

## **Cultivating Humility**

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## **Cultivating Humility**

This article focusses on the role of humility in the law school. It argues in favour of a culture where humility is consciously cultivated in law students. Section I considers on the grading curve, a quintessentially North American attribute of almost all law schools. It analyses and theorises the curve and its effect in cultivating humility. It suggests that, while the curve can have a humbling effect, this effect is felt irregularly among law students and comes with significant and often discounted consequences. This article argues that a model where humility is more consciously cultivated could minimise these consequences. Section II provides such an alternative, arguing in favour of law professors showing humility and vulnerability. It depicts this alternative as both a partial antidote to the grading curve's problems and a key starting point in inviting students to be vulnerable and constitutively challenging what it means to be a lawyer.

Keywords: Humility, legal education, assessment, vulnerability, grading curve

### **Introduction**

The legal profession is facing a significant and unprecedented crisis. Lawyers are stressed.<sup>1</sup> They self-medicate with drugs and alcohol.<sup>2</sup> Most importantly, they are not

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<sup>1</sup> See for instance Patrick R Krill, Ryan MA Johnson and Linda Albert, 'The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys' (2006) 10 *Journal of Addiction Medicine* 46. This study was conducted by the American Bar Association and involved 12,825 participants. There is no similar large-scale study in Canada.

<sup>2</sup> *ibid.*

happy.<sup>3</sup> As the legal landscape changes, lawyers should change too.<sup>4</sup> In recent years, we have seen some lawyers break the stigma around suffering and mental health.<sup>5</sup> By speaking out about their own experiences, these lawyers have dared to show their humanity. They have chosen to be humble. This article focusses on humility, the antithesis of the traditional lawyer<sup>6</sup> yet likely the key to building a gentler, more humane profession. To be humble is to recognise one's limits and fallibility. It is to ask for help

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<sup>3</sup> *ibid.* Also see generally Ronit Dinovitzer and Bryant G Garth, 'Lawyer Satisfaction in the Process of Structuring Legal Career' (2007) 41 *Law & Society Review* 1, which notably finds that lawyers from elite law schools and lawyers practising corporate law at prominent law firms are likeliest to be dissatisfied with their career.

<sup>4</sup> Phil Lord, 'Structural Change or Collective Amnesia?' (2020) 57 *Alberta Law Review* 1053.

<sup>5</sup> See for instance David Butt, 'Two Supreme Court justices, enduring mental illnesses decades apart, show how far we've come' *The Globe and Mail* (Toronto, 16 May 2019) <[www.theglobeandmail.com/opinion/article-two-supreme-court-justices-enduring-mental-illnesses-decades-apart/](http://www.theglobeandmail.com/opinion/article-two-supreme-court-justices-enduring-mental-illnesses-decades-apart/)> accessed 1 August 2020; Ann Macaulay, 'Objectif: Santé Mentale' *Canadian Bar Association* (Toronto, 28 September 2015) <[www.cba.org/Publications-Resources/CBA-Practice-Link/2015/2015/Leading-the-way-on-mental-health](http://www.cba.org/Publications-Resources/CBA-Practice-Link/2015/2015/Leading-the-way-on-mental-health)> accessed 1 August 2020; and Jim Middlemiss, 'Mental health's toll' *Canadian Lawyer* (Toronto, 20 May 2019) <[www.canadianlawyermag.com/news/opinion/mental-healths-toll/276099](http://www.canadianlawyermag.com/news/opinion/mental-healths-toll/276099)> accessed 1 August 2020.

<sup>6</sup> See for instance Erik Pitchal, 'Buzz in the Brain and Humility in the Heart: Doing It All, Without Doing Too Much, on Behalf of Children' (2006) 6 *Nevada Law Journal* 1350, 1352 ("[f]ew lawyers, however, would likely characterize their approach to their work as humble. To the contrary, attorneys tend to see themselves as dedicated advocates for clients who must both be confident and exude confidence in order to be successful. Before the tribunal, it is important to be seen as believing in your client, lest your own ambivalence plant seeds of doubt in the trier of fact. In negotiations with other parties, it is important to be able to posture credibly, showing faith in the rightness of your position and commitment to stick to your guns for as long as it takes to get the job done. Approaching these tasks with humility seems peculiar – if not undermining of the entire enterprise.")

and learn to say no. This article considers how law schools, and their agents, can cultivate humility in tomorrow's lawyers by constitutively challenging what it means to be a lawyer.

The article focusses on two loci where and through which law teachers and law school administrators try to and can cultivate humility. It adopts, at times, an autoethnographic perspective and draws on my own reflections and experience at McGill University's Faculty of Law. At 24, I am both young and ancient. I have spent my entire adult life, since the age of 18, at the Faculty. First as a B.C.L./LL.B. candidate<sup>7</sup> and then as an LL.M. candidate, I have spent more than a fifth of my life at the Faculty. The students I taught as 1Ls will graduate this year.<sup>8</sup> Chancellor Day Hall saw me grow and mature. Its halls have seen me take on and struggle with many identities: Francophone, terrified impostor, law student, mentor, law teacher, lawyer, awful wannabe scholar, published author, and, by now, fossil. And as an aspiring law professor, I want to spend the rest of my adult life in this, or another, law faculty. Having worn so many hats, I believe I am in a good position to assess how we can best cultivate humility in our law students as leaders, graduate students, and law teachers.

While the substance of this article makes an original contribution to legal education research, its form positions it in a neoteric trend in Canadian legal scholarship

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<sup>7</sup> Since 2019, our undergraduate programme is known as the B.C.L./J.D. programme.

<sup>8</sup> I co-taught the first-year course titled Integration Workshop. This course replaced, upon our curricular renewal, the first-year legal research course. It offers a forum where students can bring to bear what they have learnt in their other courses, undertake practical exercises, and learn legal research. Students also partake in a weeklong "Integration Week" at the beginning of each term.

of greater focus on autoethnography. In a recent article, transfeminine scholar Florence Ashley justifies her use of the method as follows:

Throughout this article, I adopt an autoethnographic perspective to supplement legal analysis, drawing on self-reflection and personal experiences as a guide of policy-making. I am positioned in the discussion as a transfeminine individual who has first-hand experiences with many facets of transition-related care, as well as extensive exposure to trans communities in professional, advocacy, and private settings.<sup>9</sup>

In a ground-breaking recent article, indigenous scholar Aaron Mills similarly challenges the traditional law review article model. He states:

Throughout this article I speak in a tone and manner intended to be accessible to a wide audience, including beyond the academy. I've used language with this goal in mind, too, including, for instance, diction, the use of contractions, and my decision to address you directly (i.e., in the second person). Although we've likely never met, I speak as though we're already in a relationship, inviting you into this possibility. This express linguistic choice is part of my small effort to provincialize the presumptive life-world within which law journal communication ordinarily happens.<sup>10</sup>

Mills goes on to root his article in his own experience as a law student. By weaving in my experiences here, I wish to emphasise the importance of creating scholarship – and especially scholarship regarding legal education – which is both accessible and rooted in the experiences of those legal education most directly concerns. While legal education scholarship has historically been more effective at bringing to bear the lived experiences

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<sup>9</sup> 'Surgical Informed Consent and Recognizing a Perioperative Duty to Disclose in Transgender Health Care' (2020) 13 McGill Journal of Law and Health 73, 78. Ashley is a graduate of McGill's B.C.L./LL.B. and LL.M. programmes.

<sup>10</sup> 'The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today' (2016) 61 McGill Law Journal 847, 849.

of professors, the voices of students are too often missing from a conversation which is essentially about their education.

This article is bipartite. Its first section describes and theorises a long-standing practice at McGill University's Faculty of Law (and other prominent law schools) of grading students according to an expected class average or grading curve. As the expected average is a grade of B (a GPA of 3.00), this practice results in exceptional students with near-perfect undergraduate CGPAs being labelled, once in law school, "average" students. I assess this intrinsically humbling exercise as a former student, and as a teacher who has graded students and seen them struggle with the expected average. I argue that the humbling effects of the expected average come with significant and often discounted consequences and that a better model is one where humility is *intentionally* cultivated. The second section of this article suggests such a method of intentional cultivation by assessing the importance of teachers showing their fallibility. In the traditional law school model, which often adopts the Socratic method, the law professor is separated from her students and in control of the classroom. Law professors are also often highly accomplished. I suggest, again drawing on my own experience leading a classroom, that inviting professors to show humility is key to developing a culture of humility and making students comfortable to be vulnerable.

## **I. The Curve**

I find it fit to dedicate the first section of this article to the quintessentially North American practice of grading law students according to a grading curve or expected average. I found this practice stressful yet enriching as a law student. However, my experience leading a classroom suggests that not all students feel the same way. As a

student, the expected average ultimately benefitted me. I had good grades. It is certainly far easier to sing its praises when you come out on top. After analysing the expected average, this section concludes that it is an imperfect way to cultivate humility in law students. The next section proposes an alternative.

It is first worth discussing the crucial concept of humility. It is one which is elusive and perhaps impossible to define. For the purposes of my argument, I find it best to define humility through two interrelated aspects: openness and self-awareness. While prior research has highlighted more potential characteristics of humility, I believe that a broad enough conception of openness and self-awareness subsumes these other characteristics.<sup>11</sup> Our intuitive understanding of what it means to *lack* humility may be a fit starting point. We often speak of those who think they are, in some way, superior to others as lacking humility. We can construe this attitude as resulting from either an overestimation of one's abilities or characteristics *or* as an underestimation of those of others. Openness is outward-facing: it means seeking to understand others. In understanding the experiences of others, we reassess our own and find it harder to think of ourselves as superior. Although humility may come from that process, the decision to *be open* also requires humility. Openness means deeming others worthy of our attention, and accepting that affording them such attention will likely challenge how we understand ourselves. Self-awareness encompasses the result of that process: our humbled conception of who we

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<sup>11</sup> See generally Cynthia Foronda and others, 'Cultural Humility: A Concept Analysis' (2016) 27 *Journal of Transcultural Nursing* 210, which identifies the following attributes of humility: openness, self-awareness, egoless, supportive interactions, and self-reflection and critique; Don E Davis, Everett L Worthington Jr and Joshua N Hook, 'Humility: Review of Measurement Strategies and Conceptualization as Personality Judgment' (2010) 5 *The Journal of Positive Psychology* 243; and Jennifer Cole Wright and others, 'The Psychological Significance of Humility' (2017) 12 *The Journal of Positive Psychology* 3.

are. It also encompasses the self-reflective process through which we assess and seek to understand our own experiences and fallibility. By daring to look inward, and recognise our own challenges and shortcomings, we often develop a less exalted, yet richer and more faithful conception of who we are.

As becomes plain below, a lack of humility may well come from a fear that others will judge and reject us because of our challenges and shortcomings. To show humility is, then, a courageous act: it means making oneself vulnerable and risking rejection. I will attempt to show that to be especially true (and uniquely valuable) for those who occupy positions of authority – such as law teachers.

As a final preliminary note, I wish to emphasise that this paper, and its conclusions, are first grounded in the dominant paradigm of legal education in North America. In finding its genesis in that paradigm, this article seizes the opportunity to engage with the thickest current of North American legal education scholarship, which focusses on the Socratic method. The article's autoethnographic elements also require it to be grounded in a context with which I am closely familiar. Though the model of legal education I discuss here may seem foreign to some readers from other jurisdictions,<sup>12</sup> I am confident the broader discussions of the role of humility in the law school, and of its insurgent and transformative potential within and beyond the law school's walls, will ring true to these readers.

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<sup>12</sup> On the limited applicability of attributes such as the Socratic method and the grading curve beyond North America, see for instance Shirley L Rawson and Alan L Tyree, 'Fred Keller Goes to Law School' (1991) 2 *Legal Education Review* 1; Jan M Smits, 'European Legal Education, or: How to Prepare Students for Global Citizenship?' (2011) 45 *The Law Teacher* 163; and Stefan Koriath, 'Legal Education in Germany Today' (2006) 24 *Wisconsin International Law Journal* 85.

So let us circle back to our discussion of a key feature of that North American paradigm: the grading curve. A grading curve is essentially a grade distribution. The method of “curving” and the expected grade distribution vary. However, the practice of grading students on a curve is widely adopted in North American universities.<sup>13</sup> In a traditional curve, there is an expected distribution of grades. For example, a prominent public American university adopts the following suggested distribution: 15% A’s, 25% B’s, 45% C’s, 10% D’s, and 5% F’s.<sup>14</sup> The professor is asked to rank students according to the expected distribution.

The curve concept is based on the bell curve, known in probability theory as a normal or Gaussian distribution.<sup>15</sup> Probability theory concludes that many things obey a normal distribution, which is shaped, when graphed, as a bell. Most of the sample size falls in the middle of the curve, with fewer and fewer units distributed as we get further from the middle of the curve. For example, when plotting the weight of human beings, we would find a large percentage of individuals whose weight is at or near the average weight. We would find progressively lower percentages of individuals with weights higher and lower than the average.<sup>16</sup> The grading curve is based on the implicit assumption that academic performance obeys this distribution. This assumption is not

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<sup>13</sup> See for instance George Kulick and Ronald Wright, ‘The Impact of Grading on the Curve: A Simulation Analysis’ (2008) 2 *International Journal for Scholarship Teaching and Learning* 1.

<sup>14</sup> *ibid* at 2. See also Douglas H Wedell, Allen Parducci and Diana Roman, ‘Student Perceptions of Fair Grading: A Range-Frequency Analysis’ (1989) 102 *American Journal of Psychology* 233.

<sup>15</sup> See Aidan Lyon, ‘Why are Normal Distributions Normal?’ (2014) 65 *British Journal for the Philosophy of Science* 621, 622.

<sup>16</sup> *ibid*.

wholly speculative, as related factors, such as intelligence as measured by an IQ test, obey the normal distribution.<sup>17</sup> Another probability theorem, known as the law of large numbers, dictates that large sample sizes will obey an expected distribution. A small sample size may yield a somewhat different distribution, but a progressively larger one will be progressively likelier to obey the expected distribution.<sup>18</sup> For example, a small group of students may happen to contain a disproportionately high number of “smart” students, but a large enough one will most likely contain a number of smart students corresponding to the expected average. Combining these two theorems provides a prima facie justification for a grading curve: if the group of students is large enough, their academic performance *should* obey a normal, bell curve distribution. Adopting a grade distribution which roughly mirrors the bell curve, such as the one mentioned above (15% A’s, 25% B’s, 45% C’s, 10% D’s, and 5% F’s), should accurately reflect the students’ academic performance and is, therefore, *fair*.<sup>19</sup>

North American law schools have almost universally adopted a grading curve.<sup>20</sup> Some schools, however, enforce an expected average, rather than a grading curve. Instead of dictating, as in the example provided above, how many students should receive each grade, they enforce an expected average. Professors may, for instance, be told that the

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<sup>17</sup> *ibid.*

<sup>18</sup> See FM Dekking and others, *A Modern Introduction to Probability and Statistics* (Springer 2005), 181—190.

<sup>19</sup> Several portions of this reasoning can be questioned, but this article is not a forum to question them.

<sup>20</sup> See Nancy H Kaufman, ‘A Survey of Law School Grading Practices’ (1994) 44 *Journal of Education* 415. While I do not habitually cite Wikipedia, it is worth mentioning that Wikipedia has an accurate and more current list of expected averages and curves, see ‘List of Law School GPA Curves’ *Wikipedia* <[en.wikipedia.org/wiki/List\\_of\\_law\\_school\\_GPA\\_curves](https://en.wikipedia.org/wiki/List_of_law_school_GPA_curves)> accessed 1 August 2020.

expected average grade is a B and have discretion as to how grades are distributed to result in a B average. At McGill University's Faculty of Law, the expected average is a grade of B- to B, or B- to B+ for courses with an enrollment of fewer than 25 students.<sup>21</sup> At the University of British Columbia's Peter A. Allard School of Law, the expected average is not specifically mentioned, but the grade distribution, released every year, suggests that the expected average grade is similar to, or slightly above, McGill's.<sup>22</sup> For both faculties, the distribution is consistent over many years.<sup>23</sup>

The rationale is bipartite. First, law students, however illustrious they may be, need to receive grades to be "sorted" for employment and other purposes.<sup>24</sup> Second, the

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<sup>21</sup> See Rosalie Jukier, 'McGill Grading Standards' *McGill University* (Montreal, 2019)

<[www.mcgill.ca/law-studies/files/law-studies/grading\\_standards\\_0.pdf](http://www.mcgill.ca/law-studies/files/law-studies/grading_standards_0.pdf)> accessed 1 April 2020. See also 'McGill University Faculty of Law – Student Affairs Office: Table of cumulative averages (CGPA) for BCL/LLB students – 2018-2019' *McGill University* (Montreal, 1 August 2019) <[www.mcgill.ca/law-studies/files/law-studies/table\\_cumulative\\_averages\\_bcl-llb\\_students-2018-2019\\_01aug2019.pdf](http://www.mcgill.ca/law-studies/files/law-studies/table_cumulative_averages_bcl-llb_students-2018-2019_01aug2019.pdf)> accessed 1 April 2020. The greater variation is applicable only for smaller course sections, which is consistent with the law of large numbers, described above.

<sup>22</sup> See Bruce MacDougall, 'Information about Ranking at the Peter A. Allard School of Law' *Peter A. Allard School of Law* (Vancouver, 9 May 2019)

<[www.allard.ubc.ca/sites/www.allard.ubc.ca/files/uploads/registration/grades\\_dist\\_1819.pdf](http://www.allard.ubc.ca/sites/www.allard.ubc.ca/files/uploads/registration/grades_dist_1819.pdf)> accessed 1 April 2020.

<sup>23</sup> See 'Grading' *McGill University* <[www.mcgill.ca/law-studies/courses/policies/grades](http://www.mcgill.ca/law-studies/courses/policies/grades)> accessed 1 April 2020 and 'Grade Distribution Letters' *Peter A. Allard School of Law* <[www.allard.ubc.ca/grade-distribution-letters](http://www.allard.ubc.ca/grade-distribution-letters)> accessed 1 April 2020.

<sup>24</sup> See for instance Colin Miller, 'What is the Point of Law School Grading Curves if They're Not (More) Fixed?' *PrawfsBlawg* (Columbia, 21 September 2011) <[prawfsblawg.blogs.com/prawfsblawg/2011/09/what-is-the-point-of-law-school-grading-curves-if-theyre-not-fixed.html](http://prawfsblawg.blogs.com/prawfsblawg/2011/09/what-is-the-point-of-law-school-grading-curves-if-theyre-not-fixed.html)> accessed 1 May 2020 (Miller is a full professor and associate dean at the University of Southern Carolina School of Law); Barbara Glesner Fines, 'Competition and the Curve' (1997) 65 *University of Missouri Kansas City Law Review* 779; and Steven Friedland, 'Rescuing Pluto from the Cold –

grading curve ensures consistency: between different sections of the same course, different courses, and over time (between law school graduating classes).<sup>25</sup>

Grading students on a curve is an intrinsically humbling exercise. The ranks of prominent law schools are made up of illustrious students who have shown their promise and exceptionality through their prior education, extracurricular and community involvement, and work experience. These students enter law school having finished at or near the top of their class in their prior education.<sup>26</sup> Once in law school, they become “average.” Their achievements are the norm. The grading curve reinforces this statement. While a few students will, of course, graduate at the top of their law school class, most students will receive average or below-average grades.<sup>27</sup> Even those who finish at the top of their class will not get the perfect or near-perfect GPAs they achieved in their prior education.<sup>28</sup>

For students who have never been “average” at anything, this can be an enriching experience, an opportunity to be brought down to earth. The quasi-unavailability of the highest grade on the grading scale<sup>29</sup> implicitly invites students to constantly improve and suggests that their work can indeed always get better. As these students go on to pursue successful and lucrative careers, instilling early on a culture of humility, self-reflection,

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Creating an Assessment-Centred Legal Education’ (2018) 67 *Journal of Legal Education* 592.

<sup>25</sup> See Kulick and Wright (n 13) 2 and Miller (n 24).

<sup>26</sup> See Jukier (n 21) and ‘Admissions Policies’ *University of Toronto Faculty of Law* <[www.law.utoronto.ca/admissions/jd-admissions/admissions-policies](http://www.law.utoronto.ca/admissions/jd-admissions/admissions-policies)> accessed 1 April 2020.

<sup>27</sup> See MacDougall (n 22) and ‘Grading’ (n 23).

<sup>28</sup> The highest grade on the grading scale is almost impossible to achieve in law school, see for instance MacDougall (n 22) and ‘Grading’ (n 23).

<sup>29</sup> See MacDougall (n 22) and ‘Grading’ (n 23).

and self-improvement can prove invaluable. It helps prevent the perverse effects of success in their careers.<sup>30</sup> Humility correlates with greater self-confidence and satisfaction.<sup>31</sup> It also correlates with career achievement.<sup>32</sup>

As a student, I learned to appreciate this humbling experience. My first two grades in law school, also the only grades I received before the December exams, were B-'s – below-average grades at McGill's Faculty of Law.<sup>33</sup> As a teacher, I invited my students to try to feel the same way. I reproduce here, in full, the email I sent my students after they received their most significant set of grades thus far, after the December exams:

"For, behold, the day cometh, that shall burn as an oven"

Malachi 4:1 (KJV)

Dear students,

The above quotation most likely rings true for many of you tonight. Let me simply use this opportunity to reiterate what you have already been told.

Midterm grades are meant to give you feedback on your work so far and are not necessarily indicative of your future performance in law school. (In fact, a 25% weight on some 30 credits out of 105 credits is almost mathematically insignificant.) Many students have seen their grades increase over their 3 or 4 years.

For now, embrace this opportunity to learn. Get back up and get better. Make appointments with your professors and go over your exams multiple times. Like all new skills, legal reasoning is learnt through practice and, inevitably, mistakes. As

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<sup>30</sup> See for instance Neal Dickert, 'Avoiding Judicial Arrogance: A Personal Essay' (2005) 44 *Judges' Journal* 21 and Deborah L Rhode, *Lawyers as Leaders* (Oxford University Press 2013), 1–6, 86–87, 96. The phenomenon is not unique to the legal profession, see for instance Allan S Berger, 'Arrogance among Physicians' (2002) 77 *Academic Medicine* 145.

<sup>31</sup> See Wade C Rowatt and others, 'Development and initial validation of an implicit measure of humility relative to arrogance' (2006) 1 *Journal of Positive Psychology* 198.

<sup>32</sup> *ibid.* The data cannot, however, establish that it *causes* career achievement.

<sup>33</sup> See 'Grading' (n 23).

the Latin phrase goes, *Per Angusta Ad Augusta*: we succeed by failing. Without failure, there is no growth.

Many of you have pointed out that I have done a few “impressive” things in my life. That just means I've failed a lot more than most people. As a short list of my many mistakes and failures, let me point out that I did not get into Yale (my dream university), that I could not get into the McGill Law Journal, and that I can hardly count the many business mistakes that cost me many, many thousands of dollars. On a personal level, I would invite you to also learn to embrace being humbled. You have all achieved a great deal before law school, and your undergraduate or CEGEP grades were very high. The bitter sting of failure may feel unfamiliar. But I think humbling experiences keep us grounded. They remind us that nothing is ever to be taken for granted and that thinking of ourselves as superior pulls us away from others and, often, from our destiny.

Your worth did not change tonight. You are still the same group of witty, interesting, brilliant students I have come to know. Don't let your grades (or anything else) define what you can and cannot do. All employers will look beyond your grades. And albeit through a more tortuous and rocky path, there is always a way to get where you want to go.

In closing, let me allow the entrepreneur in me to say this: changing the world is not a job. There are countless ways to make lives better, to harness your talents, and to leave the world a better place. You are being equipped with tools very few have, tools that can make any vision a reality.

So keep going and have fun as you do.

Phil

Similarly, in a letter I wrote to first-year law students as a third-year law student, I describe our Faculty as follows:

This is not a place where we learn rules. This is a place where we come to grow, as jurists, as community members, as human beings. And in that process, this is a place where women and men of great intellect, talent, and accomplishment come to be humbled. Attempt to learn to appreciate being humbled. For the study of law is a complex and frustrating endeavour. It reminds us of our limitations. Yet humbling experiences will ultimately come to define who you are and how you perceive the world.

This is a place where we fail. This is a place where the only way to succeed at the highest level is to fail. So dare to try new things, to tackle new challenges. And when you inevitably fail, strive to fail faster and fail better. Strive to use failure to learn and grow.

My students appreciated this insight and found it comforting. They told me as much. Some, however, felt deep frustration with our grading system and had little hope that their grades could ever change. Most importantly and as will be further explored in the next section, some students saw a gap between them and their teachers. Those teaching them, downplaying the importance of grades and inviting them to be humble, were people whom the grading system had benefitted.<sup>34</sup>

My students' criticism is in line with that found in the broader literature on grading curves. First, some students argue that the curve disincentivises effort.<sup>35</sup> They argue that law school grades are given almost arbitrarily and do not reflect a student's effort. Some students, they argue, do not read the materials assigned yet nonetheless get good grades. The result is bipartite: the system is or feels *unfair* and further effort (such as reading all of the materials assigned for a course) is unnecessary. Worse yet and to my great dismay,

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<sup>34</sup> Law professors almost universally have impressive credentials and graduated at or near the top of their law school classes, see for instance James Gordley, 'Mere Brilliance: The Recruitment of Law Professors in the United States' (2003) 41 *American Journal of Comparative Law* 367; Sarah Lawsky, 'Entry Level Hiring: The 2020 Report - Call for Information' *PrawfsBlawg* (Chicago, 2 March 2020) <[prawfsblawg.blogs.com/prawfsblawg/entry-level-hiring-report/](https://prawfsblawg.blogs.com/prawfsblawg/entry-level-hiring-report/)> accessed 1 August 2020 and Brad Areheart, 'Advice on Becoming a Law Professor' *The University of Texas at Austin School of Law* <[law.utexas.edu/career/paths/academic/advice-on-becoming-a-law-professor/](https://law.utexas.edu/career/paths/academic/advice-on-becoming-a-law-professor/)> accessed 1 August 2020.

<sup>35</sup> In the literature, see for instance Kulick and Wright (n 13) 3. Also see generally James W Michaels, 'A Simple View of the Grading Issue' (1976) 3 *Teaching Sociology* 198.

some students had been told before they even started law school that reading all assigned materials was neither useful nor expected. (While in law school, I skipped a total of five readings, so I certainly do not subscribe to that view.) The curve seems to, at least for some, breed a culture of (intellectual) lethargy.

I mentioned above that one of the main justifications of the grading curve is, according to its proponents, that it permits the sorting of students for employment and other purposes.<sup>36</sup> The implication, both in theory and according to my experience, is that students who will receive poorer grades will be less “marketable.”<sup>37</sup> The grading curve can have devastating effects on these students’ career. And regardless of whether a school enforces a curve or an expected average, a significant portion of the class *needs* to receive low grades. This criticism gets to the crux of and significantly undermines the curve’s positive, humbling aspects. For the students who get the proverbial short end of the stick, being graded is not a humbling experience: it is a source of significant stress. I refer here particularly to those who consistently get poor grades — as opposed to those who get average grades or several low grades which they use as a springboard to learn and grow. This problem is exacerbated by the skyrocketing cost of law school throughout North

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<sup>36</sup> See Miller (n 24) and Friedland (n 24).

<sup>37</sup> See for instance James Boyd White, *From Expectation to Experience: Essays on Law and Legal Education* (University of Michigan Press 1999), 8—24.

America.<sup>38</sup> Students who cannot find lucrative employment will experience serious financial strain, potentially throughout their lives.<sup>39</sup>

The grading curve is, therefore, an imperfect method to cultivate humility in law students. It has significant and often ignored consequences. Furthermore, its impacts – including its potential virtues – are experienced irregularly among a law school class. I believe this results from the fact that, while the grading curve has humbling effects (at least for some), it was not designed to cultivate humility in law students. It was, instead, designed for the other purposes mentioned above. Finding ways to more intentionally cultivate humility would allow us to do so in a way that has fewer unintended consequences. The next section proposes one such method: the intentional demonstration of humility and vulnerability by law professors.

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<sup>38</sup> See for instance Rabeea Khalid, ‘Skyrocketing law school tuition fees disrupting access to justice’ *The Lawyer’s Daily* (Toronto, 30 November 2018) <[www.thelawyersdaily.ca/articles/8844/skyrocketing-law-school-tuition-fees-disrupting-access-to-justice](http://www.thelawyersdaily.ca/articles/8844/skyrocketing-law-school-tuition-fees-disrupting-access-to-justice)> accessed 1 August 2020; Sarah Rankin, ‘Today’s law grad: Six figures in debt and heading to Bay Street’ *The Globe and Mail* (Toronto, 2 April 2013) <[www.theglobeandmail.com/news/national/education/todays-law-grad-six-figures-in-debt-and-heading-to-bay-street/article10565699/](http://www.theglobeandmail.com/news/national/education/todays-law-grad-six-figures-in-debt-and-heading-to-bay-street/article10565699/)> accessed 1 August 2020; and Erica Field, ‘Educational Debt Burden and Career Choice: Evidence from a Financial Aid Experiment at NYU Law School’ (2009) 1 *American Economic Journal: Applied Economics* 1.

<sup>39</sup> To students graduating with six-figure or multiple-six-figure debt, this is hardly an overstatement.

## II. Leading by Example

This section sets out an example of how law professors can begin to create a culture where humility is consciously cultivated and constitutively challenge what it means to be lawyer. I once again adopt, at times, an autoethnographic perspective and weave in my observations teaching and studying at McGill University's Faculty of Law.

I mentioned above that there is almost definitionally a gap between law professors and their students. The traditional law school model is based on the Socratic method,<sup>40</sup> which, while conversational, does not put the professor and her student on the same footing. The professor is in charge of her classroom and directs the dialogue.<sup>41</sup> She decides which questions to ask. The Socratic method does not invite students to participate or ask their own questions, at least throughout the portion of the class focussed on Socratic dialogue. Instead, specific questions are asked of them, which they must answer.<sup>42</sup> The Socratic method has faced significant criticism. It can make students feel highly uncomfortable, even humiliated.<sup>43</sup> This is particularly true of students from

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<sup>40</sup> See for instance Orin S Kerr, 'The Decline of the Socratic Method at Harvard' (1999) 78 *Nebraska Law Rev* 113, 113—14.

<sup>41</sup> *ibid*, 122—23.

<sup>42</sup> See John Yemma, 'Lawyers' Adversarial Schooling Undergoes Cross-Examination' *The Boston Globe* (Boston, 3 May 1996), A1.

<sup>43</sup> See *ibid* and Kerr (n 40) 118—22. This culture of humiliation is depicted in popular culture. Kerr gives the example of the movie *The Paper Chase* (*ibid*, 113—14).

historically marginalised communities.<sup>44</sup> The design of law schools and their classrooms reinforces this dynamic.<sup>45</sup>

As mentioned in the previous section, law professors are also almost universally highly accomplished individuals who graduated from law school at or near the top of their class.<sup>46</sup> This further creates a gap between professors and their students. My conversations with my own students lead me to conclude that, while students may look up to their professors, they also feel intimidated by them. They see their professors as extremely intelligent and accomplished individuals who, while compassionate, will never have a first-hand understanding of the struggles they go through in law school. This perception may affect their behaviour both in class and outside of class – prompting them, as an example, not to ask questions they feel might be perceived as irrelevant.

Professors should consciously attempt to show humility. Doing so will help make their students feel more comfortable to be vulnerable and become more self-aware. It will fundamentally redefine the classroom dynamic and, by ricochet, remedy some of the problems I identified in the previous section with law school grading.

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<sup>44</sup> See Christophe G Courchesne, “‘A Suggestion of a Fundamental Nature’: Imagining a Legal Education of Solely Electives Taught as Discussions” (2005) 29 Rutgers Law Record 21, 29—31, which masterfully summarises the literature on this point. See also Kerr (n 40) 118—22.

<sup>45</sup> See generally Philip C Kissam, *The Discipline of Law Schools* (Carolina Academic Press 2003), 71—91.

<sup>46</sup> See Gordley (n 34); Lawsky (n 34); and Areheart (n 34).

A fundamental way to be humble is to acknowledge and share one's failures and trials. I tried to do so with my students. The aforementioned email I sent my student when they received their December exam grades reads as follows:

Many of you have pointed out that I have done a few "impressive" things in my life. That just means I've failed a lot more than most people. As a short list of my many mistakes and failures, let me point out that I did not get into Yale (my dream university), that I could not get into the McGill Law Journal, and that I can hardly count the many business mistakes that cost me many, many thousands of dollars.

This was my effort to show humility. It came as a direct response to the admiration some students seemed to have for me – an admiration which, I felt, was based on an incomplete portrait of my life and career. More importantly, the passage drew on my own experience as a first-year student. I could feel my students' pain because I had been in their position just two years before. These were the words I would have wanted to hear.

At times, being humble means feeling like our own interests are pitted against our students'. Throughout their first semester, my students voiced their deep concern that they had, to be blunt, absolutely no idea how to answer a law school exam question. This concern is sensible and justified. I felt the same way as a first-year student. While McGill takes the welcomed step of making all first-year courses full-year courses (thereby significantly reducing the weight of the December exams), it is stressful for students who have written only two assignments (which are generally dissimilar to exams) in their first four months of law school to complete six exams they do not know how to approach. Much less do they know how to assess what constitutes a *good* exam answer.<sup>47</sup>

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<sup>47</sup> I am not suggesting that this issue is unique to McGill.

When faced with my students' concern, I instinctively thought of sending them the answers I wrote to my exams as a first-year student. I entertained the idea but initially did not want to do it. First, my answers were not good. I was a much better jurist then than I was as a first-year student. Second, they would know my grades. (If I omitted them, they could not know which answers were good and which were not as good – defeating the purpose of the exercise.) I was also concerned I would come across as arrogant in showing my grades, thereby creating a divide from my students.

In the end, I put aside my reservations and shared the exam answers. In both cases, being humble and vulnerable caused me some discomfort. (This discomfort may well be the reason no one at our Faculty had shared exam answers with first-year students before.) It is worth remembering that this is the same discomfort we ask our students to learn to appreciate. Going through this discomfort ourselves is key to understanding that of our students. It is also key to building a deeper and different relationship – one in which we are willing to abide by our advice – and to giving credibility to our edicts.

Some professors may feel that showing humility will undermine their authority and credibility in the classroom. They may feel that showing vulnerability, notably by talking about the failures and challenges they experienced, will make students doubt their competence to teach a course or lead them to refuse to accept the material they are taught. This concern misconstrues how authority is earned and sustained. A teacher's authority is generally understood to flow from two elements: the ability to lead the classroom and the possession of knowledge that is transmitted to the students.<sup>48</sup> Showing humility arguably challenges neither of these elements. It does not question the professor's

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<sup>48</sup> See Cary Buzzelli and Bill Johnston, 'Authority, power, and morality in classroom discourse' (2001) 17 *Teaching and Teacher Education* 873, 874.

knowledge or the fact that they are in charge of their classroom. Instead, it humanises the professor by reminding students that the professor is as fallible as they are. Showing humility does not undermine the professor's competence and ability to control the classroom: it enhances both. It helps build crucial trust between the professor and her students and makes students likelier to be attentive and willing to be led by the professor. Leadership and managerial studies experts have indeed long argued (and demonstrated) that humility is the most powerful way for a leader or person in a position of authority to build trust, be listened to, and influence others' behaviour.<sup>49</sup>

Law professors occupy a unique position not only in legal education but also in the legal system. They are instrumental in training tomorrow's lawyers. They intervene at a time where students develop a basic conception of the law and what it means to be a lawyer. A conscious attempt by professors to show humility is not just a sound decision which catalyses a productive classroom dynamic. Neither is it just a partial antidote to the issues with the grading curve mentioned in the previous section. Showing humility invites students to do the same and redefines what is acceptable. It helps create a culture of vulnerability and (self-)awareness. As students go on to occupy leadership roles in the private sector and beyond, they are likely to promote and replicate the same culture of humility by showing vulnerability and inviting others to do the same.

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<sup>49</sup> See for instance J Andrew Morris, Céleste M Brotheridge and John C Urbanski, 'Bringing humility to leadership: Antecedents and consequences of leader humility' (2005) 58 *Human Relations* 1323; Jim Collins, 'Level 5 Leadership: The Triumph of Humility and Fierce Resolve' (2001) *Harvard Business Review* 67; and Bradley P Owens, Michael D Johnson and Terence R Mitchell, 'Expressed Humility in Organizations: Implications for Performance, Teams, and Leadership' (2013) 24 *Organization Science* 1291.

A vulnerable and humble attitude may also embody the very nature of the law.<sup>50</sup> When law teachers dare to be humble, they metaphorically merge substance and form, and invite their students to do the same. The law itself is defined by humility and is not posited but advanced dialectically – and messily – through trial and failure. (Similarly, in legal education, we generally dedicate more attention to teaching students to navigate legal sources and reasoning than we do to teaching them positive law.)<sup>51</sup> In adversarial legal systems, a significant role is afforded to advocacy, that of lawyers, but also of judges who write often extensive reasons to convince of their positions.<sup>52</sup> There is always room left for dissension and for questioning the status quo. Legal knowledge is, then, also always vulnerable and contingent.<sup>53</sup> A good lawyer (and a good lawyer-in-the-making) acknowledges and understands these fundamental characteristics. She is both grounded in precedent and willing to question the status quo. Regardless of how readers from other jurisdictions may feel about the grading curve or the other quintessentially North American ways in which humility has traditionally been imparted, they will likely agree that the inextricability of law and humility transcends jurisdictional boundaries.

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<sup>50</sup> See generally Roscoe Pound, *The Spirit of the Common Law* (1st edn, Routledge 1999) and Gerald J Postema, ‘Classical Common Law Jurisprudence (Part I)’ (2002) 2 Oxford University Commonwealth Law Journal 155.

<sup>51</sup> See for instance Nancy L Schultz, ‘How Do Lawyers Really Think?’ (1992) 42 Journal of Legal Education 57 and Paulette J Williams, ‘The Divorce Case: Supervisory Teaching and Learning in Clinical Legal Education’ (2002) 21 Saint Louis University Public Law Review 331, 341.

<sup>52</sup> See generally JA Jolowicz, ‘Adversarial and Inquisitorial Models of Civil Procedure’ (2003) 52 The International & Comparative Law Quarterly 281.

<sup>53</sup> Also see generally James Boyd White, ‘Legal Knowledge’ (2002) 115 Harvard Law Review 1396.

## Conclusion

This article has focussed on the role of humility in the law school. It has argued in favour of a culture where humility is consciously cultivated in law students. Section I considered the grading curve, a quintessentially North American attribute to almost all law schools. It analysed and theorised the curve, arguing that, while it can have a humbling effect, this effect is felt irregularly among law students and comes with significant and often discounted consequences. This article argued that a model where humility is more consciously cultivated could minimise these consequences. Section II provided such an alternative, arguing in favour of law professors showing humility and vulnerability. It depicted this alternative as both a partial antidote to the grading curve's problems (and to the distrust law students may feel toward their professors) and a key starting point in inviting students to be vulnerable and constitutively challenging what it means to be a lawyer. Further research will fill in the gaps, both theoretically and (auto)ethnographically, in this model, and provide many further examples of how we can best cultivate humility in law students.

Cultivating humility is not and will not be easy. It challenges the legal profession's entire culture – a culture where one should never show vulnerability or ask for help and which is, likely as a result, defined by depression, dissatisfaction, and substance and alcohol abuse.<sup>54</sup> Yet it is an exceedingly powerful device. It helps create a culture where suffering, trials, and failures are spoken about and learnt from. The pain which has defined the legal profession and its challenges is deep and complex. It is likely not,

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<sup>54</sup> See Krill, Johnson and Albert (n 1); Dinovitzer and Garth (n 3); and Lord (n 4).

however, mainly the result of external factors. While the work of lawyers is fundamentally consequential, lawyers have, though perhaps unintentionally, created a profession which expects and rewards perceived mental strength. Lawyers feel stress not as much from the expectation that their work will be near-perfect as from the feeling that their colleagues do not go through the same struggles that they do (and that they are, therefore, weak or unfit for the profession).<sup>55</sup> The profession's culture leaves them feeling that they are the only ones dealing with depression and anxiety. In that context, challenging this culture and cultivating humility hold particularly great promise.

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<sup>55</sup> Butt (n 5); Macaulay (n 5); and Middlemiss (n 5).