

Touro College Jacob D. Fuchsberg Law Center

From the Selected Works of Louise Harmon

1999

The Eight O'Clock Class

Louise Harmon, *Touro Law Center*



Available at: https://works.bepress.com/louise_harmon/6/

THE EIGHT O'CLOCK CLASS

LOUISE HARMON*

If you drink enough at night, and do so consistently, it is still possible to be sufficiently drunk for the eight o'clock class in the morning—without imbibing more. This is something the puritan alcoholic has to find out for himself. It is a tricky position, being a puritan alcoholic. You can't ask others for tips because you aren't an alcoholic, of course, and your scruples won't let you countenance having a drink in the morning while the sun is shining. Tricky, I discovered, but not impossible. It was just a matter of fine-tuning.

The nine o'clock class was a lot harder to pull off. My vision had improved, if that is the right expression, and they were in focus. I could see their eyes, their backpacks, and their hair, oh, the bushels and bushels of cascading hair, freshly shampooed and conditioned, redolent of coconut oil and almond extract, hair that spilled over their shoulders as they leaned towards me to take notes, like the serpentine hair of Shiva. Down their backs, malevolent tendrils grew, and onto the linoleum floor, winding up the podium, straining to encircle my ankles, to climb up my pants leg, to embrace me, to squeeze the life out of me. Looking at them looking at me, I would be overwhelmed by disgust and fear.

I never really understood the disgust. After all, underneath all that torrent of predatory, perfumed hair, they were just people, my students. Sitting in tiers of Formica desks did not alter their essential humanity, but at nine o'clock in the morning, in sharp focus, they repelled me. Perhaps it was just their youth, which at that hour of the day struck me as somewhat vulgar, profane. But while my disgust remained a mystery, my fear—that I understood. They scared me, with their notebooks, their case briefs, and their huge underlined books, with pages glowing from the indiscriminate flow of the neon yellow markers. And those nasty little tape recorders poised on the edges of their desks, plastic black boxes with the capacity to capture my every stutter, my every substantive error, my every transgression with the language, my every slip of the tongue. My students, they were the army, and I was the enemy. So to keep them blurry, I used to volunteer for the eight o'clock class—a scheduler's delight. It was a form of public service: every faculty ought to have at least one puritan alcoholic to fill the early morning teaching slot.

* Professor of Law. Jacob D. Fuchsberg Law Center, Touro College.

Even Buddha had his teaching woes, although I do not mean to imply that he was an alcoholic. To the contrary, the fifth precept under the first fold of the 8 Fold Path, Right Action, is a proscription against intoxication, a ban on the use of alcohol and hemp, and as far as I can tell, on beauty and sensuality. As much as I tried, I could never totally fold myself into the 8 Fold Path, with that daunting first fold of Right Thought. I cherished too much my own form of ignorance, that glorious numbness that I worked so hard to achieve with my drinking, the temporary absence of pain.

But you don't have to be a drinker to suffer a crisis of confidence in the classroom. After Buddha had attained his enlightenment, sitting under the Bodhi Tree, having survived the multitude of temptations of Mara, which as far as I could tell never included a glass of Vodka mixed with some freshly squeezed fruit like the orange, or perhaps the more delicate mango, he was exhorted by the gods to teach. Imagine such a thing, to have a chorus of gods singing in your ear that you must teach, while all I had was a Snooze Alarm that crooned aubergine music in my ear, lulling me back to sleep. There is no equity in life, that I should be stuck with WFUV, while Buddha had Indra and Vishnu and their Vedic cohorts urging him to arise and teach, a god damned cadre of gods at his bedside, poking him in the ribs to get up and turn the Wheel of the Dharma, to dress and put on the chalk board the elements of burglary.

Criminal law—was it a quirk of fate that I was assigned to teach the darker side of humanity? I particularly loved to cover murder, having always had a secret fondness for the idea of extinguishing another. I used murder paradigmatically, as an example of the various elements of any crime, the *actus reus*, the requisite level of *mens rea*, the causal link between my desire and her demise. It was always a woman who was the victim in my fantasy. Not my wife, of course. She is too dogged in her pursuit of my improvement, or my edification—death wouldn't slow her down. She would still be correcting my grammar from the grave, buying me khaki pants and knitted shirts with cavorting reptiles on them, harping on me to pay our bills on time so as not to risk the hell of late payment fees—oh, those pennies drained off to the utility company and AT&T that would have made us rich beyond her wildest dreams.

No, my wife would haunt me after death, not making the crime of murder worthwhile, but some other victim, some other woman would suit, perhaps that new young woman who teaches trusts and estates, Eve Thomas, who cranks out deadly little articles on testamentary intent at a fantastic rate, and who wears jaunty red scarves around her neck like Mary Tyler Moore. Or maybe one of those young women in the

front row, with white pearls imbedded in her skull for teeth and a gold chain around her neck. Too tight perhaps, that circle of gold pressing against her taut flesh, grown plump from too many cases to brief, too many courses to outline, too little exercise. I knew better than to reveal her identity in my hypothetical, having been properly indoctrinated to mask the gender of both perpetrator and victim. Person X puts a knife into Person Y. No round pink neck, no lips slightly parted, no red scarves, no tip-off that the arrows drawn across the board—an arc of dusty chalk on smooth blue slate—eliminated a feminine entity.

I can't possibly transmit the Dharma, Buddha told the gods. I'm not up to the task. I need a master, a guru, to help me find my way. Too bad, the gods replied, the Dharma is your master these days. That's what happens when you get a promotion, when you move up the spiritual ladder, when the title on your office door changes from Bodhisattva to Buddha. You've become a teacher of teachers, with no guru to light your path. You've turned into one of the three refuges: the Buddha, the Dharma, and the Sangha. (It must be a lonely state, to have only two of the three refuges at your disposal because you constitute a refuge yourself.) Anyhow, Buddha got talked into teaching by the gods, and then experienced what I consider to be a classic teaching dilemma: who to teach the Dharma to? Where should he pitch the lecture—to what level of spiritual capacity?

Then Buddha had a vision of a lotus pond. A small number of flowers were already out of the water, standing tall in full bloom, soaking up the sun. An equally small number of plants were so stunted, they were far beneath the surface of the water, the darkness of their submersion insuring their absolute failure to ever bloom. But the rest, and there were many of those, their buds were close to the surface; they were straining towards the light. With a little instruction, encouragement, and growth, those lotus flowers would bloom. Those are the lotus flowers I will teach to, Buddha concluded. The ones in full bloom do not need me, and the ones buried deep in the water cannot hear me—but the multitude of the almost blooming, those ready to emerge into the air, with tumescent buds—those will be the souls that I will teach to.

I found myself in a similar situation. The same thing used to happen to me all the time. There would be a handful of students in the class who were really sharp, and then a handful of students who had corrugated cardboard for brains—God knows how they got through college—and then there was a large range of middling to more middling. The former didn't need me at all; they could have taught the course. The really slow ones couldn't take advantage of my teaching because they didn't understand a thing I said, no matter how deliberately I laid out

the doctrine, no matter how elemental I made the constituent parts of a crime, no matter how astutely I used handouts and visual aids. They just sat there in their seats with bovine expressions on their faces, sometimes chewing a complimentary cud, staring at me as if I were from another planet, which indeed as far as they were concerned, I might have been.

Where should I pitch the lecture—to what level of intellectual capacity? I could not teach to the really smart ones because I would have left 95% per cent of the class behind. Under any utilitarian analysis, I could not be maximizing the utility of the greatest number if only a few minds in the room had the vaguest idea what I was talking about, regardless of how challenged those few might have been.. But neither could I teach to the really slow: we would all slip into catatonia if I had to maintain a level of pedagogy tailor-made for the Holstein, the Angus, and the Brown Guernsey. And so I pitched the lecture to the middling to more middling, on the theory that there were more of them, and that they were in the best position to avail themselves of my teaching skills. Like Buddha, I had work to do, particularly with the industrious mediocre ones—those who make up the bulk of the legal profession, those who are not burdened by any imagination to inform them of how boring their work might be.

Mr. Winthrop was one of the really smart ones. In class, he was so undistinguished and indistinguishable at first, that except for his outstanding performance on the midterm, I would never have known he was in the room. This often happened with anonymous grading, that some student whose very existence I was oblivious to would end up with the highest grade in the course. Sometimes it was a man, sometimes a woman, but almost always the highest grade went to someone in the fifth row who was very quiet—diminutive, mouse like. Not so with Mr. Winthrop. When I finally located him on the seating chart after the midterm, he was in the fifth row, but turned out to be big and blonde and beefy, almost steroidal, as if he been huffing and puffing over machines at the gym for hours each day instead of studying law.

Mr. Winthrop's bloneness and muscles were deceiving, however. Underneath his baseball cap which he wore pulled down over his forehead, was a pair of sharp, dark brown rodent eyes, penetrating, all-seeing. After the midterm, which he had aced, he sat in class with his arms folded, staring at me with discernment, disdain. Having done well in the class with probably no effort, he mocked me by not taking a single note. He didn't even bring a notebook or pen with him to class, as if certain I would utter nothing worthy of writing down, and he could commit himself at the outset to empty hands, and an empty desk. If I

made a joke in class, he would never laugh, but then every once in awhile, particularly when I knew that I was faltering, repeating myself, stumbling over an idea or a sentence, Mr. Winthrop would give a knowing, diabolic smirk. He knows, I thought to myself, Mr. Winthrop knows that I am drunk.

That semester I began to have a series of teacher nightmares, something that had not happened to me for years, not since my first year of teaching when I was in a perpetual state of dread. I would be rushing to get to class on time, trying to gather up notes from a maelstrom of papers on my desk, not certain what subject we were covering today, indeed not even certain what course I was teaching. My heart was pounding. I was late. I could not find my notes. A hundred people were waiting for me in the classroom, their pens poised to take down my every syllable, and I had nothing to say. Then Mr. Winthrop's big blonde face with those dark eyes would loom at the door of my office, and with that mocking grin, he would say, "Professor, the class is waiting for you," and I would faint dead away onto the floor. Or sometimes in my dream I would make it to the podium, start to lecture on some aspect of criminal law, *mens rea* or causation, the link between the *actus reus* and the harm, only to have Mr. Winthrop raise his hand, and without even waiting to be called upon, presumably ask a question. Presumably because I could not make out his words. I could see his mouth moving underneath his baseball cap, and muffled sounds resounded in my ears, but I could not understand him. All eyes in the classroom were on me, and my students began to laugh. Some would get up and leave, but not Mr. Winthrop. He continued to move his mouth, and I felt as if I was watching TV with the sound off except that my head was all a buzz with the laughter and the shuffling of feet as my students exited in disgust. Again, I ended the nightmare by fainting dead away onto the floor, pulling the podium down on top of me, and then I would wake up, my sheets damp from desperation. It was enough to make a man get out of bed and mix a drink at four in the morning, even if he had the eight o'clock class.

Mr. Winthrop aside, I truly believed that to the objective outsider, my state of inebriation in the classroom was undetectable. I had a great set of notes for criminal law, developed over many semesters of teaching, with complex hypotheticals, and notations on the margins about where to look in the text for relevant parts of cases. I reviewed those notes before class without fail, for at least five minutes. I was prepared. My only minor problem was a chronic inclination to lose my place. Any distraction, any question not quite on point, might make me skip a groove, and depending on which way the needle fell, either go

backwards in time, repeating verbatim an entire paragraph of already lectured upon lecture notes, or leap forwards, leaving out some critical link in my concatenation of thoughts on the criminal law. My metaphor dates me, of course. Records and phonographs have been replaced by CDs, and no one understands anymore what it means to skip a groove, or to sound like a broken record. But I knew what it meant. And so did Mr. Winthrop, even if his youth robbed him of any frame of reference to understand the metaphor's implicit analogy.

I still miss my drinking terribly. Getting sober was like losing a dear friend. My friends and family all focused on the virtues of sobriety: safety behind the wheel, punctuality at work, my ability to board and ride a single train of thought to its predictable destination. But most of the virtues of sobriety are experienced by someone other than the person who is trying to sober up. It makes everyone else happy that you are no longer drunk, but for the first person singular in the paragraph that starts, Hello, my name is X and I am an alcoholic, there isn't much to celebrate. I truly loved drinking, and more to the point, I truly loved being drunk. It was a much better reality that revealed itself to me through the bottom of a glass—we still had those blue hand-blown glasses from Mexico, and looking through them was like sinking to the bottom of a cool, calm, aquamarine sea.

But there was a part of me that recognized that I was sinking at work too, and even if Mr. Winthrop had not blown the whistle, I knew that the Dean would eventually get wind of the fact that I never turned in my grades on time, or that I had not published anything for three years, or that for two semesters in a row, I had not called a single meeting of the Curriculum Committee, or that my office in the law school stood dark, silent, uninhabited. On the home front, I did not need to take the initiative of self-reflection. My wife monitored my decline, reported on it regularly, and one day, she announced with breathtaking sincerity that she would leave me if I did not stop drinking. We weren't getting along that well then, and it was a tempting offer. But I chose to stay—in my marriage, in my job, in my life, which meant I had to give up drinking, and I did. Even though I still miss it terribly.

When he called me in (prompted by Mr. Winthrop's complaint, I can only assume), I had to come clean with the Dean, and then later with my colleagues. At first I thought it would be embarrassing to confess to my associates in the academy that I was trying to get sober, but much to my surprise, many had already surmised that I was an alcoholic. Most of them were sympathetic to my plight, and once I truly stopped drinking (and there were some setbacks), I began to assume the persona of the reclaimed soul. The role of the reclaimed soul was perfect for me

to play—it involved a bit of pathos, some disarming honesty, and then there was my specialty, those glimmers of courage I revealed from time to time that evidenced my inner strength, my innate nobility of character. I grew my hair long, too, just to fit the role. There seemed something off about being a reclaimed soul with a buzz cut. Locks were needed, to rake my hands through in an occasional gesture of controlled despair.

If you are smart about it, and there is no reason not to be, you can assume the role of the reclaimed soul and have it work to your advantage. It got me into administration. One year I was a burned out alcoholic teacher of criminal law, and the next I was the Dean of Students. Not that Dean of Students was a particularly prestigious administrative position. It is low on the totem pole in our law school, as it is in most schools, evidenced by the fact that the position is often filled by a woman. But it is still decanal. I would have loved to hear the deliberations that went into placing me into that position: What if he starts drinking again? We can't have him harming a whole classroom of students. Let's put him in a cubbyhole in the student services wing where he can only harm one student at a time. He'll be good at the things they do there: granting extensions on papers, rescheduling exams, and counseling the weak and the wounded. He ought to be really good at the latter; he's weak and wounded himself. That bout with alcohol ought to make him a sympathetic listener, which will relieve the Dean and Associate Dean of having to be sympathetic listeners. And he is so ineffective—after all, the smooth operation of the institution relies on the ineffectiveness of the Dean of Students. If he had any power, or got anything done, then student concerns might actually come to someone's attention and have to be dealt with. This is a man who does not understand the meaning of cc. He's perfect for the job.

There's been a question that has haunted me ever since: does anyone ever go into administration willingly? Isn't there always a hidden history of coercion or vulnerability on every law school administrator's CV? Aren't Deans, and Vice-Deans, and Associate Deans, and Assistant Deans always drafted initially? There is a vacuum of leadership and someone has to fill it; someone is on sabbatical or fell sick; couldn't you do the schedule just this once, until the rightful possessor of the title returns? Mr. Winthrop is right, you're not feeling up to teaching right now, so won't you make another kind of contribution, just for a little while? Once in administration, of course, there may be an element of choice, although rarely is it perceived that way. Has anyone ever experienced an epiphanic moment in which the sentence, "I want to be the Dean of Students" is uttered in rapturous tones? No,

someone puts you into the administrative position, and once ensconced, administrators stay there, by and large through the irresistible force of inertia. It is easier to remain than to find somewhere else to go.

And it's not like there aren't some benefits to administration. Some relish power—those who schedule, those who buy things, those who allocate scarce resources, computers, research assistants, office space, those who decide who comes into the school and who goes out—these are genuine powers to exercise, even if there isn't any genuine money to make. There is also the benefit of having a year long job, somewhere to go when you put your shoes on, not eight but twelve months of the year. The long summer is only attractive to vertebrates, the inner driven, the disciplined. For those of us lacking a spinal column, the end of April brings a particular kind of dread; the months of May, June, July and August are filled with empty, shapeless, unaccountable days, days spent in the air-conditioning, at home in the dark, with no where to go, nothing to do, no one to do it with. It is particularly difficult if you cannot drink. I minded the summers less when I drank more. As Dean of Students I never have to worry. Even if the students are on vacation, my office is there, my desk and my chair, my administrative assistant, Jan, and they give me a place to aim towards when I stagger out into the sun.

Mr. Winthrop and I rarely saw each other after that semester, except occasionally in the halls, or in the cafeteria. He went on to get the highest grade in my class and in many others as well. As often happens between the first and second year, he underwent a metamorphosis, removing his baseball cap after a stint as a summer associate in a prestigious law firm, and changing his wardrobe to casual elite. When I read in the school newspaper that he had been appointed the Editor-in-Chief of the Law Review in his third year, I was not surprised. But our paths did not cross often—I don't really have much to do with the Law Review crowd—which was just as well. I was still feeling sore about his going to the Dean about my drinking.

I am positive it was he. How else could I have been have found out? Plus there was an aura of triumph in Mr. Winthrop's behavior whenever he saw me in the halls. Both of us were always caught unawares by the encounter, and I, unfailingly, would first avert my eyes, and then steal a glance, and there he was, in all of his blondness, more closely cropped now, his muscles more contained, more sleek, less working class in their bulginess, presumably in preparation for his entrée into the corporate sector. There was no reciprocal reticence on Mr. Winthrop's part when we met, however. He never said hello, but would stare right at me, tilting his chin in a cocky fashion, and give me a look that was at

the same time mocking and disdainful, a look of someone who once thought I was a worthy opponent, but then had found out how easy I was to bring down. Ah hah, he must have been saying to himself, I made sure you would never walk into a classroom again, you drunken sot. And I wanted to look at that smirking face in defiance, to show him that I didn't care, that I was happy in administration, that if he thought he had the power to destroy me, he was wrong. I wanted him to see that now the tables were turned. Before he had hidden information about me, and now I, the reclaimed soul, had hidden information about him. I knew that behind that All-American blonde, muscle-bound facade, the Editor-in-Chief of the Law Review was a rat.

And then suddenly, in the very end of his third year, Mr. Winthrop needed something from me, the Dean of Students: a rescheduling of a final exam. As anyone who has ever tried his or her hand at the academic schedule, the poisonous icing on the cake is in the spacing of final exams. They must not overlap, and for first year students whose curriculum is set for them, they must be evenly paced. For second and third year students, however, it is impossible to plan for every exam schedule permutation, since each student has chosen his own courses, and each has his own peculiar constellation of finals to take. Everyone recognizes that taking an exam saps energy, and needs to be recuperated from, and so the law school has a rule that an exam will be automatically rescheduled if it falls on the same day as another final. Those exam change requests are handled by my administrative assistant, Jan. I do not have any discretion to exercise in those instances. But I do have discretion to exercise when a student has a series of exams all clumped together on different days, such as a Commercial Paper exam on Monday, Evidence on Tuesday, and Professional Responsibility on Wednesday. While there is no rule to automatically rescue a student in such a bind—and indeed it was the bind that Mr. Winthrop found himself in at the end of his last semester—the Dean of Students was vested with the power to reschedule at least one of those exams.

I saw Mr. Winthrop waiting outside my office one morning in April, and I knew something was amiss. The Dean of Students does not often get a formal visit from the Editor-in-Chief of the Law Review. The specialties of our office are the weak and the wounded, not those who are riding on a foamy wave of success—not those who are a tenth of a decimal point off from being valedictorian of their class. This latter bit of information I knew from eavesdropping on a casual conversation with the Registrar, who took delight each year in watching the final grades roll in to see which of two or three hungry sharks would be giving the

vaedictory address at graduation. It's a close race between Winthrop and Feld this year, he had said to someone else over coffee in the faculty lounge. Winthrop's got a 3.896 and Feld's got a 3.830. If Winthrop can pull off all As this semester, and Feld drops the ball at all—and he might, he's got Thomas for T and E (beneath those red scarves was a ruthless grader)—then it's Winthrop who'll speak at graduation this year.

And I suppose it is an honor for a hungry shark to contemplate, standing before your law school class and all their friends and family, a sea of corsages and mortar boards, singled out from hundreds of other smart people as the smartest of all, and given a platform from which to utter platitudes about the newly minted lawyer's responsibility to the legal profession, to the community, to the universe, words spoken almost always from the mouth of a young man who is about to enter the ranks of a major law firm, destined to make more money his first year out than his professors, and programmed to turn his back on the community and the universe, all in the name of meeting his responsibilities to the legal profession. It must be a heady occasion for the likes of Winthrop and Feld, both young men who thrived on eating others, and here they were, neck and neck, fin to fin, competing for the official title of the best fish in the law school. A lot was at stake.

I nodded at Mr. Winthrop as I entered into my inner sanctum, and buzzed for Jan. What's he doing here, I asked, and she replied that he needed a final exam rescheduled. He had Commercial Paper on Monday, Evidence on Tuesday and Professional Responsibility on Wednesday. He wants to know if we could reschedule Evidence for Friday so that they would be more evenly spread out. Seems like a reasonable request, she said over her shoulder as she left the room. Ah hah, I thought to myself, she's fallen for those muscles and that blonde hair. She can't see him for what he is, a rat. This is a failing of Jan's: she is a sucker for good looks and power. Actually, I find that to be a trait of most women; they're in love with the external, the superficial, and can't see inside to the rotten core. And I knew his core was rotten. This was a man who took delight in telling on others, in getting them in trouble. This was a man who liked to bring his opponent down, to squash him on the court, like a common cockroach. This was a man who then liked to gloat about his victory, who relished his role in the demise of the weak and wounded. I knew this man.

And oh, he was so polite when he came in to see me. Hello, Professor, do you remember me from Crim Law? And I replied, oh, yes, of course I remember you well. I really liked that class, he said, lying through his rows of shark teeth. Not that I want to be a criminal or

anything. He laughed nervously at his effort to make a joke, and I did not smile. Now what can I do for you? This time I looked him squarely in the eye. I was in my fortress, behind my desk, which is big, and oak, and he had no baseball hat to hide under. Well, he said, I didn't really notice when I registered last semester that I had three big finals in a row, Commercial Paper, Evidence, and Professional Responsibility. I was wondering if I could have Evidence put off until Friday, just to evenly spread them out. (He's been prepped by Jan. I wish she wouldn't do that.) What's your GPA, I ask. He tells me, and it is accurate down to the hundredth point. I'm hoping to be valedictorian, he throws in gratis, as if that might help sway me in my decision-making. And it did.

The Dalai Lama writes a lot about how he loves the Chinese—how the lowest of the low, the eater of babies, might have once been his mother in a former life, and must therefore be treated with compassion. When I was drunk, I tried being a Buddhist for awhile, and even though my habits conflicted with the prescribed lifestyle, some of the theories worked for me. I liked the idea of detachment, and still do, and of coming back again—of being blotted out by death, of cruising through the Bardo, then of donning some other skin, fresh and new, ready to start again. I had been raised an Episcopalian, and was daunted by the notion that I only had one time around to get things right, to charter my course into eternity. Reincarnation is particularly appealing when your one time around isn't going so well; you know there will be another bite at the apple, and that if you continue to screw things up, you'll never get to the core. But oddly enough, when I got sober, the Buddhism began to wear off. I found myself drifting away from the ocean of karma, and back onto the shore of just deserts and retribution. An eye for an eye seemed much more attractive theory of punishment than the Dalai Lama's warm embrace of his enemy. At graduation, Mr. Feld spoke movingly about the role of the lawyer in the contemporary world of today that we live in now. Mr. Winthrop got an honorable mention.

