

## Boston College Law School

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1994

# Introduction. American Association of Law Schools Symposium: Bringing Values and Perspectives Back into the Law School Classroom: Practical Ideas for Teachers

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# AMERICAN ASSOCIATION OF LAW SCHOOLS SYMPOSIUM: BRINGING VALUES AND PERSPECTIVES BACK INTO THE LAW SCHOOL CLASSROOM: PRACTICAL IDEAS FOR TEACHERS\*

## Introduction

CATHARINE PIERCE WELLS\*\*

The following papers were given in 1994 at a panel sponsored by the Teaching Methods Section at the annual meeting of the Association of American Law Schools (AALS). The papers are loosely organized around two particular claims. The first claim is that law school has a substantial socializing effect on the students who attend. The second claim is that it is desirable for law school teachers to adopt practical strategies for countering this effect and for challenging prevailing law school values. Both of these claims are controversial. For example, there are some who suggest that law school is (and should be) a kind of glorified trade school. They argue that law schools provide a neutral set of skills that are independent of any ideological orientation and useful for a wide range of political objectives. Similarly, there are some who are distrustful of any attempt to influence—or as they might put it “brainwash”—students with respect to personal or political values. While the contributors to this symposium have a wide range of teaching styles and objectives, they are united in opposing the neutral skills model and in their commitment to the practical aspects of “teaching values.”

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\* Symposium presented at the Teaching Methods Section of the American Association of Law Schools Annual Meeting (January 9, 1994, Orlando, Fla.).

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I have placed the term "teaching values" in scare quotes because it is a somewhat old-fashioned way of referring to the fact that teaching does more than transmit information. It also influences their personal values, political commitments and sometimes, fundamental self-conceptions. Robert Granfield is a sociologist who has studied this process as it applies to Harvard Law School. His book<sup>1</sup> describes and documents the changes that occur in the normative attitudes of these students. The centerpiece of this change is the development of what he calls legal consciousness:

During law school, most of these students internalized a perspective of detached cynicism. While many found the cynicism initially disturbing, most adjusted to this legal consciousness by assigning value to it. [One student] commented on her own emerging legal consciousness in the following way: "Since I have been here I've realized that law doesn't achieve much. I have realized what it does achieve and that it can't achieve a whole lot more. . . . I've become really cynical. It's all a game. I'm not sure what's right or wrong anymore. I guess that I'm just understanding things more than I did before." . . . Ironically, she had equated legal thinking with an inability to distinguish right from wrong, or justice from injustice. She had come to associate cynicism with intellectual development and sophistication. . . . That law school training had "triumphed" is evident in the words she used to bemoan her current state. . . . The ability to see the world with a cynical, legal consciousness constitutes a type of cultural capital that aspiring lawyers acquire while in law school. The ability to depersonalize legal issues and be cynically detached from questions of justice is the hallmark of legal consciousness.<sup>2</sup>

In short, many students respond to legal education by becoming cynical players who are ready to leave their homegrown values behind in the service of a "hired gun" form of professionalism. This aspect of legal education obviously has many consequences for these students, for the legal profession, and for the communities where they eventually practice law.

One consequence is the remarkably narrow framework that legal consciousness gives for thinking about questions of difference and perspective. By definition, legal consciousness depersonalizes legal

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1. ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND* (1992).

2. Robert Granfield, *Constructing Professional Boundaries in Law School: Reactions of Students and Implications for Teachers*, 4 *SO. CAL. REV. L. & WOMEN'S STUD.* 53, 68-69 (1994).

problems and provides a purportedly detached standpoint for legal analysis. Built into this standpoint are certain background assumptions about the attributes of rational actors. Are rational actors black or white? Male or female? Gay or straight? Consider, for example, as Kimberlé Crenshaw does, a discussion of the “reasonableness of an Immigration and Naturalization Service agent’s detention of a car containing Latino passengers.”<sup>3</sup> Crenshaw argues that the expectation of detachment creates a particular tension for the Latina student—the possibility that she, herself, could be in such a situation “places her in the awkward position of considering whether from the perspective of the agent, it would be reasonable to detain herself and a car of her friends as suspected undocumented workers.”<sup>4</sup> Thus, legal consciousness poses special problems for people of color. Too often, class discussions assume a white perspective and when this unstated assumption is combined with the equally unstated assumption of perspectivelessness, it does much to reinforce societal patterns of racial subordination.

Legal consciousness, with its characteristic cynicism, elitism, depersonalization and purported perspectivelessness, creates a serious set of dilemmas for a law teacher who is committed to opposing these aspects of legal culture. Stephanie Wildman sums it up nicely:

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 subservient positions to corporate America. But as long as making money is the dominant cultural value, these positions are not perceived as subservient.<sup>5</sup>

The problem is that students do not absorb legal consciousness from the things we say but rather from the things we do. No matter what we say, legal consciousness receives constant reinforcement from the way we run our classes, from our complicity in the legal enterprise and from our unembarrassed enjoyment of our own positions of material privilege. Thus, unless we deal with these aspects of our pedagogy, we

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3. Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 5 (1989), reprinted in 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 38 (1994).

4. *Id.* at 38-39.

5. Stephanie M. Wildman, *AALS Section on Teaching Methods: Bringing Values and Perspectives Back Into the Law School Classroom*, 4 S. CAL. REV. L. & WOMEN'S STUD. 89, 93 (1994) (citation omitted).

end up supporting legal consciousness despite the fact that our verbal messages are very much to the contrary.

All of the contributors to this symposium have made practical suggestions for opposing the cynicism and perspectivelessness of legal consciousness. Duncan Kennedy and Fran Ansley also develop some political alternatives. Kennedy suggests a confrontational model—a model that is well known from his essay “Legal Education as Training for Hierarchy.”<sup>6</sup> This approach assumes that students are best served by an educational process that moves them along the political spectrum from right to left and further that this movement among law students will contribute to progressive changes in society. Thus, Kennedy outlines a strategy for politicizing the classroom:

What I'm proposing is to attack the problem of the perspectivelessness or the apparent neutrality or the abstraction of legal studies by making the classroom into a place where students learn doctrine and legal argument in the process of defining themselves as political actors in their professional lives. This isn't *necessarily* left wing, in the sense of left wing under any and all circumstances. But in the actual context of American politics over the last twenty years or so, I think it's actually and practically left wing. The reason being that the denial of the politics of professional life is—I admit I'm speculating—a very important part of the centrist ideology that liberals use to evade their own inner impulse toward activism.<sup>7</sup>

Thus, Kennedy proposes to politicize the classroom in a way that will specifically make conservative students less confident, liberal students more radical and radical students more resolute.<sup>8</sup>

Frances Ansley offers a somewhat different approach. Where Kennedy's strategy is aimed at moving students specifically to the left, Ansley pursues her commitment to progressive social change by working in the “folk school” tradition exemplified by the Highlander Research and Education Center. Although she quotes extensively from Paulo Freire and from Myles Horton, the Center's founder, I think that the best statement of this philosophy is her own:

I believe that the premise of starting with the students' own experiences and building from there is a powerful concept. I hope

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6. Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 38 (David Kairys ed., rev. ed. 1990).

7. Duncan Kennedy, *Politicizing the Classroom*, 4 *S. CAL. REV. L. & WOMEN'S STUD.* 81, 87-88 (1995).

8. *See id.* at 87.

to support (and pressure) students to stretch to new locations, but not at the cost of breaking their connections to their own story line, their own integrity. Such an extension should not produce an unreadable rupture between the educational stretch and a student's previous life experience.

I want to remember always that the outcome I most desire is a person still linked to her beginnings and able to integrate with her law schooling the different experiences and wisdom she has acquired in the various times and parts of her life. I hope that my students will be able to appropriate the new ideas and experiences that I, their fellow students and the course materials, have helped to provide. I anticipate that they will then be able to wield their new knowledge in new settings for their ends.<sup>9</sup>

It is important to note that this approach entails some compromise. The prior experience of many students constructs a fairly conservative world view. Maintaining a connection with their background and experiences may entail the avoidance of certain kinds of political confrontation. In short, Ansley's suggestion requires an underlying faith that students who feel a sense of empowerment and responsibility with respect to their own world view will be better promoters of progressive social change than those whose ideology is "correct" but disconnected from what is most real in their backgrounds and experience.

The difference in teaching objectives between Kennedy and Ansley poses a fundamental dilemma for those of us who are committed to progressive social change.<sup>10</sup> The dilemma is both ideological—Does student-centered teaching breed unjustifiable complacency? (Do reformist practices always breed false consciousness?)—and practical—Which method of teaching produces better results? (Under what circumstances? And what do we mean by "better?") This conflict does not have one answer for all times and places. It is a conflict that must be squarely faced in each new context—a dilemma that is always with us. My own view is this: social change is difficult. It requires large amounts of patience, commitment, clarity, persistence and passion. These qualities come from a deep and authentic place within us. They are released when we are touched or moved in that

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9. Frances Ansley, *Starting With the Students: Lessons From Popular Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 7, 14-15 (1994) (citation omitted).

10. A dilemma that troubled me greatly when I first wrote about teaching. See Catharine W. Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155, 163-64 (1988) (now Catharine Pierce Wells).

place. Ideology—even correct ideology—does not release them in sufficient quantity. Therefore, my first priority in the classroom has to be respect for each student's own sense of virtue and power.

I believe that who we are and what we care about is inextricably intertwined with where we come from, what we know and how we are educated. As a teacher, I am frequently disturbed by the extent to which the experience of legal education is disheartening and disempowering to my students. I am not cynical. I have my own deep commitment to progressive social change. I believe that people—all people—even educated, professional people—can lead lives that are socially useful and personally fulfilling. But, all too often, my students lose these exact same beliefs while acquiring an education at the law school where I teach. This saddens me and provides me with renewed motivation to struggle with these issues.