

The Virtue of Humility

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I want to talk tonight about a virtue that is praised less often than courage, and needed just as much, especially in law.

The poet and civil-rights activist, Maya Angelou, often said that courage is the most important of the virtues, because without it you cannot practice any other virtue consistently.

She's right—to a point.

Kindness that collapses at the first personal cost is not really kindness.

Honesty that falls silent at the first inconvenience is not really honesty.

Fairness that holds only when it is popular is not really fairness.

But courage cannot stand alone.

If courage is all you have, and you think you can do more than you can, courage can put you in rooms you should not enter. You might worsen what you meant to fix. You might do more harm than good.

There is another virtue at least as important, and easy to forget.

Humility.

What is humility?

It's thinking of yourself less; not less of yourself.

It's being other-centered; not self-centered.

It's a healthy sense of self: neither pride nor self-deprecation.

It's an accurate view of one's strengths; but also of one's limits.

C.S. Lewis described the humble person this way: a person "will not be thinking about humility; he will not be thinking about himself at all."¹

As Lewis suggests, humility is attention turned away from self. It's attention turned outward.

The Latin root helps: *humilis*, "grounded," "from the earth." You're not in the clouds. You're not in a private world where you fantasize you are supreme.

The judge who has already decided before reading the material is not grounded.

Neither is the senior counsel who will not listen to a junior, nor the applicant who hopes for a win that is not in the cards.

Each will come up short.

When grounded, you can see your weaknesses and work on them. You can see and use your true strengths. You can take on work where you can actually help, and stay out of work where you may do harm.

Humble people never plateau in their self-development. They know there are areas in which they can improve. And so they do improve.

¹ C. S. Lewis, *Mere Christianity*, Book 3, Chapter 8.

Being other-centered moves you from private gratification into concentrating on the betterment of others: clients, colleagues, students, institutions. Mentorship of others becomes important. And you listen more. That matters. Listening is the start of learning.

Humility itself can take courage. You need to keep critics close enough to test you. You must listen and weigh what they say, however unpleasant. And you must change when, on reflection, they are right. As Ralph Waldo Emerson put it, “a great man is always willing to be little”.²

When humble, you treat yesterday’s success or yesterday’s failure as just a fact, not a licence to overreact. You learn from it. You plan your next day. You move on.

Religious faith can help here. It draws attention away from the self, towards something greater than the self, and towards meaningful reflection and other people.

Now I would like to turn to judging and where humility fits in. For lawyers, these thoughts may guide you in making submissions that judges will accept. And some of you may one day be judges.

People often put judges on a pedestal. When we start our work in a courtroom, people bow to us. In real life, many defer to us. Few want to challenge us. That can make some judges perhaps too proud.

Here I offer three observations about judges and humility. First, some people—sometimes even lawyers and judges—forget that judges are just people. They are lawyers who one day happened to get a happy call from the Minister of

² “Compensation” in *Essays First Series* (1841).

Justice. Now they sit on a raised dais in black silk robes, and everyone bows to them. But they still have all the noble traits and strengths, and faults and foibles, of ordinary people.

Here's my second observation about judges and humility. A judge is just a temporary occupant of a judicial chair. Judges, even famous ones, come and go. Remember the great Chief Justice Dickson? We used to cite him all the time. Now, not so much. What lasts are the links he added to the long chain of doctrine.

Over time those links become anonymous. Others forge their own links to the chain. In a properly operating legal system, the chain of doctrine is vastly larger than any one judge.

A judge who does not respect that chain, who defies it, who throws it away in favour of a private view of "justice" is not a humble judge. If every judge were that way, cases would be as unpredictable as roulette wheels.

Thousands of judges work hard and anonymously, with humility, respecting the work done by their forebears in past cases, and making only incremental changes prompted by new circumstances. This is what keeps the system stable.

Now my third observation about judges and humility. The judiciary is an unelected branch of government. Judges must stay in their lane. Judges are just former lawyers who worked hard and gained a good reputation by specializing in certain things, sometimes narrow, in the field of law—not public policy, economics, science or social science. They have access to a clerk, an assistant, a law library, and very limited court resources. That's all.

Let me be clear here. Humility is not a reason to refuse a case the law assigns to the court. But it is a reason to decide

only what the record, the text, and institutional competence can support, and to say so when they cannot.

The best judges are humble and know their limits. I learned this from Justice Bertha Wilson, the first woman on the Supreme Court. I clerked for her. Let me share some recollections.

Justice Wilson was very humble. She did not apply to be appointed to the Supreme Court. She was content with her position on the Ontario Court of Appeal. Serving on the Supreme Court never entered her head. She had no inflated sense of her own talents.

One day she got an invitation to be a Supreme Court judge. The Minister called. She said no. Later the Prime Minister called. She said no. Then he called again. It was her duty, he said. Only then did she relent, reluctantly. She came to Ottawa as a matter of duty, not ambition.

On the Supreme Court, she forged some strong links to the chain. Her humility drove her to work huge hours, to nail everything down, to check her work, and then check it again.

Today we have a different appointment system for the Supreme Court. It has advantages, like more transparency, the input of a committee, and published criteria.

But under our system, one must apply for the job. That's unusual among western apex courts.

I think that's a problem. An application system tends to attract a certain type of person. Those who are content on their current court and humble about their abilities are less likely to apply.

With today's system, Justice Wilson would never have served on the Supreme Court. She never would have applied.

In fact, many of the best Supreme Court judges in the past never would have applied.

But, consistent with the virtues of humility, we really want these sorts of people in the mix.

In saying this, I do not criticize those who have been or are presently on the Supreme Court. Rather, I rue the fact that many who might have made wonderful judges on the Supreme Court were humble and never put their names forward. I make the same comment about other courts too—some people would be superb judges. But they do not apply. Humility keeps them out.

I'd like to close by talking about one key case from Justice Wilson's time, one that she co-wrote. It makes a practical point about the need for judges to be humble. This case, from 1989, is *Irwin Toy*.³

There, the Supreme Court said much about section 1 of the Charter, the section that can justify government actions that infringe Charter rights. It said that in matters of science, social science, or matters where there are competing policies in those areas, legislatures are entitled to deference, sometimes much deference. On the other hand, where the state is the “singular antagonist” of the individual, as in a criminal case, closer scrutiny is warranted.

Lawyers know a good deal about criminal process and the harm of overbroad state power in that area. They know much less about whether, say, raising the drinking age from 19 to 21 is good policy. Strict review is warranted in the former. Not so much in the latter. Though there may be cases where despite not-so-strict review, relief has to be given.

That's sound. That's humility.

³ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927.

But what has happened to *Irwin Toy*'s point about the need for judges to be humble in areas that are beyond their ken? If you search the case law, you will see that these days, judges seldom cite that point.

Yes, *Irwin Toy* is nearly forty years old. But cases don't have "best before" dates stamped on them. We don't throw out *Roncarelli v. Duplessis* just because it's old. *Irwin Toy*'s lesson about judges and the value of humility still rings true today.

Yes, on the Bench, courage is sometimes needed. But also needed, perhaps even needed more, is the quieter virtue of humility—knowing when courage has taken a judge to the edge of competence, knowing when a judge should not go where courage might lead.

The hard case is not the one that demands courage. It is the one that forces you to notice that courage has taken you as far as the office allows.

Thank you. I welcome your questions and comments.