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The Classroom Climate: *Encouraging Student Involvement*

Stephanie M. Wildman†

When I was invited to be a panelist at the 20th National Women and the Law Conference to speak about the "Classroom Climate," I recalled how nervous I had been in 1975 when I was first invited to speak at the 6th National Conference. I was nervous, not because I didn't know my subject matter, but because it has been hard for me to speak in front of large groups since my own experience in law school. Now, almost fifteen years later, it's still difficult for me to talk in front of people, but it *is* a lot easier.¹

Why start with true confessions, especially when it's not considered professional to reveal weakness or self-doubt? Feminist methodology teaches us that the personal, real life experience of women is the lens through which we view social-political life.² Therefore, since the topic classroom climate raises issues about silence in the law school classroom, I wanted to begin with my experience with legal discourse and my own roots as a silent woman.

Why are so many women silent in class?³ Silence is connected to two particular phenomena: prior acculturation to silence and the

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¹ It has not always been hard for me to speak in front of groups, even though I am a quiet person. As a junior high school and high school student, I was often a candidate for student government office. In college I was a verbal participant in seminar classes. But something happened in law school, and talking became very hard. Other women have described a similar declining progression in their verbal agility, in which law school marked the beginning of the decline. See Weiss and Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988).

² C. MACKINNON, *Feminism, Marxism, and the State: An Agenda for Theory*, 7 SIGNS 515, 534-39 (1982). See also Littleton, *Feminist Jurisprudence: The Difference Method Makes* (Book Review), 41 STAN. L. REV. 751 (1989).

³ Men, of course, may also be silent in class. Nonetheless, anecdotal evidence suggests that it is more often women than men who are silent in law school classes. To the extent that a man is

method and discourse of law school classes. Many of us, especially women, are taught to be more quiet than others by the cultural messages we learn before we even get to the law school classroom.⁴ Sexism is a reality in our culture which harms women in many ways, and one way it harms them is by teaching silence as a survival mechanism.⁵ Being silent is a socialized role for women.⁶ Not only have studies shown that women talk less than men,⁷ but when women do speak their words are often devalued.⁸

Silence learned through acculturation may go back to family background. While some spent dinner hour arguing about political issues, my family watched *I Love Lucy* reruns. Personally, I am a quiet sort of person—in high school people said about me, “Stephanie, in her own quiet way, she gets things done.” However, in law school being quiet was not the best survival mechanism. At the end of three years it was clear that my classmates, who had talked in class and forced themselves to articulate their position on issues, had a degree of verbal agility that I did not. I had to get a job as a law professor, just to catch up. But this is an extreme antidote for silence,⁹ and so I want to urge people who do not speak in class to try more immediate remedies.¹⁰

The subject matter and method of law school classes themselves also affect students’ ability and desire to participate.¹¹ Professors usually do

silent, the same phenomena that operate to silence women are probably at work. *See infra* text pp. 327-28.

⁴ See Weiss and Melling, *supra* note 1; Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 149-50 (1988).

In her presentation to the conference, panelist Professor Leslie Espinoza cited the Stanford self-study on women’s attitudes toward their legal education. Although men and women seemed to view their education similarly, women acknowledged that they participated less in class. Professor Espinoza points out that this lack of participation coupled with an uncomplaining attitude toward the experience may indicate a collective denial mechanism. *See* Special Project, *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1239, 1242 (1988).

⁵ See Wildman, *supra* note 4, at 149 (citing Littleton, *Equality and Feminist Legal Theory*, 48 U. PITT. L. REV. 1043, 1045-46 (1987)) (describing the three components of sexism—sex discrimination, gender oppression, and sexual subordination—which contribute to women’s silence in the classroom).

⁶ *Id.* at 149, n.14.

⁷ *Id.* at 150.

⁸ *Id.* at 150, n.17.

⁹ While I do not urge a career in law teaching as an antidote for silence, nothing I say should be construed as discouraging women from seeking careers in legal education.

¹⁰ Although this article emphasizes antidotes to silence, it is important to remember that silence from students may be constructive. A silent classroom may be at work, listening to an idea; people may be deciding what they think. But the devaluation of real listening, which also characterizes the law school classroom, makes it more difficult for listeners, who often are women, to speak. It is this kind of silence, which means a disaffection with and alienation from one’s own education, that this article seeks to remedy.

¹¹ See Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); Cain, *Listening to Difference and Exploring Connections*, 38 J. LEGAL EDUC. 165 (1988); Erickson, *Sex Bias in Law School Courses: Some Common Issues*, 38 J. LEGAL EDUC. 101 (1988); Finley, *A Break in the Silence: Including Women’s Issues in the Torts Course*, 1 YALE J. L. & FEMINISM 41 (1989); Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155 (1988); Wildman, *supra* note 4; *Mini-Workshop on Sexism*,

not introduce subjects such as feminism, racism, homophobia, or differences in physical ability into classroom discussion.¹² Consequently, students who perceive these issues as important may not raise them in class because they know that the professor and other students will not welcome any dialogue about these issues. The discourse of legal education is abstract, and supposedly objective and neutral. It leaves little or no room for insights based on personal experience or conversations about the allocation of power in society.¹³

While silence can be a strength when it is freely chosen, law students often feel compelled to be silent because of the intimidating atmosphere of the law school classroom. This essay addresses the problem of compelled classroom silence. The first part describes techniques a student can use to overcome compelled silence. The second part describes some of my attempts to facilitate class discussion of issues relating to societal allocation of power.

A. TECHNIQUES FOR BREAKING THE SILENCE

Students can combat silence in the classroom. In a previous article directed to law professors, I described techniques which professors can use to ensure classroom participation by all students. In that article, I articulated a few techniques faculty could suggest students use to overcome silence.¹⁴ In this article, I reiterate and elaborate on those techniques.

These suggestions are directed to the people who say, "I want to talk in class, but I don't know how to do it. I'm scared. When the teacher calls on me, my mind goes blank. I'm afraid I'll embarrass myself."¹⁵ I have a great deal of empathy for students who feel this way, because I, too, have had the experience of forgetting what I was going to say when I heard my voice echo through the room. I'm not offering these suggestions with the thought that they are easy things to do, but rather with the encouragement that no matter how difficult the effort to combat one's silence, it is worth trying.

Racism, Classism, and Heterosexism: A Close Look at our Biases in the Law School Classroom (tape recording, December 1985, New Orleans, sponsored by the Society of American Law Teachers (SALT) and the Association of American Law Schools (AALS) Sections on Gay and Lesbian Legal Issues, Minority Groups and Women in Legal Education)[hereinafter *Workshop*].

¹² See Banks, *supra* note 11; Erickson, *supra* note 11; Finley, *supra* note 11; Wildman, *supra* note 11; *Workshop*, *supra* note 11.

¹³ *But see* Cain, *supra* note 11 (describing her efforts at incorporating personal experience into feminist legal theory class).

¹⁴ Wildman, *supra* note 4.

¹⁵ The two phenomena that contribute to silence, acculturation and legal discourse, operate in tandem. We come to our legal education from a gendered society. The antidotes to the silencing which this article suggests serve to combat the mutual influence of these phenomena in the law school environment.

(1) It's hard to try to talk while worrying about taking notes, so get that worry out of the way. Pick a one-half hour period of class and have a friend agree to cover note-taking during that period of time. During your half-hour try to think of what is interesting to you about the case or discussion and raise your hand to say it. (Don't be discouraged if you are not called on. It's difficult to prepare yourself to volunteer and then not be recognized. But this risk is worth taking.) It may also be useful, once your half-hour is over, to trade with your friend. You take notes, while she volunteers.

(2) Some students find it easier to participate in class when they view speaking in class as playing a role. Pretend you are an advocate for someone with your own views. Imagine you are advocating the position and trying it out loud. Since part of playing a role is dressing for it, wear whatever attire makes you feel your personal strength. Whether it's a business suit or jeans, wear whatever enhances your ability to speak out and play the role of advocate.

(3) After you finally have spoken, you worry about how you sounded, and that's natural. Discuss your participation with your friends after class. It's almost impossible for professors teaching large classes to comment on individual students' participation. As the teacher, I wish I could comment on each student's performance, but when students come to talk to me, I often can't remember individual comments.¹⁶ It's deflating to feel your statement has been unheard. If the professor doesn't adequately respond, it will help to hear from your friends. Also, reinforce your friends' participation by responding to the point they made or by acknowledging, after class, their effort to participate.¹⁷

(4) Talk to the professor in the office or after class and explain that you are working on participating in class. If even this level of communication feels uncomfortable, go with another student or with a group of students. The professor who "teaches" through humiliation makes this suggestion particularly hard to follow, but even more important. Perhaps a group would offer more protection in dealing with this kind of professor. But remember, most teachers really do want involvement in class. If they don't, maybe your group should visit the Dean.¹⁸

(5) Organize a workshop on classroom silence at your law school. Talking about silence can foster better understanding about what happens in classrooms. Invite faculty to the discussion, too. Raising institu-

¹⁶ As a student, you always remember what you said or didn't say during class. Others tend not to. How much do you really remember individual comments made in classes? Other students don't really remember what you said in vivid or embarrassing detail either. Remembering the reality that your comments will not be etched in everyone's brain may make it easier to speak.

¹⁷ I thank those present at the "Classroom Climate" panel at the Conference for their warm reception and comments to me, both during and after my presentation of this paper.

¹⁸ If the intimidating professor is the Dean, then go to the University president. The point is to take an interest in your own education; don't just accept the status quo.

tional consciousness about silence as an issue is an important step in changing the classroom dynamic.

(6) Read about other students' experiences in law school.¹⁹ Play the Society of American Law Teachers (SALT) mini-workshop tapes from the 1985 Association of American Law Schools (AALS) annual meeting with a group of friends or classmates. The December 1985 workshop entitled *Sexism, Racism, Classism, and Heterosexism: A Close Look at Our Biases in the Law School Classroom* included moving presentations by law students about their experiences with classroom silence. Reading about and listening to other students' experiences will help you realize that you are not alone. Many students have had the experience of being silenced by law school because law school culture creates an atmosphere of intimidation and repression.²⁰ The experience of being silenced in law school is socialized, and does not indicate any personal failing.

B. FACING THE ISSUES IN CLASS

Although students must take steps to break their own silence, professors must also try to make the classroom atmosphere more accommodating to differing viewpoints and diverse issues. Although law school culture dictates the permissible content of classroom discourse, feminist law professors are trying to expand the traditional boundaries of classroom discussion. For example, Professor Jean Love has done a great deal of work on introducing feminist issues into the torts curriculum.²¹

I want to describe two of my efforts to introduce feminist issues into the torts classroom and to expand the boundaries of classroom discussion. One of these experiences was a failure; the other was a moderate success.

My failed attempt to introduce a feminist issue into the classroom occurred during a discussion about consent and the reasonable person. Prosser uses two examples to illustrate the idea of consent. In the first example, one man says to another, "I'm going to punch you." The second man stands his ground; he says and does nothing.²² Prosser implies no one would believe that the second man is consenting to be struck. The blow *is* a battery, since it is not privileged by consent.²³ I called this

¹⁹ See, e.g., Weiss and Melling, *supra* note 1.

²⁰ See *id.*

²¹ See Love, Teaching Torts: A New Perspective: Selected Cases and Articles (unpublished manuscript available from Professor Jean Love at the University of California at Davis, Davis, California); Love, *Bringing Gender Issues into the Torts Course*, in Torts and Retorts (Fall 1989) (Newsletter of the AALS Section on Torts-Compensation Systems) (paper originally delivered by Professor Love at the AALS Tort Law Workshop in Washington, D.C., March 11, 1989).

²² W. PROSSER, J. WADE, V. SCHWARTZ, TORTS: CASES AND MATERIALS 95 (8th ed. 1988).

²³ W. PROSSER & P. KEETON, PROSSER AND KEETON ON TORTS 113 (5th ed. 1984).

the macho presumption.

In Prosser's second example, a young man says to a young woman (Prosser calls her a girl²⁴) on a park bench in the moonlight, "I'm going to kiss you." She says and does nothing.²⁵ Prosser implies the kiss is *not* a battery, since there was consent.²⁶ I call this the moonlight presumption, and I believe it is erroneous.

As I told the class, Catharine MacKinnon has said that she doesn't use the term "reasonable people" because she hasn't seen any lately, just reasonable men and reasonable women.²⁷ Other feminists have written that men and women experience the world differently.²⁸ What a man views as consent may not be consent to the woman. Prosser's assumption that a woman's silence manifests her consent shows a lack of understanding of woman's experience. There may be many reasons for the woman's silence. Perhaps she is too afraid to protest. Maybe she is ambivalent or maybe she really is consenting, but the consent cannot be assumed from her silence.

Notice that I remember the tort law rules from that class and my exposition of the reasonable man versus the reasonable woman quite well. However, I did not have a clear recollection of the tense discussion that followed. So I later asked a number of women students what they thought had happened. They also had trouble remembering the details of the discussion. Our collective memories have powerful repression mechanisms. When issues that touch our lives do come up, we may repress recollection because the issues are so emotionally charged and the environment in which they are presented feels so unsafe.

This is what I wrote as a recollection of what had occurred in order to prepare for the Women and the Law Conference:

Following the tort law discussion a male student raises his hand and cites the example of date rape. He says it in a way that I hear as reinforcing my message about different points of view. A second man raises his hand; no women have their hands raised. The second man says something to validate the male point of view about consent. No women show any signs of volunteering to speak, but there is lots of tittering in the room. I sense many people are uncomfortable, and so am I. I make a lame transition and move on.

I regard this vignette as a failure of teaching; in trying to make people

²⁴ W. PROSSER, J. WADE, V. SCHWARTZ, *supra* note 22.

²⁵ *Id.*

²⁶ W. PROSSER & P. KEETON, *supra* note 23, at 41-42 (an "unappreciated kiss" as a compliment).

²⁷ C. MACKINNON, FEMINISM UNMODIFIED 87 (1987). See also Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387 (1984) (presenting another good discussion of the gendered nature of reality, describing how sexual intercourse is not the same experience for young women and young men).

²⁸ See, e.g., West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L. J. 81 (1987).

comfortable, I skirted a hard topic. I am not proud of this, but I use the example because I think it is not unique.

Because I *did* want to remember, I asked the first student participant what he recalled about the conversation. This is his recollection:

Professor Wildman stated, "Consent is a defense to intentional torts." I asked if there had been any litigation on date rape cases where the defendant used consent as a defense to the intentional tort. I said that it was my understanding that this topic was becoming more widely discussed. I then went on to discuss the nature of the problem of "date rape." I explained that when a man takes a woman out for a nice dinner or spends any large sum of money on her, he may "expect" the date to "put out." At this point, some members of the class seemed to become agitated. Then another student made the comment that oftentimes men believe that when a woman says "no" to the advances of her date, she really means "yes." After that student made his statement, the class seemed to become uncomfortable. I think most people did not understand that he did not intend to advocate this position, but rather was intending to point out a reaction to the "date rape" problem.

Now it is clearer why I view this conversation as a failure of teaching, when all I did was to make a transition and move to the next subject. By doing what I did, I could have been giving the impression that talking about these very important divergent views about date rape and consent had no place in class or that they were not "law" and thereby out of the bounds of discussion. I put making people comfortable first, and comfort meant not talking about something we might disagree about. But I wouldn't have moved on if women had raised their hands. Their silence led me to believe that they didn't want to talk about it either.

In classes, in meetings, and in daily life, we must often ask ourselves whether we should point out the sexual subordination implicit (or explicit) in a particular law school hypothetical or in someone's words.²⁹ Because of the energy it takes to combat sexism, racism, and homophobia, we silence ourselves much of the time in the interest of moving on with the so-called primary agenda, whatever that might be.

How could I, as the professor, have made it easier for the women to speak? In part because I was thinking about participating on the classroom climate panel, in part because of disappointment with my handling of the date rape discussion, and in part because I've always been troubled by this next issue in tort law, I resolved to introduce the subject of defamation in my torts class differently.

I wrote these words on the black board: "black . . . white, female . . . male, gay . . . straight." Was I imagining that the class became tense? I asked whether it would *ever* be defamatory, that is, a false remark that

²⁹ See Littleton *supra* note 5, at 1046 for a fuller discussion of sexual subordination. See also Wildman, *supra* note 4, at 149-50 for an example in the context of the law school classroom.

would tend to lower the reputation of the person about whom it was said, to call someone any of these terms, in a particular context. While there wasn't total agreement, particularly as to whether calling someone male could ever be defamatory, a consensus seemed to emerge that we could all imagine a context in which someone's reputation would be lowered if one of these things were falsely said about a person.

This discussion arose in the context of a case in which a man who had been called "homosexual" sued, claiming he had been defamed. What has always troubled me about this case has been the idea that some people would think less of a man because he is gay or a woman because she is a lesbian. We all know that this legitimation of homophobia represents a true reality—that is, that some people do think this way. In past classes, I have commented that the existence of homophobia is a sad state of human affairs. Since classroom editorials based on my views have rarely been effective for teaching, however, I was interested in pursuing another approach.

Having reached agreement with the class that in certain contexts saying any of these words could be defamatory, I asked whether that meant that defamation law was unbiased and neutral, since the law was treating as defamatory any one of these remarks. From the discussion the idea emerged that one side of each of these pairs (i.e., black-white, female-male, gay-straight) is privileged in society, so that the message to gay and lesbian people that someone's reputation could be hurt by being called gay or lesbian tended to support the status quo, perpetuating hatred of gay and lesbian people. It meant that the law was making no comment on the human reality and unfairness in that status quo and, in a sense, was validating it.³⁰

Summarizing what happened is almost impossible, since each of the eighty or so people in the room undoubtedly experienced the discussion differently. When, in the course of discussing whether calling someone a lesbian is defamatory, I said, "I am complimented when I am called that," someone gasped loudly.³¹ This introduction to the subject of defamation generated more discussion outside of class, much of it in support of expanding the boundary lines of permissible classroom discussion.

I have used these two examples to show how hard it is for each of us to try to expand these boundaries, particularly in a large class taught by the Socratic method. I would prefer to talk about date rape with a group of friends, or at a Women and the Law Conference. I am more comfortable confronting homophobia and heterosexism when I am among friends.

³⁰ See Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2374-80 (1989) (arguing that the legal system's protection of racist speech validates racism).

³¹ Evidently the idea that it is a compliment to be perceived as a woman who loves women in a misogynist society where an anti-woman message is very pervasive was a totally new idea to this person.

When we challenge racism, sexism, or homophobia, we give up a little piece of our privileged position in this society, whether we have felt that privilege by being smart, white, male, or straight. Perhaps that is why it feels so hard to do it. But as Sheila O'Rourke has said, she "tries to practice on other people's oppression."³² So if someone says something racist, she as a white person tries to speak out. She hopes others will also speak out so that she won't be surrounded by silence when the remark is sexist or homophobic.

Changing the classroom climate is hard when you feel isolated. If we expand the boundaries of permissible discourse by practicing on each other's oppressions, we can enrich all of our lives.

³² *Workshop, supra* note 11 (remarks by O'Rourke).