



1-1-1994

AALS Section on Teaching Methods: Bringing Values and Perspectives Back Into the Law School Classroom

Stephanie M. Wildman

Santa Clara University School of Law, swildman@scu.edu

Follow this and additional works at: <http://digitalcommons.law.scu.edu/facpubs>

Recommended Citation

4 S. Cal. Rev. L. & Women's Stud. 89

This Article is brought to you for free and open access by the Faculty Scholarship at Santa Clara Law Digital Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

AALS SECTION ON TEACHING METHODS: BRINGING VALUES AND PERSPECTIVES BACK INTO THE LAW SCHOOL CLASSROOM*

STEPHANIE M. WILDMAN**

I am here today with a perspective different from the other panelists. At least it is different from the problem in Professor Granfield's book which describes students coming to law school with public interest ideals and going out to work for corporate law firms.¹ Most of my students only wish they could get interviews, let alone jobs, from the corporate law firms that seek their associates at perceived elite law schools.

Sadly, alumni of my school and others in the profession use the fact that more and more of our students are getting big law firm jobs as a measure that our school is "doing well." So not only do we have a crisis of teaching values to our students, but we also have to face the fact that the very values that our profession uses to measure success are wrong-headed, by my value-system anyhow.

I want to speak today about two issues: first, the national context in which our discussion about teaching values in law school is taking place, and second, two aspects of the idea of professionalism. We first need to combat the elitist values on which our profession is based. These values are embodied in the idea of professionalism itself and in the myth of legal reasoning. While we combat these elitist measures, we must simultaneously try to foster the positive value of service and doing good that is also part of the notion of professionalism.

* © 1994 Stephanie M. Wildman.

** Professor of Law, University of San Francisco School of Law. A.B. 1970, Stanford University; J.D. 1973, Stanford University Law School.

1. ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND* (1992) (examining how law students actively participate in their institutional surroundings to create meaning and construct elite identities).

First, the context of our discussion here about teaching values and perspectives in the law school classroom is, not surprisingly, a microscopic reflection of the debate about teaching values that is playing in our society at large. Not only in law schools is society concerned with how to teach values. The recent presidential debate about family values and the idea of a politics of meaning are only two examples of our gnawing concern with whether the United States of America has a moral soul.

Of course, our heroic vision of ourselves and our society includes the idea that we are moral beings who care about each other. Superman, an archetypal American hero, who probably not by coincidence is white, male and straight, fights for Truth, Justice and the American Way. I was watching an episode of Superman with my nine-year-old son, when the villain of the piece said, "AH HAH, I will defeat Superman because I know his weakness. Superman has morals."

My son turned to me and said, "What are morals?" And so the crisis of teaching values materialized in my living room. These words were not part of this nine year old's vocabulary. Isn't law school a little late to be starting? When I explained that morals concerned the difference between right and wrong, putting the discussion into words my son knew, he nodded, and I heaved a sigh of relief. I hadn't been a total failure as a parent, at least not yet.

But what about my life as a law professor? Do I teach anything about values? Would my students nod with recognition in the same way if I talked about right and wrong? I know I spend time talking about different perspectives and valuing those different perspectives. I hope I am also saying what I believe is right.

In a recent newspaper column entitled, *Passing on a Moral Sense*, George Will (who is not someone I frequently cite) wrote: "It has become the conventional wisdom that there is no knowledge, only opinion, about morality, and that human beings have no nature other than their capacity to acquire culture."² He continues in the article to lament the loss of traditional families in creating this morality crisis.³

In another column, on the same page of the newspaper, a second conservative columnist bemoaned the closure of chapel service at his

2. George Will, *Passing On a Moral Sense*, S.F. CHRON., Dec. 16, 1993, at A31.

3. *Id.* I agree that there is a morality crisis in American culture, but I don't place the blame on changing family structures.

college prep school.⁴ He argued that the decline of spirituality is connected to the concern about declining values.⁵

But the absence of spirituality in our lives is not only a conservative issue. Michael Lerner, editor of *Tikkun*, has received national press and the notion of a politics of meaning has reached the White House.⁶

Religion has been a conventional locus for the teaching of values. Recently my daughter became a Bat Mitzvah, a rite of passage at age thirteen, where the child is acknowledged to be reaching maturity by being called to read from the Torah. As the Rabbi began the service by invoking the holiness of the bond between a bride and groom, I searched around the congregation for my gay friends to apologize to them with my eyes.

We confront this first issue in teaching values, getting the words right, so as not to exclude anyone from the values we are fostering. This need to include all of our students is still a serious struggle. By engaging in that struggle, we debunk the idea that law is perspective-less. We try to show in our teaching that a woman may have a different perspective or that a man of color may have an outlook varying from the dominant view. Yet this very effort may pose a conflict with the goal of avoiding the teaching of cynicism to our students. It is the problem that George Will alludes to: if all views are valued, then how do we know one is more right than the other? What about justice?

We all teach primarily by example. Our students learn by what we do and how we act. I was really struck as I was reading Professor Granfield's book,⁷ particularly the section on discovering law and the formation of knowledge, by how we need to start with our own assumptions about the legal profession and our own stake in perpetuating the hierarchies it creates.⁸

I am speaking here to myself and to all of us, wherever we fall on the political spectrum. Against this measure of our self-interest, our

4. A. Lawrence Chickering, *Unshutter the Chapels*, S.F. CHRON., Dec. 16, 1993, at A31.

5. *Id.*

6. *Tikkun* is Hebrew for "heal, repair, or transform the world." See *Quotes of the Day*, CHI. TRIB., Sept. 20, 1993, at C2; see also J.D. Podolsky, *The Thinker: Hillary Clinton Made Philosopher Michael Lerner Famous, But Sometimes He Wishes She Hadn't*, PEOPLE, Sept. 20, 1993, at 89.

7. GRANFIELD, *supra* note 1.

8. *Id.* at 51-71.

own stake in professionalism and its hierarchies, consider how we conduct our classes. For example, do we listen to women students or to men of color in the classroom as much as we listen to white males?

This second question, the elitist aspect of professionalism, raises the problem of teaching values. I would really like to figure out how to teach values in legal education because I am someone who essentially got stuck in law school. It's sort of like Dante's *Purgatorio*; I keep reliving the law school experience, albeit from the other side of the podium, but I keep reliving the process because I still can't seem to get it right.

When I was in law school, I got stuck on the question of professionalism. I remember quite clearly the first day of the second semester of my first year. My small section had a class called Legal Process that was meeting for the first time. It was a class, popular for a period of time in legal education, concerning the legal profession and what it meant to be a lawyer. The assigned reading for that first class was about what it meant to be a professional.

I came to class ready. I thought that professionals were no better than anyone else and that in an ideal society one wouldn't even need lawyers. I hadn't read any Marx at the time; this was my own idea. I was quite vocal in class in expressing my views. The professor remained completely skeptical, espousing the virtues and importance of a professional elite. After the class, my classmates, who were predominantly male in 1971, made numerous comments to me such as, "Did you eat nails for breakfast?" and "Why are you so belligerent?"

I was so convinced that I was right that I went to see the professor during his office hours, something not frequently done by first year students. I thought it was me; that if I could just explain myself better, he would see that I was right and that setting up lawyers as a special class made no sense. I made no more progress in his office than I had in the classroom. Finally he looked at me and said, "I have never heard anyone at Stanford Law School who thinks the way that you do. Have you ever considered graduate school in political science?" I was devastated. The message was clear: I didn't belong as a lawyer.

Professor Granfield does an excellent job of summarizing how this notion of professionalism developed to create an elite.⁹ At the core of this notion is the idea of "thinking like a lawyer" as something

9. See *id.*

unique that we law professors teach people to do. Even Professor Granfield describes this so-called process in his chapter on legal consciousness.¹⁰

But I tell my students to recognize how much emphasis is placed on the idea that "thinking like a lawyer" means thinking in a different way. I challenge them to consider why and in whose interest it is to perpetuate that particular mystique. I tell them that they know all the legal reasoning they will ever need if they have ever lived in a family and talked to a child about having ice cream at the circus. I suggest that perhaps they have *even been* that child.

The child asks, "Can I have some ice cream?"

The parent replies, "No."

The child answers, "But I had one the last time I was here."

This is arguing by precedent and analogy. The conversation continues.

The parent says, "But last time it wasn't raining."

This is making distinctions in the legal discourse.

The child responds, probably pounding the table with a clenched fist, "But why does that matter?"

Of course, the child is arguing the equities or policy. You see, children are born lawyers.

Then, if it becomes clear that the rule firmly is no ice cream, the child asks, "How about a snowcone or frozen yoghurt?"

Here we are getting into statutory interpretation or textual analysis, pushing on the boundaries of the rule. What is ice cream, really?

So I tell my students, they can already think like lawyers. But the legal profession has a big stake in making everyone believe there is something unique about thinking like a lawyer. We professors certainly share this stake; if everyone can already do this, then why do we need law schools? Professor Granfield describes the rise of law schools to channel the best and brightest into what are essentially positions subservient to corporate America.¹¹ But as long as making money is the dominant cultural value, these positions are not perceived as subservient.

10. *Id.* at 51-71.

11. *Id.* at 146-51.

As teachers, our role is not unlike that of a parent trying to teach morals. We need to consciously think about including in our classrooms and curricula the positive side of professionalism, showing that lawyers have a responsibility for social justice.

Last year at graduation, one of our students described a conversation in which her partner had asked her about her three years in law school. The soon-to-be-graduate had spoken about what she had learned, and her partner had then asked, "But where is the class about justice?"

Our curriculum is so compartmentalized into subject matters like torts and contracts that we assume justice is being taught by the pervasive method. Obviously every class should include issues of justice, but an explicit class, like the Law, Language and Ethics class that Catharine Wells teaches at the University of Southern California, would be a good start.

In our core subject matter classes, we also need to pay attention to fostering student discussion of justice issues, recognizing that we are doing this in the context of a hierarchical institution. Recently in my Torts class, I created a writing exercise, asking groups of students to write think pieces on tort reform. I asked them to reflect on any aspect of the torts system—how it should ideally function. I wanted them to think together about what a more perfect world would look like. The local legal newspaper published the best of these reflections, along with the students' photographs, in a tort symposium.

Many students thought the purpose of the exercise was to encourage discussion on the issues among themselves, which was an important part of it. And it didn't hurt that they got a little resume credit too, for publication. But even with these positive benefits from having students reflect on the way that things should be, the institutional hierarchies played themselves out as well. After the symposium was published, I was speaking to one of the students, a woman of color who had been part of a group composed of all women of color. This group's think piece had been published in the paper.

I said to her, "You must feel good about having your work published."

"Well," she shrugged, "people are saying that our piece was chosen because we've done so badly in law school that you were just trying to help us out. You know, because you're sympathetic to minorities in law school."

I looked at her in disbelief as many thoughts swirled through my brain. This rumor mill reaction, that their papers were somehow *less than*, although unfounded and untrue, prevented these students from enjoying the experience of publication in the same way that the white students could. But suppose it had been true. Suppose that they had somehow not done as well. We are their teachers. Aren't we supposed to help our students?

The exercise forced the students to evaluate their beliefs and take positions concerning tort reform. This exercise conveyed to the students the feeling of taking action, taking a position regarding justice. Yet through the response of some students to the exercise, an injustice was done.

Unjust things happen even when we try to do justice, but that can't stop us from trying.

Thank you.

