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# The Question of Silence: Techniques to Ensure Full Class Participation

Stephanie M. Wildman

The question of the silence of women in the law school classroom is an issue ripe for legal educators to address. The relative silence of women in law school classrooms<sup>1</sup> has always concerned me, in part because I was one of those silent women, but primarily because women's silence is a larger cultural phenomenon.<sup>2</sup> Society often does not see those who are voiceless. Not all of our quiet students will end their silence by becoming law professors, for whom it is not possible to remain invisible behind a wall of silence. We professors have a responsibility to pay attention to who is silent and who is not in our classrooms, to consider why some students are silent,

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1. The relative silence of women in classrooms in higher education is described in Mary Frank Fox, *Women and Higher Education: Sex Differentials in the Status of Students and Scholars*, in *Women: A Feminist Perspective*, ed. Jo Freeman, 238-255, 3d ed. (Palo Alto, Ca., 1984). According to Fox:

In faculty interaction with students, a "subtle and silent language" differentiates males and females . . . . Studies indicate that, in their interactions with students, faculty encourage male compared to female students by making more eye contact with the men, nodding and gesturing in response to questions, assuming a position of attentiveness when men speak, and taking a location near male students . . . . Observers frequently note that in classroom discussions, even the brightest female students tend to remain silent, while their male counterparts dominate . . . . Faculty members promote and reinforce the invisibility of female students by subtle practices such as calling directly on males but not females, addressing men by name more often than women, giving men more time to answer a question before going on to another student, interrupting women more frequently or allowing them to be interrupted, and crediting the contributions of male more often than female students.

*Id.* at 244. See also Pamela Roby, *Structural and Internalized Barriers to Women in Higher Education*, in *Toward a Sociology of Women*, ed. Constantina Safilios-Rothschild, 121 (Lexington, Massachusetts, 1972). Thanks to Professor Judie Wexler for calling my attention to these articles.

2. See generally Adrienne Rich, *On Lies, Secrets and Silence* (New York, 1979), in which she describes reasons for women's silence, written and oral. In the essay "Conditions for Work," Rich writes: "In a world where language and naming are power, silence is oppression, is violence." *Id.* at 204. See also the film "A Question of Silence," discussed in the next paragraph.

and to examine our own role as teachers in contributing to that silence. Because the effects of silence are so damaging to the educational process, this article focuses on techniques for breaking classroom silence.

In "A Question of Silence," a Dutch film written and directed by Marleen Gorris, three women, a secretary, a waitress, and a housewife, who have never before met each other, kill a man, a boutique owner, in a spontaneous and horrible act of violence. The housewife, after she is taken into custody, ceases to speak. Several other women, witnesses to the killing in the boutique, do not come forward to the police and also remain silent. The movie is a thought-provoking examination of the reasons for women's silence in society.<sup>3</sup>

Parallels exist between this film and the silencing dynamic in legal education and in law. We are all often complicit in the silencing of students; as students and as professors we watch the verbal violence that occurs in some classrooms, and yet we remain silent. The victims often silence themselves as well. The women in the film are rendered invisible many times and in many ways. This silencing happens in the legal education system.

As Sallyanne Payton has pointed out:

For centuries now, women's voices and women's realities have been entombed in silence. Think about it: all of the official versions of reality in this society (and not only in this one) are made by men. It is male perceptions, male feelings, male patterns of behavior, masculine preferences and needs, that account for everything from the shapes of buildings to the shapes of careers. Male patterning, conscious or unconscious, is implicit in much of this culture, but largely by default, there being no female patterning to challenge it. I confess that I do not know what that female patterning might look like; but I am quite certain that we will never know until the female voices in this society succeed in telling stories about female realities that the female pattern, the female way of apprehending the world, becomes intrinsic to our idea of how the world works and how things ought to be.<sup>4</sup>

Students come to law school out of a social context; they have lived as women and men in this culture. To remind ourselves that classroom dynamics are complex fails adequately to suggest the juggling act in which we are engaged. As legal educators we strive to teach students how to identify legal issues and how to analyze them, we try to give students practice in verbal agility and, in some courses, writing skills, all the while setting an example of how to be a lawyer. We teach all these components of legal education juxtaposed against the society in which we live and against our students' socialization in that society.

All teaching, if it is worth anything, involves transmitting values:<sup>5</sup> students learn from professors and professors learn from students. The transmission is rarely an equal interchange, however, because students look

3. For reviews of the film see Molly Haskell, *Some Films Men and Women Can't Talk About. . . . and a Few They Can, Ms.*, May 1984, at 16, and Peter Stack, *Three Women Who Murder a Man on the Spot*, *S.F. Chronicle*, October 21, 1983, at 71.
4. Sallyanne Payton, *Releasing Excellence: Erasing Gender Zoning From the Legal Mind*, 18 *Ind. L. Rev.* 629, 641 (1985).
5. Chuck Lawrence made this point when he served as moderator in a panel discussion on *Silence in the Classroom* at Stanford Law School, Spring 1987.

to the professor as the classroom authority on all issues, including the value of class contributions. Professors may use this authority, both consciously and unconsciously, to silence points of view and class participation or to encourage participation.

This article presumes that participation by all students rather than silence in the classroom is preferred. Yet silence may be a valid expression of alienation or hostility. For many students the choice of silence is not a passive act; it is an expression of anger. Although this article does not fully explore the reasons for that silence, understanding why many women are angry may help us to examine our classroom roles.

Sexism contributes to women's silence in the classroom. Three social forces—sex discrimination, gender oppression, and sexual subordination—have been identified by feminist legal scholars both to describe and give guidance for resisting sexism.<sup>6</sup> Sex discrimination includes the irrational preference for one sex over another, when they are interchangeable.<sup>7</sup> Gender oppression involves the restriction of women's "social role choice."<sup>8</sup> Sexual subordination means the "devaluation and disaffirming of anything associated with women."<sup>9</sup> These three social phenomena are, as Christine Littleton points out, "different aspects of the complex social phenomenon that constitutes inequality. All three can be brought to bear on a particular issue."<sup>10</sup>

Looking at legal education we see these forces—this sexism—at work. Until recently, women were barred by sex discrimination from law school<sup>11</sup> and practice.<sup>12</sup> Sex discrimination in legal education followed the admission of women into schools with Ladies' Days for women's class participation. Although sex discrimination has become less visible in the law school classrooms in which many classes are fifty percent women, women are still not equally represented on law faculties, as law firm partners, and in the judiciary.<sup>13</sup>

Gender oppression is evident in legal education because silence is a socialized role for women.<sup>14</sup> The prevalent social myth that women talk a lot and tend to dominate conversations has been explained as women's effort to compensate for a lack of power to act.<sup>15</sup> Yet this myth of talkative

6. See Christine Littleton, *Equality and Feminist Legal Theory*, 48 U. Pitt. L. Rev. 1043, 1045–46 (1987).

7. *Id.* at 1045, 1046.

8. *Id.* at 1046.

9. *Id.*

10. *Id.* Littleton's article discusses these three forces in detail and applies them to different social issues.

11. See Cynthia Fuchs Epstein, *Women in Law* 50–51 (New York, 1983). See also Karen B. Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* 44 (New York, 1987).

12. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1873).

13. See Rita Simon & Kathryn Gardner, *Still the Second Sex*, 10 *Student Lawyer* 18 (December 1981), and *Federal Judges: Fewer Women, Blacks Today*, 11 *Human Rights* 3 (Winter 1983).

14. Gloria Steinem, *Men and Women Talking*, in *Outrageous Acts and Everyday Rebellions* 176 (New York, 1983).

15. Steinem, *supra* note 14, at 178–79.

women does not fit research findings: "There has not been one study which provides evidence that women talk more than men, and there have been numerous studies which indicate that men talk more than women."<sup>16</sup> Furthermore, women who *do* talk find that their speech is not well received: "Women speakers are more likely to hear some version of 'You have a good point, but you're not making it effectively,' or 'Your style is too aggressive/weak/loud/quiet.'"<sup>17</sup> Devaluation of women's speech exemplifies gender oppression. When this common cultural phenomenon is translated into the law school setting, where verbal agility is valued, it creates an impossible conflict for many women students.

A particularly poignant but not atypical example of sexual subordination, the systemic marginalization of women, was given by a Yale law student, who described a "joke" told by her evidence professor about a hearsay case in which a man killed his wife during an argument. The wife had called her mother during the fight; the legal issue was whether the mother's statement, reporting what her daughter had said to her over the phone during the fight, was admissible. The professor described the facts and then lightheartedly said, "I guess that's the last argument they'll ever have." The student described her reaction in this internal monologue:

Shall I raise my hand and tell him that its not funny to make jokes about battered women? Should I talk with him after class? He's not receptive to questions in class, so maybe I should go up later, but then my peers' attention won't be called to the incident. Meanwhile there is a blank space in my notebook and an evidentiary point lost.<sup>18</sup>

Eradicating sexism in our classrooms in each of these three manifestations is an important first step in ensuring that our women students can be part of the educational process.<sup>19</sup> The effect of silence on students is harmful.

The most damaging part of silencing students in the classroom is that it interferes with a student's ability to learn the substantive material. That part of the class that makes her feel alienated and hostile also deprives her of the opportunity for education. A student who has been unable to participate in the class has surely missed out, if we believe class time has value.

Classroom silence is also troubling because, in addition to the teaching of substantive material, class time is valuable for giving each student practice in verbal agility. It is one skill to learn a body of doctrinal law or to speculate on policy arguments; it is quite another to verbalize that knowledge.<sup>20</sup> My

16. Dale Spender, *Man Made Language* 41 (London, 1980), *quoted in* Steinem, *supra* note 14, at 178.

17. Steinem, *supra* note 14, at 184–86.

18. Remarks of Louise Melling, Mini-Workshop on Sexism, Racism, Classism and Heterosexism: A Close Look at our Biases in the Law School Classroom, December 1985, New Orleans, sponsored by SALT and the AALS Sections on Gay and Lesbian Legal Issues, Minority Groups, and Women in Legal Education.

19. Certainly eradicating racism and homophobia are equally important, although this article focuses on sexism.

20. At the end of three years of silence in law school, in which I disdained the verbal gymnastics in which my colleagues engaged, I realized that they had learned something about verbal skill that I had not learned. My experience, not atypical, occurred even

goal as a teacher is to ensure shared participation in each class in order to maximize the opportunity for all students to develop their verbal agility.

This article assumes that all of us are trying to teach in a nondiscriminatory way. Yet to the extent women are silent in greater numbers in the law school classroom because of social conditioning, we need to address that issue and to reconsider our teaching techniques.

Calling on each student in the class<sup>21</sup> and making sure that all have been called on before going through the class once again appears at first blush to ensure shared participation. However, often when I call on a woman, she will reply, "I don't know," whereas a man, equally unsure of an appropriate response, will start to answer and be wrong or off the point, but feel free to be vocal and to monopolize the air waves.<sup>22</sup>

This phenomenon—men's willingness to "take up space" and women's choice of silence—may be culturally taught and learned for our survival.<sup>23</sup> Yet our professorial responsibility dictates that we unteach those cultural roles. Silence, deference, and talk with no substance are not ways of survival in law firms, courtrooms, and legal life.<sup>24</sup>

We as professors can help the student who says she does not know by rephrasing our question, by encouraging her to take up space, and by not backing away from our conversation with her. If the continued questioning is not done in a terrorizing manner, but rather by encouraging her to forget herself and play a role—for example, "what would you argue if you were

though I had been a good student who sparked class discussion as an undergraduate. In retrospect I see that negative feedback from classmates, who asked, "What did you eat for breakfast?" and "Feeling belligerent today?" when I debated the professor, contributed to my silence, as did the small number of women in classes. Peer support should not be underrated.

21. Calling on students is controversial in some institutional cultures. The argument against calling on a student who has not volunteered comes from a humanistic concern that someone who does not want to engage in discussion should not be forced to do so by virtue of the hierarchical classroom structure. I certainly agree that terror does not enforce learning. For the first two years in which I taught I did not call on students, but took only volunteers. Few women, in classes composed of fifty percent women, volunteered.

I decided that not calling on those students who most resembled myself as a law student was a disservice to them. True, I have to force them to speak. But I believe that I do so in a supportive way, encouraging all students to view the time when they are called on as an opportunity for us to have a conversation about the material. Students who really wish not to participate on a given day may leave me a note and opt out.

22. One of my colleagues believes that expressing impatience with those whose answers are only hot air discourages that kind of answering and creates space for other, ordinarily more quiet students. He believes that women and men talk equally often in his classroom.
23. See Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass., 1982) for a discussion of male and female differences. It is important to remember that some men are silent and some women are not. But patriarchy and the lessons of social role it teaches cannot be ignored. See Gerda Lerner, *The Creation of Patriarchy* (New York, 1986) and Adrienne Rich, *Of Woman Born* (New York, 1976).
24. At least not all the time. Taboo subjects such as sexual harassment and affirmative action are often not spoken about among colleagues, when those with less power know that they will not be listened to. Many of us are silenced in situations in which we know that our words will not be heard.

Another cultural phenomenon, "the strong silent type," is a person rewarded by high regard for silence. Typically, this person is a man in our mind's eye.

defendant's lawyer?"—she often answers the questions and does well. Once someone breaks her silence in a class and speaks, she will usually continue to speak more frequently.

In some classes I have taught, women students constitute 50 percent of the class, yet they do only 10 to 20 percent of the participating. In such classes I ask the women students to stay after class, and we talk together about why participation is a problem. Merely raising the issue with the group has a salutary effect—students try harder to break the silence. Three topics which usually surface in these discussions all contribute to helping students participate more freely in classes: support network, role playing, and personal experience.

1. Support network: I suggest that students try to reinforce each other when they do participate. Peer support can be very important. A network in which one woman tells another after class, "I like what you said," or "Tell me more" encourages each of them to speak again and more often.

2. Role playing: I suggest that students dress for class as if they were going to court or planning to present a paper. The key is for students to dress in whatever manner makes them feel empowered, whether in dresses, suits, or blue jeans. Many students tell me that they feel differently about speaking in class when they take it on as an acting role, costume and all. Several class exercises which further stimulate role playing are described below. Role playing provides a distancing function, allowing students to separate their personal identity from their words, a separation paralleling that of an attorney representing a client.

3. Personal experience: I also share my own past vulnerability with them, describing my own experience as a law student when, hearing my voice and seeing all eyes on me in a room, I found it easy to forget what I was saying. I can tell them that this has happened to me and that speaking becomes easier with practice. Women can conquer their past socialization toward silence.

I use several classroom techniques which help generate lively class discussion as well as assist students to participate who might otherwise remain silent. These techniques help silent men as well as silent women, encouraging students to be engaged in class, to be active rather than passive.

1. Convening as a court: I announce that I am vacating the decision in the casebook, which is being reargued, or that we are appealing it to the next highest court. I divide the room in half, one side representing plaintiff, the other side defendant, and designate several students to join me on the bench. I assign to the judges the role of the majority, dissenting, or concurring opinions and tell them to ask counsel questions from that point of view. This exercise works best when these role assignments are made in advance of class. However, it can succeed when done spontaneously as well. Before commencing, everyone has five minutes to talk to co-counsel or to co-judges about the arguments they will make. This time for students to talk to each other is crucial because it gets everyone in the room talking and energized. When we actually convene as the court, people are "rarin' to go."

An appellant begins the argument and the bench, including me, interrupt with questions, in typical moot court fashion. I make sure to call on other co-counsel to assist in responding to questions so one student is not under fire the whole time. Each side gets ten to fifteen minutes, although it is often hard to get them to stop. Total exercise time is about 30 minutes. I use this technique for important cases throughout the semester, approximately once every three or four class meetings.

2. Assist from co-counsel: When I call on a student who is really stuck, I ask if he or she would like an assist from co-counsel. The two students are then engaged with me in conversation about the legal issue. I do not use this device to make one student "smart" and one "stupid." I do use it to help trigger the stuck student's mental process and pull them through to a positive verbal interaction with me and the other student. The result is a three-way conversation in front of the class.

3. Small group meetings: With some classes I cancel the large section meeting and meet for three consecutive hours with members of the class divided into three smaller groups. The different group dynamic and smaller size often helps some formerly silent students participate, and they then find it easier to continue participation in the larger section. Some years I assign special reading, such as a law review article related to the casebook material, as the subject matter for these small section classes. The break from the traditional case format, which is reminiscent of college seminars in size and subject matter, is a device to reach silent students.

4. Playing the SALT mini-workshop tapes from the 1985 AALS meeting: In December 1985 SALT and the Gay and Lesbian Legal Issues, Minority Groups, and Women in Legal Education sections of AALS sponsored a workshop entitled "Sexism, Racism, Classism, and Heterosexism: A Close Look at Our Biases in the Law School Classroom." Part of the presentation included students' describing their own experiences with classroom silence. After I played this student presentation, which lasts about an hour, to a seminar class, participation and consciousness about participation changed dramatically for the better.

5. Convening as a legislative body to decide whether to adopt a certain law: A variation on convening as a court, this exercise gives the opportunity to address issues from a different perspective. I divide the entire class into groups, each representing a different special interest lobby that will offer "testimony" to the legislature about the proposed legislation. These groups meet in different corners of the room for about twenty minutes. For some interest groups it is obvious whether they will be for or against the legislation; however, in some cases the group must decide a position and then develop the appropriate testimony. After hearing from representatives of all the groups, the legislature convenes. The class members now abandon their previous role as interest-group representatives and debate the appropriate legislative action.

6. Pro, con, listener-notetaker: I use this exercise in classes of 36 or smaller. I divide the class into groups of six, with two students in each role. Role 1 favors accomplishing a goal, role 2 opposes it, role 3 is the

decision-maker who must listen to the arguments from each side and make a decision. Role 3 reports to the class the arguments that were made and the decision. Each role 3 student adds any new arguments or reasoning that might lead to a different decision. Students meet in their small groups for 10 to 15 minutes; the reports of role 3 actors take another 15 to 20 minutes in all. At the end, the class has a sense of the richness of the debate, while many members of the class have practiced verbal agility in a small group context.

This exercise has successfully been used on the issue of affirmative action by making role 1 a minority law school applicant who is admitted if race is taken into account, role 2 a white student who is not admitted if race is considered, and role 3 the dean who decides who is admitted to law school. The personal stake in the outcome attached to the roles adds a dimension to the exercise which ensures no one is bored.<sup>25</sup>

These exercises and role plays are all focused on giving students a chance to talk. We have to change students' experience. The presence of examples of women as teachers, lawyers, and judges in role plays, as in life, helps to change that experience and affects students' attitudes, self-perception, and sense of possibility. Giving voice to the silent helps our students to see themselves and to see women.

At some fundamental level the appeal to law professors to use techniques such as those described in this article challenges the male version of the law school classroom, which is engrained in our collective unconscious through images like Professor Kingsfield in "The Paper Chase." Instead of telling our students, as Kingsfield does, "Here is a dime. Go call your mother and tell her you won't be a lawyer," by using these techniques we ask our students to work with each other in the classroom, to step outside their own identities, and to play the role of lawyers representing clients.

What manner of legal training will best serve client interests?<sup>26</sup> Is the "Paper Chase" hazing technique one that benefits the client or is it merely the comfortable (for some) way things have always been?

The question of silence continues to be a challenge for law professors. We need to become more aware of this issue and concerned about addressing it constructively as colleagues. Because it does not clamor for our attention, because it is invisible, it is all too easy to ignore.

25. Paul Brest and Chuck Lawrence developed this exercise in classes at Stanford and U.S.F.

26. Doctors are re-examining whether medical school training techniques are benefiting patients. In one recent case a sleep-starved intern killed a patient. See *Sixty Minutes: The 36-Hour Day* (CBS television broadcast, June 21, 1987) (transcript on file with Stephanie Wildman).