, the objectives of positive psychology are not achievable—no one can be happy in law school. There is general agreement among psychologists, however, that happiness is determined by more than internal predisposition and external influences. Todd David Peterson and Elizabeth Waters Peterson, who examined the promise positive psychology holds for legal education, explain "that while 50% of our happiness is genetically predetermined and 10% is based on external circumstances, up to 40% is within our control and can be altered through intentional activities." Positive psychologists, as well as law faculties and students, should therefore explore what intentional activities will make female law students happier.

Some recommendations from positive psychology overlap with the reforms suggested above. A major suggestion by the Petisons involves the concept of encouraging students to play to a "signature strength." This does not refer to superior ability with regard to torts versus contracts—rather, "signature strengths" mean advantageous qualities of character; traits such as curiosity, authenticity, social intelligence, fairness, forgiveness, or gratitude. Several commentators examining the performance of female students have proposed a broader curriculum, both in terms of subject matter and teaching style, so that adversarial dialogue is not the only tool by which students are assessed. Positive psychology provides an additional justification for wider course options: a student who is particularly strong in social intelligence will not only perform particularly well in a course on negotiation or alternative dispute resolutions, but will feel reaffirmed, more confident, and quite possibly happier when such a course is available. Addi-
tionally, people are happier when they believe what they do is important. Satisfaction, in other words, can turn on the “perceived meaningfulness of work.” It may be a futile goal to make all of legal education feel meaningful to students, but at least two suggestions can be emphasized: first, many students derive great satisfaction from work in clinics, in which they work on actual cases and in some cases have individual clients. The importance of being engaged in work perceived as meaningful reaffirms the utility of clinics not only to teach students practice skills, but also to make them happier students. Second, many students do not plan to take jobs that require the verbal gymnastics characteristic of Socratic dialogue. Such skills are important for litigators, but students who are interested in corporate work, or even students aware that their first years of practice in law firms will be much more oriented toward document review rather than courtroom time, may feel particularly frustrated when asked to practice skills they do not necessarily need. This is not to say that Socratic dialogue should be eliminated, but it is doubly important to offer courses to students who are not only more comfortable in other pedagogical methods, but who see other methods as teaching techniques more relevant to their future careers.

Another recommendation deals with self-assessment: how to make more female law students compare their own capabilities favorably to their peers. One of the skills taught in law school, particularly in the usually disorienting first year, is learning to “think like a lawyer.” A crucial component of this is searching for weaknesses in arguments, logically critiquing legal positions from a rational and skeptical viewpoint. Emotions have no part in thinking like a lawyer. This shift in viewpoint in how to argue, how to decide what is relevant, and how much to critique can affect analysis of personal as well as professional issues. In essence, female students may be thinking like a lawyer too much, by counting all the ways in which they differ from the ideal law student with a critical eye. It may thus be particularly helpful to provide examples that show that self-criticism can be constructive and need not determine ultimate success or happiness in law school. For example, in a legal writing course for first-semester 1Ls, one

143. Id. (“We are made to argue both sides of a case with little emotional commitment to either. We are told that emotions have no role to play in learning how to think like a lawyer, that emotions make messy things out of arguments.”).
144. See Gary A. Munneke, Law Practice Management: Everything You Need to Know (About Practicing Law) . . . You Learned in Law School, N.Y. ST. B.A.J., May 2009, at 32, 32 (“I would argue that this ability to think like a lawyer transforms not only the way you deal with legal questions, but also the way you address other issues in your personal and professional life.”).
instructor has the class publicly critique a writing sample before revealing that it was her own first legal writing assignment as a student. The instructor thus provides concrete proof that although students will likely experience plenty of critical evaluation in law school, it does not mean that they lack a talent that others have, nor should they judge themselves harshly in a determinist way.

Finally, one of the most important lessons from positive psychology deals with classroom participation. Multiple studies of female law students have found that professors treat female contributions to discussion differently than remarks from male students. Sometimes professors are dismissive or respond negatively to female students, which for obvious reasons would inhibit contributions from women. But sometimes the disparate treatment may be thought benign, or even motivated by a desire to help female students. At UC Davis, while some students reported that professors were less respectful of female students, others believed that professors were “more gentle” towards women, tried to “make questions easier for women,” or as one male student put it, were “nicer to women” because they “assume [women] can’t respond to intense questioning.” A study by the Association of American University Women found that professors were more likely to “probe a male student’s response to a question for a fuller answer requiring a higher level of critical thinking [and] wait longer for a man to answer before going on to another student.” Bashi and Iskander suggested that professors at Yale treated female students differently because of “hesitation on the part of some faculty members to challenge women or to engage their ideas.”

This is not to say that the problem in law school is that professors are not hard enough on female students. It is worth stressing that much of the feedback emphasized professors were dismissive or outright patronizing of female students. But there are also professors who are quicker to cease questioning students they perceive to be struggling, or who are reluctant to let a classroom sit in silence for a full minute as a student on call attempts to formulate an answer. Positive psychology has suggestions for both those scenarios: use feedback in the style of optimistic attribution.

146. See, e.g., Cassman & Pruitt, supra note 44, at 1250-51.
147. Id. at 1251.
148. Id. at 1251 (alteration in original).
150. Bashi & Iskander, supra note 5, at 409.
Optimistic attribution is a straightforward concept: if you ask people to explain things about the world, do they use positive or negative language? If you ask a law student how she is doing in her coursework, does she say, “I just don’t think fast enough to keep up in class”? Such a statement would demonstrate a pessimistic outlook: not only is the statement negative, but it has the three dimensions of “permanence, pervasiveness, and personalness.” The problem is internal to her own capabilities; she cannot change it, and it will affect her performance throughout her law school career. In contrast, a student with an optimistic attribution style believes that any negative statements are “temporary, specific, and hopeful.” Such a response might be “I got lost today in class, but I think I did the assigned reading too fast.” The student with a pessimistic attribution style is more likely to be depressed and more likely to be intensely self-critical. The student with an optimistic attribution style will not only have more faith in their capabilities, but will likely be happier.

In the fraught atmosphere of the law school classroom, professors can try to use the language of optimistic attribution to respond to students. This will model optimistic attribution as well as provide more positive feedback even to students who are not giving the correct answer every time. In her article Creating the Optimistic Classroom, Corie Rosen provides a particularly clear explanation of the danger of both pessimistic and neutral responses to incorrect student answers:

[A] common feedback situation is one in which a professor is confronted with a clearly incorrect answer in the course of a Socratic dialog and, not wanting to respond to the incorrect student with targeted criticism, simply ignores the answer, dismisses it out of hand, and calls on another student to tackle the problem before the class. That feedback may be silent, but in many important respects, it is likely just as negative as a directed pessimistic statement. This silent response not only fails to encourage flexible optimism, but likely also serves to defeat and embarrass the student in the same way that pessimistic feedback would.

In contrast, Rosen suggests that professors use temporary, specific, and hopeful language to respond to an incorrect answer, such as: “You haven’t reached the right answer yet,” (Temporary); ‘There is a better answer to this problem,’ (Specific); [or] ‘You have the case in front of you—use its exact language, and you can develop a better answer,’ (Specific/Hopeful). Criticism in the form of optimistic attribution still corrects the answer, but also expresses a belief that the problem is a fleeting one, and that the student has the skills to identify a stronger argument. Such tech-

152. Id. at 329.
153. Id. at 339.
154. Id.
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niques thus both address some of the criticisms of Socratic dialogue and provide additional “friendliness cues” that may encourage female students to contact professors outside of the classroom.155

Positive psychology provides a particularly fruitful avenue for reform for several reasons. Although aspects of positive psychology will likely prove especially beneficial for female students, the reforms are not seen as targeting women for different treatment. This is both a pragmatic advantage, as proposals are less likely to generate opposition from traditionalist stalwarts, and is more palatable for feminists who reject the contention that women generally benefit from different educational models than men do. And it is certainly no small advantage that positive psychology would likely make all students happier, regardless of their gender. But there is particular reason to believe that positive psychology and optimistic attribution will be effective for female students. There is some research showing that pessimistic explanatory styles correlate with a higher LSAT score,156 perhaps because the criticism of the pessimist lends itself to the logical reasoning skills of thinking like a lawyer. As discussed earlier, female students entering law school on average have higher undergraduate grades, while male students on average have higher LSAT scores. There is reason to believe, therefore, that female students may learn to employ optimistic attribution styles quicker or better than their male counterparts.157

CONCLUSION

For several decades, women in law school have been less happy and less successful, on average, than their male counterparts. Part of their negative experience is likely due to an unfavorable environment and pedagogy, but some of the stress and pressure of legal education appears to be caused by overly harsh self-criticism as female students compare themselves to a male norm. Although examination of negative factors affecting most women is still useful, lessons from positive psychology offer a new avenue of reform to address this internal judgment. Positive psychology’s lessons may improve the mental and emotional wellness of all law students, which in the changing legal market and educational world is particularly important, but will likely prove particularly helpful to female students.

155. See supra note 63 and accompanying text.
157. See id. at 399. Of course, the flip side to this is that learning optimistic attribution styles might somehow harm a student’s logical reasoning skills. See id. This likely confuses correlation with causation, however, and is also a pessimistic response!