




8-11-2016

# Channeling the River: Using Positive Psychology to Prevent Cultural Helplessness, as Applied to African-American Law Students

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## **Abstract**

*Helplessness deficits* are characterized by an organism's failure to escape escapable situations after exposure to aversive stimuli. It has recently been learned that helplessness is the mammalian default protective response, and that it is subdued as mammals learn to control their environment. Human helplessness responses are mediated by our ability to *think*; explanations for adverse stimuli that tend toward the individual's inability to control a stimulus can cause a person to exhibit helplessness deficits. This paper proposes a theory of *cultural helplessness*, positing that information and beliefs spread through cultural transmission can provide individuals with automatic explanations, which can potentially lead to helplessness deficits across a population when group members are subjected to similar aversive stimuli. This theory is applied to a group of African-American law students who have the ability to score well on the LSAT and pass the Bar Exam on the first try, but do not. Positive psychology, applied as part of an interdisciplinary strategy, is proposed as a way to help these students to perceive themselves as being in control of their fate, thus allowing them to achieve according to their ability.

## **Keywords**

positive psychology, learned helplessness, explanatory theory, education, African-American achievement, law school, culture, cultural transmission, stereotype threat, capital deficiency theory, race, Bar Exam, LSAT

## **Disciplines**

Legal Education | Linguistic Anthropology | Other Psychology | Race and Ethnicity | Social and Cultural Anthropology | Sociology of Culture

Channeling the River: Using Positive Psychology to Prevent Cultural Helplessness,  
As Applied to African-American Law Students

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A Capstone Project Submitted  
In Partial Fulfillment of the Requirements of the Degree of  
Master of Applied Positive Psychology

Advisor: Martin E. P. Seligman

Date: August 11, 2016

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As Applied to African-American Law Students

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### **Acknowledgements**

First, to my girlfriend, Valencia Parris, my mom, Edith Thomas, and my nephew Roderick Thomas, thanks for putting up with my absence over the course of the past year while I traveled to Philadelphia once a month.

To Marty Seligman, thanks for agreeing to be my advisor, for your support of my ideas, and for encouraging me to push ahead and fully consider solutions, rather than being satisfied with describing an interesting problem.

To Martha Knudson and Darrah Wolfe, thanks for being my surrogate audience, reading through my drafts, fixing my typos, and asking questions I didn't realize I hadn't provided answers for. Also to Martha and her husband Tyler, for reviewing my business plan.

Finally, I'd like to thank all of the researchers and professors (some I know personally, most I do not, but they were kind enough to answer my emails) who provided me with insights into human nature, leads on articles and books (even if the references didn't make it into the final draft), and helped me to reframe my own questions in ways I would not have otherwise considered: Wayne Baker, Deborah Bishov, Anne Brafford, Leona Brandwene, Bram Buunk, Lauren Cheatham, Charles Cobine, David Cooperrider, Angela Duckworth, Jane Dutton, Josiah Evans, David Gal, Marybeth Gasman, Daniel Gilbert, Kelly Goldsmith, Patricia Graham, Jon Haidt, Ralph Keyes, Barbara Mellers, Caroline Miller, Eric Molleman, James Pawelski, Dan Pink, Joshua Plotkin, Raj Raghunathan, Reb Rebele, Julie Reuben, Linda Reustle, Joshua Rothman, Judy Saltzberg Levick, Peter E. Schulman, Paddy Steinfort, Claudio Tennie, Danny



Torrance, Heather Williams, Klaus Zuberbeuhler, and anyone I might have missed for your willingness to help, share information, and provide me with insights I had not previously considered.

### Foreword

The title of this paper is derived from four books: *Deep Like the Rivers: Education in the Slave Quarter Community, 1831-1865* (Webber, 1978); *The Shape of the River: Long Term Consequences of Considering Race in College and University Admissions* (Bowen & Bok, 2006); *The Source of the River: The Social Origins of Freshmen at America's Selective Colleges and Universities* (Massey & Charles, 2006); and *Taming the River: Negotiating the Academic, Financial, and Social Currents in Selective Colleges and Universities* (Charles, Fischer, Mooney, & Massey, 2009). These four books address different aspects of African-American education. Webber (1978) uses the metaphor of the river to describe the education of slaves. On the one hand, there were the beliefs, values, character, and information (or lack thereof) that slaveholders tried to instill in the slaves. Despite these attempts to limit their development, the slaves built an entire culture largely hidden from slaveholders. This hidden culture, education, and society was what Webber was referring to in choosing a line from Langston Hughes' *The Negro Speaks of Rivers* as his title.

In a similar vein, Bowen and Bok (2006) studied how race-based affirmative action policies have actually worked in practice. While the arguments for and against may be common knowledge, the student experience is largely hidden from view. Likewise, Massey and Charles (2006) and Charles et al. (2009) report on a longitudinal study of freshmen at Ivy League and selective colleges. This study helps to inform us what proportion of students come from various backgrounds, and what these students do once they are accepted into these schools. Again, factors that are largely hidden from view.

I applied to the Master of Positive Psychology program because I believed I could use what I would learn to help African-American students who should pass the Bar Exam but do not.

Over the course of the year, my ideas on the scale and nature of the issue and how to truly assist this population evolved. It was only after taking a step back and thinking about factors common to all humans that I could get a clear idea of what might be affecting the success of this specific group.

Today, schools and companies all over the United States seek diverse candidates. But, in the case of attorneys, only five percent of all licensed attorneys are African-American. There simply is not enough talent available to fill the demand. Positive psychology can help fill this gap. To extend the metaphor, positive psychology can help *channel the river*, helping African-American students who should do well in law school to live up to their potential. If successful, the solution proposed in this paper can be adapted to other levels of education, helping these students' formal education to be as deep as our ancestors' informal education.

### **Introduction**

In the fall of 2012, I found myself running Brooklyn Law School's student newspaper when the July 2012 New York Bar Exam results were published. Our results? A slight decline – 85.7% of the class of 2012 passed, down from 89.1% in 2011, which itself was down from 89.7% in 2010 (Brooklyn Law School, 2016). The students, including me, were worried. To us, these continued, albeit slight, drops meant that our personal chances of failing the exam were significantly higher than they were when we entered school. Even worse for me, during the course of my investigation for the paper, I learned that approximately half of Brooklyn Law's African-American examinees had not passed (New York State Board of Law Examiners, 2012). Suddenly, in the space of a day, my chance of passing the Bar Exam dropped by 30 percentage points!

I later learned that the decline in Bar Exam pass rates wasn't an anomaly. Instead, it was a reversion to the mean. Though it is widely accepted that the first indicators of The Great Recession occurred in 2007 (USA Today, 2013), there are hints that the first indicators occurred much earlier. The New York statewide pass rate peaked in 2008 (Thomas, 2013). Three years earlier, the entering class was made up of students who would not have chosen law school but for the fact that they could not find a job upon graduation. As the Great Recession got underway, more and more people applied to school either because work was unavailable or perceived as unavailable. The larger applicant pool allowed schools to more easily fill their classes with students whose academic credentials were higher than historical averages. These students continued to pass the Bar Exam at higher rates than historical averages, slowly reverting to the mean over the course of several years as the recession took its course and the applicant pool returned to its normal size (Thomas, 2013).

Based on this information, I predicted that the pass rate of my class, Brooklyn Law's class of 2013, would continue to revert to the mean, dropping just beneath the class of 2012. I was wrong. Instead, 94% of our class passed, Brooklyn Law's highest pass rate in 25 years (Miller, 2013). Additionally, nearly 91% of African-American students passed (J. Hall, personal communication, April 5, 2014). The celebration didn't last long – only 84.5% of Brooklyn Law's class of 2014 passed the July 2014 exam (Brooklyn Law School, 2016). Again, nearly 50% of the African-American students passed (NY BOLE, 2014).

A look at the statewide pass rates from 2012-2014 reveals a similar, but far less dramatic pattern. For all persons taking New York July examinations, the pass rate changed from 68% in 2012 to 69% in 2013 to 65% in 2014 (National Conference of Bar Examiners, 2012; NCBEX, 2013; NCBEX, 2014). For first time examinees, the changes were similarly small: 76% in 2012, 78% in 2013, and 74% in 2014 (NCBEX, 2012; NCBEX, 2013; NCBEX, 2014).

Notably, the classes of 2013 and 2014 were statistically identical, not just at Brooklyn Law, but nationally (Karas, 2014). The disparate results between the two classes led to a debate on the question of how two statistically identical classes could have such different results. Some believed that the July 2013 examination was less difficult than the July 2014 examination (Denney, 2015). Others, like me, believed there was something different about the students.

What happened at the schools whose pass rates climbed and dropped so dramatically? My hypothesis was fear. *U.S. News and World Report's* director of data research informed me that in 2012-2013, the magazine changed its method of ranking law schools, causing a number of schools to change position (R. Morse, personal communication, March 12, 2013). Brooklyn Law dropped from #65 to #80 (Noël, 2013). Over the course of a week, my classmates panicked as my staff tried to figure out what was going on. The dean cleared his schedule for two days to talk

with students about whatever was on their minds. I'm not entirely certain that all of my classmates accepted or cared about Mr. Morse's explanation; the significant change in the school's ranking meant to many of us that we would have a much harder time finding jobs.

Two months later, we began studying for the Bar Exam. A few months after that, nearly all of us passed.

At the time, I figured that the negative emotions elicited by the events of that week caused the class of 2013 to focus more intensely on our work. Those who would have otherwise failed, not from lack of ability, but from a less intense focus on the task at hand stemming from inaccurate beliefs about their ability, put those thoughts aside and worked their hardest to overcome the perceived challenges associated with the school's new ranking. In the course of writing this paper, I learned that Gable and Harmon-Jones (2010) theorized as much, suggesting that negative affective states with high motivational intensity generally narrow attention. I also learned that Finucane (2011) found support for Gable and Harmon-Jones' hypothesis in a study of 98 undergraduate students, examining the effects of fear and anger on selective attention.

For me, the class of 2013's results were a signal – more people have the ability to pass the Bar Exam on the first try than actually do. More specifically, four out of ten African-American students at Brooklyn Law in 2012 and 2014 could have passed on the first try, but without the extra push from a galvanizing event such as the 2013 changes to the *U.S. News* rankings, these individuals did not maintain the narrow focus necessary to pass over the course of the entire ten-week study period. From that point forward, I sought to replicate the results of the July 2013 exam. However, intensely negative galvanizing events are rare, so I had to look elsewhere.

My first effort was to extend an offer to Brooklyn Law School's Black Law Students Association's class of 2014 to call me if they needed assistance during their study period. Not many of my former classmates took me up on the offer. In October, I was disappointed to learn that only half of them passed.

In November, I decided to regroup and try something more ambitious – to recruit members of BLSA's class of 2014 who passed to provide individual tutoring for the class of 2015. I thought it would be a good idea to include psychology in the program, and not knowing anything about psychology, I turned to Google, searching for “top psychologists.” This search led me to a website that had a profile on Marty Seligman and learned helplessness.

As I read about learned helplessness, it reminded me of something I noticed in conversations with people going back at least 10 years. Specifically, many of my friends and acquaintances refused to engage in activities or take on tasks that I and others perceived them as being perfectly capable of. A few gave legitimate reasons, such as family obligations, for why they came to the conclusion that they were incapable of doing something. Others, however, reasoned that some unknown or set of predetermined factors would stop them from achieving their objectives.

Curious, but not wanting to search through the entire library, I Googled Marty and sent a probably too long email asking where I could find more information on learned helplessness. He was kind enough to reply with a list of resources, including a link to Penn's Master of Applied Positive Psychology (MAPP) program.

After a few months, a few videos, a few articles, and a few books, I decided to apply to MAPP. I did so believing that it was my best chance of learning what I would need to know in order to apply psychological principles to improving African-American success rates on the Bar

Exam. Early in our first semester, we learned that happiness could spread through networks of people (Fowler & Christakis, 2008). It was this piece of information that inspired my question: “What if helplessness is spreading through networks of people as well?” Once I settled on the idea that it might, the next question was how. A mid-semester presentation on culture set the next link in the chain, provided there was research on how information traveled through groups of people. What follows is the result of searching for the answers to those questions.

Part I proposes a theory of cultural helplessness, providing a history of learned helplessness, connecting cultural transmission to explanatory style. Part II examines the possibility that helplessness deficits, based on cultural beliefs, are at least partially responsible for the failure of otherwise competent people, in this case African-Americans, from performing to their ability on tests such as the LSAT and Bar Exam. Part II also proposes the use of positive psychology research as a way to help students believe they are in control of their own success, thus preventing helplessness deficits from occurring. Part III presents a business plan for a positive organization, whose first mission will be to use positive psychology to achieve equal results for these students who could pass, but do not.

## **Part I: A Theory of Cultural Helplessness**

### **Introduction**

The guiding principle of cultural helplessness is that *beliefs learned through cultural transmission can cause members of a group to experience helplessness deficits when faced with similar aversive stimuli*. This does not mean that every member of a group will experience helplessness deficits in a given situation. Not only is there a lot of in-group variation between individuals, but most individuals belong to more than one group, providing overlapping sets of



beliefs that can be used to analyze a situation. These additional experiences may promote control for some group members, allowing them to function normally where others do not.

### **The Foundation: Learned Helplessness**

Cultural helplessness builds upon the existing framework of *learned helplessness*, which is “the failure to escape shock induced by uncontrollable aversive events” (Maier & Seligman, 2016, abstract). The understanding of the underlying mechanisms that cause helplessness deficits has been updated a number of times in the past 50 years. The following is a brief review.

**Discovery.** Helplessness was accidentally discovered in the 1960s during research into avoidance and escape responses in animals (Maier, Peterson, & Schwartz, 2000). At the time, Richard L. Solomon of the University of Pennsylvania and his graduate students were attempting to understand what reinforcing factors helped animals to learn avoidance responses to a future negative stimulus. In the course of their research, Overmier and Leaf (as cited in Maier et al., 2000) came across an anomaly. They found that when they induced a Pavlovian fear response<sup>1</sup> in an animal prior to teaching the animal an avoidance response, it often did not learn to escape or avoid a shock (Maier et al., 2000).

Overmier and Leaf later learned that if the animals were taught to escape prior to being conditioned, their experiment would run as intended (Maier et al., 2000). Two of Solomon’s other students, Marty Seligman and Steven Maier, were more interested in the anomalous result and began to study it. First, Overmier and Seligman (as cited in Maier et al., 2000) gave some animals escapable shocks and others inescapable shocks. They found that the animals given escapable shocks learned avoidance responses as expected. Those given inescapable shocks did

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<sup>1</sup> Ivan Pavlov is commonly known for discovering that animals could be conditioned to respond to an unrelated stimulus. He is understood to have made this discovery when he noticed that his dogs salivated upon hearing the dinner bell, even if dinner never came. In the discussed experiment, Overmier and Leaf were trying to condition animals to experience fear when they heard a warning signal (Maier et al., 2000).

not learn avoidance responses. Seligman and Maier (as cited in Maier et al., 2000) later found that animals that did not learn avoidance responses after being subjected to an inescapable shock could learn avoidance responses if they subsequently were given escapable shocks. These results led to the development of learned helplessness theory (Maier et al., 2000).

Initially, Seligman and Maier (as cited in Maier et al., 2000) argued that an animal learns that its voluntary actions will not affect the duration of the shock. As a result, this learning prevents the animal from associating its escape response with ending the shock. It also dulls the animal's impulse to escape (Maier et al., 2000).

**Reformulation.** By 1978, learned helplessness had not only been extensively studied in animals, but also applied to human behavior (Abramson, Seligman, & Teasdale, 1978). However, other researchers began to feel that the existing theory was inadequate to fully explain helplessness in humans. To that end, they reconsidered helplessness through the lens of *attribution theory* (Abramson et al., 1978).

Attribution theory posits that when humans realize they are helpless, they try to ascribe it to a cause (Abramson et al., 1978). The chosen cause “then determines the generality and chronicity of [one's] helplessness deficits as well as his later self-esteem” (Abramson et al., 1978, p. 50). Put another way, our own conclusions impact whether we become helpless, how strong the effect is, and how long it will last for. This is true regardless whether the conclusions we come to are correct or not.

In order to fully explore possible variations of what people might experience, Abramson et al. considered helplessness along several dimensions (1978). The first distinction they made was between *personal* and *universal* helplessness. Personally helpless individuals attribute failures to internal causes (e.g., “I'm terrible at x.”). These individuals believe that they cannot

solve problems that can be solved, but some relevant other person can. In contrast, universally helpless individuals attribute failures to external causes. These individuals believe neither they nor relevant others can solve the problem at hand (Abramson et al., 1978).

These researchers also made a distinction between *global* and *specific* helplessness deficits (Abramson et al., 1978). Global helplessness deficits occur over a wide range of situations, some related to the cause of a failure, some not. Specific helplessness deficits occur over a narrow range, closely related to the cause of a failure. In the literature, Abramson et al. illustrate these dimensions using an accountant who just lost his job as an exemplar. If the accountant is experiencing a specific helplessness deficit, an observer might find that he didn't seek new employment or perform any work that involved accounting, such as his income taxes. If, instead, the accountant is experiencing a global helplessness deficit, an observer would find not only that the accountant didn't look for another job or engage in accounting work, but also that he refused to engage in other parts of his life, including activities with family and friends (Abramson et al., 1978).

Finally, Abramson et al. distinguished between *chronic* (enduring or recurrent) and *transient* (temporary and non-repeating) incidences of helplessness (1978). They argued that a helpless individual's choice of attributions would determine whether his helplessness was chronic or transient, and may also determine the strength of these deficits (Abramson et al., 1978).

Additionally, Abramson et al. suggested that attributions typically fall along three dimensions: *stable-unstable*, *internal-external*, and *global-specific* (1978). The stable-unstable dimension determines the extent of the chronicity of helplessness deficits. Stable refers to factors that are lasting or recurring (e.g. task difficulty). Unstable refers to factors that are sporadic or

short-lived. The more stable the attribution, the more chronic a helplessness deficit is expected to be (Abramson et al., 1978).

The internal-external dimension concerns whether one attributes helplessness to himself or to outside factors (Abramson et al., 1978). Internal attributions tend to have worse outcomes than external attributions because one tends to carry his sense of self with him and also because “external circumstances are usually but not always in greater flux than internal factors” (Abramson et al., 1978, p. 56).

The global-specific attribution dimension is similar to the definitions of global and specific helplessness deficits (Abramson et al., 1978). One expects global attributions to recur across a wide variety of situations. However, specific attributions are expected to recur only across one or a few. One who uses a global attribution can be expected to experience a greater number of helplessness deficits (Abramson et al., 1978).

Seligman (1991) later coined the term *learned optimism* to differentiate between optimistic and pessimistic attributional, or *explanatory styles*. An *optimistic explanatory style* was generally more external, variable, and specific with respect to negative events and generally more internal stable, and global for positive events. A *pessimistic explanatory style* reverses these factors with respect to negative and positive events. Those with more pessimistic explanatory styles would tend to experience a greater number of helplessness deficits (Seligman, 1991).

**Learned Helplessness at Fifty.** Maier and Seligman (2016) recently released the results of neuroscientific research into helplessness. According to them, “the original theory got it backward” (Maier & Seligman, 2016, abstract). As noted above, the original theory assumed that animals generally expect to have control over their environment. However, when subjected to an

inescapable shock, animals *learned* that changing the outcome was not within its power. Thus, they learn to be helpless, displaying anxious and passive behavior even when escape was possible.

Today, it is understood that helplessness is a default reaction to sustained aversive events, and animals can overcome helplessness by learning control. These findings need to be replicated, and a full description of the research that led to this conclusion is beyond the scope of this paper.<sup>2</sup> However, one finding of note is that “*there is nothing in the brain that is selectively turned on by a lack of control, only something that turns things off when there is the presence of control*” (Maier & Seligman, 2016, p. 360).

Based on this new information, Maier and Seligman (2016) now argue that for several days after experiencing uncontrollable aversive events, mammals typically display increased anxiety and passivity. Where the original theory posited that these reactions were learned, the updated theory posits that these reactions are not learned. Rather, these reactions are the default reaction to uncontrollable negative stimuli. The research shows that uncontrollable negative stimuli sensitize a distinct set of neurons. The experience of control cancels this sensitization, and the “expectancy of control [blunts] the impact of subsequent stressors” (Maier & Seligman, 2016, p. 361). In other words, when a mammal has experienced control in the past, and thus expects it in the future, it is less likely to become helpless after experiencing an uncontrollable negative stimulus.

These findings do not take away from explanatory theory. Rather, it seems that explanatory theory is precisely about control. As formulated, individuals with an optimistic explanatory style might be seen as perceiving control with respect to positive events and

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<sup>2</sup> For a full discussion of the mechanisms involved, see Maier and Seligman, 2016.

discounting their lack of control over negative events. To the contrary, individuals with a pessimistic explanatory style seem to perceive a lack of control with respect to positive events and heed their lack of control over negative events. With this in mind, I turn to the question of how humans develop these explanations.

### **The Theory: Cultural Helplessness**

In the introduction, I noted that learned helplessness mirrored my observations of people who were reluctant to engage in tasks they were objectively capable of successfully completing. More precisely, what stood out to me was hearing *the same explanations* from *different people* using *the same words* to explain why they could not complete *the exact same task*. I had done it myself, repeating opinions I heard from others verbatim, using the same tone of voice, as if these thoughts were my own. Over the course of the first few months in MAPP, it slowly came to me. “But wait,” I thought, “if I’m adopting others’ opinions, perhaps the same thing is happening to them. And maybe if one person is experiencing helplessness he can spread it to others. And maybe *that’s* what I’m observing!

At first, my thinking was along the lines of *vicarious learned helplessness* (Brown & Inouye, 1978). Brown and Inouye posited that an individual who observes another of perceived similar ability fail will subsequently devalue her own opinion about her ability to accomplish the same task. They concluded in part that cognition of uncontrollability, not actual uncontrollability, is responsible for the onset of helplessness deficits (Brown & Inouye, 1978).

However, Brown and Inouye’s vicarious learned helplessness didn’t quite fit. I agreed that cognition played a factor, but I wasn’t thinking about helplessness as a result of something one observed. I was thinking about the effect on the persons the observer told the story to, and the effect of hearing the same thing multiple times from different sources. This distinction

became the basis of my inquiry. In the next section, I submit my proposed answer: the explanations that form the basis of explanatory theory can spread through a population via cultural transmission.

**The foundations of culture.** All organisms pass on behaviors and information from one generation to the next through their DNA. However, new behaviors passed on through genomic expression can take a long time to spread through a population. For example, Trut (1999) notes that six generations into a 40-year experiment to domesticate foxes, researchers had to create a new category in addition to what they started with. The new category included pups that displayed strong attention seeking behavior, including trying to get human attention. Eighteen percent of pups displayed this new level of domestication in generation 10, and 35% displayed these domestic behaviors by generation 20. At the time of the article, 70-80% of the population displayed these behaviors (Trut, 1999).

Like other organisms, humans pass on behaviors through genetic means. Unlike other organisms, we also pass information via culture. Richerson and Boyd (2005) define *culture* as “information [conscious and unconscious mental states acquired or modified by social learning] capable of affecting individuals’ behavior that they acquire from other members of their species through teaching, imitation, and other forms of social transmission” (p. 5). Though, this is not to say that genetic and cultural evolution operate via the same mechanisms. Culture is unique to human beings (Tomasello, Kruger, & Ratner, 1993) and accounts for a considerable amount of what we consider different about one another (Richerson & Boyd, 2005). While many of our animal cousins live in elaborate social groups, culture is distinguishable by “the nature of [its] products – for example, material artifacts, social institutions, behavioral traditions, and

languages” (Tomasello et al., 1993, p. 495). Richerson and Boyd believe that human behavior cannot be understood without taking culture into account (2005).

The basis of culture is the human ability to copy and pass behavior and information within and across generations without a significant loss of fidelity (Tomasello et al., 1993; Tennie, Call, & Tomasello, 2009). Tomasello et al. posit that three forms of *cultural learning* – imitation, instruction, and collaboration – drive our ability to retain behaviors and information. This process is *cumulative* – later generations maintain earlier generations’ ways of doing things unless necessity or inspiration incites modifications to the existing way of doing things. From that point forward, succeeding generations retain the modified version of the original behavior or information, until subsequent ideas modify the behavior or information further. This is referred to as the *ratchet effect*, which is believed to be the reason why “human culture accumulates modifications over time in a way that chimpanzee and other animal cultures do not” (Tennie et al., 2009, p. 2406).

Expanding on Tomasello et al., Tennie et al. note that with respect to imitation that primates, including humans, generally focus on the results of an action (2009). However, human children tend to focus on the actions themselves more often than other primates and “engage in such analysis more naturally, more frequently, and perhaps more skillfully, than do chimpanzees and other non-human primates” (Tennie et al., 2009, p. 2409). This allows humans to copy a wide variety of actions (Tennie et al., 2009).

Imitation also helps humans conform to group norms by seeking identification with the group. Cavalli-Sforza and Feldman (as cited in Tennie et al., 2009) believe that identifying oneself as a member of the group explains why “human beings often imitate others simply in order to be like them” (Tennie et al., 2009, p. 2412). This type of imitation extends even to non-



instrumental matters, like fashion (Tennie et al., 2009). The pervasiveness of this trait bolsters Baumeister and Leary's (1995) *belongingness hypothesis*, which states that human beings share a strong desire to develop and maintain at least some strong relationships.

With respect to collaboration, Tennie et al. note that humans are unusual in that we cooperate with non-kin, strangers, and large groups of people (2009). Cooperation allows for greater transmission of ideas, and the potential for individuals to create solutions they could not create alone. Even using tools left behind by others provides a form of indirect collaboration, as the user can build upon older designs without having to speak to the prior user (Tennie et al., 2009).

Finally, Tennie et al. note that all human societies engage in teaching, which may help to transmit practices that can only be learned through imitation (2009). Human children seem to be geared to learn from adults, and their responses help to make sure that behaviors are successfully transmitted. In contrast, adults expect certain behaviors from children, who interpret these expectations as the way things "*should* be done" (Tennie et al., 2009, p. 2412). Children will even correct a third party who they believe is performing an action incorrectly (Tennie et al., 2009). Thus, these modes of transmission help to ensure that information is passed from person to person and from generation to generation.

Tanaka, Kendal, and Laland (2009) provide an instructive example of how information can spread through a population. They used mathematical modeling to show that ineffective medical treatments can spread through a population more easily than effective treatments. The crux of this unexpected result is time. Though a person is more likely to discontinue an ineffective treatment, the effective treatment will remedy one's ailment more quickly. The result being that observers have more opportunities to witness the execution of the ineffective

treatment. Thus, there is a greater possibility of more people adopting the less effective behavior (Tanaka et al., 2009).

Discussing language, Keyes (1992) provides a set of rules for how modifications can spread through a population, over generations. According to Keyes, many of our most common sayings are misquoted or misattributed. This happens, in part, because our memories aren't perfect. When we try to recall something that someone else said, rather than quoting verbatim, we express the thought that sounds closest to what we think we heard. The variation typically shortens the original or switches the order of some of the words. However, not only *what* is transformed, but *who* is transformed. Quotes attributed to famous persons spread through the population more quickly than those that are not, and so many famous people find that the rest of us have put words in their mouths. Often, a saying can become so ubiquitous that it is no longer attributed to anyone. In the end, it may even have a far different meaning than what was originally intended (Keyes, 1992).

Humans not only transmit information, but we can also recognize and react to others' states of mind. One such process is called *emotional contagion*. Nakahashi and Ohtsuki (2015) consider emotional contagion "an evolutionary strategy of dealing with real world events" (p. 481). Emotional contagion is characterized by an instant information transfer from one person to another through acoustic, optical, or olfactory cues. The result of this exchange is that one person copies another's emotion (Nakahaski & Ohtsuki, 2015).

Emotional contagion was demonstrated in the longitudinal Framingham Heart Study, where Fowler and Christakis (2008) found that happiness can spread through networks of people. Recent findings suggest that people are poor judges of whether another considers them a friend, and that persons in reciprocal friendships have a greater influence on each other (Almaatouq,

Radaelli, Pentland, & Shmueli, 2016). In the with these findings, this effect was greatest among mutual friends who lived near each other, and persists up to three degrees of separation (Fowler & Christakis, 2008).

In contrast to emotional contagion is *emotional empathy*. Where emotional contagion causes a second person to produce the same emotion as the first, emotional empathy causes the second person to produce a different emotion from the first (Nakahaski & Ohtsuki, 2015). A final technique is *behavioral mimicry*, where one copies behavior but not emotion. This process is typically much slower than emotional contagion (Nakahaski & Ohtsuki, 2015).

**An example of a belief spread through cultural transmission.** As per Richerson and Boyd, these processes also form the basis for many of our deeply held beliefs (2005). For example, when I was a child, many of the adults in my neighborhood informed me that *children were meant to be seen and not heard*. This happened quite often, because even at four years old, I was strongly interested in being heard. My refusal to be silent when ordered to angered the adults. After all, it was disrespectful for children to attempt to interject in adult conversations. In turn, I was angry at the adults because I wanted to help and I had something important to add. Also, I didn't think the rule made a lot of sense. As a result, I did not adopt the rule for my own life.

Later, when my childhood friends were teenagers, I began to hear them say the same things to younger kids. Interestingly, they were using the same tones of voice as the adults did to admonish the younger kids. I started to realize that the adults probably learned the rule from their elders.

In college and law school I learned that this "seen but not heard" rule was created during the period where slavery was legal in the United States as a way to keep the slave population

under control. However, in the course of researching this paper, I asked a professor at the University of Pennsylvania for resources related to the American origin of the saying. She politely informed me that many sayings are misattributed to slavery, *and* that this particular saying originated 200 years before the first English colony in the Americas – with 15<sup>th</sup> century English clergy (M. Gasman, personal communication, March 18, 2016).

The original version of this saying is “A mayde schuld be seen, but not herd” (Mirkus, 1450, p. 230). It is a homily, a moral rule. Read in context, it would not be understood to mean that women or children should keep quiet. Rather, Mirkus exhorts women to be strong and patient like Mary, warning that cursing and other types of strong language makes one less perfect, and thus, a less desirable woman (1450).

The history of this saying covers nearly every area discussed so far. Over time, *mayde* transformed to *children*. The meaning of the phrase transmuted from an exhortation for women to be strong to an admonishment for children to keep quiet. It was invented by a member of the clergy, whose authority could help it to spread more easily. As a rule, it is ineffective – children are not well known for keeping quiet. This allows for multiple demonstrations of the rule/saying/belief in action. Children learn the saying as a rule; some imitate adults as they grow up, attempting to use the same rule only to discover that it is ineffective. As if by magic, the now-adults have forgotten that they were once children who refused to stay quiet. When their children also refuse to comply, the now-adults exhibit the same emotions that the now-elders did so many years ago. Some eventually abandon the rule, often noting its ineffectiveness to their now-adult children, who retort that this is exactly one of the rules that they were subject to as children. Others hold on, citing tradition despite results. In the end, enough people adopt the rule and demonstrate it to ensure its continued survival.

**From cultural transmission to helplessness.** As shown above, culture is a process of accumulated learning through repetition, imitation, teaching, and change through necessity or innovation. Humans tend to reformulate information learned through language into its shortest possible form, often changing the original meaning of the information in the process. Ineffective behaviors can spread through a population by repeated example. All of these factors can affect our beliefs and inform our expectations of control over our environment. As a result, information learned in this manner can lead to an expectation that an individual does not have control over a situation, thus leading to helplessness deficits for the individual and others in the group who may hold the same beliefs. What follows are examples of how this might arise.

*Example 1.* The United States of America is well known for its cultural ideal of independence from a central authority. I first learned this in seventh grade, when my history teacher told the class in no uncertain terms that we had the *right* to question authority. A cursory examination will trace this formulation psychologist Timothy Leary, who was active in the 1960s. Leary is credited as often saying, “Think for Yourself; Question Authority” (Potter & Estren, 2012, p. 10). Here, the idea is not presented as a right, but as an appeal for people to investigate what others say rather than accepting it at face value. You might come to the same conclusion as what an authority said, but at least the authority won’t be able to take advantage of your ignorance (Potter & Estren, 2012).

A more thorough investigation will trace the idea further, to the late 19<sup>th</sup> century, to the beginning of the movements which resulted in compulsory education in the United States. A number of parties were involved in this transition from parents being the primary source of a child’s education to the state being the primary source of a child’s education (Steffes, 2012). All involved wanted schools to instill independence as a value in children (Steffes, 2012).

However, schools weren't the source of the idea of independence from authority. One hundred years earlier, the United States fought England in the Revolutionary War. Here, the central government of England was "the bad guy" (R. Kennedy, personal communication, February 16, 2016). Benjamin Franklin also makes an appearance, as he is credited with saying, "It is the first responsibility of every citizen to question authority" (Potter & Estren, 2012, p. 10).

Ultimately the idea of independence from authority can be back to the year 1215 and the Magna Carta (Danziger & Gillingham, 2003). However, the Great Charter was not a statement of rights; it was a settlement of a dispute. As noted above, the true nature of the Magna Carta ultimately does not matter. The common understanding of the Magna Carta as a statement of rights and independence from the absolute authority from the crown eventually took hold. This led to the Enlightenment (Danziger & Gillingham, 2003) and ultimately our current understanding that we have a right to question authority.

Americans generally consider individual independence to be a desirable trait. However, in the right circumstances, a belief in independence can foster helpless deficits. Imagine an American student who has come to identify with the idea that he should be independent from authority. One day, the student decides to attend graduate school and starts the process of preparing for the GMAT, GRE, LSAT, etc. As a caveat, this student is intelligent and would have no problem learning the material for the test in question. However, in the course of his education, he was not exposed to the subjects being tested and had little reason to learn them outside of this examination.

Valuing independence and having grown up in a school system that values independent work, he does what nearly half of students who prepare for the LSAT do – he goes it alone (Evans, Thornton, & Reese, 2008). Except that he (like many of us) does not study for this exam

the way we learn in school – by studying the underlying material. Rather, he studies in a way that was learned from others – by finding a study guide that contains only old versions of the subject test and answering the questions.

This mode of study is not terribly effective. He takes the test and gets a score that average rather than exemplary. He tries to figure out what happened. The correct answer is, “I didn’t understand the underlying material and should not have expected to do well.” However, experience suggests a different answer, “This was a fluke. I’ll just take it again and do better next time.”

At this point in his life, independence is his primary mode of operation. The idea of getting help causes cognitive dissonance, if pondered at all. If the cognitive dissonance is strong enough, the student will not even consider taking class after the first failure. Assuming that he does take a class, however (in the case of the LSAT), the mean score for those who take a commercial course is the same as those who study alone (Evans et al., 2008). While I cannot speak for all test preparation companies, the one I used did not do a good job of teaching the underlying material. For the purposes of this example, let us say that the student either studied on his own or with a company that did not adequately prepare him for the test. In either case, the student gets the same score.

At this point, it is clear that the student would benefit greatly from a coach who can teach the material underlying the test. But, in an attempt to explain this unusual second failure, the student falls back on his experience of independent success: *“I’m smart.” “There must be something wrong with the test.” “The test is biased against people like me.” “I don’t need to do well on this test to do well in school.”* If someone suggests getting a tutor, the student responds

with, “*I don’t need help,*” “*That won’t work,*” or “*Tutors are too expensive*” (without having first checked on the price).

Here, the student equates his failure to achieve his goal independently with the question of whether success is within his control. Not being able to pass without assistance is perceived as a lack of control with respect to success. Tutoring is out of the question, rejected as being pointless, especially where the tutor tries to bring something new to the student and the student doesn’t experience immediate success. Here, the student, believing success is out of his control, experiences helplessness, gives up, and either does not attend graduate school or does not apply to his first choice school.

**Example 2.** Reivich and Shatté (2002) recount the story of a female African-American client who lost her composure at an interview for an internal promotion because she believed her interviewers were not seriously considering her for the position, and that they intended to deny her the promotion on the basis of her race.

While it is unquestioned that racial discrimination in the United States has played a part in an untold number of decisions to deny people jobs, housing, etc., nothing in the client’s story suggests that her interviewers intended to discriminate against her. Rather, it seemed that she was a leading candidate for the job. She worked at the company for some time and personally knew her interviewers. However, things went downhill when she perceived an innocuous action by one of her interviewers to be a signal that their minds were already made up against her.

In her own words, she started to think about the difficulties African-American women have had getting jobs because of past racial discrimination. Thus, nothing she could do in that interview would affect the outcome. In that moment, I believe she experienced a helplessness



deficit, based off knowledge that both in the past and today, a decision maker's consideration of race has led them to reject otherwise qualified candidates such as herself.

It should be noted that her reaction – an explosion of anger directed at her interviewers, thus ending the interview and ruining any chance she had of getting the job, was probably culturally derived as well. To me, it is reminiscent of what I learned from other kids in my neighborhood growing up – that when backed into a corner, one must fight back, thus regaining control of the situation. Here, such a response is maladaptive, but may hold value in other contexts.

**Example 3.** Festinger's (1954) theory of *social comparison processes* posits, among other things, that humans are driven to evaluate their opinions and abilities, and that where non-social ways to perform these analyses are unavailable, humans will evaluate their opinions and abilities by comparing them to others. Forsyth's (2000) review of the literature considers social comparison theory as being "as much about group dynamics as it is a theory about individual's perceptions of their opinions and abilities" (p. 98).

People tend to conform to group norms (Tennie et al., 2009). This idea also appears in the social comparison literature. Not only do people tend to adjust their ideas to that of the groups they belong to, but as groups become more cohesive, the more the members' views tend to resemble the mean of the group (Forsyth, 2000). Dissenting voices tend to be rejected, or seek out new groups.

We tend to compare ourselves to others because of our innate desire for high status relative to others in our circle (Schwartz, 2004). *Downward comparisons* (where one compares himself to another of lesser ability or performance) tend to increase well-being (Schwartz, 2004). *Upward comparisons* (where one compares himself to another of greater ability or performance)

can produce an increased competitive drive (Forsyth, 2000), can foster negative mood, decreased well-being, jealousy (Schwartz, 2004), and lower self-esteem (Forsyth, 2000). Individuals will not join groups whose members highly outperform or underperform them (Festinger, 1954), and “individuals may deliberately avoid joining groups that include people who outperform them in spheres they consider to be personally important” (Forsyth, 2000, p. 92).

The literature posits that those who find themselves, through evaluation, to be at the bottom of a group will seek to leave the group. But sometimes groups or comparisons to another group are inescapable, or at least perceived to be inescapable. In law school, for example, groups are artificially created among students of near equal ability by class ranking. Of note is the top 10% of the class, perceived by my classmates as having the best chance of getting the most desirable jobs right out of law school. Also of note is the bottom 25% of the class, generally understood by my classmates as being those most likely to fail the Bar Exam.

Most students who enter law school will finish, but their class ranking is not likely to change much over the course of three years. As a result, a formerly A student is forced to compare themselves to her classmates through most of her law school career. Being at or near the bottom of the class, while simultaneously taking classes with students one perceives to be highly intelligent, can cause a student to feel that success is outside of her control. She may find herself not working as hard toward her second and third years because she gets the same “low” grades regardless of effort. Those who strongly experience helplessness may carry deficits into Bar Exam study, experiencing anxiety during the study period and not working as hard as they need to in order to pass. Alternatively, they may study as hard as needed but experience deficits during the test as a result of seeing unfamiliar material. In either case, these experiences can lead to failure.

**Conclusion**

Generally, helplessness deficits can be activated by a perceived lack of control. In humans, this perception may arise through the explanations one creates for perceived negative events. At least some of these explanations are the product of cultural learning and social comparison. Beliefs spread through a population, and while many of these beliefs are useful, they don't always gel with reality, and can cause a person to expect a lack of control or can foster a belief that one does not have control over important outcomes. In such cases, a portion of a population that inherits a particular belief will be susceptible to helplessness deficits, though it will not be true that everyone in the population will experience helplessness.

I believe that helplessness deficits are a contributing factor in the failure to pass the Bar Exam of law students who have both the ability and training, but who do not pass. In Part II, I discuss how these deficits might come about in certain African-American Bar examinees.

## **Part II: Channeling the River**

### **Introduction**

It is generally accepted that African-Americans and Hispanic/Latino students, as a group, are less prepared for, and achieve in higher education at lower rates than their white and Asian counterparts (Massey, Charles, Lundy, & Fischer, 2003). This section will discuss the historical origins and theoretical understanding of this discrepancy as it relates to African-American law school students, consider how cultural helplessness deficits may play a role on the individual level, and propose the creation of a positive organization to help increase the number of successful African-American law students.

### **Law School: The Numbers**

In order to apply to an American Bar Association (ABA) accredited law school, one must complete a bachelor's degree and take the LSAT. The LSAT tests reading comprehension, one's ability to use logic, and one's ability to identify logical fallacies in other's arguments. According to the Law School Admissions Council (n.d.), who administers the LSAT, the combination of undergraduate GPA and LSAT performance is strongly correlated with first-year law school performance ( $r = .31$  to  $.64$ , median  $.48$ ;  $n$  [law schools] = 178). Law schools use GPA and LSAT to determine which students they will admit, with more elite schools generally attracting the highest performing students.

Converted LSAT scores range from 120-180, with 150 approximately representing the 50<sup>th</sup> percentile. In the year 2011-2012, the mean score for all takers was 150.66 ( $SD = 10.19$ ;  $n = 105,390$ ) (Delassandro, Anthony, & Reese, 2012). The mean score for students identifying as White or Caucasian was 152.80 ( $SD = 9.27$ ). Asian: 152.68 ( $SD = 10.52$ ). Hispanic/Latino: 146.32 ( $SD = 9.25$ ). Black/African American: 141.84 ( $SD = 8.68$ ) (Delassandro et al., 2012).

Of those admitted to law school from 2013-2015 ( $n = 131,466$ ), the mean GPA = 3.33 and the mean LSAT score  $\approx 155$  (J. Evans, personal communication, June 27, 2016). Asians ( $n = 13,582$ ): GPA  $\approx 3.35$ ; LSAT  $\approx 158$ . White/Caucasian ( $n = 89,517$ ): GPA  $\approx 3.38$ ; LSAT  $\approx 157$ . Hispanic/Latino ( $n = 13,853$ ): GPA  $\approx 3.25$ ; LSAT  $\approx 3.25$ . African-American ( $n = 14,019$ ): GPA  $\approx 3.1$ ; LSAT = 149 (J. Evans, personal communication, June 27, 2016).

Although 14 – 15% of all law school applicants are African-American, approximately 56% are admitted, in comparison to 78% of all students (J. Evans, personal communication, June 27, 2016). Of those, 80% of African-American students matriculate, in comparison to 83% of all students. By the end of the first year, 45% of African-American, and 65% of all law school applicants have matriculated (J. Evans, personal communication, June 27, 2016).

Jumping ahead to the Bar Exam, the best available data set is the LSAC National Longitudinal Bar Passage Study (NLBPS), which followed students who began law school in 1991 (Yakowitz, 2010). Here, researchers found that 96.7% of white ( $n = 19,285$ ), 91.9% of Asian ( $n = 961$ ), 89% of Hispanic ( $n = 520$ ), and 77.6% of African-American ( $n = 1,368$ ) examinees passed the bar after one or more attempts (“LSAC Bar Passage Study,” n.d.). Yakowitz notes that this study exaggerates racial disparities because it includes graduates of the six ABA-accredited historically black law schools (HBCUs), who are predominantly African-American, but does not include graduates of unaccredited law schools, who are predominantly white (2010). Both groups tend to fail the bar in large numbers. This skews the pass rate of students who identified as white upward. In 2015, graduates of unaccredited law schools represented 4.5% of all persons taking a bar exam (NCBEX, 2015). Nineteen percent passed (NCBEX, 2015).

On average, these data show that African-Americans start the law school application process with lower GPAs and LSAT scores than many of their counterparts. Though African-Americans apply to law school in proportion to their representation in the general population, a smaller proportion than average are admitted. Of those admitted, a smaller than average portion matriculates. Of those who matriculate, a smaller than average proportion pass the bar. Finally, a smaller than average proportion of African-Americans who fail on their first attempt retake the bar (Yakowitz, 2010). The end result is that in 2010, only 5% of the attorney population was African-American (American Bar Association, 2016).

The most immediate question that springs to mind after reviewing these statistics is “why?” The following sections will attempt to shed some light on the answer to that question.

### **An Historical View of Race and Education**

The concept of race, as we understand it today, is not a biological fact (Shanklin, 1994; Nanda & Warmus, 2004), but instead was largely developed in the United States (Montagu, 1997) through various government actors.<sup>3</sup> The first set of racial classifications in what would become the United States were made to circumvent rules regarding slavery. Generally, European slavery was restricted: one could not enslave another person unless that person was a non-Christian, a prisoner of war, or as punishment for a crime (Mann, 2011). The English colonists originally favored indentured servitude as a way of obtaining cheap labor, but realized early that freed indentured servants were both expensive to replace and represented unwanted future competition (PBS, n.d.). Popular uprisings such as Bacon’s Rebellion in 1676 united indentured servants and slaves in common cause against the ruling class (Roberts, 2011). Factors such as these pushed colonists away from the use of indentured servants.

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<sup>3</sup> See *Perkins v Lake County Dep’t of Utilities*, 862 F.Supp. 1262 (1964) for a detailed explanation of the difficulties associated with classifying individuals by race.

Slavery based on skin color represented a way around these problems. Slaves could be paid lower – or no – wages. Slaves did not necessarily have to be freed. And persons of a different skin color could not easily blend into the population at large. Large scale importation was possible because European and African economics differed in an important way – Europeans tied value to land; Africans tied value to labor (Mann, 2011). As a result, Africans tended to have a lot of slaves (though they were better treated and longer lived in Africa than they would eventually be in the New World). Both Europeans and Africans held a cultural norm of trading slaves, which facilitated the sale of African slaves to Europeans. Finally, there were the aforementioned issues with competition from and uprisings by indentured servants. And so, early in the history of the future United States, English colonists began to rely more heavily on the labor of Africans sold to them as slaves (Mann, 2011).

Ironically, one of the first African slaves in the colonies was held by an African. In 1654, Anthony Johnson, previously an indentured servant himself, took John Casor to court, claiming Casor as his slave (“History of Slavery in America,” n.d.). The court ruled in favor of Johnson, stating that Africans were not protected by English Common Law. After Johnson’s death, a Virginia court ruled that the government could seize his land because “he was a negroe and by consequence an alien” (PBS, n.d.).

By 1665, Massachusetts legalized slavery and Virginia legalized the enslavement of a slave’s child. In 1705, Virginia passed the first Slave Codes, specifying a definition of a slave:

*And also be in enacted, by the authority aforesaid, and it is hereby enacted, That all servants imported and brought into this country, by sea or land, who were not christians in their native country, (except Turks and Moors in amity with her majesty, and others that can make due proof of their being free in England, or any*

other christian country, before they were shipped, in order to transportation hither) shall be accounted and be slaves, and such be here bought and sold notwithstanding a conversion to christianity afterward.

(“An act concerning Slaves and Servants,” 1705). Seeking to divide free laborers, indentured servants, and slaves, the Codes, among other things, made distinctions in the types of punishments that could be levied against white Christian servants versus others; established a list of groups who could not purchase a Christian servant; restricted the ownership of weapons by Africans; created new property rights for slave owners; and created separate judicial systems for different classes of people. Moving forward, the 1790 Census created the United States’ first official classifications: free, slave, taxed, and untaxed (Prewitt, 2005). It also created additional classifications, based on ancestry: European, African, and untaxed Native American (Prewitt, 2005).

The courts played a large role in shaping racial classifications, mainly in determining who was and was not white. For example, in *People v. Hall*, the California Supreme Court distinguished white persons as Caucasian, holding that a Chinese person could not testify in a murder case against a white person (*People v. Hall*, 4 Cal. 399 [1854]). In *Dow v. United States*, the Fourth Federal Circuit held Syrians, Armenians, and Parsees to be white, allowing Dow to take advantage of naturalization laws (*Dow v. United States*, 226 F. 145 [4<sup>th</sup> Cir. 1915]). Finally, in *United States v. Thind*, the U.S. Supreme Court separated the scientific and popular definitions of the words Aryan and Caucasian, to hold that Indians from the extreme northwestern part of the country were not white, despite being both Caucasian and Aryan (*U.S. v. Thind*, 261 U.S. 204 [1923]).



Class differences, maintained in part by perceived racial differences, extended to the development of secondary education in the United States. Near the end of the 19<sup>th</sup> century, only 4% of students entered high school (Steffes, 2012). These were the children of wealthy and elite families. When the Industrial Revolution began, parents, community groups, and state and local leaders in the United States turned to education as a way to guard against the uncertainties of the social upheaval that was taking place. By the 1940s, 50% of U.S. children attended high school (Steffes, 2012).

The focus of these schools was not equal *results* for the students being educated, but equal *opportunity* for a minimum acceptable standard of education (Steffes, 2012). These schools stressed the value of independence of the prior agrarian era, despite growing interdependence stemming from increased industrialism. The new students were not taught that they had the ability or responsibility to govern society. Rather, they were taught that these complex affairs should be left to experts (Steffes, 2012).

To be clear, schooling was a local, not a national issue (Steffes, 2012). Parents, individuals, and community groups were all in favor of increased education, and many commentators advocated for the inclusion of subjects that would teach children practical social roles. By the 1930s, commentators were angry after realizing that the schools simply maintained the status quo of social stratification, rather than giving students equal chances to obtain society's rewards (Steffes, 2012).

These divisions were also a part of school funding (Steffes, 2012). Schools were funded by local property taxes, which were funneled to the districts the taxes came from, rather than being dispersed equally among all schools in the state. This allowed more affluent neighborhoods to maintain better schools than less affluent neighborhoods. Additionally,

Southern states applied a greater amount of resources to white schools than primarily African-American schools, helping to keep that population working as laborers (Steffes, 2012).

In 1896, the U.S. Supreme Court, in *Plessy v. Ferguson*, created the doctrine of *separate but equal*, allowing for segregation in public facilities (*Plessy v. Ferguson*, 163 U.S. 537 [1896]). This decision legitimized the segregation that was already taking place.

In the 1930s, the federal government introduced *redlining*, which was a real estate appraisal practice that included the racial makeup of a neighborhood into account when determining property values (Smith & Smith, 2003). Under this scheme, neighborhoods comprised mostly of African-Americans were considered high-risk, thus lowering their property values. This provided a disincentive for white families to move into African-American neighborhoods. As a result, African-American property values remained artificially low because of artificially reduced demand (Smith & Smith, 2003). Therefore, these property owners could not trade equity for cash to send their kids to school, or generate revenues for school through the property tax mechanism.

Though *Plessy*, and thus racial segregation, was eventually overturned by *Brown v. Bd. of Education*, 347 U.S. 483 (1954), the U.S. Supreme Court does not consider money a *suspect classification* in the way that it now considers race. As a result, the Court applied a less stringent legal standard to its analysis of *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), approving a Texas school district's use of property tax funds to finance school operations in the districts where the property tax was collected. This decision has since allowed more affluent districts to continue the practice of funneling funds to schools in the neighborhoods where the taxes originate. In practice, this essentially maintains preexisting differences the quality of education received in racially segregated neighborhoods.

With respect to Asian and Hispanic/Latino populations, immigration policy has been the main driver of educational outcomes. Mexicans, for example, immigrated to the United States as low-wage workers starting with 1942's Bracero program (Lee, 2015). In contrast, many Asians immigrated to the United States after 1965's Immigration and Nationality Act was passed (Nadeem, Skrentny, Lee, Valdez, & Gabbacia, 2015). This act gave preference to highly skilled applicants, causing Asian immigration to shift from low-wage workers to highly educated workers. As a result, 51% of Chinese immigrants in 2010 were college graduates, compared to 28% of all adults in the United States and 4% of all adults in China. In contrast, 17% of Mexicans and 5% of Mexican immigrants to the United States are college graduates (Lee, 2015).

Highly educated Asian immigrants have created after school organizations to help give their children additional opportunities for education (Lee, 2015). They also pass on information about schools, college admissions processes, etc. at community meeting places. This information also finds its way to working class Asians through ethnic-language media (Lee, 2015). Because of these factors, Asian students currently make up approximately 20% of the entering class at Ivy League universities, though Asians only account for 6% of the U.S. population (Nadeem et al., 2015). This success is the basis of the *model minority* myth (Lee, 2015).

As this review shows, race in the United States is a social construct that was invented through legislative acts and court decisions in an effort to keep visually identifiable groups of people first as slaves, and then in the labor class. When schooling was rapidly expanded at the beginning of the Industrial Revolution, funding methods and choices made about what to teach students helped to maintain the preexisting social order. While these generally served to keep the children of low-skilled workers among the labor class, high-skilled Asian workers took

advantage of changes to immigration laws, their knowledge base, and skill set to create a set of institutions that helped their children more easily navigate the road to academic excellence.

### **A Theoretical View**

Massey, Charles, Lundy, and Fischer (2003) provide an in-depth review of several theories which have been proposed in an effort to explain underachievement by African-American and Hispanic/Latino students. Here, I provide a brief review of three of these theories.

**The National Longitudinal Survey of Freshmen.** While not entirely analogous to law school, The National Longitudinal Survey of Freshmen, which followed 959 Asian students, 998 white students, 1051 African-American students, and 916 Latino students through their careers in Ivy League and other highly selective schools may provide some additional insight (Massey et al., 2003; Charles, Fischer, Mooney, & Massey, 2009). One of the things learned in this study is that the white and Asian student populations are primarily comprised of students from a high socioeconomic background (Massey et al., 2003). Many of these students reported having two parents with a bachelor's degree or higher, and a household income of over \$100,000. In contrast, African-American students came from a wider variety of backgrounds. As such, a white student picked at random would almost certainly be one of a higher socioeconomic status. In contrast, one could not easily predict the socioeconomic background of an African-American student picked at random (Massey et al., 2003). About half of the African-American students grew up in segregated neighborhoods, which are more likely to have violence, disorder, and a lower quality of infrastructure than upper-middle class or integrated neighborhoods (Massey et al., 2003).

**The theory of capital deficiency.** The *theory of capital deficiency* posits that higher levels of *financial capital* (money), *human capital* (skills, abilities, and knowledge), *social*

*capital* (benefits that accrue to members of a social circle), and *cultural capital* (knowledge of cultural norms that allows one to navigate various social settings) can all serve to increase one's chances of success in academia and at various levels of society (Massey et al., 2003). MacLeod (as cited in Massey et al., 2003) notes that these factors are highly correlated with one another. This theory "is generally supported by a substantial body of work documenting the powerful effect that family socioeconomic status has on children's educational achievement" (Massey et al., 2003, p. 7). Under this theory, historical factors such as segregation begets reduced access to these forms of capital which results in relatively lower levels of preparation and performance among African-American and Hispanic/Latino students (Massey et al., 2003).

**The theory of oppositional culture.** The *theory of oppositional culture* posits that members of minority groups that did not enter a society of their own free will and were then relegated to low social status will tend to share a negative view of the majority's values and institutions (Massey, et al., 2003). Members of these groups who seem to share majority values, such as pursuing academic success and speaking proper English, are ostracized. These students, forced with a choice between group loyalty and being ostracized, choose the group. As a result, they underperform academically (Massey et al., 2003).

Having lived through this scenario, I admit that the desire to be part of a particular group and not be teased is a highly motivating force that partially led to my disinterest in high school. However, as Festinger (1954) notes, people who find that they cannot easily compare to a group tend to leave it. Furthermore, the same people who teased me were also very supportive of my academic efforts, something noted by Massey et al. (2003). These factors may explain why the results of trying to test this theory are largely inconclusive: for some, the desire to be just like

everyone else wanes. For others, they found a way to achieve academically and be accepted by the group. Finally, some may not care as much as the theorists originally thought.

**Stereotype threat.** The theory of *stereotype threat* posits that exposure to a negative stereotype about a group one belongs to prior to a performance relevant to that stereotype can cause a person underperform, thus living up to the stereotype (Massey et al., 2003). Continued exposure can lead to *disidentification* with a particular area of achievement. Here, it is believed that African-Americans who consistently underachieve no longer consider academic achievement important to their self-worth (Massey et al., 2003).

There has been experimental support for stereotype threat, but according to Massey et al., more work needs to be done outside the laboratory to see how these results translate to the real world (2003).

**Mismatch theory.** Finally, *mismatch theory*<sup>4</sup> posits that a student, regardless of race, who attends a school they are substantially underprepared for compared to their classmates can suffer rather than benefit, quickly and hopelessly falling behind (Sander, 2004; Friedersdorf, 2015). In the context of race-based affirmative action, this means that students who are admitted to schools that they might not gain entry to but for affirmative action can set themselves up for failure by choosing a school they are not prepared to compete in. With respect to law school, Sander believes that mismatches created by affirmative action are responsible for the class placement and lower bar exam placement of African-American students (2004).

While I agree with Sander that large differences in preparation may lead to a downward spiral and adverse outcomes for all underprepared students, I also believe that mismatch theory is not adequate to describe the academic experience of African-American law students. Rather,

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<sup>4</sup> Massey et al. do not cover mismatch theory. However, it seemed important to include here.

Sander's theory is largely abrogated by several factors: (1) the African-American Bar Exam pass rate of the class of 2013 (discussed above); (2) LSAC's assertion that GPA and LSAT results are correlated with *first year* law school success; and (3) the development of the concept of *grit*, which states that the amount of and type of work a person is willing to achieve a goal is the main determinant of one's success (Duckworth, Peterson, Matthews, & Kelly, 2007). The first factor tends to show that law schools are probably not using affirmative action to admit students who are significantly behind their peers. The second and third factors tend to show that past the first year, LSAT and undergraduate GPA are not predictive of success. The real question is how the student responds after the first year.

**Conclusion.** Although race is not a biological fact, the racial groups created through the operation of U.S. law boast different average results in undergraduate GPA, LSAT, and on the Bar Exam. African-Americans, in particular, obtain lower than average GPAs, LSAT scores, and pass rates on the Bar Exam. Capital deficiency theory makes a strong case for the idea that the various benefits of higher socioeconomic status drive a large portion of these discrepancies. The *privileged poor* theory (Jack, 2015) helps to bolster capital deficiency theory by showing that children of lower socioeconomic status who obtain additional forms of capital by attending private and preparatory schools tend to also do well in elite schools. The historical record lends additional credibility to these theories, as it shows that a variety of factors within and without the government artificially held back the economic progress of African-Americans, and that today, African-Americans tend not to have the same resources as their white and Asian counterparts.

There is also support for the idea that the psychological mechanisms of individual African-Americans also play a part in their success. Both stereotype threat and mismatch theory posit the idea that psychological factors can cause students to experience a downward spiral, thus

leading to a lack of success. I believe that helplessness deficits may also be in play, stemming from culturally learned expectations that suggest a student is not in control of his fate.

### **Cultural Helplessness, as Applied to Certain African-American Law Students**

As noted in the beginning of this paper, not every African-American student at Brooklyn Law passed the 2013 bar. Rather, 9 out of 10 passed, in comparison to 5 out of 10 the year before and the year after. Therefore, I posit that out of this group, 10% failed because they did not understand the material or had an emergency that interfered with their studies. Forty percent did not have serious issues understanding the material, but either did not study hard enough or efficient enough to pass, or suffered from psychological phenomena during the study period or during the test, limiting their effectiveness. I suspect that different schools will also be able to divide their students into these three groups, even though the proportions will not be the same.

For the purposes of this paper, I argue that helplessness may be a factor for those students who could have passed the Bar, but did not. This group of otherwise capable students may have an expectancy that they lack control over their ability to pass the Bar. One possible source of such a belief might be the prior experience of upper class students and admitted African-American attorneys.

On a personal note, I took two Bar Exams and found both to be easy. I know exactly one other African-American attorney who categorized the test as easy. To the contrary, discussions about the Bar usually revolve around its difficulty; so much so that it can be uncomfortable to admit that I felt fully prepared when I walked in, and that by the time I was done writing the first essay I was confident that I would pass.

Now imagine how it might impact you to spend three years hearing from everyone you know – even those who have not taken it – about the difficulty of the exam. Imagine hearing



several African-American alumni whose intelligence you respect talk about their difficulties on the Bar, or having to take it more than once. Imagine hearing members of the administration say that they don't know why people fail, except for the few who point out that some students simply don't work hard enough. Without that alternate voice, the one that insists that passing is contingent on both understanding the material, and the amount of time one is willing to put in to learning things he doesn't already know, students can come to expect not only that the Bar will be hard, but it will be beyond their abilities. When faced with 10 weeks of study that students generally feel as though they are not learning anything, experiencing helplessness deficits on the assumption that the work you are putting in is not beneficial is a real possibility.

With respect to class rankings, as noted earlier, one's LSAT/GPA combination is a strong predictor of first year law school success. African-American students typically enter law school with lower LSAT/GPA combinations than other groups, and often find themselves in the bottom of their respective classes. A certain portion of those students will come to learn from other students that people below a certain class ranking are more likely to fail the Bar. Even more specifically, I was told by a professor in a Bar prep course that students who were scoring below a certain letter grade were those who were more likely to fail the Bar. Here, we have an example where students were explicitly told, close to exam time, that they were more likely to fail the Bar. In other years, this might have led to an expectation that passing was beyond their control. However, by this time I believe my class – having dealt with the trauma of the new *U.S. News Rankings*, was committed to the idea that they were going to pass no matter what.

Based on the foregoing, I believe that the examinee most likely to be in the class of people who have the ability to pass but do not, in part due to helplessness deficits, are those from lower socioeconomic backgrounds who do not benefit from being one of the privileged poor.

These students, who may not have benefits associated with being born into a higher socioeconomic status (financial, human, social, and cultural capital, as noted above) or attending preparatory and other schools like the privileged poor (also noted above) may compare their academic abilities negatively with respect to their peers. They may also lack the depth of human, social, and cultural capital as their peers, not believing they have as many people to turn to in order to discuss issues related to school and success. As a result, they may be more likely than others to feel that they do not have control over their success, thus giving them a greater potential to experience helplessness deficits in their studies or on their tests.

For example, I have observed people from low-income neighborhoods like the one I grew up in state unequivocally that students from higher income backgrounds all get private tutoring, and as a result, African-American students could not compete with them. If a student perceives that his classmates understand the material more easily than he does, he may take this as a sign that they are, in fact, receiving extra help that he cannot easily obtain. This may result in an expectation that he will not be able to compete with his classmates.

Students who start law school and other academic endeavors slightly underprepared need not experience helplessness deficits as they seek to master the material. More effort may be needed to put students on equal footing, but with hard work they should be able to finish their respective programs at or near the same level of competency and understanding as their classmates. Many law schools have academic success programs to help entering students who may be less prepared than their peers. While these programs deal with academic preparedness, it is unlikely they take into account the possibility that the students they wish to help may come from a wide variety of backgrounds. It is also unlikely that these programs focus on mental preparedness.

As things stand now, African-American law students, on average, continue to perform below average on the LSAT and Bar Exam. I believe it is possible to create a more effective program. I also believe that positive psychology has a strong role to play in such a program. Below, I propose a program that incorporates positive psychology as part of an interdisciplinary process to simultaneously teach content and prevent adverse psychological phenomena from occurring. I believe this program has potential to help African-American law students achieve according to their ability, thus increasing the available pool of African-American attorneys.

### **An Introduction to Positive Psychology**

Positive psychology is the scientific study of the factors that contribute to human well-being. Where psychology has focused on the disease model – treating and eliminating mental illness, positive psychology focuses on the cultivation of mental wellness.

Prior to World War II, psychology focus on three areas: “curing mental illness, making the lives of people more productive and fulfilling, and identifying and nurturing high talent” (Seligman & Csikszentmihalyi, 2000, p. 6). After WWII, psychology’s primary focus shifted to pathology because of economic incentives: (1) many psychologists realized that they could earn an income treating mental illness; and (2) grant-making bodies chose to fund research focused on pathology. This shift highly benefited the scientific understanding of mental illness, however, psychology’s other original areas of focus diminished to near obscurity (Seligman & Csikszentmihalyi, 2000).

This focus on what can go wrong with people tended to ignore what can go right with people (Peterson, 2006), and in 1998, Martin Seligman, then president of the American Psychological Association, called for the creation of an empirically sound “science of human

strengths” (Seligman, 1999, p. 560). Initially, this *positive psychology*<sup>5</sup> sought to prevent mental illness by cultivating human strengths. By 2006, positive psychology was being described in terms of “promoting human potential” (Peterson, 2006, p. 5), in terms that complemented the extensive work done to fix the worst things in life.

Though positive psychology is a relatively new field, in some sense it is not. Some of the questions asked by positive psychology have been explored for thousands of years. Aristotle wrote about achieving *eudaemonia*, a state of being happy, through the *virtuous circle* (Melchert, 2002). James (1899) argued that the brain’s *plasticity* (its ability to change through effort) could help people to form habits that can ultimately lead to happiness. More recently, researchers have studied areas as diverse as health, creativity, strengths, and altruism (Diener, 2009).

Today, positive psychology research covers a wide variety of subjects related to human flourishing, including the mechanisms underlying long-term success (Duckworth et al., 2007), personal and character strengths and how to use them to improve one’s life (Peterson & Seligman, 2004; Rath & Conchie, 2009; Biswas-Diener, Kashdan, & Minhas, 2010), how to cultivate the factors that help one overcome hardship (Reivich & Shatté, 2002), and how to utilize everyone who works in an organization to help the organization make better long-term decisions (Cooperrider, 2013). This research has led to books, academic journals, professional associations, and graduate and Ph.D. level programs in positive psychology. Positive psychology has also been applied to other disciplines, including health, counseling, and clinical spaces (Joseph, 2015).

Despite, or perhaps because of its popularity, positive psychology is not without its critics and concerns. Some are concerned that positive psychology focuses too much on the individual

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<sup>5</sup> See Peterson (2006, p. 4, fn. 1) for a description of prior uses of the term *positive psychology*, and similar disciplines in Russia and South Africa.

(Diener, 2009). Others agree, noting that well-being is a concept that should include individuals, their relationships, and the societies they live in (Prilleltensky, 2005). Some argue positive psychology does not adequately acknowledge the role that the negative aspects of human nature have played and can continue to play in its development (Pauwels, 2015). Some commentators note the field has grown so large that researchers have felt a need to define its boundaries (Pauwels, 2015). Finally, positive psychology, by virtue of its name, is often misunderstood to be *happiology* – the study happiness, specifically a hedonic, superficial form of happiness (Peterson, 2006).

None of these concerns have particularly short-term solutions. Some have already taken up the issue of scope and defining positive psychology (Pauwels, 2015). Finally, only continued public exposure to positive psychology will raise awareness that positive psychology is not the *science of happiness*. Current or future researchers will have to take an interest in positive psychology and its relation to negative aspects of human nature. In the next section, I take up Prilleltensky's concern by proposing an application focused on both individuals and the populations they belong to.

### **Application Plan**

As alluded to in the prior sections, African-American success throughout the law school process has both individual and group characteristics. Individuals learn and take the various tests required to become an attorney; the group performs below average at every stage. I believe that the biggest contributor to these results are capital deficiencies that can ultimately be traced to historical efforts to keep a portion of the United States' population in the labor class. However, I also believe, based on the outstanding Bar Exam results of the class of 2013, that capital deficiency theory does not provide a complete explanation. These results indicate to me that it is

likely that a measurable proportion of students who fail the Bar Exam have the training and ability to pass on the first try, however, something on the individual level is preventing the focus that leads to performance. I believe one factor to be shared beliefs, which can cause helplessness deficits that (1) prevent examinees from studying as consistently or as long as they need to in order to pass; or (2) lead to anxiety during the exam itself. My solution to these overlapping issues lies in the creation of a positive organization – *The Maroon Foundation*.

**The Maroon Foundation.** Named after the societies formed by slaves who routinely escaped into the Amazon (Mann, 2011), the Maroon Foundation will seek to use positive psychology as part of an interdisciplinary model to address social issues relevant to minority populations. The work of the foundation will be divided into self-contained projects in order to facilitate *small wins*, a strategy proposed by Weick (1984). Weick argued that size of a perceived task affects the quality of thought that people use to accomplish the task. The larger the issue, the poorer the quality. Breaking large problems into smaller, concrete, controllable problems, and framing them not as problems can help people to more easily think of solutions (Weick, 1984). By pursuing measurable small wins, the foundation will have a greater likelihood of achieving a long-term impact on social issues.

The choice of name is a *framing device*, a way to establish the culture of the organization (Howard-Grenville & Hoffman, 2010). Framing “helps shape the perspectives through which people see the world by providing contextual cues that guide decision making and inferences” (Tatchenkery & Metzker, 2006). It is also a first step towards *cultivating a sense of identity*, a strategy that Heath and Heath (2010) notes as a precursor to lasting changes. Finally, it represents a first step toward a *mind shift*, as our subjective beliefs can affect objective outcomes (Crum & Phillips, 2015).

For example, many people in the foundation's intended target audience are directly descended from African slaves who were imported into the Americas. A more complete understanding of the lives of African-American ancestors may serve to spark an attitude of belief in one's ability to tackle hard problems. Our general understanding of the African slave trade tends to include knowledge that persons were kidnapped from Africa; packed tightly into slave ships; forced to perform hard labor against their will; whipped by masters and overseers; and separated from their families. However, this understanding does not capture the full extent of the Trans-Atlantic slave trade, which, as mentioned above, also included sales of African slaves by Africans. It does not include some of the worst abuses by slaveholders, including castrations and the cutting off of ears (Webber, 1978). Most importantly, it does not include knowledge of the slaves themselves. The historical record does not show that these people became helpless. Rather, they tended to assert their independence and humanity at every available opportunity.

The first African slaves in what was to be the first permanent settlement in America in 1526 revolted six months after they arrived, burning down the settlement as the colonists' numbers dwindled to 150 from 500 due to illness (Aptheker, 1945, Mann, 2011). In the 1800s, slaves in the United States, knowing that members of slave patrols were generally illiterate, would take letters and pass them off as passes when they were arrested by slave patrols (Webber, 1978). Africans routinely escaped, faked illness, sabotaged equipment, maimed animals (Mann, 2011), built communities, and in at least one account, considered themselves far cleverer than the slave owners (Webber, 1978). In 1775, Archibald Bullock and John Houstoun of Georgia told future President John Adams, "The Negroes have a wonderfull Art of communicating Intelligence among themselves. It will run severall hundreds of Miles in a Week or Fortnight" (Goldstone, 2005, p.41). This communication system kept the slaves informed of events ahead of

their masters, and helped them to maintain connections with family members who had been sold to other plantations (Webber, 1978). Though enslaved, and subject to the possibility of horrible punishments at any time, the slaves, in their own words, exhibited many of the social factors that drive resiliency (Webber, 1978, Masten et al., 2009). Providing this more complete account could prove an important first step in reframing how students view themselves, and thus, their chances of success today.

***The Charles Hamilton Houston Project.*** The foundation's inaugural project will be named after Charles Hamilton Houston, the former Dean of Howard Law School who is credited with devising the strategy that led to *Brown*, which ended the Jim Crow segregation laws (NAACP, n.d.). The primary goal of this project will be to increase the number of African-American attorneys admitted to the Bar each year. The primary target of this project will be students with the ability to pass, but are have a higher likelihood of failure because of helplessness deficits or other psychological phenomena.

In order to accomplish these goals, the project will seek to accomplish three *lower order goals*, which are short-term, context specific goals that help one achieve a larger goal (Duckworth & Gross, 2014): (1) raising the mean African-American LSAT score to the mean for all students admitted to law school; (2) improving the legal analysis and writing skills of African-American law students; and (3) increasing the African-American Bar passage rate. This is another example of seeking out small wins to achieve a larger goal.

The project will seek out these subordinate goals not just on the individual level, but at multiple levels. Prilleltensky (2005) notes that this type of multilevel strategy is more effective than employing interventions only at the individual level, because each level of society has its own set of tools to influence outcomes. The project will first look to emulate what is already



working before putting effort into creating something new, which Heath and Heath (2010) note as a way of getting to more effective solutions more quickly. Additionally, the project will seek out partnerships where it would be more advantageous to work with individuals or organizations than to go it alone.

*Sub-goal 1: Information sharing.* The project's first task will be to share certain LSAT, law school, and Bar Exam information. The object will be to make this information as close to common knowledge as possible, so that fewer prospective attorneys are guessing when it comes to understanding things like what majors best prepare one for law school. For example, I learned from other prospective students that an English major was the best preparation for law school. But I didn't consider law school until I was about to graduate. I didn't learn this information until I was about to graduate. Finally, a study showed that philosophy majors have higher average LSAT scores than English majors (Niaswiadomy, 2010). So even if I started early, I would not necessarily have given myself the best possible chance of getting the highest score by taking my classmates advice.

In another example, in law school, several students (who had not yet taken the Bar) informed me that online-only Bar prep courses were best for African-Americans. I was later informed by the administration that students who took these courses failed at a higher rate than those who took other courses.

In both cases, incorrect, and sometimes detrimental, information is part of what is learned in the culture of pre-law or law school students. It is likely the same thing happens in other educational contexts. Students have a high level of exposure to incorrect information, but not much to correct information. Thus, the project will seek to become a credible source of law

school related information, which will allow correct information to spread through the population of prospective law students.

In order to facilitate this information spread, the project will emulate the successful practice of Asian parents noted earlier in this section. Thus, the project will maintain a website, use advertising space in African-American media including radio stations, magazines, and TV stations, and send information directly to students at *feeder schools* (where the highest proportions of prospective students apply from). Additionally, the project will seek to partner with LSAC, colleges, and student run programs in order to find the most effective ways of sharing, but not duplicating, useful information.

*Sub-goal 2: Individual students.* On the individual level, the project will seek to host three preparatory classes – a nine-month LSAT class; a first-year writing class; and a supplemental Bar Exam class. Portions of each of these classes will utilize positive psychology research.

In all cases, the first object of the classes will be to help students spell out their goals. Ryan (as cited in Locke & Latham, 2002) believed that “conscious goals direct action” (p. 705). Locke and Latham found a strong correlation between the difficulty of a goal and the effort exerted by the person who was trying to achieve the goal. They also found that effort tends to wane when one is working past the limits of their ability. Finally, they found that people worked harder toward specific goals than nonspecific goals (Locke & Latham, 2002). Therefore, helping the students to set hard, but specific and realistic goals should help students to have the best chance of success.

In order to help students to set goals, the project will start by providing a few resources and bits of information. First, because there is general knowledge that African-American

students do not perform as well on standardized tests as their counterparts, but it is generally not understood what a standardized test is, the project will provide students with the definition. As per Ravitch (1987) a *standardized test* is a test where the same content is given all participants in the same manner at the same time. Students will learn that except for this distinction, there is nothing different about a standardized test than any other test.

Next, students will learn that their success is determined by the amount of and type of work they are willing to devote to their goals (Duckworth, 2016). They will further be informed that the program will help to give them useful, evidence-based tools to facilitate their success.

From here, (using the LSAT as an example), students will be informed of the mean LSAT score of all students admitted to law school, as well as the ranges that various schools have accepted in the past. It will be noted that African-Americans score lower on average on the LSAT (Delassandro et al., 2012), but it will be reiterated that proper preparation is key to peak performance. The Project may employ former successful students as a model to speak with students about the necessary work.

With these factors in mind, students will engage in a *mental contrasting plus implementation* exercise (Duckworth, Grant, Loew, Oettingen, & Gollwitzer, 2011). Here, the now-informed students will be asked to write down the score they hope to achieve. Then, they will be asked to think of things that could keep them from achieving their goals. Finally, they will be asked to devise ways to overcome these obstacles. By planning in advance, these students may be able to more easily work through problems that arise during the course of their studies (Duckworth et al., 2011).

On day two, students will begin the session by completing a *values affirmation exercise*. This exercise would mirror the one given to students in a study conducted by Cohen, Garcia,

Apfel, and Master (2006). There, Cohen et al. presented students with envelopes that had their names on them. Inside was a short writing assignment, asking students what they valued most and why those values were important to them. At the end of this assignment, students sealed the envelopes. African-American students who were asked to write about their values earned higher grades at the end of the semester than students in the control condition (Cohen et al., 2006). Harackiewicz et al. (2013) conducted a similar experiment on 798 U.S. undergraduate biology students, 154 of which were *first generation* (where neither of a student's parents obtained a four-year college degree). Those who took part in the exercise showed improvement in their grades and stayed in the biology program longer than those who were not given the exercise. A variation on this exercise, perhaps connecting student values to why they want to be an attorney, may inspire students to work harder at achieving their goals.

After the exercise, students will engage in training inspired by Mellers et al. (2014). Working over two years in political forecasting tournament, Mellers et al. showed that groups of people make better predictions than individuals, and that teams trained in teamwork, probability, and statistics could make even better predictions than groups without training (2014). One of the factors common to the best forecasters was that they updated their predictions more frequently than the less successful forecasters (Mellers et al., 2015). The techniques used to create these *superforecasters* can be applied here.

To the extent possible, students will be broken up into groups of similar ability. Eppie and Romano, and Betts and Shkolnik (as cited in Mellers et al., 2014) have found evidence that students, especially high achievers, learn better when they work in groups of similar ability. A sufficiently large group of LSAT students can be further grouped according to ability by subject.

Next, students will receive a short training in probability. In their experiment, Mellers et al. were taught the principles of sound probabilistic reasoning to help guide their forecasts (B. Mellers, personal communication, April 11, 2016). While extensive training may not be necessary, it will be useful for the students to learn basic probabilistic reasoning so that they can better estimate their chances of achieving their goals as the study period moves forward.

Finally, if small enough, groups can serve as teams. During the course of study, team members can help each other understand the material better through explanations and detailed, constructive responses to each other (B. Mellers, personal communication, April 11, 2016). The students should also seek to update their predictions about their chances of reaching their goal on a regular basis. These tactics may promote small wins, more accurate assessments of students' own ability, and greater willingness to put effort toward reaching their goals.

Regardless of the student's current state of knowledge, the project will make use of *journey metaphors* to describe the relationship of what they are doing now to their ultimate goal. Journey metaphors may be useful in creating an academically oriented identity by connecting a possible future self to their current self (Landau, Oyserman, Keefer, and Smith, 2014).

Once these preliminary matters are complete, the classes will start. The preparatory classes will focus on the fundamental skills required to do well on the task at hand, connecting the skill to others along the way and to its place in legal practice. During the course, the project will employ *deliberate practice* to help give students the greatest gains in the shortest period of time. Deliberate practice requires repeated trials and immediate, detailed feedback from the teacher (Ericsson, Krampe, & Tesch-Römer, 1993). Correcting the student in this manner can lead to gains the student would not otherwise be able to make (Ericsson et al., 1993).

To the extent possible, the project will also use individualized tutoring to assist student progress. Tutoring is one of the most effective ways to help students learn because tutors not only deal with academic material, but they also assist students with their emotions (Murphy Paul, 2014). A human tutor equipped with both the subject matter knowledge and training in effective psychological tools to surmount emotional obstacles can be an extremely effective resource.

Finally, to the extent possible, the program will make use of positive psychology tools and research to further help students see their own potential more clearly, and to overcome bumps in the road.

*Sub-goal 2a: Research and development.* Prior to offering the proposed class (here, the LSAT), the Project will engage in a study to test proof of concept, and to learn if including positive psychology will positively impact student scores. The study will consist of three trials. These trials will be used to test content and teaching techniques, as well as whether including positive psychology research will positively impact scoring.

Trial number one will take place in a two-month class. Students will be recruited from undergraduate feeder schools via flyers and other means, offering a free LSAT class. As they sign up, students will be randomly assigned into either the control group (a class without positive psychology) and the study group (which will include positive psychology).

At the beginning of the class, students will take a practice LSAT under standard testing conditions, and will be asked demographic and other relevant information. This will help the Project determine baseline levels of competence. At the end of the class, the students will take the test again, to see whether there is improvement, and whether there is more improvement in the positive psychology group.

As the optimal class length is also an important factor for the Project to determine, the Project will want to create longer versions of the class to see if there is a difference. One way to accomplish this is to simply make the study eight months. Here, students would be tested every two months to see how their skills progress and if learning starts to plateau in the sixth or eighth month. Another way to accomplish this is to do three separate studies, recruiting students for two longer versions of the same class. The Project will consult with its advisors to see which of these is more tenable. The Project will also seek to partner with LSAC to locate tests of approximately equal difficulty to use in this process.

The Project will be testing three assumptions in this study: (1) positive psychology will influence scores upward; (2) the length of time spent in class will influence scores upward; and (3) skills will start to plateau after a length of time. If these assumptions are proven, the Project will have proved its concept.

*Sub-goal 3: Relevant partners.* Where sub-goals one and two focused mainly on students, sub-goal three focuses mainly on people who students might reach out for assistance. The project will first target pre-law professors. I personally considered law school for several years before actually putting in an application, and met with three different pre-law professors in those years. My experience was that while everyone was willing to help, the quality of their advice varied wildly. Therefore, the project will seek out partnerships with colleges and their pre-law professors and programs. The goal of this effort will be to help pre-law professors not only answer the questions that students tend to ask, but to help completely inform their students in a way that resonates with the individuals in question.

A second possible partner is the law schools themselves. As noted in Denney (2015), a number of law school administrations are looking for answers as to changes in their pass rates

over time. I am in the camp that the students who apply today represent a “normal” distribution of students, and that these students’ Bar Exam results are what the schools should expect long-term if nothing changes.

To their credit, many schools provide additional resources for their students with Bar Exam prep classes, and academic success departments. I took two of these classes, sponsored by two different commercial prep courses, while I was in law school. Both focused on content. Neither focused on skills improvement. Rather, the idea was more to give students a head start by giving them some of the legal rules that might be tested in advance of the study period, so that some would stick in the student’s head.

What the project would do differently is to first try to figure out what normal is for the school in question – what proportion of students pass, fail, and where they tend to land in the class rankings. Next, the project would try to predict who might fail based on past experiences, reports from professors, and any other information available. Finally, the project would target the students with the highest likelihood of failure, and create a prep class for those students, such as the one described in sub-goal 2.

*Triage.* Where helping students before the beginning of the process, before they take the LSAT, is ideal, not every possible student will be aware of or seek out the kind of detailed assistance noted above. In the very likely case that students wait until they are about to take the Bar Exam to seek assistance, the project’s supplemental Bar Exam course – labeled here as *triage* – will seek to help students in the shortest possible timeframe.

By this point, the student is dealing with three years of law school results and their own opinions about whether they truly understand the material, while simultaneously dealing with the most extensive and stressful study period of the student’s life. In my experience, and as per



Weick (1984), such students tend to fall back on previously learned study methods, even when they are not appropriate or effective. Rather, these students need extra work – such as writing one essay per day and receiving immediate feedback on it – but may not do the work even if asked.

The solution here may be to set up a class lasting several hours, recruit several essay graders, and instruct students to write several essays, with one of the graders giving detailed feedback before the student moves on to the next essay. There may also be other solutions worth attempting, and the project will attempt different methods until it figures out what works best.

*Potential obstacles.* This combination of sub-goals using positive psychology represents a good way to start building a culture of success to help prevent helplessness deficits in African-American students who might otherwise experience deficits that might interfere with their performance. However, there are a number of potential obstacles to the project's long-term success that must be accounted for.

1. Many students will not seek help, even if offered. (Evans et al., 2008) notes that the most popular study method is self-study. As noted in Part I, Americans highly value independence from authority, which may account for the prevalence of students who choose self-study. While, on average, these students perform as well as those taking commercial courses, at least some of these students could use assistance in learning the material. If the project cannot convince that group to seek help, then it should expect less success than hoped for. The information sharing described in Part I is a good first step, but can be tweaked as necessary to help convince more students who need help to seek out competent help.

2. There are a multitude of commercial and non-commercial preparatory classes in existence. Essentially, creating classes makes the foundation their competition. However, if these organizations adopt some of the research used in the creation of the foundation's program, which in turn increases the scores and pass rates of lower performing students, this will be considered a victory. Partnering with or consulting for these organizations to help improve their products would be one way to dampen the negative aspects of perceived competition while helping to spread evidence-based tools to this community.
3. Law school deans share a wide variety of opinions as to the ability of their students to pass. Some may not like the idea of an outside agency coming in and apparently telling them how to run their school. However, in the spirit of seeking out small wins, the project will work hard to form partnerships with those schools that are interested, expecting only average results from those who show no interest.
4. It is possible that the project will not attract its target audience, instead attracting students who will perform to the level of their ability. The project may still be able to benefit these students by helping them clarify goals and providing access to needed information.
5. In my experience, prospective law students rush to take the LSAT, setting a date to take the test before they know where they stand, on the assumption that they have to attend law school at a certain time, rather than when they are truly able to compete with their peers. Students may see a nine-month program as too long to wait for their purposes, accepting a lower score and the possibility of not getting

into a school they want to go to. If the project wishes to attract these students, it will have to design a plan to help them feel that waiting is in their best interest.

6. The project may become obsolete. It is possible that African-Americans (as a group) will start to achieve according to their ability without the assistance of this project. In the past 34 years, the proportion of African-Americans earning \$75,000 or more doubled to 21% (adjusted for inflation) (Gates, 2016). The proportion making at least \$100,000 quadrupled to 13%. In comparison, the proportion of white Americans making at least \$100,000 rose to 26% from 11%. It is conceivable that these parents will, on their own, create the infrastructure to send a proportionate number of African-American students to law school 20 years from now. If so, the Project, as defined, would welcome a change to its charter, and the Foundation would be happy to close the Project and use the funds toward another project.

*Unexpected consequences.* Nearly every initiative results in unexpected consequences. The project should keep its eye out for information that suggests that negative consequences are arising from its efforts. For example, minorities commit suicide at half the rate of white people (Burns, n.d.). However, attorneys have a higher than average rate of suicide (Nydegger, 2014). Gaining proportional equality for African-Americans in law schools and law firms may thus lead to higher depression and suicide rates among African-American lawyers as they become part of the mainstream attorney culture. A possible solution might be using *positive education* research to promote strengths and resiliency at the outset of a student's legal career. Seligman, Ernst, Gillham, Reivich and Linkins (2009) taught these skills to a grammar school. The researchers and faculty both felt the program was a success (Seligman et al., 2009). Even if this research

cannot be applied on the law school level, the project will seek ways to avoid unexpected and unwanted negative consequences.

*Conclusion.* The Charles Hamilton Houston Project proposes to use data and positive psychology as part of an interdisciplinary approach to increase African-American success from the LSAT to the Bar Exam. By downplaying race and social comparison, focusing on the fundamental skills needed to succeed, engaging students with lessons from history and exercises derived from positive psychology, and engaging relevant stakeholders/influencers at each level, the Project hopes to successfully build target students' psychological capital, preventing them from experiencing helplessness deficits based on preexisting beliefs or any other detrimental psychological phenomena.

### **Part III: Business Plan**

As conceived of in Part II, the Maroon Foundation's purpose will be to foster equal results in minority populations. The Charles Hamilton Houston Project, described in Part II, is an exemplar of how the Foundation intends to operate. There, African-Americans as a group have lower LSAT scores and Bar passage rates than the general population. The Project proposes to target the portion of students who have the ability to do well, but do not. If successful, increasing the LSAT score and Bar pass rate of this group will raise the average results of the African-American law student and prospective law student cohort. If completely successful, the average results will be in line with the average overall results for law students and prospective law students. This will increase the number of African-American attorneys, making it easier for law firms and other organizations to fulfill their diversity goals.

The Foundation will use the best available research methods to discover potential projects, and to create interdisciplinary project designs that have the best chance of obtaining the desired result. For example, the Project noted above contains research from education and positive psychology.

Hopefully, these projects will have spillover effects. In the case of attorneys, many will go into careers where they have direct and indirect impacts on people's lives. These careers are unavailable to those without a law license.

#### **Business Model**

The Foundation will be organized as a public charity under section 501(c)(3) of the Internal Revenue Code.<sup>67</sup> The Foundation will derive revenues from an active fundraising

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<sup>6</sup> It is possible that this choice of organization will mean that the Foundation cannot use the word "foundation" in its name.

<sup>7</sup> For the purposes of this paper, the Foundation is conceived of as a public charity. However, its goals may also be well served if the Foundation is organized as a different type of business entity, such as a benefit corporation. This

program, seeking out contributions from public and private sources. The Foundation will also seek out opportunities to create revenue streams from fees for services and goods, licensing, or owning a for-profit operation. Ultimately, the Foundation hopes to become fully self-sufficient.

### **Funding**

As with any new non-profit, the Foundation's most pressing concern is obtaining start-up funding and creating revenue streams. McKeever (2015) can provide some useful guidance on how much the Foundation may need to raise, and what are the most likely sources of funding.

First, it is noteworthy that the two biggest sources of revenue – fees for goods and services from private and public sources – are highly overrepresented in McKeever's report. These two categories comprise 72 percent of revenues (McKeever, 2015). However, revenues from private sources are driven by tuition at institutions of higher education. Revenue from public sources is largely driven by government contracts (McKeever, 2015). While both may provide some funding, it is unlikely that these two categories will account for a similar proportion of revenues.

The third largest contributor to revenues is private contributions (McKeever, 2015), and it is likely that these contributions will be the Foundation's primary source of revenue. Therefore, the Foundation will seek out fellowships, grants, and individual donations. The Foundation will also seek to mimic some of the practices of high-impact nonprofits noted in McLeod Grant and Crutchfield (2007). One of these is creating a for-profit center, as noted above. Finally, the Foundation will devote some of its revenues to investing, eventually creating a third base of revenue.

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form of business does not restrict its management team to the sole pursuit of profit, but also does not require management to depend on donations for the company's continued existence. Benefit corporations have been authorized in New York since 2011.

Among the potential sources of funding are the following:

- **Echoing Green Foundation/Open Society Black Male Achievement Fellowship:**  
Program looks for persons who present innovative ways of addressing social issues related to African-American male achievement. Fellows receive \$80,000 plus additional stipends and support over two years.
- **LSAC Diversity Initiatives Fund Grants:** Funds projects designed to encourage underrepresented groups to pursue legal education and to increase the enrollment and successful law school completion of minority applicants.
- **Draper Richards Kaplan Foundation Grants:** Funds early stage non-profits in the United States with developed ideas. The organization seeks non-profits with potential to scale and potential to have a large impact.
- **Fund for the City of New York Incubator/Partner Project Program:** Provides financial management services, including a CFO, comptroller, auditor, human resources experts, and nonprofit coaches. The program welcomes inquiries from organizations starting a new project and have an established organization.
- **Google Ad Grants:** Provides \$10,000 of in-kind advertising per month to certain types of non-profit organizations. The organization will have to contact Google once it is up and running with a content-filled website to see if it is eligible.
- Individual donations solicited via a website and through fundraising events.
- State business laws provide for a wide variety of combinations of non-profit and for-profit ventures. In one example, Share Our Strengths uses funds generated by a consulting business that it owns to continue its mission (McLeod Grant & Crutchfield, 2007). In the course of its work, the Foundation will accumulate

expertise in education and positive psychology, among other things. This expertise can be spun off the Foundation's own consulting firm, thus generating funds for the Foundation. Additionally, the Project may wish to consider charging students for its Bar Exam program. In 2013, I paid over \$3,000 for a Bar review course. The program should be able to charge significantly less, while targeting specific groups of students. The project could easily earn \$60,000 per year by charging 20 students \$1,500 apiece to take a high-quality Bar Exam program that incorporates scientific findings into its program.

- **Partnerships.** Partnerships can provide funding, but a successful partnership can also provide information, support, and connections while the Foundation can also offer the partnering organization something of value. For example, a possible partner might be a large law firm. The firm could provide funds, but it could also provide personnel who can pass knowledge to students about the work environment and actual work of a large law firm. In turn, the Foundation could provide the firm with potential diverse candidates who have previously been advised about the firm's environment and have shown an aptitude for the type of work they would be assigned.
- **McLeod Grant and Crutchfield** note the importance building a strong community of supporters (2007). High-impact organizations tend to inspire their supporters by creating emotional experiences that lead not just financial support, but to evangelism. The Foundation will take care to create and maintain its relationships, while searching for ways to effectively promote participation by supporters.



## Projected Financial Statements

Although it is customary to provide detailed projected financial statements in a business plan, the necessary level of detail is beyond the scope of this paper. With that in mind, I present here my initial thoughts and research on how much this proposed business model might earn, where those funds may come from, and how much the Foundation might spend.

The following financial statements assume that the Foundation can achieve normalcy within five years. Here, *normalcy* means that the Foundation's revenues and expenses will be within one standard deviation of the average revenues and expenses of public charities focused on education.

**Initial Funding.** The Foundation will initially seek funding to cover at least its first year of operations, which administration, fundraising, and the Project's activities. Among other things, management will have to consider:

- Foundation Administrative Expenses
  - Salary
  - Office space and overhead
- Project Expenses
  - Labor
    - Curriculum developer
    - Class instructor
    - Data analyst/statistician
  - Non Labor
    - Class Materials
    - Supplies

- Software Licenses
- Online Surveys
- University overhead

**Continued operations.** The closest analog for the Foundation's initial estimated continued operations are public charities with a focus on education. Excluding institutions of higher education, there are 48,212 public charities that focus on education (McKeever, 2015). These institutions average \$2.2 million in revenues, \$2 million in expenses, and possess an average of \$7 million in assets (McKeever, 2015). The following estimates assume that the Foundation can be close to average within five years. The estimates assume that the Foundation's initial fundraising efforts go well, and that the growth rate diminishes over time. The estimates also use the S&P 500's historical growth rate of ten percent to simulate potential growth of the Foundation's assets. These estimates do not include the possibility of the Foundation seeking funding for its second project.

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenues	\$522,000	731,000	1,023,000	1,381,000	1,795,000
Expenses	<u>456,000</u>	<u>639,000</u>	<u>894,000</u>	<u>1,207,000</u>	<u>1,570,000</u>
Net Proceeds	66,000	92,000	129,000	174,000	\$225,000
Total Assets	\$66,000	164,600	310,060	515,066	\$791,573

While these estimates are incomplete, they provide a good starting point for the Foundation's ultimate estimates. I will seek to provide a complete estimate in the final version of this business plan.

### **Milestones, Assumptions, and Tasks**

In order to ensure the success, the Foundation must meet a number of objectives. These are listed below. These objectives assume an operational start date in January 2017. This should be enough time to account for the legal formation of the entity. This should also provide enough time to account for administrative matters related to this capstone.

**Milestones.** The Foundation hopes to meet the following milestones in order to ensure that its business functions smoothly.

- **Raise capital.** The organization will set a tentative initial funding goal of \$1 million in its first year. It is doubtful that the Foundation will need this level of funding in its first year. However, the attempt to raise this level of funding will prove instructive for the management team as it learns more about the true cost of running the business.
- **Complete Project specifications.** While Part II presents a general framework for the Project's operations, there are a number of aspects missing. Among these are the location of the classes, the content of the advertisements, and the costs of contacting the various schools. These specifications must be completed before starting operations. I speculate that it will take three – four months to complete these specifications.
- **Prove concept.** As noted in Part II, the Foundation will first seek proof of concept with the undergraduate/LSAT portion of the Project. Starting at the college level will allow the Project to gain valuable insights about its target audience and future directions. Proof of concept for this portion of the project works requires several things: (1) Showing that the inclusion of positive psychology in an LSAT class can raise student scores; (2) a showing that targeted advertising of important information

can raise awareness among the target audience of what is required of them for success; and (3) a showing that providing relevant information to undergraduate and admissions faculty can help them to provide better services for their prospective and current students. The study design mentioned in Part II requires at least eight months to complete. An analysis of the results should take no more than one month.

Therefore, proof of concept, with respect to including positive psychology in an LSAT class should take approximately ten months.

- Finish prototype/Start final version. The LSAT study mentioned above will serve as the prototype for this project. Moving from the study to the final version of the class should take no more than a month or two. This will help the Project make any changes it deems necessary, streamline operations, and time the offering of the class to the testing cycle. By this time, management should have also fully considered how it will help students with the application process, and created its prototype website, information brochures, and advertisements. As a result, it should take approximately one year from the beginning of the initial study for the Project to be ready with its final version of the LSAT portion of the project.
- Achieve breakeven. The Project will consider the breakeven point the point at which its revenues can support all of its proposed tasks. Therefore, the Project will need enough funds to support its proposed writing and Bar Exam projects, in addition to its LSAT program.

**Assumptions.** The Foundation's business model makes the following assumptions:

- The Foundation will devise projects that someone thinks are worth funding.
- The Project is something someone thinks is worth funding.

- The Project has chosen the correct factors that may be preventing students from achieving success.
- There may be additional pre-college factors that the Project needs to consider; however, these factors are not strongly implicated in terms of what is being proposed.
- The Foundation will have the ability to fund the Project within a year.
- There is not already a working prototype of this model.
- Relevant organizations will be interested in working with the Project.
- The Project can recruit enough students to conduct a proper study.
- The findings from research into positive psychology are scientifically valid.
- At least one member of the Project is personally connected to its target audience. This may prove useful in some way.
- There will be few disruptive organizational issues in the first years of the program.
- The Foundation will be able to find space to run the Project.

**Tasks.** The Foundation must complete the following tasks in order to be successful:

- Recruit a *right hand* and a *left hand* for the management team. While *right hand* usually refers to an indispensable part of the team, here both are considered indispensable. The person who serves as the right hand should be someone who is strongly creative, and can envision multiple possibilities for the various areas of the Foundation's projects. The person who serves as the left hand should be someone with extensive business experience. This person should be able to tell the rest of the management team when a course of action is unlikely to work, and suggest practical alternatives.
- Recruit a board of directors/advisors.

- Legally form the Foundation.
- Obtain tax-exempt status.
- Raise funds.
- Obtain office space.
- Purchase office equipment (including necessary software).
- Find space to conduct studies.
- Recruit teachers (if not teaching ourselves).
- Create curriculum.
- Create books and study materials.
- Complete study design.
- Run study.
- Approach organizations that may be interested in partnership.
- Develop website.
- Create ads.
- Start corporate bank account.
- Recruit additional staff.
- Review business plan; revise as needed.

### **Marketing**

The Foundation will have two marketing goals. Its major marketing goal is to inform potential donors of its existence, in an effort to obtain continued funding. Its minor marketing goal is to recruit students to participate in its programs. As some of the mechanism behind student recruitment has already been discussed, this section will address only the Foundation's fundraising. The following are all forms of marketing that the Foundation will engage in:

- Some of the grant-making organizations listed above post descriptions of their winners on their websites. If the Foundation or its founders win any of these grants, this will help to bring some attention to the Foundation.
- MAPP, the University of Pennsylvania, and the various programs the founders belong to all have alumni associations and networks. Appearing in their news items will help bring some attention to the Foundation.
- I plan to engage in academic writing and public speaking as part of my future activities. Even where these do not involve talking about the Foundation, they can still serve as a form of marketing.
- As mentioned above, we hope to turn both our Board of Directors and our students into advocates for the Foundation. We hope that their interest in the Foundation's success leads to word-of-mouth advertising for the Foundation.
- The Project includes advertising as part of its strategy. These advertisements will be heard and seen not only by the intended audience, but also by others. This spillover will also serve as a form of marketing.
- Persons involved in the Project can make appearances at legal and positive psychology events, allowing them to get to know persons who might be interested in funding the Foundation.
- The Board of Directors may have information about other methods of obtaining funding. The management team will ask for their counsel and act accordingly.

## **Competition**

The Foundation faces no shortage of competition. There are currently over 1.5 million tax-exempt organizations in the United States (National Center for Charitable Statistics, n.d.). Specific competition will depend on the projects that the Foundation takes on.

With respect to the Project's goals, more than 3,000 colleges and universities that offer 4-year degrees (NCES, n.d.). Many of these offer pre-law counseling. At least some have in-house pre-law and LSAT preparation programs. There are 205 ABA accredited law schools and several unaccredited schools (American Bar Association Section of Legal Education and Admissions to the Bar, n.d.). At least some of these run academic success programs aimed at the Project's target audience. Finally, there are nearly 50,000 public charities with a focus on education (McKeever, 2015). In particular, Practicing Attorneys for Law Students and LatinoJustice hold programs that compete directly with the Project's anticipated focus. It is anticipated that a number of these organizations will compete directly with the Project for student attention and funding dollars.

In addition to competition from public charities, the Foundation also faces competition from for-profit companies. Organizations such as Kaplan and Barbri offer test preparation and other services. They also have name recognition and a presence within the schools. Being present in the school with an advertising table may be impossible for an organization that focuses only on certain racial groups.

Even though the Project faces a lot of competition, it does have several advantages over its competition. First, the priority for the Project is results, not dollars. If the Project successfully improves its target audience's results, they are likely to tell others. This can result in a steady stream of students utilizing the Project's programs.



Second, the Project will commit to creating and using high-quality research to create its programs. This will allow the Project to make updates (or simply to stick with what works) faster than organizations without the same expertise or access to expertise.

Third, the Project intends to work at multiple levels in order to achieve its goals. This multilevel focus seems to be unique to the Project, though it is possible that another organization that works on several levels exists.

Fourth, I am only aware of one program introduces students relatively deeply to formal logic – Blueprint LSAT Test Prep, though others may exist. It is unlikely, but not impossible, that some include positive psychology as part of their service. This may change as companies become more aware of positive psychology research. If this happens, the Project will welcome the opportunity to partner with or profit from a consulting relationship with these companies.

Additionally, the Project has several competitive advantages over possible competitors:

- The Project has defined a very specific audience. This makes it easier to target resources toward this audience, and makes measurement of the Project's results more meaningful than programs serving a more general audience.
- The founder is a member of the Project's audience. This may help people working for the Project to better understand and relate to the Project's audience.
- The Foundation will be committed to truly understanding an issue before devoting time and money toward programs. This will help the Foundation to be more effective than its competitors.
- The Project intends to recruit persons who can be effective teachers, not just persons who scored well on the test in question. Performing well on a test is not necessarily correlated with one's ability to teach a subject.

- The Project is looking to work at multiple levels, rather than just presenting a test preparation program. This should help create conditions for success for at least some who are not in the Project's test preparation program.
- The Project is looking to emulate an already successful idea in spreading the knowledge of what's expected and how to do well for potential attorneys. Using a variation of a successful model is a great starting point and will help to make the Project's goal easier to obtain.

Educational institutions need not be strictly competitors. As mentioned above, the Project is looking to partner with some of these organizations. One definition of success for the Project is helping these organizations increase the probability that their minority students will perform as well as their general populations. This does not have to happen through the plan described above. The Project's goals will be well-served if another organization can take on one of the Project's anticipated tasks.

### **Management**

The day-to-day management of the Foundation will be run a chief executive officer. Serving immediately under the chief executive officer will be co-chief operating officers, designated informally as the *right hand* and *left hand*. The right hand will be expected to more strongly contribute areas such as community relations and relationship building with the Foundation's partners. The left hand will be expected to more strongly contribute to areas such as management and administration. The chief executive officer will seek their counsel on important matters, in an effort to make the best possible decisions for the Foundation.

**Proposed management team.**

- Dwayne Allen Thomas (Founder, CEO) currently serves as the Assistant Law Clerk to Hon. Martin Solomon at the New York State Supreme Court, Civil Term, Kings County. Prior to his current position, Thomas ran a solo legal practice for a year. While in law school, Thomas served as the second editor-in-chief of *The BLS Advocate*, the student newspaper, and as the Career Development Chair of the Black Law Students' Association. As editor, Thomas increased the readership of the newspaper by 30%. As Career Development Chair, he tripled attendance at BLSA's events. Prior to law school, he worked three years as a licensed auto insurance sales agent and five managing an office and a staff of ten. While at Baruch, Thomas led a team of five to the finals of the Baruch College Entrepreneurship Competition. Thomas has won several awards as a result of his work, including the Chris Peterson Memorial Fellowship (MAPP Alumni Association), 3L and Alumnus of the Year (Brooklyn BLSA), and the SBA President's Award for Outstanding Community Service (Brooklyn Law). Thomas holds a Bachelor of Business Administration in Finance from Bernard M. Baruch College, a Juris Doctor from Brooklyn Law School, and is expected to receive a Master of Applied Positive Psychology from the University of Pennsylvania in August of 2016.
- TBD (COO, right hand). The ideal candidate for this position is someone with a working knowledge of law, law school, or positive psychology. This person should also have strong creativity and judgment, as well as organizing or management experience.
- TDB (COO, left hand). The ideal candidate for this position should be someone who is currently unconnected to the Founder or right hand. Ideally, the Foundation would hire

someone with significant organizational experience who can use this experience to help guide the founding team in the proper operation of a public charity.

The Foundation will also recruit a Board of Directors, and possibly Advisors who do not wish to sit on the Board. The Board will consist of people who can advise the managing team to help them make good long-term decisions. Directors will encompass a variety of expertise, including running a non-profit enterprise, psychology, history, and law. The following group represents an ideal starting point for the Foundation's search for its Advisors and Board of Directors. The Foundation will contact this group as well as others as early as possible in the process to inquire as to their interest.

**Proposed board members/advisors.**

- Greg Berman, Director of the Center for Court Innovation. Working with the Center from its start-up days, Berman served as its Deputy Director before becoming Director. The Center now has an annual budget of \$35 million. Berman has authored or co-authored several books and articles, and has served on several boards and task forces. Berman graduated from Wesleyan University and is a former Coro Fellow in Public Affairs. Berman's full biography can be found at <http://www.courtinnovation.org/staff>.
- Michael Brown, CEO and Co-Founder, City Year. City Year is one of the high-impact non-profits profiled in McLeod Grant and Crutchfield (2007). City Year provides tutoring to students in high-poverty communities to help the higher than average dropout rates in these communities. Brown is a graduate of Harvard and Harvard Law School. He has also received the Reebok Human Rights Award and has been awarded several honorary degrees. Brown's full biography can be found at <https://www.cityyear.org/about-us/leadership/senior-leadership>.

- Angela Duckworth, Founder and Scientific Director of the Character Lab. A former management consultant and 7<sup>th</sup> grade teacher, Duckworth entered the Ph.D. program at the University of Pennsylvania to study the connection between effort and success. Duckworth recently released her first book, *Grit: The Power of Passion and Perseverance*, and is a 2013 MacArthur Fellow. Duckworth's full biography can be found at <https://characterlab.org/our-team>.
- Charles J. Ogletree, Jr., Jesse Climenko Professor of Law, Harvard Law School and Founding Director of the Charles Hamilton Houston Institute for Race and Justice. Ogletree has been named one of the 50 Most Influential Minority Lawyers in American by the National Law Journal. Ogletree focus of scholarship is complex constitutional issues, and he has written extensively about criminal justice issues. Ogletree holds a B.A. and M.A. in Political Science from Stanford and a J.D. from Harvard Law School. Ogletree's full biography can be found at <http://hls.harvard.edu/faculty/directory/10635/Ogletree>.
- Martin E. P. Seligman, Founder of Positive Psychology. Marty is an authority on positive psychology, resilience, learned helplessness, depression, optimism, and pessimism. A prolific writer, Seligman has written over 250 scholarly publications and 20 books. Seligman previously served as the President of the American Psychological Association. He holds a B.A. from Princeton and a Ph.D. from the University of Pennsylvania. Seligman's full biography can be found at <https://www.authentic happiness.sas.upenn.edu/faculty-profile/profile-dr-martin-seligman>.
- Darren Walker is the President of the Ford Foundation, the second largest philanthropic organization in the United States. Prior to joining Ford, Walker was the Vice President of

the Rockefeller Foundation. While there, he managed the rebuild New Orleans initiative after Hurricane Katrina. In the 1990s, he served as the COO of the Abyssinian Development Corporation, Harlem's largest community development organization. There he oversaw a revitalization program which resulted in over 1,000 units of new housing. In 2016, Time magazine named him one of the 100 Most Influential People in the World. Walker's full biography can be found at <https://www.fordfoundation.org/people/darren-walker/>.

- Heather Williams, Presidential Term Professor and Professor of Africana Studies, University of Pennsylvania. Prior to becoming a professor, Williams had a successful legal career, working for the Civil Rights Division of the U.S. Department of Justice and the New York State Attorney General's office. Williams left the law to pursue a Ph.D. in African-American history at Yale, and is now one of the leading scholars studying slavery in the 18<sup>th</sup> and 19<sup>th</sup> century American South. Williams has written several books, and has received a Mellon Foundation New Directions Fellowship for a project related to Jamaican immigration to the United States. Williams' full biography can be found at <https://africana.sas.upenn.edu/department/heather-williams>.

### **Conclusion**

In 2013, African-American law students, who historically passed the Bar Exam at a lower rate than their counterparts, passed at almost the same rates as their counterparts. I argue that this result is not a fluke, and can be replicated. Finding students who have ability, but who might believe that success is not within their control, and equipping them with the fundamental academic skills they need to succeed and training to prevent adverse psychological phenomena is the key to effectively and consistently replicating these results. Positive psychology will play a

strong part in this endeavor, and I look forward to applying what I've learned in an effort to make that happen.

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