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# A Case for Grade Inflation in Legal Education

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# A Case for Grade Inflation in Legal Education

*By* JOSHUA M. SILVERSTEIN*

## Abstract

*This Article contends that every American law school ought to substantially eliminate C grades by setting its good academic standing grade point average at the B- level. Grading systems that require or encourage law professors to award a significant number of C marks are flawed for two reasons. First, low grades damage students' placement prospects. Employers frequently consider a job candidate's absolute GPA in making hiring decisions. If a school systematically assigns inferior grades, its students are at an unfair disadvantage when competing for employment with students from institutions that award mostly A's and B's. Second, marks in the C range injure students psychologically. Students perceive C's as a sign of failure. Accordingly, when they receive such grades, their stress level is exacerbated in unhealthy ways. This psychological harm is both intrinsically problematic and compromises the educational process. Substantially eliminating C grades will bring about critical improvements in*

*both the fairness of the job market and the mental well-being of our students. These benefits outweigh any problems that might be caused or aggravated by inflated grades. C marks virtually always denote unsatisfactory work in American graduate education. Law schools are the primary exception to this convention. It is time we adopted the practice followed by the rest of the academy.*

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## Introduction

EVERY AMERICAN LAW SCHOOL ought to substantially eliminate C grades by setting its good academic standing grade point average at the B- level. Grading systems that require or encourage law professors to award a significant number of marks in the C range are flawed. There are two problems with such systems. First, substandard grades damage students' placement prospects. Employers examine more than law school reputation and class rank in making hiring decisions. They also frequently consider a job candidate's absolute grade point average. If a school systematically assigns inferior grades, its students are at an unfair disadvantage when competing for employment with

students from institutions that award mostly A's and B's.[1] Second, C marks injure law students psychologically. Students perceive C's as a sign of failure. Accordingly, when they receive such grades, their stress level is exacerbated in unhealthy ways. This harm is both intrinsically problematic and compromises the educational process.[2] By substantially eliminating C's, a B- good standing GPA will rectify these problems. It will improve the fairness of the job market and enhance the mental well-being of law students. Given the recent reduction in employment opportunities for our graduates and rising concerns about law student depression, these are considerable benefits.

There are three signature objections to reducing the use of C marks. But only one has genuine force—the contention that students will not work as hard if law schools inflate grades. That is a critical concern, to be sure. But there are good reasons to believe that law students will actually work *harder* in the aggregate under an inflated system. And there is compelling evidence that if a decrease in student effort does occur, it will be sufficiently small such that the benefits of higher grades outweigh the harms caused by the reduction in work.[3]

Spurred on by changes in the legal employment market, a number of law schools have raised grades over the last few years, hoping, *inter alia*, to improve the job prospects of their students.[4] This grade inflation has been controversial in both the academy and beyond.[5] The issue has even captured the attention of the mainstream media, reaching the pages of publications like the *New York Times*.[6] In my view, the law schools that raised grades were right to do so and the remaining institutions should follow the same path.

C-type grades virtually always denote unsatisfactory work in American graduate education. Law schools are the primary exception to this convention. It is time we adopted the practices followed by the rest of the academy.

Part I of this Article surveys the use of C grades in American graduate institutions. Part II explains certain technical and empirical fea-

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1.   *See infra* Part III.A.
2.   *See infra* Part III.B.
3.   *See infra* Part IV.C.
4.   *See infra* notes 90–99 and accompanying text.
5.   *See, e.g.*, Catherine Rampell, *In Law Schools, Grades Go Up, Just Like That*, N.Y. TIMES (June 21, 2010), *available at* http://www.nytimes.com/2010/06/22/business/22law.html?pagewanted=all ("But the tactic getting the most attention—and the most controversy—is the sudden, deliberate and dubiously effective grade inflation, which had begun even before the job market softened.").
6.   *See id.*

tures of my recommendation that law schools substantially eliminate C marks via a B- good standing GPA. Part III presents the case for eliminating C grades. And Part IV responds to the three most common and important objections to inflating grades. The Article also has one appendix that addresses several issues regarding transitioning to a new grading system that requires the awarding of higher marks.

## I.    The Use of C Grades in American Graduate Education

C grades are generally considered unsatisfactory in American graduate education. Since 1975, most graduate schools have required that students maintain a 3.0 grade point average to remain in good academic standing and to graduate.[7] This means that B marks (or better) are required.[8] Perhaps the most common justification for this practice is that graduate schools admit only the best recipients of

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7. *Academic Grading in the United States*, WIKIPEDIA, http://en.wikipedia.org/wiki/Academic_grading_in_the_United_States#Numerical_and_letter_grades (last visited Feb. 10, 2013) [hereinafter *Academic Grading in the United States*, WIKIPEDIA]; *accord* John D. Wiley, *Foreword* to GRADE INFLATION: ACADEMIC STANDARDS IN HIGHER EDUCATION, at viii (Lester H. Hunt ed., 2008) ("[A]n average 'B' grade is required for satisfactory progress and continuation as a graduate student."); *see also* Mary Biggs, *Grade "Inflation" and the Professionalism of the Professoriate, in* GRADE INFLATION: ACADEMIC STANDARDS IN HIGHER EDUCATION 109, 116–17 (Lester H. Hunt ed., 2008) (explaining that "A equals A; A- equals the former B; B plus is the former C; B is the former D; and B-, of course, is the old F . . . may even be conservative as regards grading in many graduate programs"); HENRY ROSOVSKY & MATTHEW HARTLEY, EVALUATION AND THE ACADEMY: ARE WE DOING THE RIGHT THING? GRADE INFLATION AND LETTERS OF RECOMMENDATION 4 (2002), *available at* http://www.amacad. org/publications/monographs/Evaluation_and_the_Academy.pdf. ("Relatively undifferentiated course grading has been a traditional practice in many graduate schools for a very long time.").

8. Falling below 3.0 does not always lead to immediate dismissal. Frequently, students with GPAs under that level are placed on probation and receive a semester or two to raise their average above 3.0. *See, e.g.*, HOWARD UNIV., RULES AND REGULATIONS FOR THE PURSUIT OF ACADEMIC DEGREES art. 5, § 2 (1979), *available at* http://www.gs.howard.edu/ rules/pdf/rules_and_regulation.pdf ("A cumulative average of 3.00 (B) is required for graduation. . . . A student who falls below the 3.00 average shall be warned and informed that he/she must raise his/her quality point index to 3.00 in the next two terms in residence. Students failing to do so will be dropped from the Graduate School."); *Academic Regulations*, W. MICH. UNIV., http://catalog.wmich.edu/content.php?catoid=14&navoid=461 (last visited Feb. 17, 2013) ("Good Standing: A graduate student admitted to a graduate degree or certification program is in good standing whenever that student's degree or certification grade point average is at least 3.0. . . . If a student's degree program grade point average falls below 3.0, the student will be placed on probation.") (further explaining that students are given time to raise their averages above 3.0, but eventually will be dismissed if they fail to do so).

bachelor's degrees.[9] "[O]utstanding performance and corresponding 'A' grades are [thus] expected."[10]

The 3.0 standard is particularly common at *general* graduate schools that cover multiple fields of study. For example, at the University of Texas Graduate School, "[t]o continue . . . beyond the first semester . . . , the student must . . . maintain a grade point average of at least 3.00."[11] Likewise, at Stanford University, "graduate students must maintain a 3.0 (B) grade point average overall."[12] The 3.0 standard is also regularly used in other types of post-baccalaureate institu-

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9. Wiley, *supra* note 7, at viii.

10. *Id.*; *see also id.* at ix ("So, in this sense, 'grade inflation' is not considered a defect of graduate education, it is a design feature!"); Francesca Di Meglio, *Grade Inflation: Devaluing B-Schools' Currency*, BUS. WEEK (Apr. 19, 2005), http://www.businessweek.com/bschools/content/apr2005/bs20050419_8678_bs001.htm ("B-school administrators say graduate students are self-motivated and do well because the admissions offices carefully screen applicants. 'Our students are used to excelling, and we expect them to excel here as well,' says Robert Korajczyk, Kellogg's senior associate dean of curriculum and teaching.") ("Kellogg" is the name of Northwestern University's business school).

11. *Warning Status, Academic Dismissal, and Termination*, UNIV. TEX. AUSTIN GRADUATE SCH., http://www.utexas.edu/ogs/student_services/academic_policies/warning_status.html (last visited Feb. 20, 2013).

12. *Registration Enrollment and Academic Progress (GAP 3.1)*, STANFORD UNIV., http://gap.stanford.edu/3-1.html (last visited Jan. 24, 2013) (applying the 3.0 standard to all graduate degrees other than certain business, medical, and law degrees); *see also Academic Information*, GRADUATE SCH. ARTS & SCI., HARV. UNIV., http://www.gsas.harvard.edu/handbook/academic_information.php (last visited Jan. 24, 2013) ("The minimum standard for satisfactory work in the Graduate School is a B average in each academic year."); *Graduate Academic Policies*, BELLARMINE UNIV., https://catalog.bellarmine.edu/2011-2012/graduate-academic-policies (last visited Jan. 24, 2013) ("The status of good standing indicates that a student has a cumulative Grade Point Average of 3.00 or better and is making satisfactory progress toward a degree."); ILL. INST. OF TECH., IIT GRADUATE BULLETIN 2010–2012, at 37 (2010–2012), *available at* http://www.iit.edu/graduate_college/bulletin/pdfs/bulletin10-12.pdf ("Satisfactory performance in the graduate divisions is defined as the maintenance of a minimum cumulative GPA of 3.0/4.0, as reported by the registrar. The minimum GPA for graduation is 3.0/4.0."); *Academic Progress, Graduate Catalog*, GRADUATE SCH., VA. POLYTECHNIC INST., http://graduateschool.vt.edu/graduate_catalog/policies.htm?policy=002d14432c654287012c6542e38200ad (last visited Jan. 24, 2013) ("Students whose cumulative GPA falls below a 'B' (3.00 GPA) will be placed on probation by the Graduate School."); *Academic Policies and Procedures*, CHAPMAN UNIV., 2011–2012 GRADUATE CATALOG, http://www.chapman.edu/catalog/oc/current/gr/content/4848.htm#o9994 (last visited Jan. 24, 2013) ("Students are expected to achieve a 'B' or higher in all course work toward a degree or credential at Chapman University. A cumulative grade-point-average of 3.000 based on all course work applicable to the graduate degree or credential is required, excluding prerequisite courses.").

tions, such as business schools,[13] engineering schools,[14] and schools of education.[15]

At many graduate institutions, C grades can cause a loss of good standing even if the student's GPA does not fall below 3.0. To illustrate, in the College of Education at Tennessee Tech University, "[a] grade of 'C' is *considered a failing grade* in doctoral programs."[16] Students are "allowed to maintain a grade of 'C' in only one course completed toward the Ph.D. degree. If a student receives two 'C's they will be dismissed from the program."[17] Similarly, at Howard University, graduate students are expelled if they receive C grades in more than

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13. *See, e.g.,* TERRY COLL. OF BUS., THE UNIV. OF GA., MBA STUDENT HANDBOOK 2012–2013, at 14 (2012–2013), *available at* http://mba.terry.uga.edu/fulltime/admitted/geninfo/mba-handbook.pdf (C- is not a passing grade in the MBA program); *id.* at 21 ("The minimum required grade point average is 3.00."); *Policy Grading,* LEAVEY SCH. OF BUS., SANTA CLARA UNIV., http://www.scu.edu/business/graduates/academics/policy-grading.cfm (last visited Jan. 28, 2013) ("To qualify for the MBA or MSIS degree, a student must maintain an overall grade point average (GPA) of at least 3.0 in all work taken at the Leavey School of Business."); DANIELS COLL. OF BUS., UNIV. OF DENVER, 2011–2012 GRADUATE STUDENT HANDBOOK 20 (2011-2012), *available at* http://www.daniels.du.edu/daniels-tomcat/docs/pdf/handbooks/2011_12_Daniels_Graduate_%20Handbook.pdf. ("Students in the Graduate School are required to achieve a 3.0 (B) Grade Point Average (GPA) or higher to obtain a degree. A grade lower than 'C-' in a course renders the credit unacceptable for meeting the degree requirements . . . . Any student whose overall grade point average falls below a '3.0' will be placed on probation, suspension, or dismissal, depending on the grade point deficiency."); *see also* De Meglio, *supra* note 10 (noting that at many business schools "that still give old-fashioned grades, grade inflation is so bad that students rarely get lower than a B.").

14. *See, e.g.,* PENN STATE UNIV., ARCHITECTURAL ENG'G GRADUATE STUDENT HANDBOOK 2011–12, at 2 (2011-2012), *available at* http://www.engr.psu.edu/ae/degree_programs/GraduateHandbook.pdf ("A minimum grade-point average of 3.00 for work done at the University is required for all graduate degrees."); *Engineering,* GRADUATE COLL., UNIV. ARIZ., http://grad.arizona.edu/live/programs/description/46 (last visited Feb. 20, 2013) ("Academic Progress—Students enrolled in the Master of Engineering degree program must maintain a minimum 3.000 grade-point average (GPA)[.]"); STANFORD UNIV., GUIDE TO GRADUATE STUDIES IN AERONAUTICS AND ASTRONAUTICS 2011–2012, at 22 (2011–2012), *available at* http://aa.stanford.edu/curriculum/handbook.pdf ("Candidates for the degree of Engineer are required to have a GPA of 3.0 or higher.").

15. *See, e.g.,* COLL. OF EDUC., UNIV. OF WASH., GRADUATE SCH. MANUAL 2011–2012, at 14 (2011–2012), *available at* http://education.washington.edu/pdf/grad_manual_11-12.pdf ("A minimum overall GPA of 3.00 is required for graduation.").

16. *Candidate Responsibilities,* COLL. OF EDUC., TENN. TECH U., http://www.tntech.edu/education/responsibilities/ (last visited Jan. 28, 2013) (emphasis added).

17. *Id.* (further noting that the good standing GPA is 3.25) (emphasis omitted).

nine credit hours of course work.[18] And at other graduate schools, C's are expressly identified as unsatisfactory grades.[19]

The 3.0 good standing GPA is not universal. Many graduate programs employ a higher standard—3.3 or even 3.5.[20] And at some of

18.  HOWARD UNIV., *supra* note 8 (further noting that "[a] cumulative average of 3.00 (B) is required for graduation."); *see also* COLL. OF NURSING, UNIV. OF ARK. FOR MED. SCI., CATALOG 2004–2005, at 44 (2004–2005), *available at* http://nursing.uams.edu/publications/04-05%20CON%20CATALOG.pdf ("Only one (1) letter grade of 'C' will be allowed for any course work toward the master's degree. A student with a second letter grade of 'C' will be dismissed from the UAMS Graduate School and the College of Nursing. . . . A cumulative grade point average of 'B', 3.0 (on 4.0 grade scale), must be attained for graduation. If a student has less than 3.0 cumulative grade point average on 12 or more semester hours of graded course work, the student will be placed on academic probation.").

19.  *See, e.g., Grading System,* COLL. OF LIBERAL ARTS & SCI., SUFFOLK UNIV., http://www2.suffolk.edu/2011Archive1/catalogs/2011-2012-Archive-Catalog35075.html (last visited Feb. 10, 2013) (applying the label "Satisfactory Performance" to A, A-, B+, B, and B- grades; applying the label "Unsatisfactory Performance" to C+ and C grades); *see also Academic Standing,* COLL. OF LIBERAL ARTS AND SCI., SUFFOLK UNIV., http://www2.suffolk.edu/2011Archive1/catalogs/2011-2012-Archive-Catalog35077.html (last visited Feb. 10, 2013) ("Each semester, the appropriate Departmental Committee or Director of each Graduate Program will review the records of Graduate students believed deficient in any of the following areas: 1. Cumulative grade point average below 3.0. . . . 3. Excessive grades below the 'B' level."); UNIV. OF WASH., *supra* note 15, at 14 ("For graduate students a minimum of 2.7 is required in each course that is counted toward a graduate degree. A minimum overall GPA of 3.00 is required for graduation. Correspondence between number grades and letter grades is as follows: . . . 2.8 = B- . . . 2.4 = C+"). *But see General Information and Policies,* HOFSTRA UNIV., http://bulletin.hofstra.edu/content.php?catoid=50&navoid=2554#grad (last visited Feb. 17, 2013) ("It is necessary for graduate students to earn a 3.0 grade point average or better, as required by the program, to be considered in good standing.") ("C Satisfactory . . . D Not creditable for graduate degree"); *Grading System,* BALL STATE UNIV., http://cms.bsu.edu/ Academics/CollegesandDepartments/GradSchool/Academics/ AcademicpoliciesandProcedures/GradingSystem (last visited Feb. 17, 2013) ("Although you need to have a C or better in a course for it to count toward a degree program . . . [i]f you are pursuing a master's degree, you'll need a scholastic ratio of at least 3.0 as well as a 3.0 in your major.").

20.  *See, e.g., Requirements for the Master of Arts Degree,* DEP'T ENG'G, FULBRIGHT COLL. ARTS & SCI., UNIV. OF ARK., http://www.uark.edu/depts/english/grad/ma.php (last visited Jan. 28, 2013) ("Each candidate must have a cumulative GPA of at least 3.33 on the total number of hours presented for the degree."); *Graduate Student Handbook,* DEP'T ENG'G, UNIV. OF FLA., http://www.english.ufl.edu/resources/grad/handbook/progress.html (last visited Jan. 28, 2013) ("A minimum 3.5 grade point average for all courses should be maintained."). As these examples show, often times it is individual departments within a school that require a higher GPA. *See also Student Guide to Grades at CGU,* CLAREMONT GRADUATE UNIV., http://www.cgu.edu/pages/5081.asp (last visited Jan. 28, 2013) ("You must maintain a minimum grade point average (GPA) of 3.0 in all coursework taken at Claremont Graduate University. Individual academic programs may require a higher GPA and or additional standards of progress."); THE GRADUATE COLL., UNIV. OF ILL. AT URBANA-CHAMPAIGN, THE GRADUATE COLL. HANDBOOK OF POLICY AND REQUIREMENTS FOR STUDENTS, FACULTY AND STAFF - 2011 § B.2. (2011), *available at* http://www.grad.illinois.edu/gradhandbook/chapteriii/section02 ("Campus policy requires a student to maintain a minimum cumulative graduate GPA of 2.75 in order to continue in an advanced degree program, and to

these schools, *B* grades are considered unsatisfactory. For example, in the English and Comparative Literature Department at Columbia University,

> [g]rades of B+ signal work that raises concerns, and in the case of an M.A. student a pattern of B+ grades would indicate someone who shouldn't go on in the program unless he or she is doing significantly better in other courses. The rare grade of B signals an active recommendation that the student not go on.[21]

At other institutions, the good standing GPA is somewhat lower than 3.0. But the standard is still typically set at a level that makes C grades unacceptable. For example, many schools use 2.75, or a GPA in that range, as the cutoff.[22]

There are some graduate schools where C grades do not jeopardize a student's academic standing. For example, at Northwestern University's Kellogg School of Management, students need to maintain only a C average to continue in the program and ultimately graduate.[23] But such institutions are a small minority.[24]

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have a cumulative graduate GPA of at least 2.75 to graduate. Many departments, however, require a minimum of 3.0 or higher. For departments with higher minima, the Graduate College enforces the department's minimum.").

21. *Written Work, Grades, and Evaluations*, THE M.A. PROGRAM, ENG. & COMP. LITERATURE DEP'T, COLUMBIA UNIV., http://english.columbia.edu/graduate/ma-program-1#Written Work, Grades, and Evaluations (last visited Feb. 17, 2013).

22. *See Academic Grading in the United States*, WIKIPEDIA, *supra* note 7 ("Most graduate schools have required a 3.0 grade point average since 1975 . . . but some schools still have 2.75 as their pass standard."); UNIV. OF ILL., THE GRADUATE COLL. HANDBOOK, *supra* note 20, at § B.1. ("Campus policy requires a student to maintain a minimum cumulative graduate GPA of 2.75 in order to continue in an advanced degree program, and to have a cumulative graduate GPA of at least 2.75 to graduate."); *Degree Requirements*, BOS, UNIV. SCH. OF MGMT., http://smgworld.bu.edu/gpo/academic/mba-program/academic-policies-grading/degree-requirements/ (last visited Feb. 17, 2013) ("To qualify for the MBA degree, students . . . must . . . [h]ave a cumulative GPA of at least 2.70."); *Grading*, BOS, UNIV. SCH. OF MGMT., http://smgworld.bu.edu/gpo/academic/mba-program/academic-policies-grading/grading/ (last visited Feb. 4, 2013) (2.7 = B-); *Master of Engineering Degree Requirements*, DEP'T OF COMPUTER SCI., CORNELL UNIV., http://www.cs.cornell.edu/grad/MEng Program/DegreeRequirements/index.htm (last visited Feb. 17, 2013) ("A cumulative GPA of at least 2.5 must be maintained to continue in the program."); Abby Ellin, *Do Grades Matter?*, N.Y. TIMES (Apr. 13, 2012), http://www.nytimes.com/2012/04/15/education/edlife/do-grades-matter.html?emc=tnt&tntemail0=y (observing that "most grad schools require students to maintain B-minus or higher").

23. *Registration and Academic Policies*, KELLOGG SCH. OF MGMT., NW. UNIV., http://www.kellogg.northwestern.edu/stu_aff/policies/registration.htm (last visited Feb. 17, 2013) ("A cumulative average of C in all courses attempted is required for degree conferment. . . . 2Y students must have at least a C average to continue enrollment after the first year (three quarters) of study. 1Y students must have at least a C average to continue enrollment after the second quarter of study.").

24. And at many of these schools, the 2.0 standard is a mere formality since most of the grades awarded are in the A or B range.

Since the vast majority of graduate schools require at least a B or B- average to remain in school, it should come as no surprise that grades in the C range and below are seldom awarded. "According to Christopher Healy, an associate professor of computer science at Furman University who compiles grade distributions, about 75 percent of grades in master's programs are A's, 22 percent are B's and 3 percent are C's. Less than 1 percent are D's or F's."[25] For example, Professor Healy found that eighty-three percent of grades at Furman University's graduate school were A's during a representative semester, fifteen percent were B's, one percent were C's, and zero percent were D's or F's.[26] Similarly, at Indiana University in Bloomington, seventy-one percent were A's, twenty-seven percent were B's, two percent were C's, 0.1 percent were D's, and 0.3 percent were F's.[27]

Like other graduate programs, medical schools have substantially eliminated C grades. But they have done so in a different way. Most colleges of medicine use a type of Pass/Fail grading.[28] Some operate with only Pass and Fail marks.[29] Others use a "modified Pass/Fail" system that includes additional grade levels, such as Honors, High Pass, and Low Pass.[30] Given this implementation of Pass/Fail assessment,

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25. Abby Ellin, *Failure Is Not an Option*, N.Y. TIMES (Apr. 15, 2012), http://www.ny-times.com/2012/04/15/education/edlife/failure-is-not-an-option.html?emc=tnt& tntemail0=y.

26. *Id.* (Furman's data is contained in a graphic that lists the percent breakdown of graduate school grades for six schools).

27. *Id.* (Indiana's data is contained in the same graphic as Furman's; there is also a second graphic that lists the percent breakdown of graduate school grades for eight additional schools).

28. *Medical School in the United States*, WIKIPEDIA, http://en.wikipedia.org/wiki/Medical_school_in_the_United_States (last visited Feb. 20, 2013); *accord* Robert A. Bloodgood et al., *A Change to Pass/Fail Grading in the First Two Years at One Medical School Results in Improved Psychological Well-Being*, 84 ACAD. MED. 655, 655 (2009) ("The most recent data available from the Association of American Medical Colleges Web site (http://services.aamc.org/currdir/section1/grading1.cfm) show the following breakdown of the grading system used by medical schools for the required basic sciences portion of the curriculum: two intervals (usually pass/fail) = 40 schools, three intervals (usually pass/fail/honors) = 35 schools, four intervals (usually pass/fail/honors/high honors) = 32 schools, and five intervals (usually A, B, C, D, F) = 26 schools.").

29. *See, e.g.*, STANFORD SCH. OF MED., MD PROGRAM HANDBOOK AND POLICY MANUAL: ACADEMIC YEAR 2011–2012 at 101 (2011–2012), *available at* http://med.stanford.edu/md/policies/MD%20Handbook%202011-12.pdf (Pass/Fail grading).

30. *See e.g.*, *Student Manual 2011–2012*, IND. UNIV. SCH. OF MED. - FORT WAYNE, http://fortwayne.medicine.iu.edu/curriculum-academics/student-information/ (last visited Feb. 17, 2013) (Honors/High Pass/Pass/Fail grading); CREIGHTON UNIV. SCH. OF MED., STUDENT HANDBOOK 23–24 (2011), *available at* http://medschool.creighton.edu/fileadmin/user/medicine/Departments/student_affairs/SA_docs/StudentHandbook.pdf (Honors/Satisfactory/Unsatisfactory grading). Some other graduate programs use modified pass/fail grading systems. *See, e.g.*, UNIV. OF N.C.-CHAPEL HILL, THE GRADUATE SCH. HANDBOOK

medical schools have generally ceased awarding not only C's, but other letter grades as well.[31]

A number of medical schools still use letter marks.[32] Such institutions are divided in their approach to C grades. At some, C's are effectively unsatisfactory. For example, at the University of Kentucky College of Medicine, students with a grade point average under 2.5 are placed on probation and "must improve their academic performance in the subsequent academic year or risk dismissal."[33] Similarly, at the University of Central Florida College of Medicine, while "[m]inimal competency in each module/clerkship is a composite score of 70 or above (A, B or C grade)," students with "one or more C grades" may be placed on probation.[34] Other schools, however, treat C's as acceptable marks. To illustrate, at the University of South Carolina School of Medicine, students must maintain a 2.0 grade point

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8–9 (2012), *available at* http://handbook.unc.edu/pdf/handbook.pdf (High Pass/Pass/ Low Pass/Fail grading); *PMBA FAQs*, OLIN BUS. SCH., WASH. UNIV. ST. LOUIS, http:// www.olin.wustl.edu/ academicprograms/pmba/faq/Pages/default.aspx (last visited Feb. 20, 2013) ("We operate on a modified pass/fail system (HP, P, LP, NP) in both the full-time MBA and the PMBA programs."). But such systems appear to be far more common in medical schools than elsewhere.

31. Of course, under modified Pass/Fail grading policies, there are often as many grade intervals as in letter grade systems. For example, a policy with Honors, High Pass, Pass, and Fail is quite similar to one that uses A, B, C, and F grades without + and – distinctions. But one important difference remains: Schools that use a modified Pass/Fail approach generally do not compile those grades into a grade point average or calculate a class rank, while most institutions that employ letter systems determine at least GPA, and often class rank.

32. *See supra* note 28.

33. *Student Progress and Promotions Committee*, UNIV. OF KY. COLL. OF MED., http://www. mc.uky.edu/meded/student_affairs/progress_and_promotions.asp (last visited Feb. 20, 2013) (noting also that a grade point average under 2.0 leads to automatic dismissal).

34. UNIV. OF CENT. FLA. COLL. OF MED., M.D. PROGRAM STUDENT HANDBOOK 2010–2011, at 41, 45 (2010–2011) *available at* http://med.ucf.edu/media/2011/08/student_handbook_2010.pdf. Note that for degree-conferring programs at medical colleges *other than* M.D. programs, 3.0 is typically the good standing GPA. *See, e.g., Welcome to Microbiology and Immunology!*, UNIV. OF ILL. CHI. COLL. OF MED., http://www.uic.edu/depts/mcmi/ newstudent.htm (last visited Oct. 22, 2012) (in the Ph.D. program in Microbiology & Immunology, if a student's GPA falls below 3.0, the student is put on probation and may not graduate until the GPA is brought back above that level); SCH. OF HEALTH SCI. & PRACTICE, N.Y. MED. COLL., SATISFACTORY ACADEMIC PROGRESS POLICY 1 (2012), *available at* http:// www.nymc.edu/academics/schoolofhealthsciencesandpractice/assets/policyonsatisfactory academicprogress.pdf (setting the good academic standing GPA at 3.0 in multiple programs).

average to continue in the program.[35] The same is true at the University of South Dakota's Sanford School of Medicine.[36]

Law schools differ from other graduate institutions.[37] The vast majority require only a 2.0 grade point average—or something in that range—to remain in good standing and graduate.[38] Indeed, based on data provided to the National Association of Law Placement ("NALP") for 2012,[39] 140 out of 142 reporting schools set their good standing GPA in the C range or lower, and ninety-three use 2.0 specifically.[40] C

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35. UNIV. OF S.C. SCH. OF MED., POLICIES FOR CURRICULUM ADMIN. 15 (2012), *available at* http://ca.med.sc.edu/curriculum_policies.pdf.

36. SANFORD SCH. OF MED., UNIV. OF S.D., MED. STUDENT AFFAIRS HANDBOOK 21 (2010), *available at* http://www.usd.edu/medical-school/medical-doctor-program/upload/Student-Affairs-Handbook-2010-2012-final-1.pdf (also providing that students must earn a C or better in all required courses); *see also* MARSHALL UNIV. JOAN C. EDWARDS SCH. OF MED. POLICY REGARDING ACADEMIC AND PROFESSIONALISM STANDARDS, LEAVES AND APPEALS 2 (2010), *available at* http://musom.marshall.edu/students/documents/Policies/ASC-FINAL-POLICY.pdf ("Students are considered in good academic standing if they maintain at least a 2.0 grade point average each semester."); COLL. OF MED., HEALTH SCIENCE CTR., TEX. A&M UNIV., STUDENT HANDBOOK FOR COLL. OF MED. STUDENTS 10 (2012), *available at* http://medicine.tamhsc.edu/student-affairs/pdf/handbook.pdf ("Good academic standing is defined as having an overall grade point average of 2.0 or above.").

37. *Academic Grading in the United States*, WIKIPEDIA, *supra* note 7 ("American law schools are notoriously out of step with mainstream graduate level education.") (the quotation is actually from an older version of the Wikipedia entry and is on file with the author); *see also* Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 299 (2008) (observing that "[l]aw schools with low set points or ranges for grades differ" from other graduate schools).

38. Harvey Gilmore, *To Failure and Back: How Law Rescued Me From the Depths*, 10 FLA. COASTAL L. REV. 567, 581 (2009) ("However, the grading chart of a typical law school lists a C as average, and a 2.0 is usually the minimum grade point average required for a student to continue in good standing."); Kristen Booth Glen, *To Carry It On: A Decade of Deaning After Hayword Burns*, 10 N.Y. CITY. L. REV. 7, 13 n.29 (2006) (observing that most law schools use a cutoff GPA of 2.0); *Academic Grading in the United States*, WIKIPEDIA, *supra* note 7 ("Most American law schools require no more than a 2.0 grade point average to qualify for the professional doctorate in law."); *see, e.g.*, MISS. COLL. SCH. OF LAW, COURSE CATALOG 2011–2012 ACADEMIC YEAR 26 (2011–2012), *available at* http://law.mc.edu/academics/course-catalog/ (2.0 good standing GPA); THOMAS JEFFERSON SCH. OF LAW, STUDENT HANDBOOK 2012–2013, at 3 (2012–2013), *available at* http://www.tjsl.edu/student-life/student-handbook (2.0 good standing GPA). *But see Academic Regulations*, SHEPARD BROAD LAW CTR., NOVA SE. UNIV., http://www.nsulaw.nova.edu/online/edl/regulations.cfm (last visited Feb. 20, 2013) (3.0 good standing GPA).

39. All data was collected from NAT'L ASS'N OF LAW PLACEMENT, 2012–2013 DIRECTORY OF LAW SCH. (last visited Feb. 20, 2013), *available at* http://www.nalplawschoolsonline.org/

40. 128 of the reporting schools use a 4.0 scale. Of those, the good standing GPAs are as follows: 2.4 = one school, 2.33 = six schools, 2.3 = eleven schools, 2.25 = two schools, 2.2 = six schools, 2.15 = one school, 2.0 = ninety-three schools, 1.9 = two schools, 1.835 = one school, 1.67 = one school, 1.67 = one school, and 1.667 = one school. Two schools use 2.5, but one of these institutions expressly identifies a 2.5 as the bottom of the C range. The other implicitly defines 2.5 as a B-. Finally, one school uses 2.6. Eleven reporting schools

grades are thus generally satisfactory in legal education. Moreover, C grades are regularly awarded. In their survey of law school grading practices, Professors Robert Downs and Nancy Levit received mean grade data from forty-eight schools operating on a 4.0 or 4.33 scale.[41] The combined first-year mean grade at these institutions was 2.82,[42] which is only slightly higher than a B- average (2.7 or 2.67). Accordingly, teachers at these schools awarded a significant number of grades below B- to first-year students.[43] It is also noteworthy that law schools generally still employ D grades, "whereas the industry standard is to eliminate it from the graduate-level quality index."[44]

While C (and D) marks remain in general usage in legal education, grading practices *across* institutions vary significantly. In another survey of law school grading practices, Professor Nancy Kaufman found a correlation between the level of grades awarded by an institution and the index scores of its students:[45] "As might have been expected, law school class means and medians tend to decrease on the

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employ a 100-point scale. Each of those indicated that the GPA necessary to graduate is in the 70s or lower, with all but two expressly defining grades in the 70s as falling within the C range. Three reporting schools use a non-traditional scale. Each of those expressly identified the good standing GPA as being at a level that constitutes a C or C-.

41.  *See* Robert C. Downs and Nancy Levit, *If It Can't Be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices,* 65 UMKC L. REV. 819, 841 (1997).

42.  *Id.*

43.  The mean grade was somewhat higher for the graduating classes: 2.97. *Id.* Thus, it is likely that fewer C grades were awarded to second- and third-year students at these institutions. For additional data on schools that reported *median* grades to Downs and Levit, or that use a 100-point grade scale, see *id.* (explaining, for example, that the mean grade at the seven reporting schools that used a 100-point grade scale was 80.40, which is at the bottom of the B range).

44.  *Academic Grading in the United States,* WIKIPEDIA, *supra* note 7. *Compare Registration,* FORDHAM UNIV., http://www.fordham.edu/academics/summer_session/welcome/registration/ (last visited Feb. 20, 2013) ("There is no grade D in the graduate school."), *with Grading and Ranking,* UNIV. OF WASH. SCH. OF LAW, http://www.law.washington.edu/Students/Academics/Grading.aspx (last visited Feb. 20, 2013) (explaining that the D grade "indicates that the level of performance is below that which on average is required for the award of the degree."). *But see* TOURO COLL. JACOB D. FUCHSBERG LAW CTR., STUDENT HANDBOOK 2011–2012, at 26 (2011), *available at* http://www.tourolaw.edu/pdf/Student_Handbook.pdf (starting in the fall of 2011, there are no D grades); WILLIAM H. BOWEN SCH. OF LAW, UNIV. OF ARK. AT LITTLE ROCK, GRADING SCALE AND GRADE NORMALIZATION POLICY 1 (2011), *available at* http://ualr.edu/law/files/2010/11/Grade-Scale-and-Mandatory-CurveforWebsite.doc.pdf (same).

45.  In law school admissions, an "index score" is a compilation of a student's score on the Law School Admission Test and the student's undergraduate GPA. Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decision,* 36 LAW & SOC. INQUIRY 620, 621 (2011).

whole as the index of the incoming students decreases."[46] Generally, the higher a school is ranked in *U.S. News & World Report*, the higher its index score is.[47] Thus, more prestigious schools tend to give better grades to their students than less prestigious schools.

To obtain a clearer picture of law school grading practices, it is helpful to break down institutions by *U.S. News* ranking "tier." The first tier contains those schools ranked in the top fifty.[48] Many of these schools have adopted grade normalization policies that essentially eliminate the use of C grades.[49] Some policies do so explicitly. For example, under New York University's mandatory curve in first-year classes and recommended curve in upper-level classes, grades below B- are set at "0-5%" of those awarded.[50] And in actual practice, C and D

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46.   Nancy H. Kaufman, *A Survey of Law School Grading Practices*, 44 J. LEGAL EDUC. 415, 422 (1994). Interestingly, there appears to be a similar pattern among undergraduate schools. *See* Stuart Rojstaczer & Christopher Healy, *Grading in American Colleges and Universities*, TEACHERS COLL. RECORD 2 (Mar. 4, 2010) [hereinafter Rojstaczer & Healy, *Grading in American Colleges and Universities*], *available at* http://www.tcrecord.org/content.asp?contentid=15928 ("[W]e find that colleges and universities have, without any collective consultation or external pressure, collectively created an ad hoc national grading scale based on school selectivity.") (explaining that the more selective the school, the higher the grades awarded); *see also* Stuart Rojstaczer & Christopher Healy, *Where A is Ordinary: The Evolution of American College and University Grading, 1940–2009*, 114 TEACHERS COLL. RECORD, no. 7, at 8 (2012) [hereinafter Rojstaczer & Healy, *Where A is Ordinary*], *available at* http://www.tcrecord.org/content.asp?contentid=16473 ("Our simple regression model . . . indicates that the average percentage of A plus B grades at a school correlates significantly with the median SAT score of its student body . . . .").

47.   This is partly because median undergraduate GPA and median LSAT score constitute 22.5 percent of the weighted average used to establish each school's rank. *See Methodology: Law School Rankings*, U.S. NEWS & WORLD REPORT, *available at* http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings (last visited Feb. 20, 2013).

48.   U.S. News superficially uses three categories—"The Top 100 Schools," "Third Tier" schools, and "Fourth Tier" schools. *See Best Law Schools*, U.S. NEWS & WORLD REPORT, *available at* http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/ law-rankings (last visited Feb. 20, 2013). But as is abundantly clear, given the last two labels, the top fifty schools are "first tier" and schools fifty-one through 100 are "second tier." *See* Robert Steinbuch, *On the Leiter Side: Developing a Universal Assessment Tool for Measuring Scholarly Output by Law Professors and Ranking Law Schools*, 45 LOY. L.A. L. REV. 87, 91, 105 (2011) (referring to the top fifty schools in the U.S. News ranking as "Tier 1" and schools fifty-one through 100 as "Tier 2"). Indeed, that is how U.S. News categorized the schools from 1997 through 2002. *See Law-School Rankings: A Short History*, PRE-LAW HANDBOOK, http://www.prelawhandbook.com/law_school_ranking__usn_history (last visited Feb. 20, 2013).

49.   Several first-tier institutions—such as Yale, Harvard, and Stanford—have eliminated letter grades altogether by moving to modified Pass/Fail systems. *See List of Law School GPA Curves*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_law_school_GPA_curves (last visited Feb. 20, 2013) [hereinafter *List of Law School GPA Curves*, WIKIPEDIA].

50.   Memorandum from Liam Murphy, Vice Dean, N.Y.U. Law Sch., on Grade Reform (2008) (on file with the author).

marks are virtually unheard of at NYU.[51] Similarly, the University of Washington's mandatory curve provides that zero to ten percent of grades must fall below B-, and such grades are capped at 5% in first-year courses.[52] Other grading policies substantially dispense with C's by implication. To illustrate, Cornell University applies a mandatory mean of 3.2 to 3.5 on a 4.33 scale.[53] As a practical matter, such a system significantly restricts the number of grades under B- that a professor may award. Moreover, in five hypothetical grade distributions circulated to teachers to guide their grading, the percentage of grades below B- were, respectively, four percent, eight percent, two percent, zero percent, and zero percent.[54] At the University of Minnesota, there is a mean range of 3.0 to 3.333 that is mandatory in first-year courses and advisory in upper level courses.[55] In language, this policy creates significant room for awarding grades under B-. In reality, such grades are rare: For the class of 2011, the median GPA was 3.428 and the twenty-fifth percentile GPA was 3.279.[56]

Other first-tier schools award C's somewhat more often. For example, the University of Texas has (1) a mandatory mean of 3.25 to 3.35 in all courses, (2) a mandatory curve in first-year classes which

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51. I attended NYU when the grade normalization policy was less generous than today. During my time, grades below B- were incredibly rare.

52. UNIV. OF WASH. SCH. OF LAW, *supra* note 44; *see also Grading Policy Statement*, LAW SCH., UNIV. OF NOTRE DAME, http://law.nd.edu/careers/employers/policies/grading-policy/ (last visited Feb. 20, 2013) (implementing a mandatory curve under which zero to ten percent of grades must fall below B-; in the fall of 2011, the median GPAs for first-year and third-year law students were 3.287 and 3.349, respectively, indicating that relatively few low grades are awarded at Notre Dame).

53. CORNELL UNIV. LAW SCH., CORNELL LAW SCH. GRADING POLICY FOR J.D. STUDENTS (2012), *available at* https://support.law.cornell.edu/students/forms/view_grading_explanation_January_2012.pdf (last visited Feb. 20, 2013) (the target mean is 3.35).

54. Memorandum from Stephen P. Garvey Circulated to Cornell University Law Faculty on Grading Policy (Nov. 2009) (on file with the author); *see also* UNIV. OF VA. SCH. OF LAW, ACADEMIC POLICIES 8, *available at* http://www.law.virginia.edu/pdf/academics/policies_nov2011.pdf (2.3 good standing GPA on 4.3 scale); *id.* at 7 (mandatory 3.3 mean on a 4.3 scale); Posting of Professor Richard D. Balnave, Professor of Law, Univ. of Va. Sch. of Law, to lawclinic@lists.washlaw.edu (Feb. 25, 2009, 23:09 EST) (on file with author) (explaining that the mandatory mean is actually a range from 3.25 to 3.35).

55. UNIV. OF MINN. LAW SCH., STANDARDS, WRITING REQUIREMENTS, GRADES, HONORS AND RANKS/QUARTILES FALL OF 2009: CLASS OF 2010 AND 2011 (2009), *available at* http://www.law.umn.edu/uploads/38/Oj/38OjnFnbnGNDMGNjzm6o3A/quartiles-July-2009.pdf (last visited Feb. 20, 2013); *see also Forms – Letter of Good Standing*, U. MINN. L. SCH., http://www.law.umn.edu/current/forms.html#JsJ7aCNdDn9lU1EHgMq50A (last visited Feb. 20, 2013) (good standing GPA is 2.0).

56. UNIV. OF MINN. LAW SCH., UNIV. OF MINN. LAW SCH. QUARTILE INFO. 1990–2011 (2011), *available at* http://www.law.umn.edu/uploads/da/ac/daac7cf62ebee3500946959a0e0e5f12/University-of-Minnesota-Law-School-Quartiles-1990-2011.pdf.

requires that at least five percent of grades fall below B-, and (3) a recommended curve in upper-level courses which provides that "about 10% of grades" should be under B-.[57] According to the school's fall 2011 grade distribution reports, roughly ten percent of grades were C+ or worse in non-seminar courses.[58] Similarly, the University of Iowa applies a mandatory median of 3.3 and a mandatory grade distribution under which marks below B- should be roughly ten percent of those awarded.[59]

A few schools in the first tier appear to award a significant number of grades below B-. The University of Wisconsin Law School is illustrative. It has (1) a recommended mean of 2.85 to 3.1 on a 4.3 scale in first-year courses and in upper-level courses with more than thirty students, and (2) a recommended distribution for courses with more than thirty students which provides that seven to seventeen percent of grades are expected to be a C+ or a C and zero to thirteen percent of grades are expected to be from C- down to F.[60]

Fourth-tier schools—those ranked below 145th in *U.S. News*—operate differently from most first-tier institutions. These schools award large numbers of C grades. Indeed, their grade normalization policies often require or strongly encourage it. Whittier Law School is a good example. In first-year, doctrinal classes, Whittier's grade normalization policy mandates that at least seventy percent of grades be in the C

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57. *Grading Policy*, UNIV. OF TEX. AUSTIN SCH. OF LAW, http://www.utexas.edu/law/sao/academics/gradingpolicy.html (last visited Feb. 20, 2013) (also providing that the target mean is 3.3).

58. In the fourteen Fall 2011 seminars, there was only a single grade below B—a C+. *See* UNIV. OF TEX. SCH. OF LAW, DISTRIBUTION OF GRADES FOR FALL 2011 (2011), *available at* http://www.utexas.edu/law/sao/academics/distributions/119seminardist.pdf.

59. THE UNIV. OF IOWA COLL. OF LAW, STUDENT HANDBOOK 2006–2007, at 22–23 (2006–2007), *available at* http://www.law.uiowa.edu/documents/2006-07_handbook_web-final.pdf; *see also id.* at 9–10 ("To be eligible for a J.D. degree, a student must: . . . Achieve a cumulative GPA of 2.0."); *Grading*, FORDHAM UNIV. SCH. LAW, http://law.fordham.edu/adjunct/21621.htm (last visited Feb. 20, 2013) (explaining that "3 to 10 percent must receive a grade of C- to C+") (this policy is mandatory in first year courses and recommended in upper level courses, but "the school has a policy that the curve is followed absent an exceptional reason for [not] doing so"); *J.D. Program Grading System*, FORDHAM UNIV. SCH. OF LAW, http://law.fordham.edu/career-planning/1416.htm (last visited Feb. 20, 2013 (B = "Very good, the standard expected of the majority of students." C = "Good." D = "Performance at a level that if consistently repeated would be insufficient to advance").

60. *Law School Rules: Grading Rules for 2005 and Later Matriculants*, UNIV. OF WIS. LAW SCH. 2.07–2.08, http://law.wisc.edu/current/rules/chap2.htm (last visited Feb. 20, 2013); *see also id.* at rule 2.05 (The "Conversion Scale for Intra-University Use" is as follows: A+, A, A-, and B+ in the law school equal an A elsewhere in the university. B and B- = AB. C+ and C = B. C- and D+ = BC. And D = C.).

range or below.[61] In upper-level, doctrinal courses with more than twenty students, at least sixty percent must be C grades or lower.[62] And the actual number of C, D, and F grades awarded by Whittier professors is often well above these percentages.[63] St. Thomas University in Florida operates under similar parameters. That school employs a mandatory mean of 2.25 to 2.5 in first-year, doctrinal courses.[64] 2.5 is considered a C+ under St. Thomas's grading scale.[65] Thus, the average grade may be no higher than a C+. Under such a system, a majority of the grades awarded will almost always fall below B-. For example, in the fall of 2009, twenty-eight percent of grades in first-year, doctrinal courses were in the A or B range, sixty-eight percent were in the C range, and seventy-two percent were in the C range or below.[66] In required upper-level courses, the mean range is broader—2.25 to 2.75.[67] However, in *all* required courses at St. Thomas, at least fifteen percent of grades must be a C- or lower.[68] Finally, under Northern Kentucky University's recommended curve, thirty to sixty percent of grades in most required courses should be either a C+ or a C.[69] In addition, between sixteen and thirty-five percent should be a C- or below in Torts, Contracts, Property, and Civil Procedure, and between

61. WHITTIER LAW SCH., LAW SCHOOL POLICIES 2009–2010, (2009–2010), at B10, *available at* http://www.law.whittier.edu/pdfs/cstudents/Whittier-Law-School-Policies-2009-2010.pdf.

62. *Id.* Whittier also has a mandatory mean of roughly 2.5 to 2.75 in first-year, doctrinal courses and roughly 2.5 to 2.875 in upper-level classes other than seminars. *Id.* at B11–B12. It should be noted that Whittier uses a somewhat unique grade scale under which 2.9 is considered a C grade. *Id.* at B5.

63. *See, e.g., Grade Distribution Report – Fall 2010,* WHITTIER LAW SCH., http://www.law. whittier.edu/resources/pdfs/registrar-Grade_distribution_201090.pdf (last visited Feb. 20, 2013) (for example, in the first section of Civil Procedure 1, over 80% of the grades were in the C range or below).

64. ST. THOMAS UNIV. SCH. OF LAW, 2011–2012 CATALOG 52 (2011–2012), *available at* https://www.stu.edu/LinkClick.aspx?fileticket=nRKTJKIUVpo=&tabid=1168.

65. *Id.* at 51.

66. *Grade Distribution Report,* ST. THOMAS UNIV. SCH. OF LAW, (on file with author). Note that these grade distributions reflect St. Thomas's prior grading policy, which was slightly less generous than the current system. *See* E-mail from Professor Dennis S. Corgill, Associate Professor of Law, St. Thomas University School of Law, to Author (Apr. 17, 2012, 8:12 EST) (on file with author).

67. ST. THOMAS UNIV. SCH. OF LAW, *supra* note 64, at 52.

68. *Id.* In electives, the mean range is 2.25 to 2.75, and in legal writing, seminars, clinics, and skills classes, there is no required mean. *Id.*

69. SALMON P. CHASE COLL. OF LAW, N. KY. UNIV., STUDENT HANDBOOK – SECTION XIII. GRADES AND GRADING POLICIES 5, *available at* http://chaselaw.nku.edu/documents/student_affairs/Student_Handbook/ch13.pdf.

ten and forty percent should be a C- or below in most other required courses.[70]

Not all fourth-tier institutions award a majority of grades at the C and D levels. For example, at South Texas College of Law, sixteen to thirty percent of grades must be a C+ or lower in first-year required courses with forty or more students.[71] But virtually every fourth-tier law school gives a substantial number of marks below B-.[72]

Schools ranked in the third tier of *U.S. News* grade somewhat more generously than their fourth-tier counterparts. But most of them still award a large number of grades under B-. Cleveland State University is paradigmatic. It has a recommended curve that borders on mandatory. In the "required core curriculum," the curve has the following parameters: (1) eleven to fifteen percent of grades should be a C+, with a target of thirteen percent; (2) ten to fourteen percent should be a C, with a target of twelve percent; (3) three to seven percent should be a C-, with a target of five percent; (4) two to ten percent should be a D+, with a target of five percent; (5) two to eight percent should be a D, with a target of five percent; and (6) zero to six percent should be an F, with a target of three percent.[73] Aggregating the targets for these grades, forty-three percent of marks are supposed to be below B-. Higher grades are permitted in upper-level classes, but

70. *Id.*

71. S. Tex. Coll. of Law, Student Handbook 2011–2012, at 84 (2011–2012), *available at* http://www.stcl.edu/registrar/StudentHandbk2011-12revOct2011.pdf; *see also Grade Distribution Report – Fall of 2011*, S. Tex. Coll. of Law, http://www.stcl.edu/registrar/grade_distribution_201210.pdf (last visited Feb. 20, 2013) (C grades regularly awarded in first-year and upper-level courses).

72. *See, e.g.,* Touro Coll. Jacob D. Fuchsberg Law Ctr., Student Handbook 2011–2012, at 28 (2011–2012), *available at* http://www.tourolaw.edu/pdf/Student_ Handbook.pdf (mandatory mean in all required classes of 2.91 to 3.09, and "8% to 15% of all grades for Required First Year Courses . . . initially submitted to the registrar shall consist of grades of C- . . . or lower"; mandatory mean of 2.90 to 3.36 in all electives with thirty or more students); The John Marshall Law Sch., Student Handbook 2011–12, at 12 (2011–2012), *available at* http://www.jmls.edu/students/handbook/2011-2012-student-handbook.pdf (In first-year, doctrinal courses, fifteen to twenty-five percent must receive a C+, C, or C-, ten to twenty percent must receive a D or F, and there is a mandatory mean of 2.4 to 2.8; in most upper-level courses with thirty or more students, ten to twenty-five percent must receive a C+, C, or C-, zero to ten percent must receive a D or F, and there is a mandatory mean of 2.70 to 3.10.); Miss. Coll. Sch. of Law, *supra* note 38, at 26 (first-year, doctrinal course have a required mean of 2.500-2.7999); Thomas Jefferson Sch. of Law, *supra* note 38, at 19–20 (starting in the fall of 2012, sixty percent of grades must be a 2.5 or below on a 4.3 scale in first-year classes; in upper-level classes, twenty-eight percent of grades must be 2.5 or below on a 4.3 scale).

73. Cleveland-Marshall Coll. of Law, Cleveland State Univ., Faculty Manual 45 (2011), *available at* https://www.law.csuohio.edu/sites/default/files/facultystaff/manuals/facultymanual2011.pdf.

the overall target for grades under B- is still twenty-six percent in those courses.[74] Washburn University has a recommended curve with a similar structure to Cleveland State's, though its targets for grades below B- are somewhat smaller.[75] And numerous other third-tier schools operate using grade normalization policies that require or recommend the awarding of large numbers of C grades, particularly during the first year.[76]

The University of Arkansas at Little Rock, where I teach, is in the third-tier of *U.S. News.* We recently adopted a formal, grade normaliza-

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74. *Id.* ((1) eight to fourteen percent range for C+, with a target of eleven percent; (2) six to twelve percent range for C, with a target of nine percent; (3) zero to six percent range for C-, with a target of two percent; (4) zero to seven percent range for D+, with a target of two percent; (5) zero to seven percent range for D, with a target of two percent; and (6) zero to five percent range for F with no target).

75. *See Grading Guidelines for Average Grades and Grade Distribution,* WASHBURN UNIV. SCH. OF LAW, http://washburnlaw.edu/policies/gradingguidelines.php (last visited Feb. 20, 2013) (first-year, doctrinal courses: 2.70 to 2.90 mean range; C+ = 14% target, 9-19% range; C = 11% target, 6-16% range; C- = 4% target, 1-7% range; D+ = 2% target, D = 2% target, and F = 1% target, and together D+, D, and F have a combined range of 2-10%) (upper-level courses: C+ = 11% target, 6-16% range; C = 10% target, 5-15% range; C- = 3% target, D+ = 2% target, D = 1% target, and F = 0% target, and C-, D+, D, and F together have a combined range of 0-10%); *see also Grade Distribution,* WASHBURN UNIV. SCH. OF LAW, http://washburnlaw.edu/students/grades/ (the grade distribution reports establish that Washburn faculty generally follow the recommended curves).

76. *See, e.g.,* CHAPMAN UNIV. SCH. OF LAW, STUDENT HANDBOOK, at 4-12 to 4-13 (2012), *available at* http://www.chapman.edu/law/_files/students/studenthandbook-fall2012-ver16a.pdf. Chapman uses a 4.0 grade scale and awards number grades to the tenth of a point: 2.3, 2.4, 2.5, and 2.6 are C+ grades and 2.7, 2.8, and 2.9 are B- grades. *Id.* at 4-12. In first-year, required courses, there is mandatory maximum median of 2.8 and at least ten percent of grades must be a 1.9 or below. *Id.* at 4-13. In all other courses, there is a mandatory maximum median of 3.0, and in exam courses with twenty or more students, twenty percent of the grades must be 2.4 (i.e., a C+) or lower. *Id.; see also* UNIV. OF S.C. SCH. OF LAW, LAW STUDENT HANDBOOK § VIII(D)(2) (2011), *available at* http://law.sc.edu/registrar/handbook/handbook.pdf (for first-year, doctrinal courses, there is a mandatory mean of 2.7-3.0; in upper-level classes with more than twenty-five students, there is a recommended mean—the average grade should fall within 0.25 of the class's incoming mean GPA); *Office of Law Registrar and Academic Services,* UNIV. OF S.C. SCH. OF LAW, http://law.sc. edu/registrar/academic.shtml#class_rank_percentiles (last visited Feb. 20, 2013) (containing links for six years of grade distribution reports; the reports indicate that C grades are regularly given). *But see* VILLANOVA UNIV. SCH. OF LAW, STUDENT HANDBOOK 2011–2012, at 10 (2011–2012), *available at* http://www.law.villanova.edu/Current%20Students/Policies %20and%20Handbooks.aspx (Villanova is a third-tier institution that awards fewer grades below B- than most others. For example, in exam classes with thirty or more students, there is a recommended curve which provides that ten percent of grades should be a C+, five percent should be a C, and zero to five percent should be a C- or below); *Grade Distributions,* VILLANOVA UNIV. SCH. OF LAW, http://www.law.villanova.edu/current%20students/ registrar/grade%20distributions.aspx (last visited Feb. 20, 2013) (containing twelve years of grade distribution reports).

tion policy that went into effect in the fall of 2011.[77] Prior to that
semester, we had no such policy; grading was unregulated.[78] Under
the old system, and before several years of inconsistent grade inflation
that lead to the adoption of the current policy,[79] C marks were quite
common. To pick a representative school year, in the fall of 2004,
thirty-nine percent of grades awarded in first-year courses were in the
C range, with another four percent constituting D's and F's.[80] If the
legal writing and legal research courses are removed, the number of
C+, C, and C- marks balloons to over forty-eight percent, with D's and
F's comprising another 4.5%. In upper-level classes, C-type grades
were just under twenty-seven percent of the total, with roughly one
percent being D's and F's. The following spring, over forty-seven per-
cent of grades in first-year, doctrinal courses were C+'s, C's, or C-'s,
and almost twenty-three percent were in those ranges in upper-level
courses.

Second-tier schools seem to fall into two basic camps. Some oper-
ate using practices more comparable to first-tier schools. These insti-
tutions award a moderate number of grades below B-, generally
between ten and twenty percent. For example, at Arizona State Uni-
versity, in first-year courses and upper-level courses with twenty or
more students, eleven to nineteen percent of grades must be C+ or
below, with a target of fifteen percent.[81] And the same numbers are
recommended in upper-level classes with fewer than twenty stu-
dents.[82] Other second-tier schools grade like those in the third-tier,

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77.  *See* WILLIAM H. BOWEN SCH. OF LAW, *supra* note 44, at 1.

78.  WILLIAM H. BOWEN SCH. OF LAW, UNIV. OF ARK. AT LITTLE ROCK, ACADEMIC RULES
11–12 (Nov. 9, 2009) (on file with author).

79.  *See* Joshua M. Silverstein, *In Defense of Mandatory Curves,* 34 U. ARK. LITTLE ROCK L.
REV. 253, 259–62, 336 (2012).

80.  This data is taken from the grade distribution report provided by our Associate
Dean and a spreadsheet created to analyze the data. Both documents are on file with the
author.

81.  SANDRA DAY O'CONNOR SCH. OF LAW, ARIZ. STATE UNIV., STATEMENT OF STUDENT
POLICIES – ACADEMIC YEAR 2012–2013, at 31 (2012–2013), *available at* http://www.law.asu.
edu/LinkClick.aspx?fileticket=wNxrp-WbgMo%3D&tabid=965.

82.  *Id.; see also Grading Policy,* SEATTLE UNIV. SCH. OF LAW, http://www.law.seattleu.
edu/x1924.xml (last visited Oct. 24, 2012) (in first-year courses other than legal writing:
(1) five to fifteen percent of grades must be a C or below, with a target of ten percent; (2)
seventy to eighty percent must be a B or above, with a target of seventy-five percent; and
(3) five to twenty-five percent must be a B- or C+, with a target of fifteen percent) (the
same numbers are recommended in upper-level courses taught in multiple sections by
more than one professor in the same school year); *Grades and Grade Averages,* UNIV. OF
CINCINNATI COLL. OF LAW, http://www.law.uc.edu/current-students/register/general-grad-
ing-information/grades-and-grade-averages (last visited Feb. 20, 2013) (in all first-year
courses, five to ten percent of grades must be a C+, five to ten percent must be a C, and

typically awarding more than twenty percent of marks in the C range or lower. Seton Hall University is illustrative. That institution has a mandatory curve that applies the following parameters to virtually all required courses: (1) ten to twenty-five percent of grades must be C's and C-'s, (2) five to fifteen percent must be D+'s and below, and (3) ten to twenty-five percent must be B-'s and C+'s. Under the mandatory curve applicable in elective courses, ten to twenty-five percent of grades must be a B- or C+ and ten to twenty-five percent must be a C or below.[83]

Recall that Professors Downs and Levit's findings demonstrate that C grades are regularly awarded at American law schools.[84] The examples from each of the *U.S. News* tiers presented above explain why: Grade normalization policies in legal education frequently require or encourage professors to award a substantial number of such marks. Recall also that Professor Kaufman found that index score correlates with grade level across law schools.[85] The examples above help to explain this point as well: Lower-ranked schools—i.e. those with lower index scores—generally operate under grade normalization pol-

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zero to five percent must be a C-; there is also a mandatory B+ median in upper-level courses with twenty or more students and sectioned courses with fewer than twenty students; the B+ median is recommended in courses with under twenty pupils that are not sectioned).

83. *Examinations,* SETON HALL UNIV. SCH. OF LAW, http://law.shu.edu/Students/academics/examinations/Grading-Curves.cfm (last visited Feb. 20, 2013); *see also* WILLIAM S. BOYD SCH. OF LAW, UNIV. OF NEV., LAS VEGAS, STUDENT POLICY HANDBOOK 2011–2012, at 25 (2011–2012), *available at* http://portal.law.unlv.edu/files/portal/Student%20Handbook.11-12Rev1211.pdf (at least twenty percent of grades in classes with twenty or more students must be a C+ or lower); *Grade Curve,* LOYOLA UNIV. CHI. SCH. OF LAW, http://www.luc.edu/law/registrar/records_documents/grades.html (last visited Feb. 20, 2013) (all courses with twenty-five or more students, except for certain skills classes, seminars, and clinics, must meet the following curve: C+ = 10-25%; C = 5-20%, C- = 0-10%; D = 0-10%; F = 0-5%); *Class Rank & Grading Policy,* BEASLEY SCH. OF LAW, TEMPLE UNIV., http://www.law.temple.edu/Pages/Current_Students/Current_Class_Rank.aspx (last visited Feb. 20, 2013) (recommended curve under which at least twenty percent of grades should be a C+ or below in all exam courses and in the legal writing course); *What's What Student Handbook – Grading System, Probation and Dismissal,* LEWIS & CLARK LAW SCH., http://law.lclark.edu/academics/whats_what/grading_system_probation_and_dismissal/ (last visited Feb. 20, 2013) (mandatory maximum mean of 3.0 on a 4.3 scale in first-year courses and upper-level courses with more than twenty students where the assessment is only "by means of an examination"); *Academic Regulations,* UNIV. OF KAN. SCH. OF LAW, http://www.law.ku.edu/regulations (last visited Feb. 20, 2013) (2.8 to 3.0 mandatory mean in first-year courses; 2.9 to 3.1 mandatory mean in upper-level, required courses; 2.8 to 3.4 mandatory mean in all other courses).

84. *See supra* text accompanying notes 41–43.

85. *See supra* text accompanying notes 45–46.

icies that mandate the awarding of far more C grades (and below) than the policies used by their higher-ranked counterparts.

The information I have provided so far is anecdotal. To more carefully confirm the findings of Professors Downs, Levit, and Kaufman, I gathered data on class rank and grade point average from every law school that provided this information to NALP for the 2011 graduating class.[86] I then compiled the data of all reporting schools by *U.S. News* tier based on the 2011 law school rankings.[87] Set forth below is the average GPA necessary to achieve a class rank at the seventy-fifth, fiftieth, and twenty-fifth percentiles in each of the four *U.S. News* tiers, as well as the figures for all reporting schools:

|             | 75th | 50th | 25th |
|-------------|------|------|------|
| First Tier  | 3.49 | 3.28 | 3.03 |
| Second Tier | 3.40 | 3.17 | 2.96 |
| Third Tier  | 3.34 | 3.06 | 2.83 |
| Fourth Tier | 3.20 | 2.91 | 2.66 |
| All         | 3.35 | 3.09 | 2.84 |

This data establishes that law schools award *far* more grades in the C range and below than other graduate institutions, consistent with the results of Professors Downs and Levit's study.[88] Indeed, the median grade point average for all law schools (3.09) is only slightly higher than the good standing GPA in most other graduate programs (3.0); and the median at fourth-tier institutions (2.91) is under that

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86. All data was collected from THE NAT'L ASS'N OF LAW PLACEMENT, 2012–2013 DIRECTORY OF LAW SCH., *supra* note 39.

87. I used the rankings released in March of 2011 which technically are the "2012" rankings.

88. A few additional notes about the NALP data: First, it is not comprehensive. Not all law schools are members of NALP. In addition, some NALP members reported no class rank or grade point average data. Finally, some NALP members only reported selected data—for example, the fiftieth percentile but not the seventy-fifth or twenty-fifth. However, more than half of the schools in the second, third, and fourth tiers reported all three figures. For the first tier, thirteen reported all three, nine reported two, and six reported one. Twenty-three reported no data. And two reported data that could not be converted to a four-point scale.

Second, as I just implied, not all reporting schools use a four-point scale. For schools using a 100-point scale, I generally was able to convert the data to a 4.0 system. However, some schools use a unique type of 100-point scale that made such conversion impossible without the danger of distortion. Likewise, a small group of schools use entirely different scales—e.g., a twelve point scale. I did not include institutions from the latter two groups in the compiled data.

level.[89] Even first- and second-tier institutions award much lower marks than other graduate schools: Nearly a quarter of students at first-tier law schools have a GPA beneath 3.0 and more than a quarter of second-tier students do.

The data is also consistent with Professor Kaufman's findings. There is an approximately linear decrease in grades as one moves from the first tier down to the fourth tier. Note further that the numbers likely understate the disparity between first-tier and other schools because a disproportionate number of institutions ranked in the top thirty of *U.S. News* do not report class rank statistics to NALP.

While grading practices in legal education remain anomalous, a recent trend has brought some law schools closer to the approach of other graduate programs. Faced with changing conditions in the legal employment market since the financial crisis,[90] many institutions have inflated grades in the hope of improving the placement prospects of their students.[91] For example, New York University raised its curve in the fall of 2008 so that the marks it awards "more accurately represent the achievements of our students to the outside world."[92] A faculty committee there "concluded that the [old] curve appears to be somewhat out of line with our peer schools, and expressed concern that an unintended effect could be that it systematically disadvantages our stu-

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89. *See supra* notes 7–8 and accompanying text (good standing GPA at most other graduate institutions is 3.0).

90. *See* David C. Yamada, *Therapeutic Jurisprudence and the Practice of Legal Scholarship*, 41 U. MEM. L. REV. 121, 153 (2010) ("The severe recession marked by the Fall 2008 stock market meltdown continues to wreak havoc on the employment opportunities of today's law students and may well have triggered systemic changes in the legal profession, which in turn will impact the economic viability of many law schools."); Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL ED. 598, 599–608 (2010) (explaining the changes in the market for legal services).

91. *See* Rampell, *supra* note 5 ("In the last two years, at least 10 law schools have deliberately changed their grading systems to make them more lenient. . . . Law schools seem to view higher grades as one way to rescue their students from the tough economic climate."); L.J. Jackson, *Is My School Next? Examining the Growing Trend of Law School Grade Reform*, STUDENT LAW, April 2011, at 31 (noting growing trend among law schools to "do away with letter grades altogether" or "bump up GPAs and institute more lenient grading"). The recent trend is reflective of a longer pattern. Schools have been raising grades to help students with placement—often by attempting to match the grades of peer institutions—since at least the mid-1990s. *See* Downs & Levit, *supra* note 42, at 844 (noting that, in response to a 1996 survey, several schools stated that they a adopted mandatory curve in order to (1) raise the mean GPA to the level of peer schools, or (2) "inflate grades to meet prevailing market norms").

92. Memorandum from Liam Murphy, NYU Law School on Grade Reform (on file with author).

dents applying for clerkships and some other jobs."[93] Similarly, the University of Southern California ("USC") raised its mean grade in first-year courses from 3.2 to 3.3 (1) to match other schools, some of which had also recently elevated grades, and (2) because of the difficult job market law students face today.[94] Perhaps most notoriously, Loyola of Los Angeles both prospectively *and retroactively* raised its grades because the "information conveyed [to employers] by the old grading curve did not accurately convey the high quality of [their] students."[95] After concluding that its marks in first-year courses were lower than most other accredited, California law schools, Loyola became concerned that, "[w]ithout adjusting our curve, we send an inaccurate message to employers about the comparative quality of our students and put them at an unfair competitive disadvantage."[96]

Highly-ranked schools like NYU and USC, which are in the first tier of *U.S. News*, have received most of the publicity resulting from law school grade inflation. But the adoption of higher marks is not restricted to such institutions. Schools at every level have raised

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93. Memorandum from Richard Revesz, NYU Law School regarding Grade Curve (Oct. 17, 2008) (on file with author), *available at* http://abovethelaw.com/2008/10/nyu-law-grade-reform-another-law-school-loses-its-fastball/#more-9544 (last visited Feb. 20, 2013).

94. *See* Elie Mystal, *Grade Reform at USC Gould School of Law: Here is a Free .1*, ABOVE THE LAW (Dec. 1 2008), http://abovethelaw.com/2008/12/grade-reform-at-usc-gould-school-of-law-heres-a-free-1/ (last visited Feb. 20, 2013) (containing an excerpt of an internal memo outlining the reasons for raising the mean); Deborah Cassens Weiss, *USC Law School Considers Boosting Average Grade to B-Plus*, ABA JOURNAL (Dec. 3 2008), http://www.abajournal.com/news/article/usc_law_school_considers_0.1_boost_to_grade_curve/ (last visited Feb. 20, 2013) (discussing USC's proposal to raise the mean grade at the school from 3.2 to 3.3); *List of Law School GPA Curves*, WIKIPEDIA, *supra* note 49 (indicating that USC in fact raised the mean to 3.3); *The University of Southern California School of Law (Gould)*, TOP-LAW-SCHOOLS.COM, http://www.top-law-schools.com/usc-school-of-law.html (last visited Feb. 20, 2013) (same).

95. Elie Mystal, *Loyola Law School (L.A.) Retroactively Inflates Grades*, ABOVE THE LAW, http://abovethelaw.com/2010/03/loyola-law-school-la-retroactively-inflates-grades/ (last visited Feb. 20, 2013) (the quotation is from a statement by Dean Victor J. Gold, Loyola Law School of Los Angeles, excerpted in Mystal's posting). Under the change, every grade on a then-current student's transcript was raised by one third (e.g., B up to B+). *Id.*

96. *Id.* (the quotation is from a statement by Dean Victor J. Gold, Loyola Law School of Los Angeles, excerpted in Mystal's posting; the statement further explains that "many other schools already have moved their curves higher than ours to give students an advantage in this difficult job market"). The retroactive element of Loyola's change was somewhat famously parodied by The Colbert Report. *See I's on Edjukashun − Loyola, Texas Textbooks & Wal-Mart*, COMEDY PARTNERS, http://www.colbertnation.com/the-colbert-report-videos/340896/july-06-2010/i-s-on-edjukashun—loyola—texas-textbooks—wal-mart (last visited Feb. 20, 2013).

grades.[97] The change at the University of Missouri, a second-tier school, is particularly noteworthy. When Missouri amended its grading policy in 2007 to shift the expected median grade from 77.5 to 83.5 in first-year courses and from 79 to 84 in required, upper-level courses, it explained that the "New Grading Scale has more of a 'Graduate School' feel to it."[98] I contend that *all* American law schools should follow in Missouri's footsteps and attempt to replicate a "graduate school feel." Many first-tier law schools have done so already. It is time for the rest of us to join them.[99]

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97.   *See, e.g., Grading*, UNIV. OF ALA. SCH. OF LAW, http://www.law.ua.edu/academics/curriculum/grading/ (last visited Feb. 20, 2013) (in the spring of 2010 and earlier, Alabama, a first tier school, had a recommended curve in the first-year under which at least 22.5 percent of grades were expected to fall below B-; starting in the fall of 2010, however, Alabama adopted a mandatory mean in first-year courses of 3.2 with a recommended grade distribution providing that roughly fifteen percent of grades should fall below B-); BEASLEY SCHOOL OF LAW, TEMPLE UNIV., *supra* note 83 (Beasley, a second tier school, raised the recommended target mean from 2.85 in exam courses to 3.05, effective January 1, 2009); DEPAUL UNIV. COLL. OF LAW, 2011–2012 STUDENT HANDBOOK § 7.2 (2011–2012), *available at* http://www.law.depaul.edu/students/pdf/student_handbook.pdf (at DePaul, a second tier school, in first-year and required classes with fifty or more students, twenty to thirty percent of grades must be B- and C+ and ten to fifteen percent must be a C or below; under the old system, on file with the author, twenty to twenty-five percent of grades had to be C+ and fifteen to twenty percent had to be a C below); STETSON UNIV. COLL. OF LAW, GRADE NORMALIZATION POLICY (2009), *available at* http://justice.law.stetson.edu/policies/GradeNormalization.pdf (last visited Feb. 20, 2013) (at Stetson, a third tier school, there is a mandatory mean of 2.90 to 3.10 in most course; in classes with twenty or fewer students and in skills and paper classes, the mandatory mean is 2.90 to 3.35); STETSON UNIV. COLL. OF LAW, GRADE NORMALIZATION POLICY (2004), *available at* http://justice.law.stetson.edu/policies/GradeNormalization.pdf (last visited Feb. 20, 2013) (in first-year courses, the mandatory mean was 2.70 to 2.90; in doctrinal, upper-level courses, the mandatory mean was 2.90 to 3.10; and in seminar and skills classes, the mandatory mean was 2.90 to 3.25); S. TEX. COLL. OF LAW, *supra* note 71, at 84 (at South Texas, a fourth tier school, in first-year, required courses with forty or more students, sixteen to thirty percent of grades must be C+ or below and the class average must be between 2.85 and 3.15; prior to the fall of 2011, the mandatory mean range was 2.50 to 2.80). *But see* THOMAS JEFFERSON SCH. OF LAW, *supra* note 38, at 19–20 (sixty percent of grades must be a 2.5 or below on a 4.3 scale in first-year classes; under the system in effect through the spring of 2012, only forty percent of grades had to be a 2.5 or below).

98.   UNIV. OF MO. SCH. OF LAW, A WORD OF EXPLANATION ABOUT THE LAW SCH. GRADING SCALE (2007), *available at* http://www.law.missouri.edu/students/pdf/gradingscale.pdf (last visited Feb. 20, 2013) (further explaining that the new grading policy was intended to make the median grade look like a "mid-B" rather than a "C").

99.   It is not entirely clear why law schools grade differently from the rest of the academy. One possible explanation is our history of flunking out large numbers of students. Early on, most law schools had relatively open admissions. Screening for competency occurred during the first year, with up to a third of students suffering academic dismissal. *See* Martin H. Belsky, *Law Schools as Legal Education Centers*, 34 U. TOL. L. REV. 1, 4 (2002); Edward J. Littlejohn & Leonard S. Rubinowitz, *Black Enrollment in Law Schools: Forward to the Past?*, 12 T. MARSHALL L. REV. 415, 426 & n.55 (1987); Parham Williams, *Comments from a Former Dean*, 74 MISS. L.J. xi, xviii–xix (2004). Under such a system, lower grades are useful.

## II. Substantially Eliminating C Grades Via a B- Good Standing GPA

My recommendation is that every law school set its good standing GPA at the B- level. On a 4.33, 4.3, or 4.0 scale, that level is generally 2.7 or 2.67, though it can be as low as 2.5 and as high as 3.0. On a 100-point scale, a B- is typically equated with eighty-two, but it often applies to a range from eighty to eighty-three. To be precise, I believe that the good standing GPA in legal education should be 2.7 at institutions that employ a four-point system and eighty-two at institutions that use a 100-point system.

When B- is the good standing line, C grades constitute unacceptable or unsatisfactory performance. Students should still get credit for courses in which they earn a C, as they typically do now if they receive a D; but C's ought to be used only to denote performance that fails to satisfy minimum competency. Additionally, D grades should either be eliminated entirely or treated the same as F's.

Setting the good standing GPA at B- will substantially eliminate C grades in legal education. Under such a system, C's can lead to academic dismissal the way D's currently do at most schools. Therefore, law professors will probably award C's about as often as they currently award D grades. In other graduate programs with a high good standing GPA, C grades are exceptionally rare.[100] There is no reason to believe that law schools will operate differently, particularly since our accreditation standards forbid us from admitting "applicants who do not appear capable of satisfactorily completing" our educational programs.[101]

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For example, it is probably easier to explain academic dismissals to law school constituencies when a dismissed student earned C's, D's, and F's than it would be if the student earned B's and C's. With the development of the Law School Admissions Test and soaring applications, law schools adopted selective admissions practices designed to screen out candidates who would not be successful. *See Williams* at xix. The change in admissions approach was also driven by a reexamination of the ethics of flunking out so many students. Indeed, the accreditation standards currently state that a "law school shall not admit applicants who do not appear capable of satisfactorily completing its educational program and being admitted to the bar." ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS standard 501(b) [hereinafter ABA STDS.], *available at* http://www.americanbar.org/content/dam/aba/migrated/legaled/standards/20082009StandardsWebContent/Chapter_5.authcheckdam.pdf. Perhaps the lower grades awarded in legal education are simply a holdover from the era of open admissions and high attrition. *Cf.* Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 891 (1997) (observing that some law faculties may still be "operating in the 'look to your left, look to your right' days of open admissions and high attrition").

100. *See supra* text accompany notes 25–27.
101. ABA STDS., *supra* note 99, standard 501(b).

Most colleges of law use some type of grade normalization to regulate grades.[102] While I am a staunch proponent of this practice,[103] my proposal here is conceptually distinct from normalization and rests on somewhat different justifications.[104] Grade normalization is concerned with *equalizing* and *standardizing* the pot of grade wealth that each teacher allocates to his or her students at a particular school.[105] Grade inflation and deflation are concerned with the *size* of the pot of grade wealth the instructors are given. To illustrate, grade normalization is about whether to *have* a policy like a mandatory mean. Grade inflation and deflation are about where to *set* such a mean—for example, at 2.5, 3.0, or 3.3. This Article advocates for increasing the size of the grade-wealth pot that professors distribute, not for equalization or standardization among teachers.

To be sure, one of my justifications for raising grades is fairness *across law schools* (as opposed to fairness among teachers at a specific institution). I argue below that schools that award lower grades disadvantage their students in the labor market.[106] And if most institutions eliminate C grades, it will likely produce a significant homogenizing of grading in legal education. Thus, I *am* advocating for increased grade equalization *across institutions*; but I am offering no argument here that individual law schools should adopt some form of normalization. I believe each school should set its good standing GPA at the B-level regardless of whether it has a mandatory curve, a mandatory mean, or no grade normalization at all.

To explain this point another way, there is a difference between advocating for a mandatory 3.3 mean and advocating for a 2.7 good standing GPA. I support the former. And in a previous article, I set forth in detail what a grading system that contains both a 3.3 mean and a 2.7 good standing GPA should look like.[107] In this piece, however, I am arguing only for the latter—for the B- good standing level.

Of course, in practice, because the top grade at most law schools is worth either 4.0 or 4.3, a 2.7 good standing GPA will likely lead to

102. *See* Silverstein, *supra* note 79, at 305 & n.206.
103. *See id.* at 253–336.
104. *See* Downs & Levit, *supra* note 41, at 854 ("Suggesting that grades fall within certain ranges [(grade normalization)] is an entirely different matter than suggesting that higher grades be given [(grade inflation)].").
105. In this paragraph, I am using "equalization" principally to refer to mandatory and recommended means and "standardization" principally to refer to mandatory and recommended distributions, curves, and standard deviations. Throughout the rest of the article, I use these terms in a more generic sense.
106. *See infra* Part III.A.
107. *See* Silverstein, *supra* note 79, at 332–35.

an average grade in the 3.3 to 3.4 range, regardless of whether a given school has a normalization policy. This type of inter-school consistency is something I am hoping will result from the adoption of a B-good standing level, as I explained two paragraphs above.[108] But that is not the only basis for my 2.7 proposal. Since the median GPA at all American law schools according to NALP data is about 3.09,[109] the implementation of my proposal will both substantially eliminate C marks *and* raise the mean grade at the vast majority of institutions. I maintain that these changes are worth accomplishing *independent* of any equalizing of grades across schools because of the psychological benefits they will have for students.[110]

## III.  Arguments in Support of Substantially Eliminating C Grades

There are two principal reasons that law schools should set their good standing GPAs at 2.7. First, low grades lead to unfairness in the placement market. Second, C grades cause students to suffer unnecessary psychological harm. Part III explains these points in detail.

### A.  Substantially Eliminating C Grades Will Improve the Fairness of the Job Market

As noted above, substantially eliminating C grades by raising the good standing GPA to B- will result in considerable grade inflation in legal education. Moreover, it will likely lead to increased standardization of mean grades among law schools. This standardization will critically improve the fairness of the labor market for new attorneys because employers often consider the absolute grade levels of job candidates in making hiring decisions. Obtaining a position after graduation is the primary reason people attend law school. Accordingly, greater labor market fairness is a compelling reason to substantially eliminate C grades.

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108.  *See* Deborah Waire Post, *Power and the Morality of Grading–A Case Study and a Few Critical Thoughts on Grade Normalization,* 65 UMKC L. Rev. 777, 786 (1997) (explaining that "[s]tudents are proposing that in the absence of any mechanism for collective control, law schools in the same market should act voluntarily to ensure uniformity of grading practices").

109.  *See supra* text accompanying notes 88–89.

110.  *See infra* Part III.B. This explains why a 3.3 mean, alone, is neither necessary *nor* sufficient to bring about my desired results. If all schools adopted such a mean, there would be equalization across institutions, but schools could still award C grades for satisfactory work. I want C grades to be used *only* for performance that falls below minimum competency. A 3.3 mean, alone, will not ensure this result.

Grades play a central role in the legal employment market. First, they determine a student's class rank, which is perhaps the most important metric used to screen job applicants.[111] Second, employers consider absolute GPA. For example, many private and public employers list a minimum GPA in their job postings.[112] Based on a brief survey of the resources available through my school's placement office, I found multiple job postings from (1) law firms, (2) federal agencies, (3) state agencies, (4) local agencies, (5) and non-profit organizations, that require applicants to have achieved a certain GPA—typically 3.0, though sometimes higher.[113] The evidence does suggest that class rank is more important than GPA *per se*, but there is little doubt that the latter plays a significant role in hiring.[114] This should not be surprising given that the belief that grades are an objective measure of absolute performance is deeply embedded in our society.[115] At the very least, the view that absolute grade levels matter to employers is common among faculty and administrators. As noted above, multiple law schools have raised grades recently for the express purpose of helping their students in the job market.[116] Implementing such a

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111. *See* Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J.L. REFORM 399, 405 (1994) ("Empirical research confirms that employers do use class rank to select students: the firms studied consistently used ranking as the key indicator of law school success." (citing Emily Cambell & Alan J. Tomkins, *Gender, Race, Grades, and Law Review Membership as Factors in Law Firm Hiring Decisions: An Empirical Study*, 18 J. CONTEMP. L. 211, 235 (1992)); Fines, *supra* note 99, at 886 (observing that most prestigious employers screen applications using class rank).

112. *See* Jeffrey Evans Stake, *Making the Grade: Some Principles of Comparative Grading*, 52 J. LEGAL EDUC. 583, 584 (2002) ("Many of the most prestigious and high-paying firms limit their hiring to students above a specified grade point average or class rank.").

113. All materials are on file with the author. *See also* Ashley Marchand, *A California Law School Will Raise All Students' Grades*, CHRON. HIGHER EDUC. (Apr. 1, 2010), *available at* http://chronicle.com/article/A-California-Law-School-Will/64949/ ("'There are employers that have GPA cutoffs,' [Professor Stuart Rojstaczer] said, 'and by inflating grades, you increase the number of students who meet those GPA cutoffs.'"); *id.* ("Although employers often gauge law students' academic achievements based on their class rank, [Dean Victor J. Gold of Loyola Law School of Los Angeles] said, some governmental agencies will not consider hiring students with less than a B average.").

114. *See* Heather S. Woodson, *Evaluation in Hiring*, 65 UMKC L. REV. 931, 931–32 (1997) ("Most lawyers to whom I spoke [with during a survey of Kansas City law firms of varying sizes] said they look at class rank rather than grade point average as a barometer of academic achievement."); Daniel Keating, *Ten Myths About Law School Grading*, 76 WASH. U. L.Q. 171, 179 (1998) (observing, based on conversations with employers and career service professionals, that while most employers only give weight to class rank, "some employers do attach significance to the grade average number for its own sake," particularly employers beyond the large law firms).

115. *See infra* notes 254–255 and accompanying text; *see also infra* Part IV.A. (criticizing the belief that grades objectively measure absolute performance ).

116. *See supra* notes 90–99 and accompanying text.

change only makes sense if one believes that lower absolute grades disadvantage students in the eyes of prospective employers.[117] Moreover, I suspect that law students almost universally hold the view that absolute GPA matters in hiring.[118] Finally, note that many schools do not publish or even calculate class rank. In particular, sixty institutions did not report class rank statistics to NALP for 2011.[119] This elevates the importance of absolute grade levels when hiring officials evaluate job candidates from these schools because rank cannot be used as a screening device.

The consideration of absolute GPA in placement decisions leads to unfairness in the employment market. Law schools grade in different ways. And students at schools with lower mean grades compete for positions with students from institutions that award higher marks. Job candidates in these two groups often have identical class ranks, but dramatically different grade point averages. For example, assume that Student X attends Law School B. The mean grade there is 3.2. X is ranked at the seventy-fifth percentile and has a 3.5 GPA. Student Y attends Law School C. That school is substantially identical to B in all respects save one: The mean grade at C is 2.8. Y is also ranked at the

117.   *See* Keating, *supra* note 114, at 178–79 ("The fact that some employers buy into the non-relativity myth [—the myth that grades convey absolute rather than relative meaning—] helps explain why there has been such a trend toward grade inflation in law schools nationally.").

118.   *See* Post, *supra* note 108, at 786 ("Students at regional law schools are aware of competition not only with their classmates but also with the students from other schools. Grades, they have divined, play a large part in the competitive process."); *id.* at 798 ("The students [at Touro Law School] cited the competition among students from regional schools for a rapidly declining number of jobs [in seeking to raise grades at the school]. If employers were comparing the grades of students from different schools, shouldn't there be some sort of normalization among schools or at least a conscious attempt at consistency?"); Jackson, *supra* note 91, at 32 (quoting law student Graham Ryan of Louisiana State University: "'The old [grading] policy forced our students to compete for law firm clerkships, government employment, and alternative career opportunities against students from competitor schools with much higher median GPAs,' Ryan explains"); Rampell, *supra* note 5 ("Students and faculty say they are merely trying to stay competitive with their peer schools, which have more merciful grading curves. Loyola, for example, had a mean first-year grade of 2.667; the norm for other accredited California schools is generally 3.0 or higher. 'That put our students at an unfair disadvantage, especially if you factor in the current economic environment,' say Samuel Liu, 26, president of the school's Student Bar Association."); Posting of Wanda G. Hoover, Assistant Dean of External Relations, Univ. of Ark. at Little Rock, William H. Bowen School of Law, to LAWFAC-L@UALR.EDU (June 22, 2010, 11:17 CST) (on file with author) (explaining that during exit interviews with graduating third-year students, many students complain that the grades at our law school are too low).

119.   *See* THE NAT'L ASS'N OF LAW PLACEMENT, 2012–2013 DIRECTORY OF LAW SCHOOLS, *supra* note 39.

seventy-fifth percentile, but has a GPA of only 3.1. If X and Y apply for the same jobs, X will have a critical advantage to the extent employers are concerned with absolute grade levels.[120] This advantage is unfair because it results from the fact that Law School B grades more generously than Law School C, and allocating placement opportunities based on institutional grading philosophy rather than student merit violates the norms of distributive justice.[121]

Many of my students have related stories to me that illustrate the pertinence of the above hypothetical. Job interviewers regularly ask them how their grades can be so low given their class rank. The interviewers often expressly compare my students to those from other schools where the same class rank is accompanied by a much higher GPA. This is important evidence that employers are unfairly influenced by absolute GPA when making comparative assessments about applicants from institutions that grade differently.

The problematic role of absolute grade levels is aggravated when one or both of the students competing for a position attend a school that does not report class rank. Continuing with my illustration, suppose that Law School B is one such institution. An employer might mistakenly conclude that Student X has a much higher rank than Student Y because X's GPA is substantially better.[122] This mistake is more likely if Law School C also does not report rank. In these scenarios, an employer might falsely believe both (1) that X's higher absolute GPA reflects superior achievement rather than a variation in the grading philosophies of schools B and C, *and* (2) that X's class rank is better than Y's. In short, when institutions inconsistently disclose class rank, or do not disclose it at all, comparisons of students across schools becomes far more difficult, which causes further unfairness.[123] As explained by Douglas Henderson, "[m]any employers may not be aware

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120. *See* Fines, *supra* note 99, at 892–93 ("Moreover, in the intra-institutional competitions for placement of our graduates, these strict graders have an impact. If the student who graduates at the twenty-fifth percentile from hard grader's school has only a 3.5 GPA, one can surmise that she will be competitively disadvantaged over the student from a competing school with the same rank in class but a higher GPA.").

121. *Cf.* Silverstein, *supra* note 79, at 264 ("Thus, it is critical that grades reflect academic merit. Allowing faculty to award widely divergent marks based on their *individual* grading philosophies unfairly substitutes grading approach for merit. Put more generally, grade disparities caused by differences in teacher grading philosophy violate the norms of distributive justice." (emphasis added)); *id.* at 258–59 (explaining the concept of "grading philosophy").

122. *See* Henderson, *supra* note 111, at 423 (offering a similar example).

123. *See id.* (arguing that recruiters "cannot hope to compare [the] achievements [of law students] accurately" when class rank is disclosed inconsistently).

of, or may not have the time to take into account, the differences in law school grading and ranking. The interschool differences in ranking [thus] works [sic] inevitably to disadvantage some students."[124]

The problem of unfair GPA comparisons across institutions is also magnified when the law schools at issue do not have similar rankings in *U.S. News*. Assume that Law School B is in the first or second tier and Law School C is in the third or fourth tier. When students X and Y embark on the job search now, prospective employers will likely perceive X to be the superior candidate both because X has higher grades *and* because X achieved those marks at a more prestigious institution.[125] Faculty at third- and fourth-tier schools have limited control over their schools' *U.S. News* ranking. But we certainly can make changes to eliminate the disadvantage our students face as a result of the grading disparities between more and less prestigious schools.

Let me emphasize that my desire is for fairness in the job-market competition among students from different schools. I am *not* recommending that individual institutions raise their grades to obtain an advantage over other law schools. That would simply reproduce the type of unfairness that exists now.

Nor am I advocating that institutions elevate grades to meet the GPA cutoffs that employers use. This would likely work only until employers realize grading practices have changed and amend their cutoff lines. To put the point more broadly, there is a finite number of legal jobs. Inflating grades is not going to change that number. What it *will* do is standardize grades, making the allocation of the existing jobs fairer. Professor Daniel Keating summarizes this idea well:

> A more 'defensive' and less crude justification for grade inflation is that it responds to a collective action problem: if lots of other schools are inflating their grades, we had better follow suit or our students will be relatively disadvantaged in a marketplace where some employers attach weight to absolute grade letters or numbers.[126]

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124. *Id.*; *see also* Downs & Levit, *supra* note 41, at 842 (offering an example of two students from separate schools in the same city that have different mean grades and are competing for the same job) ("Will the recruiting employer take the time to learn the comparative scales of measurement at the two schools?").

125. This is definitely a concern of students. *See* Post, *supra* note 108, at 804 (explaining that students at Touro Law School requested an increase in the curve there because they saw inequality in "the ability of students from more established or more prestigious schools to get jobs while they could not").

126. Keating, *supra* note 114, at 179 n.5. A similar problem has been identified in the undergraduate setting. *See* Rojstaczer & Healy, *Grading in American Colleges and Universities*, *supra* note 46, at 1 (explaining that there is "so much variability in grading from one school

There are five important counter-arguments one might press against my contention that grade inflation will enhance the fairness of the labor market. The first goes as follows: It does not matter that some law schools award higher grades or fail to disclose class rank because employers are aware of the grading practices used by different schools. Recruiters keep track of the grading protocols at the institutions where they interview and consider them when judging candidates from different law schools.[127] As a result, the job market already operates under fair conditions.[128]

There are two problems with this argument. First, as explained above, some employers believe that absolute grade levels are important. When they see students with equivalent class ranks and different grade point averages, they often conclude that the student with the higher GPA is more qualified. The problem with these employers is not a lack of information about variations in law school grading practices. It is more fundamental: They wrongly believe that grades have enough objective meaning across institutions to warrant concluding that the student with the higher GPA is genuinely more qualified.[129] Without grade standardization, this belief undercuts the fair distribution of employment opportunities.

Second, only a subset of employers have the resources and experience to properly assess grading practices among law schools when class rank is not reported. "It is well known among those involved in law firm hiring . . . that the great majority of big firms have adopted sliding scales that set rule-of-thumb grade thresholds at each school the firm selects from."[130] But smaller firms, government agencies, and non-profit organizations are not similarly situated. They have fewer resources to devote to recruiting and they interview, and review the resumes of, far fewer job candidates. This prevents such employers

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to the next and between various major areas of study" that employers and graduate schools commonly make mistakes in evaluating applications for jobs and admission).

127. *See* Rampell, *supra* note 5 ("Some recruiters at law firms keep track of [grade policy] changes and consider them when interviewing, and some do not."); Jackson, *supra* note 91, at 31 ("[G]rading machinations aren't lost on recruiters who often take a school's historical performance into account when assessing each new crop of candidates.").

128. *See* Jackson, *supra* note 91, at 31 ("'I don't think the system can be 'gamed' to somehow give an advantage or disadvantage to students based upon a particular grading system, at least not from a recruiting standpoint,' says James N. Bierman, Foley & Lardner LLP partner and chair of the firm's National Recruiting Committee.").

129. For more on the non-objectivity of grades, see *infra* Part IV.A.

130. Richard Sander & Jane Yakowitz, The Secret of My Success: How Status, Prestige and School Performance Shape Legal Careers 17 (July 29, 2010) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1640058.

from obtaining the comprehensive picture of law school assessment practices that large firms receive.[131] Even if law schools try to keep prospective employers informed about current grading protocols— something I strongly favor—the limits faced by most organizations are likely too great when class rank is not reported. Small and government employers are simply unable to keep sufficient track of grading practices to ensure fairness in the job market.[132]

The second argument against my position is that grade inflation will have no impact because employers will simply raise their hiring standards in response. This criticism also has two problems. First, it actually supports my contention that inflation will increase fairness. Many institutions have already raised grades to enhance their students' competitiveness in the job market. If employers are adopting more rigorous hiring standards to compensate for these changes, then students at law schools that have *not* inflated are at an increasing disadvantage in the competition for employment. Second, this objection is properly directed only at the strategy of inflating grades to meet grade-point-average cutoffs. If all law schools raise their mean to 3.3, it seems very likely that employers concerned with absolute grade level will elevate their GPA limits to 3.5 or higher. This would nullify the impact of grade inflation designed to satisfy employer GPA thresholds. But it would have no impact on the utility of my recommendation. Remember, my argument is about fairness in the *inter*-school competition for employment. I am not suggesting that raising grades will somehow make substantially more American law students eligible

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131.   *See* Rampell, *supra* note 5 ("Smaller firms, however, may not have the resources to research every school's curve, and may see too few students from any given school to track changes from year to year."); Paul L. Caron, *Law School as Lake Wobegone: The Gentleman's C Becomes the Gentleman's B*, TAXPROF BLOG (Feb. 27, 2008), http://taxprof.typepad.com/tax-prof_blog/2008/02/law-school-as-l.html (comment noting that while large firms can keep track of grading changes, mid-size and small firms may not have the resources to do so; thus "these bottom 65% students look a lot worse compared with students with similar class ranks from [other schools]"); Jackson, *supra* note 91, at 31 ("Large law firms are better able than smaller firms to stay on top of law school grading trends."); *see also* Downs & Levit, *supra* note 41, at 842–43 ("But what about schools which do not release class rank? . . . Will the initial impression of the GPA alone . . . leave the potential employer with the ineffable sense that the UMW student has better grades?"). *But see* Sander & Yakowitz, *supra* note 130, at 32–33 (in this study, the authors found that the market corrects for some of the grade variation between high- and low-ranked schools).

132.   As implied in the text, I have no sympathy for any institution that raises grades in a "stealth" manner to try and deceive employers and provide its students a temporary edge in the labor market. When I proposed inflating grades at my law school, I also recommended that we place a summary of the new grade policy on every student's transcript and post the full policy in a prominent location on our website. *See* Silverstein, *supra* note 79, at 335.

for—or able to obtain—jobs. I am only asserting that grade inflation and the resulting standardization will make the distribution of jobs amongst our students more just.

The third criticism of my proposal is that it will increase the importance of class rank in the assessment of job applicants.[133] To elaborate, grade inflation causes grade "compression"—the concentration of marks into the high end of the grading scale. This can limit the usefulness of absolute grades as a tool for distinguishing among students.[134] Employers will thus shift their focus from absolute grade level to class rank in making hiring decisions. But assuming this to be true, any such change would be a welcome development. Class rank is much more difficult to manipulate than absolute grades. It is not hard for a law school to structure its grading policy so that every student has a GPA in the A range. But it is a mathematical certainly that no more than ten percent of the students in a class will rank in the top ten percent of that class (unless there are ties). As such, class rank is a more valuable tool for assessing candidates than GPA, and any increase in the importance of class rank vis-à-vis GPA would constitute an improvement in job-market fairness.[135]

The fourth counter-argument is that my proposal could lead to grade inflation spiraling out of control. Some commentators have observed that the recent moves to increase grades

> can create a vicious cycle like that seen in chief executive pay: if every school in the bottom half of the distribution raises its marks to enter the top half of the distribution, or even just to become average, the average creeps up. This puts pressure on schools to keep raising their grades further.[136]

In other words, rather than improving labor market fairness, my proposal will lead to a never-ending competition among law schools as they elevate grades to obtain a strategic advantage in the placement arena. This is not a significant concern.

The danger of spiraling grade inflation would be considerable if I were proposing that individual law schools try to get an edge over their peers by awarding higher marks. But that is not what I am advo-

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133. *See* Rampell, *supra* note 5 ("Employers say they also press law schools for rankings.").

134. For more on grade compression, see *infra* Part IV.B.

135. It should be noted that a greater emphasis on class rank might lead to more competition between students, which could inhibit learning. *See* Silverstein, *supra* note 79, at 296–97; *id.* at 299 & n.178.

136. Rampell, *supra* note 5; *accord* Stake, *supra* note 112, at 615 ("With time, there is pressure on other schools to inflate their grades so that their graduates have a fair shot in the competitive education and employment markets. Thus, grade inflation spirals.").

cating. Instead, my recommendation is that *all* law schools adopt the same good standing GPA—2.7 or B-. I am pushing for *uniformity* at the good standing level in legal education. And this uniformity should increase grading standardization more generally—i.e., it should promote consistency in mean grades across schools.

Of course, some colleges of law might seek to maintain their favored position by raising grades still further. Thus, grade inflation could continue. But there are practical limits. To illustrate, assume that all second-, third-, and fourth-tier schools follow my recommendation and adopt grading practices that are largely consistent with first-tier institutions. Assume further that some first-tier universities desire to maintain the strategic advantage that comes from awarding better marks. Such schools cannot go much higher at this point. The median GPA in the first tier is already at least 3.3. On a 4.0 or even a 4.3 scale, this number cannot be raised significantly without causing problematic grade compression. Could such schools inflate anyway, ignoring any compression issues? Alternatively, could they combine grade inflation with an expanded grading scale, setting the top mark at 4.5 or even 5.0 to avoid the compression? Yes, these moves are possible. But frankly, I doubt first-tier law schools would adopt either one. After all, our first-tier colleagues are just as concerned with fair grading as the rest of us. Moreover, even if I am wrong, the mere fact that some institutions might try to keep their unfair competitive advantage is no reason for the rest of us to do nothing.[137]

The fifth objection is that grade inflation is not necessary because the existing grade disparities among law schools are justified. Therefore, the labor market is already operating under fair conditions. To elaborate, the data presented above showed a correlation between *U.S. News* ranking and grade level. More prestigious schools tend to award better marks than less prestigious schools.[138] In addition, students at higher-ranked institutions generally have superior undergraduate GPAs and LSAT scores than their counterparts at lower-ranked

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137.   Note also that raising the top of the grade scale would undercut the value of a higher mean GPA. Employers, including those who believe in the absolute meaning of grades, are much more likely to apply a discount factor to marks earned under an abnormal scale. That is because the usage of such a scale is transparent to employers in a way that current differences in grading practices are frequently not. For example, if Law School A raises its mean from 3.3 to 3.6 and the top of its scale from 4.0 to 4.5, employers will see these changes much more easily than they would perceive a rise in the mean grade from 3.3 to 3.5 without a corresponding change in the scale. Thus, many employers would probably apply a 0.2 to 0.5 discount to grades listed on the transcript of students from School A.

138.   *See supra* text accompanying notes 87–88.

schools.[139] This suggests that they are stronger students and thus per-
form better in law school. If the students at more prestigious institu-
tions are in fact superior performers, then they deserve better marks.
Accordingly, the grade differential between higher- and lower-ranked
schools is justified, and any competitive advantage in job placement
accruing to students from the former set of institutions is fair. There
are multiple problems with this reasoning.

First, the objection assumes that grading practices vary strictly by
prestige and student credentials. But that is not the case. As I demon-
strated above, there are significant grade disparities among schools
*within* each of the *U.S. News* tiers. For example, there is substantial
variation in the grading practices of first-tier institutions.[140] The same
is true for second, third, and fourth-tier schools.[141] Thus, while there
is *some* correlation between institutional grade levels and students' en-
tering qualifications, the correlation is far from universal. This means
that there are numerous examples of schools with similar entering
classes, but divergent grade levels.[142]

Second, we lack the evidence necessary to accurately compare the
performances of students across law schools. Index scores are only
predictive. They are not a measure of actual outcomes. And numerous
other factors impact student achievement as well, such as teaching
quality, class size, assessment practices, academic support programs,
and resource allocation. Without a direct measure of student learn-
ing, grade disparities are not justified. Hypothesized differences in ac-
ademic performance based on variations in index scores are
insufficient.[143]

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139. *See infra* text accompanying note 178.
140. *See supra* notes 48–60 and accompanying text.
141. *See supra* notes 61–83 and accompanying text.
142. Indeed, there is often an *inverse* correlation between entering credentials and law
school grade levels. To illustrate, the University of Alabama's UGPA and LSAT scores for
the 75th, 50th, and 25th percentiles of its 2010 entering class were 3.92/167, 3.80/165, and
3.50/159. For American University, the numbers were 3.58/164, 3.39/163, and 3.13/158.
*See* LAW SCH. ADMISSION COUNCIL & AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS
TO THE BAR, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 56–57 (2012 ed.
2011) [hereinafter LSAC/ABA]. Based on my review of previous years, these numbers are
representative of a typical entering class at each institution. Now, compare this to the law
school GPAs for the 75th, 50th, and 25th percentiles of their 2011 graduating classes. For
Alabama, the numbers were 3.39, 3.11, and 2.85; for American, the numbers were 3.62,
3.45, and 3.27. *See* THE NAT'L ASS'N OF LAW PLACEMENT, 2012–2013 DIRECTORY OF LAW
SCHOOLS, *supra* note 39. This means that Alabama's students consistently have higher in-
dex scores but lower law school GPAs than students at American.
143.   One might respond that we can use bar exam results to compare achievement
across institutions. But that is not an appropriate measure. First, the bar exam is merely

Third, the counter-argument assumes that grades should strictly reflect academic results *across* institutions. However, this is fundamentally inconsistent with the way teachers approach assessment. In awarding grades, we almost never judge our students against those at other schools. Rather, we adapt our grading standards to the students around us.[144]

Fourth, even if the higher grades at some schools *do* reflect greater student achievement levels, the grade disparities still cause unfairness in the labor market. To illustrate, assume that Student X earns a 3.5 GPA at a third-tier school and Student Y earns a 3.5 at a first-tier school. Each is ranked at the ninetieth percentile of his law school class. But given the student quality at the two institutions, Y's academic performance is better. Assume further that X and Y apply for the same job. The employer will likely give Student Y's GPA and class standing more weight than X's because Y attended a first-tier institution with superior students. In other words, employers treat numerically equivalent grades differently depending on whether they are received at a high-ranking or a low-ranking school, on the assumption that students at the former institution are better. Call this the "prestige bump."[145] Now assume that the first-tier school awards higher grades. As a result, Y earned a 3.7 GPA with the same class rank, rather than a 3.5. Since many employers grant significant weight to absolute

pass/fail. And there is no clear or fair way to translate bar passage rates into letter or number grade equivalents. For example, assume that Law Schools Q and R have 90% and 83% bar passage rates, respectively. What does that actually tell us about the mean grade the schools should award on a four-point scale? Very little, if anything. Second, the content and structure of the bar exam makes it a poor proxy for overall student learning. *See generally* Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams,* 45 BRANDEIS L.J. 269, 275-82 (2007) (setting forth multiple criticisms of the bar exam); Andrea Curcio, et al., *Society of American Law Teachers Statement on the Bar Exam,* 52 J. LEGAL EDUC. 446, 446–51 (2002) (same); Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success,* 78 U. COLO. L. REV. 69, 77-85 (2007) (same).

144.   It could be argued that our current practices are not a good benchmark. Perhaps legal educators should develop national grading standards that can be applied consistently to all law students, allowing for more accurate inter-school comparisons of legal aptitude. Unfortunately, that is not practical. Implementing uniform grading standards is not even realistic at a *single institution. See* Silverstein, *supra* note 79, at 289-95. Yet doing so nationwide would be exponentially harder (if not truly impossible). Moreover, if it turns out that the top students at third- and fourth-tier schools never earned A's under the national standards, would professors at those institutions really be willing to stop awarding high marks? I suspect not.

145.   *See* Sander & Yakowitz, *supra* note 130, at 20–21 (concluding that school ranking is correlated with the salary earned by recent graduates); *see also id.* at 26-35 (setting forth statistical analysis regarding the impact of law school ranking on post-graduation salaries).

grade levels, this will often provide Y with another benefit when com-
peting with X for a job—an "absolute grade bump." Accordingly, if
first-tier schools award higher marks than third-tier schools, students
from the former receive both a prestige bump *and* an absolute grade
bump for the same superior achievement. That constitutes double
counting; Y's accomplishment justifies either one bump or the other,
but not both. Put another way, Y's superior performance is already
accounted for by the prestige bump. If Y also obtains higher marks
and the associated absolute grade bump for the same performance,
then Y is receiving two benefits for the same accomplishment. This is
unfair.

In sum, (1) index scores do not perfectly correlate with grade
levels, (2) even if they did, index scores are an insufficient measure of
achievement levels, (3) grading students across institutions is inconsis-
tent with the nearly universal assessment practices of teachers, and (4)
when more prestigious law schools award higher absolute marks, the
superior performances of their students are improperly double
counted in comparisons with students from less prestigious institu-
tions. These points fatally undercut the proposition that the existing
grade disparities are justified and do not cause unfairness in the com-
petition for job placement.[146]

One final point is worth noting. My recommendation is that law
schools that currently award lower marks inflate their grades to match
the assessment practices of their high-grading counterparts because
this will make the labor market fairer. But inflation is not the only way
to accomplish increased grade standardization among institutions.
The same result would be achieved if the high-grading schools *deflated*
their grades. In other words, fairness in the placement market is pro-
moted by increasing grade *uniformity*, but there is no *necessary* connec-
tion between uniformity and inflation; deflation would work just as
well. With that said, there is a *practical* connection between uniformity
and inflation: There is essentially no chance that high-grading institu-

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146. A sixth counter-argument one might press against my position is that if we inflate
grades for current and future students, recent graduates with lower grades will be unfairly
disadvantaged. *See* Jackson, *supra* note 91, at 32 (explaining that not everyone was happy
about grade inflation at one law school—"particularly recent grads who fear the deprecia-
tion of their hard-earned GPAs"); *see also* Shouping Hu, *Beyond Grade Inflation: Grading
Problems in Higher Education*, 30 ASHE HIGHER EDUC. REP., No. 6, 1, 19 (2005) ("Grade
inflation favors recent generations over previous ones because it violates horizontal equity
criteria."). But avoiding inflation on this ground puts the interests of a few, recent graduat-
ing classes ahead of the interests of years and even decades of future graduates. Given the
numbers in each group, any harm or unfairness to recent alumni is easily trumped by the
benefits to future students.

tions are going to lower their grade scales. Grade inflation by the rest of us is thus the only plausible way to achieve the requisite, industry-wide grade equalization.

Given the relevance of grades in the employment market and the importance of jobs to our students, a fairer distribution of placement opportunities and outcomes is a powerful justification for grade inflation.

## B.    Substantially Eliminating C Grades Will Improve the Psychological Well-Being of Law Students

Law school is stressful, and the first year particularly so. Indeed, research indicates that law students suffer disproportionate levels of psychological distress generally and depression specifically.[147] Law student anxiety has many causes,[148] but one of the most significant is grades.[149] This makes sense. Grades are critically important in the lives of our students.[150] They determine academic honors, scholarship

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147.    *See* Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113–15 (2002) (surveying the literature); Grant H. Morris, *Preparing Law Students for Disappointing Exam Results: Lessons from* Casey at the Bat, 45 SAN DIEGO L. REV. 441, 442–44 (2008) (same); Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 365–70 (2009) (same).

148.    *See* Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 367 (2004) (identifying the following factors as causes of stress in the first year of law school: (1) students' high expectations, (2) law school teaching methods, (3) the limited amount of feedback, (4) the unfamiliar subject matter, (5) lack of familiarity with effective methods for studying law, (6) the importance of first semester grades, (7) the way that "law school shatters the illusion that a student is in control by challenging how she thinks, writes, and interacts with [the] world").

149.    Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 78 (2002) (explaining that grades are a primary source of stress in law students); Morris, *supra* note 147, at 449 (asserting that "undoubtedly" exams and grades "'are the dominate source of anxiety and preoccupation among the first-year class'") (quoting Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2033 (1998)) [hereinafter *Making Docile Lawyers*].

150.    Downs & Levit, *supra* note 41, at 819 ("It is undeniable that grades matter . . . ."); Stake, *supra* note 112, at 585 ("We can argue about the degree to which grades matter, but few doubt that grades do matter."); Emily Zimmerman, *Do Grades Matter?*, 35 SEATTLE U. L. REV. 305, 326–27 (2012) ("In each survey year, almost all students indicated that they either agreed or strongly agreed with [the statement, 'It is important to me to get good grades during my first year of law school'], with a large majority indicating that they strongly agreed . . . ."); *id.* at 322–24 (setting forth the parameters of this three-year study of the law students at a school that opened in 2006).

eligibility, placement prospects, and career paths.[151] Given the objective importance of grades, some grade-based anxiety is rational and healthy. However, the use of C grades to denote competent performance exacerbates the stress students experience in unhealthy ways. This additional stress is both injurious to the learning environment and intrinsically harmful to students. Therefore, substantially eliminating C grades by adopting a B- good standing GPA will bring about critical improvements in our students' psychological well-being.

C grades are common in legal education.[152] They are generally awarded to students whose performance is satisfactory. In other words, C marks indicate that one has achieved basic proficiency and should continue in the program. But that is not how many—and perhaps most—law students see such grades. Large numbers of students (and often their families) perceive C's as a sign of poor performance or even failure. And this is so despite regular explanations from faculty that C marks are acceptable.

To illustrate, under my school's previous grading system, students regularly stopped by during my office hours in January and February for the sole purpose of asking whether they should stay in school given their C-type marks. This is deeply troubling. Under the grading system then in place, these students demonstrated that they were on the path to becoming effective lawyers. They should not have felt like failures, or been contemplating discontinuing their studies. But no matter what I told them—including anecdotes about C students who are now happy and successful attorneys—some were inconsolable, which caused them to leave school and give up on a promising career. Numerous others stayed in school but ceased putting serious effort into their studies. Some of these students consciously chose to do the

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151. Henderson, *supra* note 111, at 405-06 ("Without question, grades are universally perceived to determine the direction of legal careers no matter the specialty or the setting. . . . Other research demonstrates the important effect of grades later in life, not just in school."); Hess, *supra* note 149, 78 ("Grades and class rank are significant gatekeepers to the reward system during and after law school—law review membership, research or teaching-assistant positions, internships, and jobs."); Fines, *supra* note 99, at 883 n.19 ("For example, Dean's list, Latin honors, Law Review membership, probation & dismissal are all often based on grades or rank."); *id.* at 886 ("Financial aid may be based on maintaining or achieving a particular grade average."); Downs & Levit, *supra* note 41, at 819 ("In addition, grades often are important in the determination of which students receive scholarships or other forms of financial aid."); Sander & Yakowitz, *supra* note 130, at 3–4 ("The consistent theme we find throughout this analysis is that performance in law school—as measured by law school grades—is the most important predictor of career success. It is decisively more important than law school 'eliteness.'").

152. *See supra* notes 41–43, 87–89, and accompanying text.

minimum level of work because they did not believe that greater dedi-
cation would be rewarded.

A former Assistant Dean for Student Affairs at my institution had
similar experiences. He explained that, during his tenure, numerous
C+ students came to his office in such a dejected state after the release
of first semester grades that they were ready to withdraw from
school.[153] He believes that B's are usually a sufficient wake-up call for
most students at our institution. C grades, however, go too far. Rather
than providing an incentive for increased effort, C's are more likely to
cause students to scale back their studying because such marks lead
them to believe that higher grades are out of reach. In the Dean's
words, "a B is a hit, but a C is truly discouraging."[154]

The reaction of students at my school to C grades is consistent
with national trends in higher education. Today's college students re-
gard grades in the C range as "loathsome and a sign of failure,"[155] a
"devastating insult,"[156] and an indication that the student "has disap-
pointed the teacher."[157] Parents and other constituencies frequently
hold the same view.[158] Accordingly, students today expect A and B
grades for average work.[159] In fact, they sometimes challenge even *B*
grades via university grievance procedures.[160] Law students come from

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153. Interview with Andrew M. Taylor, Assistant Dean for Student Affairs, Univ. of Ark.
at Little Rock, William H. Bowen Sch. of Law (May 28, 2009) (on file with the author).

154. *Id.*

155. Stephen Goode & Timothy W. Maier, *Inflating the Grades*, UPI INSIGHT MAG., May
25, 1998, at 8.

156. Biggs, *supra* note 7, at 111.

157. Richard Kamber, *Understanding Grade Inflation, in* GRADE INFLATION: ACADEMIC
STANDARDS IN HIGHER EDUCATION 45, 66 (Lester H. Hunt ed., 2008) (further noting that
"Bs and Cs have become marks of disapproval").

158. Richard Kamber, *Combating Grade Inflation: Obstacles and Opportunities, in* GRADE
INFLATION: ACADEMIC STANDARDS IN HIGHER EDUCATION 171, 172 (Lester H. Hunt ed.,
2008) ("A C+ signified average performance in 1960, but today it signifies below-average
performance. It is no easy thing to convince students, parents, employers, graduate
schools, and so on that a C+ in your class or at your institution means average rather than
below average.").

159. Kamber, *supra* note 157, at 58 ("In a fascinating study, R. Eric Landrum found
that '[s]tudents performing average work, who acknowledge themselves that their work is
average, expect a grade of B or A more than 70% of the time, even though they realize that
the grade for average work is C.'" (quoting R. Eric Landrum, *Student Expectations of Grade
Inflation*, 32 J. RES. AND DEV. IN EDUC. 126 (1999))). Kamber further notes that he "con-
ducted similar studies in [his] classes and obtained compatible results." Kamber, *supra*
note 157, at 58; *see also* VALEN E. JOHNSON, GRADE INFLATION: A CRISIS IN EDUCATION 235
(2003) ("In today's college environment, a professor cannot assign grades of C or D with-
out tangible justification. Students become indignant when they receive such
grades . . . .").

160. Kamber, *supra* note 157, at 59.

this cohort. Moreover, they are among the most successful of college graduates. Thus, they probably think worse of C grades than the bulk of their undergraduate peers.

Students often define themselves by their grades.[161] Disappointing marks can therefore have a profoundly negative psychological impact. And research indicates that when students receive such marks, they are more likely to withdraw than to work harder to improve their performance.[162] More generally, anxiety "is a significant inhibitor" of learning.[163] And psychological well-being is "strongly associated with academic success."[164] As a result, when we award large numbers of disappointing C grades to law students, we harm them in ways that are intrinsically bad *and* undercut our pedagogical aspirations.

Why do C grades cause such distress among law students? Why is it so difficult for law professors to convince their students that C's are acceptable under the grading systems generally in operation in legal education? Because our students are raised in an "A and B world." More specifically, they receive mostly A's and B's in high school and college. As a result, they are conditioned to expect marks above the C level.

Before elaborating on this point, I want to explain the parameters of my argument. Grade inflation in high school and college is a frequent topic in the popular press. Such inflation is regularly taken as a given. But the scholarly literature on this issue is complicated. While many education researchers believe that both secondary and undergraduate schools have experienced inflation, dissenting voices have

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161. Fines, *supra* note 99, at 883; *see also* Stake, *supra* note 112, at 584 ("Grades can influence the way students think about themselves, swelling their heads or shaking their confidence.").

162. Fines, *supra* note 99, at 901 (citing RAYMOND J. WLODKOWSKI, ENHANCING ADULT MOTIVATION TO LEARN 98 (1993)); *see also* Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367, 452 (2004) (citing STEPHEN COLE & ELINOR BARBER, INCREASING FACULTY DIVERSITY: THE OCCUPATIONAL CHOICES OF HIGH-ACHIEVING MINORITY STUDENTS 208–09 (2003)) ("[Cole and Barber] find that the use of racial preferences by liberal arts colleges tends to place blacks in schools where they perform poorly. Low grades, in turn, sap student self-confidence and may produce still lower grades by feeding 'stereotype threat.'").

163. Fines, *supra* note 99, at 902; *accord* B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 635–38 (1991) (setting forth a survey of the literature on the ways that stress inhibits learning).

164. Henderson, *supra* note 111, at 427 (citing Janice M. Livengood, *Students' Motivational Goals and Beliefs about Effort and Ability As They Relate To College Academic Success*, 33 RES. HIGHER EDUC. 247, 256–57 (1992)).

raised powerful counterarguments.[165] Critically, I do not need to take

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165.   For sources concluding that grade inflation has occurred at the college level, see GEORGE C. LEEF, DEGRADED CURRENCY: THE PROBLEM OF GRADE INFLATION 2–6 (American Council of Trustees and Alumni 2003), *available at* https://www.goacta.org/publications/downloads/GradeInflationFinal.pdf (summarizing the results of fifteen studies); ROSOVSKY & HARTLEY, *supra* note 7, at 4–7 (reviewing about a dozen studies); Rojstaczer & Healy, *Grading in American Colleges and Universities, supra* note 46, at 1–2 (finding that the average grade has risen from roughly 2.3 in the 1930s to roughly 3.1 in 2006). For sources concluding that the existence of grade inflation has not been established, see Clifford Adelman, *Undergraduate Grades: A More Complex Story Than "Inflation", in* GRADE INFLATION: ACADEMIC STANDARDS IN HIGHER EDUCATION 13, 13-44 (Lester H. Hunt ed., 2008) (challenging the existence of grade inflation on conceptual and empirical grounds; summarizing his prior studies on the subject for the U.S. Department of Education); *id.* at 39 ("Neither the literature nor the national time series data proves that U.S. higher education is paying a higher price [in grades] for lower quality product [in student performance], or a higher price for a stable quality product, or even a higher price for a product that has risen in quality at a lower rate"); Alfie Kohn, *The Dangerous Myth of Grade Inflation, in* GRADE INFLATION: ACADEMIC STANDARDS IN HIGHER EDUCATION 1, 1–5 (Lester H. Hunt ed., 2008) (also challenging the existence of grade inflation on conceptual and empirical grounds). For an outstanding survey of the college grade inflation literature, see HU, *supra* note 146; *see also id.* at 42 (concluding that college grades have increased, but that most of the increase appears to have resulted from causes other than "inflation").

For studies of high school grade, compare KELLY E. GODFREY, THE COLL. BD., INVESTI-GATING GRADE INFLATION AND NON-EQUIVALENCE, RESEARCH REPORT 2011-2 (2011), *available at* http://professionals.collegeboard.com/data-reports-research/cb/gradeinflation_non-equivalence (finding that grade inflation has occurred); DAVID J. WOODRUFF & ROBERT L. ZIOMEK, ACT INC., HIGH SCHOOL GRADE INFLATION FROM 1991 TO 2003, ACT RESEARCH REPORT SERIES 2004-4 (2004), *available at* http://www.act.org/research/researchers/reports/index.html (same); ROBERT L. ZIOMEK & JOSEPH C. SVEC, ACT, HIGH SCHOOL GRADES AND ACHIEVEMENT: EVIDENCE OF GRADE INFLATION, ACT RESEARCH REPORT SERIES 95-3 (1995), *available at* http://www.act.org/research/researchers/reports/91index.html (same), with DANIEL KORETZ & MARK BERENDS, RAND EDUCATION, CHANGES IN HIGH SCHOOL GRADING STANDARDS IN MATHEMATICS, 1982–1992 (2001), *available at* http://www.rand.org/pubs/monograph_reports/MR1445.html (finding no grade inflation in high school mathematics departments for the study period).

Part of the complexity in debates over the existence of grade inflation results from the fact that scholars disagree at a definitional level. Grade inflation has been defined as either (1) any increase in grades, *see, e.g.,* Kamber, *supra* note 157, at 46–47, or (2) an increase in grades without a comparable increase in student performance, *see, e.g.,* HU, *supra* note 146, at 15 (defining grade inflation as an increase in grades without a comparable increase in student performance); ROSOVSKY & HARTLEY, *supra* note 7, at 4; *see also* HU, *supra* note 146, at 29 (distinguishing between "grade increase" (i.e., the first definition) and "grade inflation" (i.e., the second definition)). The difference here is critical. If grades are going up because, for example, student performance is improving or because students are more often registering for courses where grades have always been higher, *see* HU, *supra* note 146, at 34–35, then grade inflation would exist under the first definition but not under the second.

The second definition is more well accepted. But proving the existence of grade inflation using that standard is extremely difficult because it raises fundamental conceptual and empirical problems. As explained by Clifford Adelman, if grade inflation only occurs when a higher grade is awarded in the present than was awarded in the past for the same "defined level of academic achievement," then we need a method for accurately measuring

sides in this debate. That is because the evidence proffered by both camps supports the conclusion that A's and B's dominate high school and university grading.

Let me begin with undergraduate education. Professors Stuart Rojstaczer and Christopher Healy, two of the most prominent advocates of the hypothesis that grade inflation is real, gathered historical and contemporary statistics on letter grades awarded at over 200 four-year colleges and universities.[166] Based on their research, in 2008, C's constituted only 14.9% of college grades, while D's and F's were a mere 8.3%. A's and B's, on the other hand, constituted an extraordinary 76.8% of marks:[167]

| School Type | Avg. % A's | Avg. % B's | Avg. % C's | Avg. % D's | Avg. % F's |
|---|---|---|---|---|---|
| Private Non-Profit Universities | 48.2 | 35.8 | 11.4 | 2.2 | 2.3 |
| Private Non-Profit Colleges | 47.7 | 36.6 | 11.3 | 2.4 | 1.9 |
| Public Flagship Universities | 42.3 | 34.5 | 15.5 | 4.1 | 3.6 |
| Public Satellite Universities | 41.7 | 32.0 | 16.0 | 4.8 | 5.4 |
| Public Commuter Universities | 39.0 | 31.8 | 17.5 | 5.4 | 6.3 |
| *Totals* | *43.0* | *33.8* | *14.9* | *4.1* | *4.2* |

Clifford Adelman, a leading inflation skeptic, who for thirty years served as a researcher at the United States Department of Education, arrived at similar conclusions. His data is from The National Education Longitudinal Study of 1988, which gathered and reviewed college

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achievement over time. But, Adelman argues, educators lack such a method; there is no way to accurately determine whether student performance today is the same as, or different from, performance in the past—either via direct measurement or by the use of proxies (such as standardized tests). Adelman, *supra* note 165, at 19–22; *see also* Kamber, *supra* 157, at 62–64 (agreeing with Adelman that measuring grade inflation using the second definition "runs into insurmountable obstacles," but arguing that this demonstrates the need for a better definition—the first one). *But see* Rojstaczer & Healy, *Where A is Ordinary, supra* note 46, at 12–13 (explaining that because SAT scores are down, students study less, the literacy of graduates has declined, and student engagement is at all-time lows, "[t]here is no indication that the rise in grades at public and private schools has been accompanied by an increase in student achievement").

166.   Rojstaczer & Healy, *Where A is Ordinary, supra* note 46, at 1.

167.   *Id.* at 4–6.

transcripts from 8,900 members of the high school class of 1992.[168] These students received the following grades:[169]

| Institutional Selectivity | A's | B's | C's | D's | F's | Pass | W/ NCR |
|---|---|---|---|---|---|---|---|
| Highly Selective | 31.4 | 33.6 | 14.8 | 2.6 | 1.2 | 14.9 | 1.7 |
| Selective | 30.4 | 33.8 | 16.9 | 3.8 | 2.5 | 8.3 | 4.2 |
| Nonselective | 29.2 | 30.8 | 19.0 | 5.0 | 4.1 | 5.6 | 6.4 |
| Open Door | 23.4 | 24.7 | 18.4 | 4.9 | 7.2 | 5.4 | 16.0 |
| Not Rated | 36.1 | 33.1 | 14.4 | 3.1 | 2.1 | 6.9 | 4.3 |
| *Totals w/o Pass w/NCR* | 28.1 | 29.9 | 18.2 | 4.6 | 4.5 | 6.4 | 8.3 |
| *Totals* | 32.9 | 35.1 | 21.3 | 5.4 | 5.3 | — | — |

Adelman's results for A's and B's are different from Rojstaczer and Healy's (57% vs. 76.8%), but his results for C's (18.2% vs. 14.9%), D's (4.6% vs. 4.1%), and F's (4.5% vs. 4.2%) are substantially the same. This comparison is not precisely apples-to-oranges because Adelman collected Pass, Withdrawal, and No-Credit Repeat grades, whereas Rojstaczer and Healy did not. But even with those grades removed from Adelman's numbers, C marks still account for only 21.3 percent of college grades, and D's and F's are a mere 10.5%.[170] In addition, A's and B's balloon to 68%, which is more in line with Rojstaczer and Healy's findings. Other comprehensive research also shows that C's are substantially less common than A's and B's at American universities.[171]

168. CLIFFORD ADELMAN, INST. OF EDUC. SCIENCES, U.S. DEPT. EDUC., PRINCIPAL INDICATORS OF STUDENT ACADEMIC HISTORIES IN POSTSECONDARY EDUCATION, 1972–2000, at iii (2004), *available at* http://www2.ed.gov/rschstat/research/pubs/prinindicat/prinindicat.pdf.

169. *Id.* at 78 (the totals); *id.* at 80 (the breakout by the selectivity of the institution).

170. There are two immediately apparent differences between the two data sets that might explain the divergent results. First, as explained in the body, Adelman's numbers are from the mid-1990s, whereas Rojstaczer's and Healy's are from 2008. Second, Adelman's data includes grades from community colleges and vocational schools. *See* ADELMAN, *supra* note 168, at vii. Rojstaczer's and Healy's data, however, is exclusively from four-year institutions. *See* Rojstaczer & Healy, *Where A is Ordinary*, *supra* note 46, at 1; *see also* LEEF, *supra* note 165, at 5 (contending that this difference between Adelman's work and other studies explains why Adelman's results are inconsistent with much of the literature).

171. *See, e.g.*, NAT'L SURVEY OF STUDENT ENGAGEMENT, STUDENT ENGAGEMENT: PATHWAYS TO COLLEGIATE SUCCESS 13 (2004), *available at* http://nsse.iub.edu/2004_annual_report/pdf/annual_report.pdf ("About two-fifths of all students reported that they earned mostly A grades, another 41% reported grades of either B or B+, and only 3% of students reported earning mostly Cs or lower."); *id.* at 10 (survey of 620,000 students at 850 different four-year colleges and universities). For a study concluding that low grades might be somewhat more common, see LAURA HORN ET AL., NAT'L CTR. EDUC. STATISTICS, U.S. DEPT. OF

Turning to high schools, the College Board gathers data each year from over one million students who register for the SAT. According to this information, the mean GPA for college-bound seniors in both 2010 and 2011 was 3.34—roughly a B+ level.[172] Moreover, in both years, forty-four percent of reporting students said they had an A+, A, or A- average, and another forty-five percent said they earned a B average.[173] Data collected by the ACT is consistent with these results.[174] Students who register for the SAT and ACT are not representative of all secondary school students.[175] As a group, they have somewhat better grades than the overall student population. But the U.S. Department of Education conducted a study of 2005 high school graduates designed to measure the average GPA of *all* students, rather than just those who registered for the college entrance exams.[176] The

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EDUC., PROFILES OF UNDERGRADUATES IN U.S. POSTSECONDARY INSTITUTIONS: 1990-2000, at 68 (2002), *available at* http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002168. This report is "based on institutional records of approximately 50,000 undergraduates from approximately 1,000 institutions and on telephone interviews with about 35,000 undergraduates." *Id.* at 4. It found that students received the following grades:

|          | Mostly A's | A's & B's | Mostly B's | B's & C's | Mostly C's | D's or Lower |
|----------|-----------|-----------|------------|-----------|------------|--------------|
| Public   | 9.7       | 9.7       | 25.1       | 26.7      | 17.9       | 11.0         |
| Private  | 15.0      | 14.4      | 30.1       | 22.0      | 11.7       | 6.9          |
| All      | 11.3      | 11.1      | 26.6       | 25.3      | 16.0       | 9.7          |

*Id.* at 68. But these findings are based on reported grade point averages, not (1) direct counting of letter grades from grade distributions or transcripts, nor (2) questions to students about the types of grades they received. *Id.* at 142. And there is greater division in the literature over the level of college grade point averages than over how typical grades below B- are. *Compare* ADELMAN, *supra* note 168, at 78 (finding that the average undergraduate GPA was 2.74 in the 1990s), *with* Rojstaczer & Healy, *Grading in American Colleges and Universities*, *supra* note 46, at 1, 4 (finding that the average undergraduate GPA was roughly 3.1 as of the mid-2000s).

172. COLLEGEBOARD, 2011 COLLEGE-BOUND SENIORS—TOTAL GROUP PROFILE REPORT 5 (2011), *available at* http://professionals.collegeboard.com/profdownload/cbs2011_total_group_report.pdf [hereinafter 2011 COLLEGE-BOUND SENIORS]; COLLEGEBOARD, 2010 COLLEGE-BOUND SENIORS—TOTAL GROUP PROFILE REPORT 5 (2010), *available at* http://professionals.collegeboard.com/profdownload/2010-total-group-profile-report-cbs.pdf [hereinafter 2010 COLLEGE-BOUND SENIORS].

173. 2011 COLLEGE-BOUND SENIORS, *supra* note 172, at 5; 2010 COLLEGE-BOUND SENIORS, *supra* note 172, at 5.

174. *See* WOODRUFF & ZIOMEK, *supra* note 165, at 3, 10 (2003 mean GPA of 3.20 for those registering for the ACT).

175. WAYNE CAMARA ET AL., COLLEGEBOARD, WHOSE GRADES ARE INFLATED?, RESEARCH REPORT NO. 2003-4, at 11 (2004), *available at* http://professionals.collegeboard.com/data-reports-research/cb/whose-grades-inflated.

176. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., THE NATION'S REPORT CARD: AMERICA'S HIGH SCHOOL GRADUATES: RESULTS FROM THE 2005 NAEP HIGH SCHOOL TRANSCRIPT STUDY 2 (2005), *available at* http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2007467.

Department of Education concluded that the mean GPA for the entire 2005 cohort of 2.7 million high school graduates was 2.98—a B average.[177]

What about data with respect to law students specifically? I found no source that has compiled the high school grades of our students. But given the numbers presented in the previous paragraph, most law students likely received very few marks below B- during their secondary education. After all, they generally were superior performers in high school and were college bound.

Data *is* available with respect to our students' college careers. The American Bar Association ("ABA") and Law School Admission Council ("LSAC") gather comprehensive statistics on the undergraduate grade point averages of law students.[178] I compiled this information for the fall 2010 entering class by 2011 *U.S. News* tier:

|             | 75th Percentile | 50th Percentile | 25th Percentile |
| ----------- | --------------- | --------------- | --------------- |
| First Tier  | 3.81            | 3.68            | 3.45            |
| Second Tier | 3.68            | 3.47            | 3.20            |
| Third Tier  | 3.61            | 3.38            | 3.11            |
| Fourth Tier | 3.45            | 3.17            | 2.88            |
| *All*       | 3.64            | 3.44            | 3.17            |

These numbers paint a clear picture: Law students receive high grades in college. The median GPA for all such students is well above B+ (3.44). Indeed, the median at third-tier schools is above that level (3.38). And even students ranked at the *twenty-fifth* percentile attending *fourth-tier* schools have an average undergraduate GPA of 2.88, which has been equated to earning "[m]ostly B's" by researchers at the U.S. Department of Education.[179] When these numbers are combined with the data collected by Rojstaczer, Healy, and Adelman discussed above, it appears quite likely that virtually all American law students receive mostly A's and B's in college; C grades and below are a rarity.[180]

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177. *Id.* at 12.

178. *See LSAC/ABA, supra* note 142, at 56–61.

179. *See* HORN, *supra* note 171, at 142.

180. To confirm this point more directly, I requested that my law school provide me with a representative sample of our students' undergraduate transcripts. However, despite the fact that I stated that the school could redact every identifying piece of information from the transcripts and thus produce documents with nothing but a series of letters, the university counsel's office denied my request, claiming the transcripts are exempt from the Arkansas Freedom of Information Act ("AFOIA"). *See* E-mail of Mandy Hull Abernathy to

Given our students' academic records in high school and college, is it any wonder that so many are crushed when they receive C's in law school? The admission credentials of most law students are excellent.[181] These students "have succeeded in their prior academic endeavors, and they expect to succeed in law school."[182] Professor Emily Zimmerman's three-year study of the students at one law school supports this point.[183] According to her data, just over eighty-five percent of the law students surveyed "responded that their first-year law school grades would either be better than their college grades or about the

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Professor Robert Steinbuch, UALR Bowen School of Law (Feb. 22, 2012, 17:33 CST) (on file with author) (stating that the Arkansas "FOIA specifically exempts from disclosure educational records as defined by [the Federal Educational Rights and Privacy Act" (citation omitted)). This email to a colleague of mine served as the basis for denying my request. The counsel's office is plainly incorrect, as Professor Steinbuch and I explained in a letter we subsequently sent to the state attorney general. *See* Letter of Associate Professor Joshua M. Silverstein and Professor Robert Steinbuch to Arkansas Attorney General Dustin McDaniel (Jun. 26, 2012) (on file with author). Perhaps realizing the flaw in its position, the counsel's office subsequently proffered two new arguments: (1) the watermarks on transcripts make it impossible to redact every piece of information but the grades, and (2) transcripts with nothing but grades are not public records. *See* Letter of Mandy Abernethy to Arkansas Attorney General Dustin McDaniel 6–8 (Jul. 9, 2012) (on file with author). Once again, the counsel's office is clearly wrong. Professor Steinbuch and I demonstrated in a second letter that (1) it is quite easy to redact a college transcript in such a way as to make it impossible to see any distinguishing features of the watermark, and (2) there is no question that redacted transcripts are public records. *See* Letter of Professor Joshua M. Silverstein and Professor Robert Steinbuch to Arkansas Attorney General Dustin McDaniel 10–13 (Jul. 16, 2012) (on file with author) [hereinafter July 16 Letter]. Unfortunately, the Attorney General subsequently opined that an Arkansas court would likely conclude that I am not entitled to the transcripts. Ark. Op. Att'y Gen. 2012-083 at 12. The Attorney General reasoned that the letter grades on a transcript are not "reasonably segregable" from the information on the document that is exempt from AFOIA because the grades alone would be "'essentially meaningless.'" *Id.* at 11–12 (quoting ARK. STAT. ANN. § 25-19-105(f)(2) and Mo. Coal. for the Env't Found. v. U.S. Army Corps of Eng'rs, 542 F.3d 1204, 1212 (8th Cir. 2008)). However, as the reader knows by now, this is clearly false. The letter grades on transcripts are, by themselves, *highly* meaningful to anyone researching grading practices generally and grade inflation specifically. Professors Steinbuch and I explained this in one of our letters. *See* July 16 Letter at 12–13. Nevertheless, the Attorney General ignored our analysis as well as every other point we set forth in our two letters. *See* Ark. Op. Att'y Gen. 2012-083 at 1–12.

181. Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 527 (1998) ("Most students enter law school with superior academic records."); Morris, *supra* note 147, at 449 ("Even at law schools that are not among the fifteen or so that claim to be ranked in the top ten, or in the next group of fifteen or twenty law schools that assert some claim to being 'prestigious,' admissions credentials of students are excellent.").

182. Morris, *supra* note 147, at 449.

183. *See* Zimmerman, *supra* note 150, at 322–24 (setting forth the parameters of the study).

same as their college grades."[184] In short, our pupils arrive seeing themselves as A and B students. And because they have experienced so few C's in life, they perceive such grades as unsatisfactory and often a sign of failure.[185] The C marks we award frequently demolish their expectations, eroding their self-esteem and discouraging future effort.[186]

These impacts are intensified by students' belief that law school grades are more important than those they earned at previous stages of their education—a justifiable conclusion. Once they enter law school, students have chosen a career path, and they are acutely aware that their grades will profoundly impact the available opportunities along that path. In addition, law school is the first time that many students have been seriously challenged in their schooling. Given the environment in which they were raised, the stakes of law school grades, and the intensity of the one-L year, it should come as no surprise that the C grades awarded in legal education critically damage the self-image of countless students.

I take no position here on the issue of whether the transformation of America into an "A and B nation" is positive or negative overall. That is not pertinent to my thesis. What is pertinent is that our students were born and raised in a world in which C's are regularly

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184. *Id.* at 329; *see also id.* at 371 (indicating that in all three of the survey years, the number of students in the "better" category and the number of students in the "about the same" category were roughly equal—just over forty percent in each category every year). *But cf. id.* at 346 n.174 ("In all three survey years, a statistically significant correlation was *not* found between *expected law school* grade point average and *reported undergraduate* grade point average. This result suggests that incoming law students are *not* basing their law school grade expectations on their undergraduate grade point averages." (emphasis added)).

185. *See* Rojstaczer & Healy, *Where A is Ordinary, supra* note 46, at 17–18 ("Given that many students now have never seen a C and rarely a B before entering college, there is a tendency on the part of some students to equate B's with substandard performance and C's with failure."); Biggs, *supra* note 7, at 117 (observing that in college, "C is reserved for deeply defective performance").

186. *See* Harry Brighouse, *Grade Inflation and Grade Variation: What's All the Fuss About?*, *in* GRADE INFLATION: ACADEMIC STANDARDS IN HIGHER EDUCATION 73, 76–77 (Lester H. Hunt ed., 2008) ("An overall inflation of grades . . . enculturat[es] students to receiving higher grades so that lower grades are more likely (than in a noninflated regime) to depress their self-esteem."); Lester Hunt, *Preface, in* GRADE INFLATION: ACADEMIC STANDARDS IN HIGHER EDUCATION, at xiii, xvii (Lester H. Hunt ed., 2008) ("[I]f Cs become rare, then they are more likely (when they are given) to discourage students and crush their desire to try harder."); *see also* Iijima, *supra* note 181, at 527 (observing that in law school, many students receive below-average grades for the first time in their lives); *Making Docile Lawyers, supra* note 149, at 2035 ("After years of constant academic success, receiving average grades for the first time can be extremely destabilizing and an intense blow to [law students'] self-esteem.").

viewed as failing grades. I believe that this goes a long way towards explaining why so many of them are deeply distressed by the C's we administer in law school.

I am not the first person to criticize the low grades common in legal education. Professor Laurence Krieger, one of the leading experts on law student stress and depression, has reached similar conclusions. According to Krieger, if the overall grades at a law school are lower than the grades students at the institution received prior to matriculating, then the "[s]tudents will reasonably experience dissonance, and often anxiety or excessive pressure."[187] In comparing law schools to other graduate programs, Krieger observes that graduate schools outside of law "typically grade in ways that reflect the high capability of their students and that allow all students who learn well to grade well."[188] Most law schools do not follow this approach. Instead, we award low grades that send a negative signal to students about their capabilities and performance, which inhibits learning:

> The message from the [law] faculty is simple: *we presume that you will learn and perform poorly here compared to your previous achievement.* Whether the faculty believe this or not matters little; the perception in students that faculty have low expectations for their learning undermines the very educational purpose of the institution, since perceived autonomy support—which includes a sense of respect—is the primary determinant of . . . positive motivation, well-being, and learning performance.[189]

Additionally, grading requirements that set the standard lower than pre-law school performance lead students to believe that only a small portion of each graduating class is successful—namely, the ten to twenty-five percent who actually receive high marks.[190] Such perceptions are corrosive to the learning process, impede the development of a healthy professional identity, and cause psychological damage:

> Students often tell me that they resent such grading systems, which effectively create a sense of resignation and mediocrity across a large segment of the class. Such systems encourage some students to "tune out" and stop trying, a classic example of *learned helplessness.* Others feel compelled to compete, often to excess, for the limited cache of good grades and other resume points. The former response, amotivation, can lead to depression; the latter can create distortions in attitude and lifestyle, and reinforces a concept of the

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187.   Krieger, *supra* note 37, at 299.
188.   *Id.*
189.   *Id.*
190.   *Id.* at 300.

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profession that may be reflected in the problems of overwork, insensitivity, and hyper-competition among lawyers today.[191]

In short, Krieger concludes that when a law school awards grades that are lower than those students have come to expect given their previous levels of achievement, "competence and self-esteem needs *are likely to be compromised unnecessarily.*"[192] Krieger thus recommends that "the overall grading parameters at a school should be, at a minimum, consistent with the lifetime experience of grade achievement of the students at the school."[193]

At present, law schools fall well short of Krieger's recommendation. Set forth below is the data I collected from ABA/LSAC and NALP on undergraduate and law school grade point average. Once again, the information is broken down by *U.S. News* tier.

|  | 75th Percentile | | 50th Percentile | | 25th Percentile | |
|---|---|---|---|---|---|---|
|  | Avg. Undergrad GPA | Avg. Law School GPA | Avg. Undergrad GPA | Avg. Law School GPA | Avg. Undergrad GPA | Avg. Law School GPA |
| First Tier | 3.81 | 3.49 | 3.68 | 3.28 | 3.45 | 3.03 |
| Second Tier | 3.68 | 3.40 | 3.47 | 3.17 | 3.20 | 2.96 |
| Third Tier | 3.61 | 3.34 | 3.38 | 3.06 | 3.11 | 2.83 |
| Fourth Tier | 3.45 | 3.20 | 3.17 | 2.91 | 2.88 | 2.66 |
| *Total* | *3.64* | *3.35* | *3.44* | *3.09* | *3.17* | *2.84* |

As the data make clear, at every level, law schools are awarding lower grades to their students than these same students earned in college.[194] If Krieger's analysis is correct, these numbers explain a critical portion of law student psychological distress and the related damage to our educational effectiveness.

At this point, the reader might wonder why I am advocating for the universal adoption of a B- good standing GPA in legal education. Such a policy will not have that much impact at first- and second-tier institutions because they already award relatively high grades. But the

191.  *Id.* at 301.
192.  Krieger, *supra* note 37, at 298 (emphasis added); *see also* Jay M. Feinman, *Law School Grading*, 65 UMKC L. REV. 647, 651 (1997) ("In the general view, . . . a C or C+ indicates mediocrity; the law school that uses C+ for its mean grade ensures that many of its students will be regarded as mediocre. . . . This unintended result can be avoided by . . . shifting [the school's] grading practices . . . . (For example, by using something like a bell-shaped curve, but with a B rather than a C+ average grade).").
193.  Krieger, *supra* note 37, at 302 (emphasis added).
194.  Just to clarify, this data actually reflects two different groups of students. But the size and timing of the data sets justify my conclusion.

gaps between law school and undergraduate GPA are greater overall at those schools than at third- and fourth-tier schools. Under Krieger's analysis, these larger gaps suggest that the psychological harm caused by lower grades is greater at more prestigious institutions.[195] In addition, students at schools in the upper tiers are more accustomed to receiving good marks. This too might imply that they suffer from greater mental distress when they receive grades below what they are accustomed to earning.

There are four reasons why I am recommending a 2.7 good standing line rather than a policy more consistent with Krieger's recommendation. First, and most importantly, if every law school awards grades comparable to those their students received as undergraduates, then significant grade disparities across institutions will continue to exist. As I explained in the previous section, such disparities cause unfairness in the employment market. Between the equitable distribution of placement opportunities and enhanced mental well-being, I think the former is more important. Second, a 2.7 good standing line should eliminate the gap between undergraduate and law school GPA at third- and fourth-tier schools and largely do so at second-tier schools. It will also raise the grades somewhat at many first-tier institutions. Thus, my proposal will largely, though not entirely, address Krieger's concerns about grade levels in legal education without undercutting my goal of enhancing fairness in the labor market. Third, many schools in the upper tiers of *U.S. News* cannot raise their grades to match the undergraduate marks of their students without risking problematic grade compression. For example, the median undergraduate GPA at first-tier institutions is around 3.7. Setting that as the mean grade on a 4.0 scale would likely compress grades too much. And the same might be true even with the use of a 4.3 scale. Fourth, my principal concern in this section is with the psychological impacts of C marks, not low grades *per se*. The latter is an important issue, to be sure, but it is secondary. Setting the good standing GPA at B- will substantially eliminate C grades.

As with the placement-based justification presented in the last part, there are several counter-arguments one might offer against the claim that grade inflation will improve the psychological well-being of law students. The first is that law school grades are not *that* much lower than the marks our students received as undergraduates. Based

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195. However, it bears repeating that a disproportionate number of schools in the top half of the first-tier do not report class rank, and thus the GPA gap for this group of institutions is likely overstated.

on the data presented above, the difference is roughly 0.25 GPA points at the median level. Given this, will raising grades in legal education make a significant difference? There are four reasons to think so. First, if a 2.7 good standing line is uniformly adopted, a majority of the resulting grade inflation will take place at third- and fourth-tier schools. The average GPA at fourth-tier institutions will likely rise from 2.9 to 3.3 or 3.4, and in the third tier, it will move from 3.06 up to the same level. Those are sizeable increases.[196] Second, the GPA gaps I presented are composites of every reporting school within each tier. The gaps at many individual institutions are greater, and thus raising the good standing line to B- will lead to larger grade increases at those places than the mean gaps suggest. Third, as I noted at the end of the last paragraph, GPA levels are not my central concern. While I share Professor Krieger's belief that the average grade in law school is too low, my primary claim is that grades in the C range are a critical problem independent of mean GPA. Setting good standing at 2.7 will both significantly raise the average GPA at most institutions *and* substantially eliminate C marks at *all* law schools. Fourth, there is anecdotal evidence that raising grades and eliminating C's each, independently, improve psychological well-being. To illustrate the former, the Associate Dean for Academic Affairs at UC Davis School of Law concluded that when his school raised its curve, the mood on campus improved.[197] To illustrate the latter, at my institution, we adopted a mandatory mean and amended our grading scale, effective the fall of 2011.[198] By design, these changes significantly reduced the number of C-type grades awarded *without altering the mean grade point average.*[199] Critically, the spring of 2012 was the first spring semester in my eight years of teaching that no first-year law student came to my office in January or February asking whether his or her C marks warranted

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196. Note that such grade inflation will not impact the ability of a school to flunk out a larger percentage of its students, if it chooses to follow that approach. *See* Theodore P. Seto, *Understanding the U.S. News Rankings*, 60 SMU L. Rev. 493, 528 (2007) (observing that some schools academically dismiss a higher portion of their first-year classes in order to boost bar passage rates); *see also* Sander, *supra* note 162, at 437 (setting forth attrition rates for various groups of law schools). All the school will have to do is adjust its grading practices so that the same number of students earn Cs or lower under the inflated system as receive Ds or lower under the current grading policy.

197. *See* Caron, *supra* note 131.

198. *See* Silverstein, *supra* note 79, at 332-36.

199. We did this by keeping the mean at roughly 3.05, but altering the grade scale such that each letter grade is now worth a lower grade point value than before. For example, B and B- were valued at 3.25 and 3.0 under our old scale, but are worth 3.0 and 2.7 under the new scale. *Compare* UNIV. OF ARK. AT LITTLE ROCK, *supra* note 44, at 1, *with* UNIV. OF ARK. AT LITTLE ROCK, *supra* note 78, at 12.

dropping out of school. As I said, such evidence is anecdotal. But it is telling nonetheless.

The second objection to my claim that grade inflation will help our students psychologically is that we really do not know what percentage of law student mental distress flows from marks in the C range and low GPAs and what percentage flows from other causes.[200] For example, Professor Grant Morris explains that "for students who have previously scored highly on examinations as undergraduates, anything less than *competitive success* on law school exams is interpreted by them as failure."[201] "Competitive success" means relative success—students expect a high class rank, not just high absolute grades.[202] If one-hundred percent of our students are convinced that they will finish in the top ten percent of their class, then ninety-percent of them are destined for disappointment. It is clear that a 2.7 good standing GPA will not help law students to the extent that their psychological health is contingent upon class rank.

This objection can be expanded further. I have discussed or cited scientific studies, research compilations, and other reliable evidence, for most of the points in this section. But I have not yet proffered any scientific research directly supporting the three hypotheses that constitute the essence of my argument: (1) marks in the C range and low absolute GPAs each, independently, cause mental distress in law students; (2) such mental distress results, in large part, because the grades awarded in law school are not consistent with the students' grade expectations flowing from their prior schooling; and (3) such distress is pedagogically harmful. Instead, I have supported these points by drawing inferences from valid research on related propositions and with anecdotal evidence that is directly relevant. The skeptical reader might reasonably conclude that this is not sufficient.

There are two recent scientific studies that directly address my hypotheses. The first study was conducted by Professor Krieger and Professor Kennon M. Sheldon, a psychologist.[203] It analyzed changes

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200. For a list of some of these causes, see *supra* note 148.

201. Morris, *supra* note 147, at 451.

202. *See* LINDA F. WIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY 5, 70 (1998), *available at* http://www.unc.edu/edp/pdf/NLBPS.pdf (in this comprehensive study that contains five years of data from 163 law schools, thirty-four percent of beginning law students predicted that they would finish in the top ten percent of their graduating classes and ninety-nine percent predicted that they would finish in the top half).

203. Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007).

in subjective well-being and psychological needs satisfaction of law students during their three years in law school.[204] The study involved one class of students at Florida State University and one class from another, unidentified institution.[205] Krieger and Sheldon found statistically significant positive correlations between third-year GPA and both third-year subjective well-being and two other psychological variables that influence educational outcomes.[206] This supports my first hypothesis that low grades damage mental health and my third hypothesis that such distress hinders student learning.[207]

204. *Id.* at 883; *see also id.* at 884–87 (explaining the theoretical framework underlying the study).

205. *Id.* at 886–87 (explaining the parameters of the study and noting that these two schools were also the subjects of the authors' prior study); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being,* 22 BEHAV. SCI. & L. 261, 265 (2004) (explaining that the two law schools in the study were Florida State University and another, unidentified institution).

206. Sheldon & Krieger, *supra* note 203, at 889. The correlation between third-year GPA and third-year subjective well-being was .15, with a p-value of .05. *Id.*; *see also id.* at 887–88 (describing how subjective well-being was measured in the study). *But see* Zimmerman, *supra* note 150, at 314 n.45 (stating that this correlation in the Sheldon/Krieger study "was not strong"). The correlation between third-year GPA and third-year "competence" was .25, with a p-value of .01. Sheldon & Krieger, *supra* note 203, at 889; *see also id.* at 885, 888 (describing "competence" and how it was measured in the study). The correlation between third-year GPA and "autonomy support" was .16, with a p-value of .05. *Id.* at 889; *see also id.* at 884, 886–88 (describing "autonomy support" and how it was measured in the study).

207. A few points about Sheldon and Krieger's previous study are worth noting. That paper assessed changes in subjective well-being, motivation, and values for one class of law students at Florida State University during their legal education. Sheldon & Krieger, *supra* note 205, at 261, 265–66. The authors found that during the first year of law school, the students in the study "experienced large reductions in positive effect, life satisfaction, and overall SWB [subjective well-being], and large increases in negative affect, depression, and physical symptoms." *Id.* at 272. However, Sheldon and Krieger also found "that these main effects were *not moderated by . . . first-semester GPA.*" *Id.* (emphasis added); *see also id.* at 275 n.2 ("To evaluate the effects of first-semester GPA we conducted a separate regression analysis for each SWB variable . . . . *In no cases was the GPA effect significant.*" (emphasis added)). These findings appear to undercut my first hypothesis that low grades negatively impact mental health. If GPA were correlated with well-being and other psychological variables, one would reasonably expect a higher GPA to moderate changes in well-being *et al.* But that did not happen in the study. *See* Zimmerman, *supra* note 150, at 314 (offering the following description of the results quoted above from the Sheldon and Krieger study: "In fact, one empirical research project found that law students' first-semester grade point average was *unrelated* to decreases in well-being that occurred during the first year of law school." (emphasis added)). However, when I contacted Sheldon and Krieger to discuss their paper, they expressed important reservations about the relevancy of their findings to my first hypothesis.

First, they explained that the *unpublished* data gathered for this study *did* show a correlation between first-year GPA and subjective well-being in the fall of the second year. *See* E-mail from Professor Kennon M. Sheldon, Professor of Psychology, University of Missouri,

The second study is Professor Zimmerman's three-year survey of the students at one law school.[208] Multiple parts of Zimmerman's paper are salient. To start with, Zimmerman investigated "whether there was any relationship between students doing better or worse than they expected and students' attitudes regarding their law school experience."[209] To assess this, she compared selected survey responses of students who earned lower grades than they expected to receive during the first year (those with a "negative grade gap") to the responses of students who earned higher grades than they expected to receive during the first year (those with a "positive grade gap").[210] On average, the students with a positive grade gap agreed more strongly with all of the survey items, but only some of their differences from the other group were statistically significant.[211] Zimmerman found statistically significant differences for the following survey questions:

(1) "My *first year* of law school has been *interesting*";
(2) "In general, I have *received grades* during my first year of law school that I felt *reflected my judgment as to the quality of my work*";
(3) "I have been *satisfied with my grades* during my first year of law school"; and
(4) "I have gotten *good grades* during my first year of law school."[212]

There was no statistically significant difference for any other survey items compared, including the following:

to Author (Sep. 26, 2012, 15:25 CST) (on file with author) ("I just took a quick look at the . . . data and it appears that [time 3] SWB is positively correlated with [time 3] GPA (p < .05)."); *see also* Sheldon & Krieger, *supra* note 205, at 267 (explaining that "time 3" in the study was in November of the students' second year of law school); E-mail from Professor Lawrence S. Krieger, Professor of Law, Florida State University, to Author (Sep. 27, 2012, 9:47 EST) (on file with author) ("I agree with Ken, that [time 3] correlation is solid."). Second, Professor Sheldon explained that the statistical test used to reach the findings quoted in the previous paragraph does *not* address the correlation of GPA with the various psychological factors, and thus it is methodologically improper to draw conclusions about correlations (or a lack thereof) from the findings. *See* E-mail from Professor Kennon M. Sheldon, Professor of Psychology, University of Missouri, to Author (Sep. 26, 2012, 17:01 CST) (on file with author); E-mail from Professor Kennon M. Sheldon, Professor of Psychology, University of Missouri, to Author (Sep. 27, 2012, 9:37 CST) (on file with author). Given these points, I believe that the first study by Sheldon and Krieger does not sufficiently support or undercut my position to warrant discussion in the body of the article.

208. *See* Zimmerman, *supra* note 150, at 322–24 (setting forth the parameters of the study).

209. *Id.* at 340.

210. *Id.* at 340. For additional details on precisely which students were included in the two categories, see *id.* at 338–40.

211. *Id.* at 341–42.

212. *Id.* at 342 (emphasis added to all four survey questions). *But see id.* at 354 n.212 (explaining that with respect to the survey item about whether the first year was *interesting* (item (1)), "[b]oth groups' average response . . . was over four . . . indicating that on average both groups agreed that the first year of law school had been interesting").

(5) "I have *enjoyed my first year* of law school";

(6) "I *enjoy studying law* in law school";

(7) "I am *looking forward to continuing to study law* in law school";

(8) "I am *looking forward to returning for my second year* of law school";

(9) "I will *enjoy being a lawyer*"; and

(10) "I am *glad that I decided to attend law school.*"[213]

Zimmerman concluded that these results suggest the following: (a) "although many students come to law school with unrealistically optimistic grade expectations, law students are relatively resilient in the face of this potentially disappointing situation,"[214] (b) "law students' unrealistically high grade expectations may not necessarily pervade all aspects of their law school experience,"[215] and (c) "contrary to some of the suggestions in the literature regarding law students and grading, students may not disengage from law school upon receiving disappointing grades."[216] Zimmerman's findings regarding the limited impact of grade expectations plainly cut against my second hypothesis that the psychological harm induced by low marks results primarily from law schools awarding worse grades than the students are accustomed to receiving. Less obviously, her findings also undercut my third hypothesis that mental distress compromises student learning. Recall my argument: Disappointing grades damage student's psychological health, which causes students to disengage, frustrating the educational process. But again, Zimmerman's findings suggest that "students may *not* disengage from law school upon receiving disappointing grades."[217] Accordingly, perhaps low marks do not inhibit student learning.

Zimmerman further analyzed whether students' attitudes about law school are related to their absolute GPA. To do this, she grouped the respondents with a grade gap into three categories based on GPA levels, and then compared their answers to the same survey items.[218] Here, Zimmerman found statistically significant differences for more of the survey questions—using the numbering above, for items (1),

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213. *Id.* at 342 & n.158 (emphasis added to all six survey questions). There were two other survey items—(11) "Law school courses should be graded on a curve" and (12) "The courses that I have taken in my first year of law school have helped prepare me to be a lawyer"—and no statistical difference was found for these items either. *Id.* at 340–41.

214. *Id.* at 354.

215. *Id.* at 355.

216. *Id.*

217. *Id.* (emphasis added).

218. *Id.* at 343 (category 1 = students with a GPA of 3.33 or higher, category 2 = students with a GPA under 3.33 and above 2.67, and category 3 = students with a GPA of 2.67 or below).

(2), (3), (4), (5), and (6).[219] Higher GPA correlated with stronger agreement with each of these survey questions.[220] The key difference from the expectations results in the previous paragraph was for items (5) and (6), which concern enjoyment of law school.[221] Zimmerman observed that this variation raises "the possibility that students' actual law school grades might be a more salient factor in students' enjoyment of law school than students' grades relative to their expectations."[222] This supports my first hypothesis concerning the relationship of GPA to psychological well-being. But once again, there was no statistically significant difference between the three groups for items (7), (8), (9), and (10).[223] Zimmerman explained that these results suggest that "grades might not be as salient with respect to students' overall satisfaction with their law school attendance or anticipated satisfaction with their future professional life."[224] And this undercuts my first and third hypotheses.[225]

The findings from these studies are contradictory. This calls for further research, as Krieger, Sheldon, and Zimmerman recommend,[226] and limits the studies' value in determining the accuracy of my three hypotheses. I also have another, deeper concern with the studies: Neither controls for class rank in assessing the impacts of grade expectations and actual grades. Recall Professor Morris's point that students expect to achieve "competitive success,"[227] which I interpreted to mean *relative* success.[228] If class rank is significantly more important to students than absolute grade levels, then it is possible

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219. *Id.* at 343–44.

220. *Id.* at 376. The results are actually more complicated than this. For a complete explanation and breakdown, see *id.* at 344, 376.

221. There was also a difference for item (11) regarding whether law school grading should be on a curve. *Id.* at 344 (explaining that there were statistically significant differences in the students' responses to this survey question).

222. *Id.* at 361.

223. *Id.* at 344 & n.163.

224. *Id.* at 364.

225. There is one other piece of Zimmerman's study worth noting. In response to the question asking students whether they agreed with the statement "I have been *satisfied* with my grades during my first year of law school" (item (3)), a majority of all students (not just those with a grade gap) responded that they strongly disagreed, disagreed, or neither agreed or disagreed— roughly 64% in survey year 1, 60% in survey year 2, and 56% in survey year three; the rest of the students answered that they either strongly agreed or agreed with the statement. *Id.* at 332, 373 (emphasis added). In other words, only around 40% of the students were satisfied with their grades.

226. *See* Sheldon & Krieger, *supra* note 205, at 282–83; Sheldon & Krieger, *supra* note 203, at 895; Zimmerman, *supra* note 150, at 355, 366.

227. Morris, *supra* note 147, at 451.

228. *See supra* text accompanying note 202.

that all of the correlations (or lack thereof) that Zimmerman, Shel-
don, and Krieger identify are capturing *class rank* effects instead of
*absolute grade* effects. Of course, it may be quite difficult to design a
study that measures the significance of grade levels independent of
class rank. But definitive conclusions on my three hypotheses cannot
be reached without such work.

Where does all of this leave the second objection? That depends
on one's disposition. I concede that the lack of scientific evidence di-
rectly and definitively supporting my three hypotheses is an important
limitation. For those only willing to make policy changes in the educa-
tional setting when such evidence is proffered, my argument should
be unconvincing. But when operating in a context where there is little
or no reliance interest, this approach grants too much weight to the
status quo. Remember, the scientific evidence here is essentially
equally divided. And it is only two studies involving three law schools.
Moreover, because both studies do not control for class rank, their
findings may be of questionable value regarding my three hypotheses.
Thus, neither my opponents nor I can claim a scientific mandate for
our positions. But I am willing to amend most law school rules with
less support, such as the type of evidence I presented above: Extensive
anecdotal evidence and inference from a large body of valid research
on related propositions. Given that standard, the objection fails.

The third argument against my view is that students will eventu-
ally figure out that B grades are "average" or "low." Once that hap-
pens, such grades will be as upsetting as C marks are now. I have two
responses. First, even if this is true, it is not a significant concern. If
law schools can get five, four, or even three years of improved mental
well-being out of grade inflation, that would be a valuable accomplish-
ment. In addition, law faculty will have learned that we possess limited
control over the psychological distress caused by absolute grade levels.
We can then focus our energies elsewhere in the quest to improve the
mental well-being of our students.

Second, based on my review of the literature, there is little evi-
dence that undergraduate and graduate students are starting to view B
grades with the same loathing that they have for C marks. This is so
despite the fact that B's have been particularly common throughout
higher education for at least forty-years.[229] Indeed, at the graduate
level, B-type grades have been the lowest passing marks since the

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229. *See, e.g.,* Adelman, *supra* note 165, at 24 (noting that B's made up 31.2% of grades
in the mid-1970s, 32.8% of grades in the mid-1980s, and 29.9% of grades in the mid-1990s;
B was the most common grade in every time period).

1970s.[230] If law schools adopt similar grading practices, there is no reason to believe that our students will react differently from their counterparts throughout the academy.

Remember, the problem with C grades in legal education is not that they are viewed as "average" or "low." It is that they are viewed as "unsatisfactory" or even "failing." Our students perceive C marks in this way principally because of the disjunction between law school and undergraduate grading practices. Under my proposal, this disjunction will disappear: There will no longer be any *passing* grade in law school that sends a *failing* signal to students because the grade was viewed as unsatisfactory in college. As long as grade inflation does not reach the point where B's become rare in undergraduate and law school settings, such grades will likely never be viewed with the same contempt that C marks are today.

The fourth counter-argument against my position is that law students are adults, and as adults they should have the mental fortitude to handle receiving grades in the C range. Indeed, the disappointment of low grades is beneficial; it is a useful tool for weeding out students who will not be able to manage the pressures of practicing law. For example, if Student X is inclined to drop out of school over C marks, how might X react when his client faces the possibility of significant civil damages, a failed business transaction, the loss of child custody, a prison sentence, or execution for capital murder? The signature problem with this line of reasoning is that the premise is wrong: Most of our students are *not* adults; they are *adolescents.* A majority of those who enroll in law school are between the ages of twenty-one and twenty-four.[231] And it is now well accepted that adolescence continues into the mid-twenties.[232] Given that the bulk of our pupils have not yet reached full maturity, I question the efficacy of C grades as a tool for measuring law students' capacity to handle challenges they will face after graduation. Moreover, C's inaccurately convey to

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230.   *See supra* note 7 and accompanying text.

231.   *See* KIMBERLY DUSTMAN & PHIL HANDWERK, LSAC, ANALYSIS OF LAW SCHOOL APPLICANTS BY AGE GROUP 3, 9 (2010), *available at* http://www.lsac.org/LSACResources/Data/PDFs/Analysis-Applicants-by-Age-Group.pdf. According to the LSAC report, persons from age twenty-two to twenty-four make up nearly fifty percent of all law school applicants, and those who are twenty-one or younger constitute another 4.5 percent. *Id.* at 3. Those two categories also have the highest admittance rate and the highest enrollment rate among admittees. *Id.* at 9. From these points, it follows that a majority of law students must be twenty-five or younger when they begin law school. And it is quite likely that a majority are actually twenty-four or younger.

232.   Seymour Moskowitz, *Save the Children: The Legal Abandonment of American Youth in the Workplace,* 43 AKRON L. REV. 107, 150 & n.312 (2010) (collecting authorities).

students that they lack the skills necessary to be competent practition-
ers. Whether students are adolescents or full adults, that is a signifi-
cantly more devastating message than just about any they will receive
in legal practice.[233] This further limits the value of low marks as a
proxy for future stressors. I thus believe that any benefit to using C's
as a screening tool is outweighed by the intrinsic and pedagogical
harms such grades cause young and old students alike. Finally, our
students must deal with stress induced by numerous aspects of legal
education. To the extent we want to test their mettle, we can ade-
quately do so without C marks.[234]

The last counter-argument is that grade inflation will cause the
opposite of my intended effect: Rather than helping our students, it
will actually *lower* their psychological well-being. Clifford Edwards, a
former professor of education, contends that students need "*earned
self-esteem*," the type of esteem that "results from students working hard
to achieve goals," not from "being given credit for poor work for fear
that expecting excellence may interfere with self-concept develop-
ment."[235] Edwards explains that the latter actually promotes pessi-
mism and depression.[236] "The emphasis on self-esteem and its
companion grade inflation have created conditions in the schools
where students no longer have to meet challenges, overcome frustra-
tion, or demonstrate persistence in order to be successful."[237] This
deprives students of experiences that bolster "their sense of accom-
plishment and [improve] the quality of their performance."[238] To the
extent Edwards is focused on the harmful impacts of grade inflation
in high schools and colleges, I am certainly in no position to dispute
his conclusions. But I do not think his reasoning can be extended to
legal education. By the time our students reach law school, they have
internalized a grading framework under which C marks reflect poor

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233.  The author of the student note, *Making Docile Lawyers*, explains that law students
often "receive their grades as a definitive statement regarding their legal academic ability
and their potential as lawyers." *Making Docile Lawyers, supra* note 149, at 2036. First-year
grades are "experienced as a personalized message informing them of their future pros-
pects. For the majority of students, this means a considerable lowering of their expecta-
tions, an adjustment that cannot help but be psychologically painful." *Id.*
234.  A related counter-argument is that the stress of C grades helps to prepare our
students for the rigors of practice. According to this viewpoint, rather than serving as a
screening device, low marks are good training for the challenges to come. This viewpoint is
unpersuasive for essentially the same reasons as the position I critique in the body.
235.  Clifford H. Edwards, *Grade Inflation: The Effects on Educational Quality and Personal
Well Being,* 120 EDUCATION 538, 541 (2000).
236.  *Id.*
237.  *Id.*
238.  *Id.* at 542.

and often failing performance. As a result, when law professors award large numbers of such grades, we create the converse of the problem Edwards identifies: Law students who receive C's believe they failed when in fact they succeeded.

A fairer placement market is the most tangible benefit our students will receive under a B- good standing GPA. But the positive impact on our students' psychological well-being is almost as important, both as a facilitator of greater learning and as an end in itself. "Stress, depression, anxiety, chemical dependency, substance abuse, and other mental health conditions and impairments among law students are problems that have begun to spark a national dialogue amongst faculty, staff, and students."[239] A movement to humanize legal education has emerged in response to the growing body of research on law student well-being.[240] The central purpose of this movement is the creation of "'positive learning environments for students' by reducing or eliminating, to the extent possible, the 'undue and unnecessary stress' of traditional legal education, which interferes with learning."[241] It is my thesis that our continued use of C grades to denote satisfactory performance is a major source of undue and unnecessary stress. "As professors, we can no longer ignore the psychological distress that we inflict upon our students by our teaching methods and our examinations."[242] Consistent with the philosophy of the humanizing legal education movement, it is time for law schools to substantially eliminate C grades.[243]

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239. LAW STUDENT DIV., AM. BAR ASSOC., TOOL KIT FOR STUDENT BAR ASSOCIATIONS AND ADMINISTRATORS 1 (2008).

240. Leslie M. Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading Is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 123, 141 (2011).

241. *Id.* (quoting Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN L.J. 313, 314, 318 (2007–2008)); *see also* Morris, *supra* note 147, at 454 n.76 ("Unnecessary psychological distress . . . , especially distress that debilitates the student or discourages the student from the learning process, should be addressed and eliminated.").

242. Morris, *supra* note 147, at 453; *accord* Fines, *supra* note 163, at 641–45 (explaining the responsibility of faculty to respond to law school stress).

243. I wish to briefly identify one additional point in favor of substantially eliminating C grades: Grade inflation will improve the operation of grade normalization policies in some circumstances. For example, many schools exempt selected courses from normalization requirements, such as smaller classes, seminars, and clinics. *See* Silverstein, *supra* note 79, at 310, 316, 322. This tends to cause grade disparities between regulated and exempt courses. *See id.* at 315. Raising the good standing GPA to 2.7 will typically require increasing the mean in regulated classes, which should close the unfair grading gap between regulated and exempt courses.

## IV.   Objections to Substantially Eliminating C Grades

Critics of grade inflation have three principal objections: (1) inflation results in the awarding of grades that students did not earn; (2) inflation causes problematic grade compression; and (3) inflation induces students to study less. I respond to each of these objections in this part.

### A.   Objection 1: "Students Should Not Receive B Grades for 'C Work'"

Perhaps the most common objection to grade inflation is that it results in students receiving grades that are higher than they deserve. Setting the good standing GPA at B- substantially eliminates grades in the C range. This compels law professors to award B grades for "C work." Grades thus become too high in an absolute sense. That, the objection continues, is pedagogically wrong.[244] Such reasoning is fatally flawed at a conceptual level.

To establish that grade inflation bars teachers from awarding the "correct" grade, there must be an independently valid or shared concept of desert that consistently determines when a student merits an A, a B, a C, or some other grade. But no such concept exists. In higher education, professors have substantial disagreements regarding the standards that should be used to assess student performance. Most importantly, we have different understandings of what constitutes "A work," "B work," and "C work." These designations are used in dramatically varying ways by (1) different academic fields, (2) different schools within the same field, (3) different professors within the same school, (4) different professors within the same department, and (5) even different professors who teach the same class.[245] To illustrate, in

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244.   *See, e.g.,* Rojstaczer & Healy, *Where A is Ordinary, supra* note 46, at 13 ("Even if grades were to instantly and uniformly stop rising, colleges and universities are, as a result of five decades of mostly rising grades, already grading in a way that is well divorced from actual student performance, and not just in an average nationwide sense."); *Grade Inflation: Are academic standards being lowered?,* 12 CQ RESEARCHER 505, 505 (2002) [hereinafter *Grade Inflation: Are Academic Standards Being Lowered?*] ("[Critics] warn that *unjustifiably* high grades mislead colleges and graduate schools, potential employers and students themselves." (emphasis added)).

245.   *See* Paul T. Wangerin, *Calculating Rank-in-Class Numbers: The Impact of Grading Differences Among Law School Teachers,* 51 J. LEGAL EDUC. 98, 99 (2001) ("For years, statisticians and educational researchers have explored the foregoing grading-differences problem in complex statistical studies of grading data. These studies have universally demonstrated that different departments in the overall university grade differently."); *id.* at 100 n.1 (identifying four studies described in the previous parenthetical); *id.* at 112 (finding that "dramatic differences in the definitions of letter grades" existed within the law school that was

some academic programs, "C" expressly means satisfactory perform-ance, while in others it denotes failing work.[246] Matters are no better in secondary education. Grades vary by teacher, by subject area, by school, by district, and over time.[247] "Research has demonstrated that grades are not comparable across courses and that there is considera-ble variation in grades that different instructors assign for the same papers."[248]

Letter-grade designations clearly lack the objective content neces-sary to settle such differences. The scale of grades itself is wholly arbi-trary.[249] There are no conceptual dictates preventing us from labeling "failing" grades "F," "D," "C," or even "B," as some graduate-level En-glish departments do.[250] Under my proposal, faculty will not be com-pelled to award B grades for "C work" because there is no such thing as "C work" independent of the grading system in place.[251] If the faculty at Law School X adopts a grading policy under which "B- work" is performance that meets minimum competency and "C+ work" is not, then that will be what those designations mean *by definition* at X.

Here is another way to think about the issue. Grade inflation is often labeled as the "artificial" raising of grades. But since the scale of grades is arbitrary, grades themselves are artificial to begin with. No

the subject of this study, and that the such differences existed "even with different sections of the very same course" at the law school); Silverstein, *supra* note 79, at 259–62, 327–31 (same); Hu, *supra* note 146, at 38-39 (summarizing studies of grade disparities across col-lege departments); *see also* Fines, *supra* note 99, at 882 ("However, grades have as many meanings as the criteria with which we test. . . . In sum, there are too many variations in teaching and testing to be able to say that grades have a fixed meaning outside the class-room."). For an excellent literature review and a separate study of this issue, see JOHNSON, *supra* note 159, at 197–209.

246.   *Compare supra* notes 7–22 and accompanying text (C's are failing), *with supra* notes 37–40 (C's are satisfactory).

247.   *See* Camara et al., *supra* note 175, at 4; *id.* at 4–5 (surveying the literature).

248.   *Id.* at 5.

249.   Stake, *supra* note 112, at 595; *accord* Keating, *supra* note 114, at 178–79 (explaining that it is a "myth" the grades "A" or "B" or "C" have some "absolute meaning . . . wholly apart from where that grade places a student within a particular class"); Kohn, *supra* note 165, at 4–5 ("To say that grades are . . . inflated—and that they are consequently 'less accurate now', as the American Academy's report puts it—is to postulate the existence of an objectively correct evaluation of what a student (or an essay) deserves, the true grade that ought to be uncovered and honestly reported. It would be an understatement to say that this reflects a simplistic and an outdated view of knowledge and learning." (quoting ROSOVSKY & HARTLEY, *supra* note 7, at 12)). I think Kohn might be misreading Rosovsky and Hartley, but his point about the problem with "objectively correct evaluation" stands.

250.   *See supra* note 21 and accompanying text.

251.   This explains why I did not attempt to justify my grade inflation proposal on the ground that law students are currently performing work that is inherently of A and B quality.

set of labels is any more grounded in the fabric of the universe than any other set.

Of course, this does not mean that *grading* is either arbitrary or wholly subjective.[252] There certainly is a great deal of objectivity in assessment. *In clear cases,* there is much agreement among professors about what constitutes "excellent," "satisfactory," and "failing" work. The problem is that there is not *enough* consensus to establish that grade inflation bars professors from awarding students the grades they "deserve" in any absolute sense.[253] In sum, terms like "arbitrary" and "artificial" are apt descriptions for the particular *labels* we use—such as "A," "B," "C," "Banana," "Red," or "DEFCON 1"—but not for the *methods* we employ to assign those labels in particular cases.

Perhaps if we could get law students to understand all of this, then C's would not upset them so much, undercutting my second justification for grade inflation.[254] But that goal is likely out of reach. The faulty notion that grades are an objective measure of absolute performance is deeply engrained in our society. Indeed, the position is often embraced by those one would expect to resist it, such as university professors working in fields that normally emphasize subjectivity and ambiguity.[255] Given this, I am not hopeful that law students will ever come to appreciate the artificial nature of grades.

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252. *See* Silverstein, *supra* note 79, at 273.

253. *See also id.* at 291–95 (explaining the extraordinary difficulties inherent in developing the type of grading standards that might bring about the needed intersubjective agreement).

254. *See* Zimmerman, *supra* note 150, at 356 n.218 ("[F]aculty could try to help students adjust to the grading standards of law school by letting students know that grades students might have considered 'bad' in their undergraduate experience are not considered 'bad' in law school.").

255. *See* Johnson, *supra* note 159, at 9–10 (observing that the myth that grades "have a consistent and objective meaning across classes . . . is often advocated most fervently by individuals who, in most other aspects of their professional lives, reject the notion of objective, quantifiable, and hierarchical measures of quality"). Professor Johnson submitted a proposal at Duke University to address grade disparities flowing from inconsistent grade inflation across departments and among instructors. *See id.* at 2–3, 218–23. Under the proposal, class rank is computed using a statistical methodology rather than raw GPA. *Id.* at 218–22. Teachers may still assign grades however they choose, but the impact on class rank of marks awarded by uniformly high graders is significantly diluted. *Id.* at 222; *see also id.* at 209–18 (discussing grade adjustment schemes in general). Recognizing that their grades would have less weight in class rank calculations, a number of professors challenged the proposal on the ground that their high marks "represented an *objective* assessment of student performance . . . on some well-defined but unobservable scale. Indeed, by the end of the debate, several *literary theorists* had finally identified an objective piece of text: a student grade." *Id.* at 222 (first emphasis in original; second emphasis added). The proposal ultimately was defeated. *Id.* at 2.

## B. Objection 2: "Substantially Eliminating C Grades Causes Problematic Grade Compression"

The second objection to eliminating C's is considerably more serious. When grades increase, they become more concentrated at the high end of the scale. This is known as "grade compression."[256] Significant compression can make it difficult for instructors to use grades to distinguish between variations in achievement.[257] Grades thus no longer signal to students and other constituencies whether academic performance is exemplary, acceptable, or defective.[258] If grades lose the ability to communicate useful information about achievement, then critical problems result.

The first problem is that grade compression dilutes the marks of better students. "If grades are heavily clustered at the top [of the scale], it is not possible to know which students have done outstanding work and which are just average."[259] Professor Richard Kamber explains the mechanics of how inflation leads to this result:

> When an A is awarded for what was previously B-level work, the system loses its capacity to recognize the superiority of what had been A-level work. . . . When Bs, for example, are awarded for what was previously C-level work, then the only way to differentiate what was previously B-level work is to award As to that work—which then deprives the system of its capacity to recognize A-level work.[260]

When a grading system loses the ability to reward exceptional performance, top students are treated unfairly. George Leef details why:

> If all grades are compressed into A's and B's . . . then there is little difference between the grade received by a student who has worked to achieve a very high degree of comprehension of a subject, and a student who has exerted minimal effort and is content with a vague and incomplete understanding of the subject. Just

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256.  *See* Alvaro Q. Barriga et al., *Dialogue and Exchange of Information About Grade Inflation Can Counteract Its Effects*, 56 C. TEACHING 201, 201 (2008) ("With pervasive grade inflation, grades begin to pile up at the high end of the scale, causing a condition known as grade 'compression.'").

257.  *See* William M. Abbott, *The Politics of Grade Inflation: A Case Study*, CHANGE MAG., Jan.–Feb. 2008, at 32 ("As grades become more concentrated in the upper ranges, less discrimination is possible among the varied levels of student performance . . . ."). Note that grade compression could also occur with grade *deflation. See* Kamber, *supra* note 157, at 47.

258.  *See* Kamber, *supra* note 157, at 47 ("[G]rade inflation is best defined as a 'reduction in the capacity of grades to provide true and useful information about student performance as a result of upward shifts in grading patterns.'").

259.  Leef, *supra* note 165, at 1; *accord* Barriga et al., *supra* note 256, at 201 ("[Grade compression] does not allow for adequate identification of differences toward the higher end of the grading scale, and thus excellent performance is no longer differentiated from good or possibly even mediocre performance.").

260.  Kamber, *supra* note 157, at 48.

treatment is denied to high-achieving students when they are not
given grades that reflect their superior work.[261]

This unfairness is particularly severe when the loss of information
from grade compression prevents employers and graduate schools
from being able to identify the best performers for purposes of job
offers, admissions, scholarships, and other accolades.[262] Indeed, if
grades lose their usefulness, these entities might adopt other metrics
for assessing students—such as standardized tests, the "prestige" of a
school, and personal connections—metrics that may have more seri-
ous deficiencies than grades.[263]

Compression also undercuts the motivational and guiding func-
tions of grading.[264] For example, if professors cannot use marks to
distinguish among their students, they cannot signal to the students
whether they are putting in the requisite effort, need to implement
modest adjustments, or must make dramatic changes in their cour-
sework.[265] Similarly, "[c]onflated grades can deny students informa-
tion that could be useful for choosing majors and careers . . . ."[266] A
student might be significantly better at one subject than another. But
if compression results in the student's grades across classes being es-

261. Leef, *supra* note 165, at 16; *accord* Barriga et al., *supra* note 256, at 201.

262. *See* Barriga et al., *supra* note 256, at 202 ("From a societal perspective, grade infla-
tion prevents universities from fulfilling one of their most useful functions—recognizing
and identifying different levels of achievement for other societal institutions. One aspect of
this function includes the gate-keeping service of blocking unqualified candidates from
certain professions. Another aspect of this function is to recognize outstanding achieve-
ments so that graduate schools and employers may most effectively select prospective can-
didates."); Leef, *supra* note 165, at 15–16 (essentially making the same point).

263. *See* Kamber, *supra* note 157, at 58 ("Conflated grades can . . . deprive employers
and graduate programs of a counter-balance to standardized test scores or reliance on the
cruelly elitist criterion of institutional prestige."); Leef, *supra* note 165, at 16 ("If objective
measures of student achievement fall by the wayside, it will lead to increased reliance on
non-objective ways of evaluating students. . . . [I]f it becomes harder for students to show
excellence because they earn superior grades, then there will be a tendency for business
interviewers and grad school admission committees to rely on 'connections' instead.").

264. *See Grade Inflation: Are Academic Standards Being Lowered?*, *supra* note 244, at 516
("Nonetheless, [Dean] Pederson continued, 'Many faculty members agreed that the com-
pression of effective grades limited our ability to differentiate among our students' work
and to motivate our students adequately.'").

265. This problem should be distinguished from the last objection discussed in Part
IV.C., *infra*, that students will not work as hard if we substantially eliminate C grades. Here,
the focus is the motivational impact of the *grade compression* caused by grade inflation. In
Part IV.C., the focus is on the motivational impact of grade inflation *per se*, independent of
any compression. To some degree, however, the two points overlap, as the reader will see
in Part IV.C.

266. Kamber, *supra* note 157, at 58.

sentially indistinguishable, the student may have no way of learning this fact.

In sum, the second objection is that grade inflation leads to grade compression, which reduces the capacity of grades to distinguish among students, causing fairness, motivational, and guidance problems. On the surface, this appears to be a compelling objection to my proposal that law schools substantially eliminate C grades. But a deeper inquiry establishes otherwise.

To begin with, it is important to distinguish between two types of grade compression that can result from grade inflation. The first is a *reduction in the number of grade intervals.* For example, assume that School X has a traditional 4.0 grade scale that uses letter grades. The good standing GPA at X is 2.0 (i.e. a C). Under this system, teachers can award seven different grades that reflect minimum competency or higher: A (4.0), A- (3.7), B+ (3.3), B (3.0), B- (2.7), C+ (2.3), and C (2.0). If X inflates grades by raising the good standing line from 2.0 to 3.0 without making any other changes to the system, the number of available grades that denote basic competency (or above) will drop from seven to four. Professors will no longer be able to use the B- (2.7), C+ (2.3) and C (2.0) intervals for satisfactory academic performance. Thus, all students who meet or exceed the level necessary for continuation at the school will receive one of four grades rather than one of seven. This reduction in grade intervals will make it more difficult for professors to distinguish among the varying degrees of achievement of their students.[267]

The second type of compression is a *shrinking of the mathematical range of available grades.* Continuing with the same example, after X raises the good standing line, the GPA of every student qualified to remain in school will fall between 3.0 (B) and 4.0 (A), whereas previously the range was from 2.0 (C) to 4.0 (A). This arguably limits the usefulness of GPA and class rank as metrics for comparing student performance.

It is possible to have one type of grade compression without the other. To illustrate, School X could lower the good standing line from 2.0 to 1.0, but eliminate all plus and minus grades. This would expand

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267.  *See* Stake, *supra* note 112, at 607–08 (explaining that "coarse" grading systems— i.e., those with few grade intervals—unfairly "conceal meaningful differences" in performance among students); *id.* at 616 (explaining that "[a]nother problem created by grade inflation is that it reduces the number of useful grade intervals, turning fine grading scales into course grading scales," and that the "coarse grading" that results from grade inflation causes "ambiguity in communication").

the mathematical range of the grades that constitute satisfactory work from two grade points (4.0 minus 2.0) to three (4.0 minus 1.0), but reduce the number of grade intervals within that range from seven to four (A/4.0, B/3.0, C/2.0, and D/1.0). Alternatively, School X could raise the good standing line from 2.0 to 3.0, but permit teachers to award number grades at every tenth of a point. This would reduce the mathematical range of satisfactory marks from two grade points (4.0 minus 2.0) to one (4.0 minus 3.0), but expand the number of grade intervals within that range from seven to eleven (3.0, 3.1, etc. up to 4.0).

The second example in the previous paragraph illustrates why it is possible to design grading systems that allow for substantial inflation without any reduction in the number of grade levels (the first type of compression): A law school can adopt a fine grade scale with a large number of intervals, such as a four-point or 100-point scale that uses number grades instead of letters.[268] There are several reasons why such systems are superior to coarse scales that employ only a small group of letter marks.[269] But for my purposes here, the key point is that they permit inflation without any interval reduction.

Let me offer a more detailed illustration. Consider an inflated, number grade scale that runs from 4.0 down to 1.5, where 2.7 is the good standing GPA, 2.0 is the lowest credit grade, 3.3 is either the normalized or *de facto* mean, and grades are awarded to the tenth of a point. This is essentially the structure that I am recommending to all

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268.   *See, e.g., Grading System,* GOULD SCH. OF LAW, UNIV. OF S. CAL., http://lawweb.usc. edu/why/academics/curriculum/gradingSystem.cfm (last visited Feb. 22, 2013) (grades are to the tenth of a point and run from 1.9 to 4.4); THE UNIV. OF IOWA COLL. OF LAW, *supra* note 59, at 22 (grades are to the tenth of a point and run from 1.5 to 4.3); UNIV. OF ARK. AT LITTLE ROCK, *supra* note 44, at 1 (grades are to the tenth of a point and run from 1.2 to 4.0); *Explanation of Grading System,* WASH. U. IN ST. LOUIS SCH. OF LAW, http://law. wustl.edu/Registrar/pages.aspx?id=2236 (last visited Feb. 22, 2013) [hereinafter *Washington University Grading System*] (grades are to the point and run from 70 to 100).

Note that the lowest grade in each of these systems is well above zero. The reason is that if the F grade is far below the mean and good standing GPAs, such marks have too much weight in determining class rank, absolute GPA, and whether a student is eligible to remain in school. *See* Stake, *supra* note 112, at 614–17 (explaining these problems). Indeed, a single F can cause a student to flunk out who otherwise earned satisfactory marks. Thus, if an institution inflates grades by adopting my proposed 2.7 good standing GPA, the lowest possible mark should be raised as well, to something in the 1.5 range. *See* Silverstein, *supra* note 79, at 332 (proposing that F run from 1.9 down to 1.5, with the latter being the worst possible grade).

269.   For a summary of the advantages, see Silverstein, *supra* note 79, at 333 n.306. For more detailed discussions, see Stake, *supra* note 112, at 606–10; William K.S. Wang, *The Injustice of Reducing the Number of Levels in a Grading System,* 57 J. LEGAL EDUC. 423, 423-26 (2007); and Keating, *supra* note 114, at 180–182.

law schools.[270] Under this system, there are fourteen grades from good standing up to the highest mark (2.7 to 4.0), including seven above the mean (3.4 to 4.0) and six below (3.2 to 2.7). Compare this to a more traditional letter system similar to the one used by School X, involving a 2.0 good standing GPA and a mean of 3.0. Under that approach, there are only seven or eight grades from the good standing line to the top of the scale—C, C+, B-, B, B+, A-, A, and sometimes A+ (valued at 4.3). And among these, there are just three or four grades above the mean (B+, A-, A, and perhaps A+) and three below (B-, C+, and C). If the letter scales used by most law schools today have a sufficient number of intervals, then the same *must* be true for an inflated, number system employing substantially more grade levels. Indeed, because of the greater number of intervals, teachers using the inflated number scale actually have considerably *more* ability to distinguish among the performances of their students than those working with the standard letter system, despite the substantial elimination of C grades.[271]

Even if a school that adopts the 2.7 good standing GPA retains letter marks, its grading system can still be designed to include enough intervals so that faculty can effectively distinguish among the various degrees of student performance. First, the school can use all of the available plus and minus marks. This means that the institution will have at least six grades from the good standing line to the top of the scale (B-, B, B+, A-, A, and A+). Second, the number of acceptable marks can be increased to seven by adding an "AB" grade, which is sometimes used by other graduate institutions and is typically valued at 3.5 on a 4.0 or 4.3 scale.[272] Under such a system, professors can award (1) A+ and A grades for top performance, (2) A-, AB, and B+ marks for mid-range achievement, (3) B and B- for marginal but satisfactory work, and (4) C+ or below for performance that fails to meet minimum competency. This suggests that an inflated grade scale with seven marks at or above the good standing line is sufficient to make the distinctions necessary to avoid the fairness, motivational, and guidance problems that can result from a reduction in grade intervals.

To elaborate, by setting the good standing GPA at 2.7, a law school is telling its students that B- grades demonstrate only minimum competency, and that marks in the C range are unacceptable. As a

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270. *See supra* note 107 and accompanying text; Silverstein, *supra* note 79, at 332.

271. *See* Silverstein, *supra* note 79, at 333 n.306; Stake, *supra* note 112, at 606–10; Wang, *supra* note 269, at 423-26; Keating, *supra* note 114, at 180–82.

272. *See, e.g.,* W. MICH. UNIV., *supra* note 8.

result, those grades are available to signal to students that their work product is weak or deficient. This alleviates the concern that inflation and compression in the form of interval reduction will blunt the tools needed to warn struggling students of problems with their perform-ance. Similarly, A+ and A grades can be reserved for the best pupils. This means that, post-inflation, a school will also have enough grade levels to allow for the recognition of high degrees of accomplishment.

Note further that inflating schools can still use aggregate GPA and class rank to distinguish among students.[273] As Professor Harry Brighouse explains, GPA is typically calculated to two decimal places.[274] Thus, "[c]ompression at the top would have to be much more severe than any of its critics actually claim before it became im-possible to distinguish between students on this basis."[275] To be sure, the numerical difference between particular ranks will be smaller under my system. For example, two students "might be only 0.2 apart, rather than 0.35 apart."[276] But as long as the students are ranked ordinally, consumers of transcript data—including pupils, graduate schools, and employers—will still be able to see where students place in relation to each other.[277] And that is the most reliable information provided by grades.

Prior to the adoption of our current grading policy, my law school used only seven intervals from good standing upward.[278] Under that system, we were able to differentiate among our students until significant grade inflation limited use of the lower portion of the scale. Before the inflation, we had the tools necessary to recognize the superior achievement of our best students, convey to average perform-ers their satisfactory status, and warn marginal pupils of their precari-ous academic standing.

More significantly, systems with *six* or fewer grade levels reflecting satisfactory performance have worked throughout the rest of the acad-emy for decades. One might reply that grades play a more important role in law school than in some other graduate divisions. Alternatively, there could be a wider range of abilities in the typical law school than

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273. Brighouse, *supra* note 186, at 76 ("It is worth noting that even if, say, a B- were the lowest grade that any student received it would still be possible to discriminate between students on the basis of their entire GPA . . . ."). Of course, this will not work at a school that does not rank.

274. *Id.*

275. *Id.*

276. *Id.*

277. *See id.*

278. *See* UNIV. OF ARK. AT LITTLE ROCK, *supra* note 78, at 12.

among, say, the graduate students in a standard English department. But these responses are unpersuasive. As I explained in Part I, the use of grading systems with six or less intervals from the good standing line upward is nearly universal among other graduate programs. This type of system is employed in business schools, engineering schools, schools of education, medical schools, nursing schools, and in the liberal arts and sciences, among other fields. Given the global efficacy of grade scales with a small number of intervals, there is little basis for believing that such an approach will not work in legal education. To the extent my opponents contend otherwise, they shoulder the burden of proof to establish that law schools comprise the *only* sector of the academy where seven or six "passing" grades is insufficient to make the necessary distinctions in student achievement.[279]

As I stated above, the reduction in grade intervals is only the first type of compression. The second type is a reduction in the mathematical range of the available marks. Under my proposal, the spread of grades from the good standing line upward will drop at most law schools from 2.0 or 2.3 grade points (4.3 or 4.0 minus 2.0) down to 1.6 or 1.3 grade points (4.3 or 4.0 minus 2.7). This could cause two distinct problems.

The first is that the compression of student GPAs into a tighter range might make it more difficult for employers to distinguish among students on the basis of GPA. Top students will not be as far from the mean. And those in the middle will be more tightly bunched. There are five reasons why this is not a serious concern.

First, the GPA scale is arbitrary. Thus, there is no *per se* difference between a wider spread of absolute GPAs and a narrower spread. Neither more accurately reflects variations in student performance. Indeed, a school could squeeze every grade between 3.70 and 4.00, with teachers awarding grades to the hundredth of a point. Such a system would ultimately function like a 100-point scale running from 70-100.[280] Second, while employers might be accustomed to a particular relationship between GPA differences and variations in student achievement, they should quickly adjust to the tighter spread, especially if law schools publicly explain the new system, and it is widely

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279. There is one additional point worth noting: Some first-tier law schools have already effectively reduced the number of grade levels they award to six. While these institutions still technically use C grades to denote minimum competency, *see supra* notes 38–40 and accompanying text (explaining that virtually all reporting schools set the good standing GPA in the C range), a number have all but ceased awarding marks below B-, *see supra* notes 49–56 and accompanying text.

280. *See, e.g., Washington University Grading System, supra* note 268.

implemented throughout legal education. Third, the decrease in the grade range will not be that large at many schools. A fair number of institutions will only drop from a 2.3 or 2.0 grade range of satisfactory marks down to 1.6. This includes both schools already operating on a 4.3 scale and schools currently using 4.0 as the top grade that will adopt the A+ mark (worth 4.3) to facilitate their continued use of a letter grade system. Moving from 2.3 to 1.6 is a decrease of less than one-third, and a change from 2.0 to 1.6 is only a twenty percent reduction in the grade range. Such changes should not cause serious problems for employers.[281] Fourth, a more limited range of GPAs has worked in the rest of the academy for decades. And there is, again, little basis for believing that what has universally succeeded in other graduate programs will not be effective in legal education. Fifth, employers will still be able to differentiate among students using class rank, which a majority of schools make publicly available. As I explained above,[282] GPA is generally calculated to two decimal places. Thus, even with *more* significant GPA compression than will occur under my proposal, students can still be ranked ordinally, allowing employers to determine a student's relative standing within the class.

The second potential problem with a tightening of the GPA range is that class rank and GPA could become less statistically reliable indicators. With the students compressed into a tighter range, small movements in GPA will alter a person's class rank more than under a non-inflated system. And GPA will be more variable because the impact of changing a single letter mark will be greater given the narrower scale of grades. Thus, there might be more statistical "noise" in GPA and class rank, particularly at the center of the bell curve. This too is not a major concern.

First, the problem can be avoided entirely by adopting a number grade scale with abundant intervals. Under such a system, GPA and class rank differences will be at least as statistically meaningful as they are in a traditional system because the space between the available grades will shrink by a larger amount than the overall scale does. The difference between grade levels will drop by two-thirds or more (from 0.4, 0.33, or 0.3 down to 0.1), while the scale will decrease by forty-four percent at most (from 2.3 down to 1.3). Student GPAs will be compressed into a narrower band in the inflated system, but it will be more difficult to move up and down that band since grades will vary

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281. Note that my preference is for all schools to adopt number grades and set 4.0 as the highest mark. But I do not expect that to happen.

282. *See supra* notes 273–277 and accompanying text.

by such a small amount. Second, at schools that retain letter marks, the scale will generally be shrinking from 2.3 or 2.0 grade points down to 1.6. As I explained above, those are not dramatic changes.[283] Third, smaller grade ranges universally work in other departments of the university. Thus, once again, they should be sufficient in law schools. Fourth, any statistical inaccuracy resulting from the narrower range will only have important impacts for students at certain class rank cutoffs—e.g., valedictorian, law review, top ten percent, top half, etc. And the benefits to the entire school population flowing from inflation outweigh the harm caused to the small group of students on the margins of significant rank levels.

There is one last point that addresses the concerns with both types of compression: Any loss of information resulting from interval reduction and shrinking of the grade range must be balanced against the amount of information that will be gained under my proposal. Recall that to the extent grades are designed to provide information to students and employers, the status quo is failing in critical ways. Law schools are using C grades to identify competent work, but large numbers of students are not getting the message; they frequently perceive such marks to be unsatisfactory.[284] And employers are also confused by the inconsistent signals we send via the variation in grading practices among the schools where they recruit, undermining equity in the placement arena.[285] Such variety will be greatly reduced if law schools accept my recommendation. Given the problems caused by the status quo, industry-wide grade inflation should result in law schools conveying *better* information overall to students and employers than we do under our current grading systems.

Inflated marks may be causing problematic compression at the undergraduate level.[286] But there is little reason to fear the same happening in legal education under my proposal, particularly if the substantial elimination of C grades is accompanied by the adoption of number marks. Accordingly, concerns about grade compression do not weaken the case for setting the good standing GPA at 2.7.

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283. *See supra* note 281 and accompanying text.
284. *See supra* Part III.B.
285. *See supra* Part III.A.
286. *See* Rojstaczer & Healy, *Where A is Ordinary, supra* note 46, at 2 ("It is likely that at many selective and highly selective schools, undergraduate GPAs are now so saturated at the high end that they have little use as a motivator of students and as an evaluation tool for graduate and professional schools and employers."); Barriga et al., *supra* note 256, at 202 ("Unfortunately, there is evidence that employers are beginning to rely less and less on grades in evaluating their candidates.").

## C.    Objection 3: "Students Will Not Work as Hard if We Substantially Eliminate C Grades"

The final objection to setting the good standing line at 2.7 is that substantially eliminating C grades will cause a critical drop-off in student effort. This objection has two parts. According to the first, grade inflation will reduce the commitment of average and marginal students:

> The quest for high grades and the fear of bad ones is a strong motivator for many students. When it is known that bad grades are almost never given, the natural tendency among students is to relax. If the hardest of work will get you an A, but the least amount gets you a B, many students will take the B (along with the great increase in leisure time).[287]

This argument has intuitive plausibility. If B grades are qualitatively different from C grades in the minds of our students, as I contend above,[288] it is not difficult to imagine that some students will settle for a B or B- under my proposal, even though they would *not* settle for C-type grades under a less generous system.

The second part of the objection concerns the *best* students who are at the top of the grade scale:

> If students work very hard to produce excellent products and achieve well-earned As, they may become disheartened when other students receive the same As for mediocre performances. Such a situation is unfair to students because it does not provide accurate and differentiated feedback about their performances. Some students may become less motivated because the excellence of their work is not being recognized.[289]

This reasoning makes sense too. If the best students do not receive adequate recognition for outstanding achievement, why should they put in the effort necessary to accomplish it?

This is the most powerful and important objection to my proposal. If grade inflation causes a measurable drop-off in student effort, then any employment market and mental health benefits arising from such inflation will come at a steep cost—too high a cost for most law professors, I suspect. But ultimately, neither prong of the objection defeats the case for a B- good standing GPA.

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287.  Leef, *supra* note 165, at 16; *see also* Hu, *supra* note 146, at 25 ("Grade inflation further undermines the motivational function of grades in the student learning process.").

288.  *See supra* Part III.B.

289.  Barriga et al., *supra* note 256, at 201; *accord* Kamber, *supra* note 157, at 58 ("When A no longer distinguishes outstanding from good, teachers lack a formal means to inspire and reward exertion toward academic excellence."); Brighouse, *supra* note 186, at 77 ("[I]f higher grades are the norm, then they cannot be used to encourage students.").

Let me begin with the second prong—the part that concerns top students. The claim here is that better pupils lose motivation when grades no longer reflect their superior work. This reasoning overlaps heavily with the grade compression objection discussed in the previous section.[290] And it is invalid on essentially the same grounds. First, the grading system I propose will *not* prevent teachers from assigning marks in ways that meaningfully distinguish between the performances of their students. This is so whether an inflating school switches to number grades or maintains letter symbols.[291] If eliminating C's is no barrier to recognizing the achievements of the best pupils, then grade inflation should not result in reduced effort from these students. Second, my proposal is likely to result in a mean grade in the 3.3 to 3.4 range. Under such a system, A marks should not be so common as to lose their incentivizing power. Third, grade inflation does not undercut the importance of class rank.[292] Given the role that rank plays in job placement, law review selection, and scholarship awards, good students should have ample reason to put in their best effort after B- is established as the good standing line.

The first prong of the objection focuses on average and marginal pupils. These students, it is asserted, will lose motivation under my system because there is little chance of earning a C. This argument does not overlap with the compression objection discussed previously because the contention here is that higher grades will undercut student work ethic independent of compression. More specifically, the claim is that higher marks *alone* disincentivize studying even if teachers are able to make grading distinctions among their students.

I must acknowledge that I think there is some truth to this argument. I believe that substantially eliminating C grades will cause some students to cut back on the amount of work they do. The danger of low marks is an important inducement for these people, and without it their behavior will change. But this impact will be offset by several countervailing forces. Indeed, there are good reasons to believe that law students will put in *greater* effort overall after grade inflation is implemented. At the very least the evidence is mixed. And if there is a drop off in work, virtually all of the data suggests that it will be quite

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290. *See supra* notes 259–263.

291. *See supra* notes 268–272 and accompanying text.

292. *See supra* notes 273–277 and accompanying text. Indeed, as I explained previously, the grade compression caused by grade inflation might *increase* the importance of class rank, which would be a positive development by itself, see *supra* notes 133–135 and accompanying text, and would add to the incentive effects of ranking.

small, and thus the significant benefits resulting from grade inflation are well worth the cost.

Starting with the countervailing forces, recall that most law schools use 2.0 as their good standing GPA, while the average grade awarded is roughly 3.1.[293] That is a difference of more than a full grade point. Under my approach, this gap will tighten considerably: The difference between the good standing GPA (2.7) and the likely mean grade (3.3 to 3.4) will be 0.6 to 0.7. Even at fourth tier schools the gap will be measurably smaller. At present, the mean grade at those institutions is 2.9, which is almost a full point above the 2.0 good standing level. In sum, the academic dismissal line will be much closer to the typical student's GPA under my proposal than currently is the case at the vast majority of law schools. That should serve as critical inducement for many students.

Note that worries about the impact of grade inflation on the work habits of average and especially marginal students sometimes focus on the danger of an increase in the mean grade unaccompanied by a commensurate change to the standard necessary to stay in school. When the average mark rises with no movement in the good standing GPA, the odds of flunking out can drop precipitously, causing at least some loss of motivation. As the prior paragraph illustrates, my recommendation is that we implement the exact opposite of this. I am advocating for a 0.7 increase in the good standing line (2.0 to 2.7) and, at most, a 0.5 rise in the average grade (from 2.9 to 3.4 at fourth tier schools). This should moderately *boost* the chances that law students at the bottom of the scale will flunk out—a powerful incentive for better performance. And given concerns about bar passage rates at many institutions, this increased motivation for marginal students might be a welcome development arising from my system.[294]

Next, recall the evidence I presented above that C grades specifically and low grades generally inhibit learning among law students.[295] As outlined by Professor Krieger, low marks "create a sense of resignation and mediocrity across a large segment of the class" and "encourage some students to 'tune out' and stop trying, a classic example of *learned helplessness.*"[296] If my prior discussion is correct, there will be

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293.  *See supra* text accompanying notes 40, 87–88.

294.  *Cf.* Downs & Levit, *supra* note 41, at 843 n.51 ("One concern that appears when intentional grade inflation is mentioned is bar passage rates. If schools raise the ceiling, the argument goes, this will also raise the floor, and a school may graduate students who have difficulty passing the bar.").

295.  *See supra* notes 147–194 and accompanying text.

296.  Krieger, *supra* note 37, at 301.

a significant decrease in the number of students who disengage be-
cause of poor grades once we raise the good standing GPA to 2.7.
Which group is larger: The students who will happily coast on B-
marks under my system or the students who are crushed by C grades
under the status quo? If it is the latter, then my proposal will actually
*increase* the amount of work that law students do in the aggregate.

The last countervailing force is the continued importance of class
rank. As articulated above,[297] grade inflation does not change the sali-
ence of rank. In fact, it might make class rank *more* significant.[298] Stu-
dents tempted to slack off because the danger of receiving a C is small
under my system face the risk of hurting their relative class standing.
Given the importance of rank, these students will still have powerful
incentives to work hard even if C's are a rare occurrence.

Will average and marginal students ultimately do less if law
schools inflate? Frankly, I do not think there is sufficient evidence to
answer that question. Indeed, education professionals are divided on
the subject more generally.[299] This calls for further research. But until
the uncertainty is resolved, grading policy should be driven by the
fairer placement market that *will* result, and the improved psychologi-
cal well-being that *should* result, from substantially eliminating C
grades.

Finally, assume that law students will in fact do less work if we set
B- as the good standing GPA. Even if this is the case, there are compel-
ling reasons to believe that the drop off will not be so great as to out-
weigh the benefits of inflation. High grades have been standard
practice at first-tier law schools and virtually all other graduate pro-
grams for years or even decades. From all accounts, such marks have
not seriously interfered with the educational mission of these institu-
tions—i.e., their students are sufficiently motivated to work. Conceiva-
bly, the greater importance of grades in legal education might be a
distinguishing feature. But the use of relatively high grading in gradu-
ate schools is so widespread that, yet again, my opponents shoulder

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297. *See supra* notes 273–277 and accompanying text.
298. *See supra* notes 133–135 and accompanying text.
299. *Compare* Kohn, *supra* note 165, at 7 ("Some people might defend that posture on
the grounds that students will perform better if As are harder to come by. In fact, the
evidence on this question is decidedly mixed. Stringent grading sometimes has been
shown to boost short-term retention as measured by multiple-choice exams—never to im-
prove understanding or promote interest in learning."), *with* Hu, *supra* note 146, at 25
("Empirical studies suggest that student achievement increases as standards for grading
rise, suggesting that students respond favorably to higher academic standards. . . . If they
find that they do not have to exert much effort to receive satisfactory grades, students tend
to invest less time and effort in their academic work.") (collecting authorities).

the burden of proof to establish that second-, third-, and fourth-tier law schools are the *only* subset of the academy where grade inflation will have truly deleterious effects. Until they proffer such evidence, I am comfortable recommending that all schools eliminate C grades. The placement and mental-health benefits of such a change are simply too great to ignore.

## Conclusion

The common thread running through both of my justifications for setting B- as the good standing GPA is this: Low grades generally and C grades specifically create critical perception problems. They confuse *employers* by making it hard for them to accurately assess job candidates from different law schools. And they confuse *students* by inaccurately conveying to them the quality of their performance. The former corrupts the distribution of employment opportunities in the legal market, causing considerable unfairness. The latter damages our students' learning and psychological well-being. If all law schools adopt B- as the good standing GPA, this will remedy both communication problems without undercutting any critical educational interests. And such grade inflation will bring law schools into line with other graduate programs throughout the academy. It is time we substantially eliminated C grades.

## Appendix: Transitioning to a Grading System that Involves Higher Marks

The adoption of a B- good standing GPA and the resulting grade inflation raise certain administrative complications. These complications are caused primarily by the fact that law students enrolled during the transition period will be graded and ranked using two different grading systems. This appendix presents some thoughts on how to address the four principal complications: (1) calculating grade point average and class rank during the transition period, (2) determining the grades necessary to remain in good standing during the transition period, (3) determining graduation honors during the transition period and subsequently, and (4) transcript clarity during the transition period and subsequently.[300]

Before discussing the four issues, a preliminary note is in order. One might argue that if it is impossible to develop a completely fair transition scheme, then the grading system should not be changed at all. There are two problems with this contention. First, it means that a law school can *never* modify its grading practices if transitioning to the new system will cause any unfairness. That makes no sense. Second, the transition process will only harm (at most) a small number of students—some percentage of those enrolled at the time the school changes the grading policy. The new system with higher grades will benefit all (or virtually all) future students. Since the latter group is *far* larger than the former, it is easy to conclude that the benefits of adopting a new grading policy like the one I recommend outweigh the costs—assuming, of course, that I am correct about the benefits that will result.

### 1. Grade Point Average and Class Rank

During the transition period, a law school should calculate a student's GPA in exactly the same way it did prior to adopting the B- good standing GPA. All grades under both the old and new systems should be compiled into a single GPA. And this GPA should be used to set class rank, just as under the old policy. Such a protocol will treat the vast bulk of students equally even if no special transition mechanisms are adopted. That is because, at most institutions, students pass through school at roughly the same rate. Thus, those graduating in a

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300. There will, of course, be other issues, such as updating the GPAs necessary for readmission and scholarship eligibility.

given year will earn substantially the same number of credits under both grading systems.

However, the above protocol will not always treat students equally because there *are* circumstances in which students do not pass through school at the same pace. As a result, a student might graduate in the same year as another student who spent more or less time under the new grading system. This creates unfairness. For example, assume Student X started at Hypothetical Law School in the fall of 2007 and enrolled in the school's part-time, evening program. During X's first year, Hypothetical Law School adopted a 2.7 good standing GPA, effective in the fall of 2008. Student Y started in the fall of 2008 and enrolled in Hypothetical Law School's full-time, day program. Student X takes four years to complete school and Student Y takes three years. X and Y thus graduate in the same class (2011) and are ranked against each other. In this case, Y has an advantage over X: Y received all of his grades after the school implemented the new, higher grading system, while X's first year was governed by the old system. X's class rank is thus somewhat lower vis-à-vis Y's because of Hypothetical Law School's adoption of the new grading policy. X is suffering a penalty in relation to Y for reasons entirely beyond X's control.

There are two general options for dealing with this type of situation. First, Hypothetical Law School could do nothing. At many institutions, there will be relatively few students in X's position. Moreover, the GPA and class rank impact on X will be small in most cases. For example, suppose Hypothetical Law School had a mandatory mean of 3.0 on a 4.0 scale under the old system. When it adopted the new good standing GPA, it raised the required mean to 3.3 on the same scale. The fact that X spent the first year of school under the 3.0 policy may only shift X's class rank by a few places. That harm is arguably not great enough to warrant a remedy.

Second, Hypothetical Law School could give students in X's situation a "GPA adjustment." For example, the school could raise the GPA value of all classes taken prior to the adoption of the new system by 0.3 points, since that is the difference between the mean GPAs under the old and new systems. This second approach can become complicated if Hypothetical Law School tries to get too detailed with the adjustments. But, if the school makes a basic 0.3 adjustment, that will get the school awfully close to a fair resolution. Note that grades earned under the old system would not be changed on a student's transcript. B's would still be B's, for example. If the school uses number grading,

3.0s would still be 3.0s. The grades would only have a different value for purposes of calculating GPA and class rank.[301] Between doing nothing and a GPA adjustment, I favor the latter. While the *quantitative* impact of the new grading system on X's class rank might be small, the *qualitative* impact could be significant if it moves X across one of the critical rank thresholds—for example, the ninetieth percentile, the sixty-seventh percentile, or the fiftieth percentile. Given this possibility, the adjustment is warranted, at least at schools with full-time and part-time programs.

## 2. Good Standing

A majority of law schools currently use a good standing GPA of 2.0. Raising the good standing level to 2.7 creates another transition issue. However, there is an easy solution to this problem: The law school can simply average a student's grades under the old system against the student's grades under the new system.

To elaborate, the only time the transition will present a problem is if a student is *above* 2.0 under the old system and subsequently earns a GPA *below* 2.7 under the new system. Suppose a current 2L—Student M—finishes this school year with 60 credits and a GPA of 2.1. Then, as a 3L, under the new system, he earns a 2.5 GPA in 30 credits. We average the grades as follows. First, under the old system, M earned "6 GPA points" *above* the good standing line (60 credits x 0.1 above the good standing line = 6 GPA points). Second, under the new system, he earned "6 GPA points" *below* the good standing line (30 credits x 0.2 below the good standing line = 6 GPA points). We then subtract the GPA points below the good standing line from those above. If that total is *under zero,* then the student is no longer in good standing. If the total is *at or above zero,* then the students remain in good standing. In the hypothetical, Student M is *at* zero. Thus, M is in good standing and may graduate. If M's GPA under the new system were below 2.5 by even a tiny amount, his GPA point total would be less than zero. In that case, he would not be in good standing.

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301.   Note that a student's GPA could still be reported in unadjusted form. This will avoid the problem of having some students with GPAs higher than the top of the scale— i.e. over 4.0 or 4.3. However, it might create anomalies where Student 1 has a lower reported GPA but a higher class rank than Student 2. Between these two largely administrative problems, I think the former is the greater concern. But neither is terribly significant. And another alternative would be to report two GPAs—adjusted and unadjusted.

### 3. Graduation Honors

If a law school awards graduation honors based on class rank, then no additional adjustment is necessary beyond that discussed in section 1 of this appendix. However, if graduation honors are determined via GPA, then two more adjustments are required. First, a new GPA level must be established, taking into account that higher grades are now awarded. For example, suppose all students with a 3.5 GPA on a 4.0 scale receive graduation honors at Hypothetical Law School. When the new system is adopted, the mean grade moves from 3.0 to 3.3. If the goal is to award honors to the same number of students, then the GPA cutoff must be raised. However, simply shifting the standard from 3.5 to 3.8 probably will not work because of the 4.0 ceiling. As a general rule, more students will achieve a 3.5 GPA on a 4.0 scale with a 2.0 good standing level and a 3.0 mean than will achieve a 3.8 GPA with a 2.7 good standing line and a mean of 3.3. So the new honors GPA should be lower than 3.8—roughly 3.7.[302]

Second, a mechanism is necessary to determine whether a student with grades under both systems has met the honors threshold. This should be done in precisely the same way it was for good standing. The student's grades under the old system should be averaged against the student's grades under the new system. For example, assume a current 2L—Student X—finishes this school year with 60 credits and a GPA of 3.7. Then, as a 3L, under the new system, she earns a 3.3 GPA in 30 credits. We average the grades as follows. First, under the old system, X earned 12 GPA points *above* the honors line (60 credits x 0.2 above 3.5 = 12 GPA points). Second, under the new system, she earned 12 GPA points *below* the honors line (30 credits x 0.4 below 3.7 = 12 GPA points). GPA points earned *below* the honors level are treated as *negative* numbers. We then add the two numbers together. If the total is *under* zero, the student does not graduate with the honors. If the total is *at or above* zero, the student does graduate with honors. In this hypothetical, Student X is at zero. Thus, X qualifies for honors.

### 4. Transcript Clarity

Changes in grading systems can create confusion for employers and other consumers of transcript information. Confusion is particularly likely with respect to students who attend school under two dif-

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302. Assuming a normal distribution of GPAs under both frameworks, a good estimate would be 3.65. Thus, either 3.6 or 3.7 would work.

ferent grading regimes and thus have two different types of marks on their transcripts. The most effective way of dealing with this problem is by placing a notation on the bottom or back of all transcripts that (1) summarizes the old and new grading system, (2) summarizes the transition mechanisms, and (3) directs the reader to the school's website for additional information where these items are explained in full.