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THOUGHTS ON TEACHING

Christina B. Whitman*

I teach in classrooms where, ten years ago, I sat as a student. People who were my teachers are now my colleagues. People who were my students are still my friends. The difference between teacher and student, it seems to me, is more appropriately described as progression through a life than as distinct positions in a hierarchy.

I cannot take quite seriously the view that there is some difference in kind between the person standing in front of the class and the person sitting in the seat, and I try to deliberately challenge that view when I am the person in front of the class. I let the students know what it feels like to be standing there on a particular day. I react to their reactions, refusing to participate in the illusion that there is a one-way mirror between us, a mirror that disappears only when they raise their hands. I let them know that I am aware that they too have a life outside the classroom; I know that one used to be a newspaper reporter, that another worked on a DES case as a paralegal, that the two students in heated disagreement are close friends.

It is heady and exciting to orchestrate the voices of a large class, but my most effective and rewarding classroom has been my living room, in evening seminars where the line between personal and academic life is blurred. In the more traditional classroom I aspire to create some of the feeling that emerges in the seminars. The best time of the term comes for me when the class has become familiar, when we have a history and our private jokes. That feeling doesn't come about in every class, but it happens often enough.

Teaching, when it works this way, is a pleasure, but my goal is not only pleasure. I am also responding, by being one model of their future, to my students' desire to assume the mask they think suitable for professional life. Many students do not want to take risks. They want to look sound, serious, safe—to impress each other, to reassure future clients and potential employers. Most law students are deliberately slipping out of their past into

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a new sense of themselves. Though they may see their own particular future only dimly, they believe that they are making choices that will determine the direction of their lives in a way that nothing has before. For some, even the decision to come to law school represents a sharp break with their past. Often they expect that the transition will be easy, that the rules will be clear and personal progress predictable once they assume the trappings of the new role. By showing them that I know that they are there as individuals I am refusing to accept the smooth surface of their new mask.

I do not intend to dismiss the desire to be safe and sound, but I do hope to create a self-consciousness about that urge. Students correctly understand that they will be asked to assume professional roles, that they will want to impress, persuade, and inspire confidence. I would like them to see that coming to terms with these demands need not lead to cynicism or complacency. Professional existence, even the role-playing, is not only game and technique. It is one more way of struggling with the old, hard problems of being human. Standing before them as a teacher I am a person playing a role, but the role is more than a game for me. Teaching is only part of my life, but a part I both enjoy and take quite seriously, and the struggles are still going on.

To stress the continuity between being a student and being a teacher, then, is not simply a way to question the rigidity of professional status distinctions. Nor need it call into question the teacher's authority and ability to guide. What it should do is lead the students to take our shared work as seriously as I do, to see themselves too as people who can understand and articulate and who therefore exercise power. Students see quite easily that a professor is a person with power, at least with power over students. It is often harder for students to realize that professors see students as people who will have a similar, or greater, power in just a year or two. In fact, we give students inconsistent messages: at times law students are treated by the faculty as if they were just emerging from adolescence, and at other times they are treated as if they were already professionals responsible for other people's lives. Missing a deadline, for instance, may be unimportant, simply a personal educational decision, or it may be very important, an indication of how seriously the student will take her obligations to her clients.

I hope to communicate that students are correct to perceive lawyers as people who assume certain roles, and also that the truth of that perception does not mean that the job that lawyers

do, or the power that they have, is illusory or trivial. The quality of a lawyer's life, though role-bound, is not necessarily thin. These are easier points to make in courses that deal with subjects in which the moral and political contributions of lawyers are well-publicized, courses such as Constitutional Law, Federal Courts, and Civil Rights. It has become more important to me to make these points in the less glamorous context of the first year course of Torts, where the role of lawyer is less overtly "in the public interest."

Torts can be a vehicle for teaching legal process or introducing students to the common law, and these are wonderful fun to teach and learn. Torts is also about people in pain. In the classroom I place the pain at a distance through humor that can be a bit macabre. I talk explicitly about the need to disassociate one's self from the pain—and how that might be done, both consciously and unconsciously, by the lawyers, judges, juries, insurance adjusters, and doctors who "process" the problems of people who are injured. A theme of the class is that legal language creates distance. Distance can narrow vision or conceal dishonesty, but it might also be psychologically necessary.

I have been discussing my responsibilities to my students. Torts raises explicitly the problem of our responsibility for each other. Because tort disputes concern conduct that injures others, the cases directly address the question of the sort of consideration we may fairly expect from each other, the care that must be taken for the well-being of friends and strangers. The moral theme of torts is that we should pay attention to each other. The debates among different tort theorists are over the degree of attention that ought to be paid, or the ways in which we can tell that attention has not been paid. An underlying question in every case is whether our responsibilities to each other require us to respond to every distress or only to those calamities caused in certain specified ways. These questions move easily into those raised by the obligation to be attentive to clients. One of my aspirations as a teacher is to demonstrate, by paying attention to my students and by making it clear that I do so out of a sense of moral and professional responsibility, how that responsibility can be fulfilled.

There is an intellectual counterpart to this moral and professional obligation: the requirement that the student make an honest effort to understand each position in a dispute, that she make the best case for each argument or for each style of argument. This is the stuff of traditional legal education, but done affirmatively and sympathetically rather than negatively and

critically. Forced to make the best case, a student is drawn to question her own habits of perception and belief and to ask whether her own easy categorizations are too facile methods of coping with uncertainty and pain. In thinking about an injury, for example, it is comforting to define a victim and a wrongdoer. It is unsettling to be required to make a case for the apparent wrongdoer, or to be asked whether there is something left out of the law's description that makes them both wrongdoers, or both victims.

Like most torts teachers, I structure my course around the various theories of liability—intent, negligence, strict liability, pure compensation, no recovery. In reading particular cases or essays, I ask the class to think about what assumptions each theory implies, what psychological sustenance it gives, how it offends, why it attracts. I repeatedly ask that the students focus on the structure of particular arguments and that they begin by reading sympathetically. I call attention to the choices that have led to the text before us—the litigant's choice to seek an attorney, the attorney's choice to go to court or to a certain court or to make a particular claim, the judge's choice to describe the conflict in the way she has or to reach the decision she has reached, the students' choice to read with certain assumptions, my choice to teach as I teach. I stress that there are choices of perception and description as well as of judgment and action. Over the course of the term a series of questions, asked of every text and argument, emerges. These questions focus on the way in which the text or argument has been constructed: Why does this come first? Why were these words chosen? Why is this question worth asking? Why does this seem more convincing and this less? Because I like to ask these questions, I prefer casebooks and texts, as well as opinions, that openly reveal the author's voice. I expect the students to learn to read with an ear for prejudice and position—not only to attack, though that is part of it, but also, and primarily, to understand.

As a law professor I inevitably deal with material of varying quality and only rarely with works of obvious genius. Because I enjoy appreciation, I sometimes envy those who teach *Ulysses* or Vermeer. But the variation in quality has a positive side: it makes it easier to convince students that they can create and critique legal works. This material can be mastered. It expresses attitudes, and makes mistakes, that students should be able to understand. Most importantly, the material of law cannot be regarded as a finished system which has achieved perfection and can be known whole.

I encourage my students to be critical, as well as empathetic, but I am not willing to allow them to criticize either themselves or the law for failing to be perfect. Law appeals to the desire for coherence and consistency, a desire that grows out of the very human need for stability as well as the less personal requirements of rationality and justice. Much of the language of law seems to promise that coherence has been achieved. Yet, by assuming that something can be said for each side, law opens the way for ambiguity and the awareness of complexity. Some answers to questions are better than others, and some resolutions of conflict are more correct than others. But most efforts to describe what has happened or what should happen are inadequate. The appellate opinion in a case, which is often all a student sees, may be a conclusion of a sort; but it is often unsatisfactory, and it is not always the fault of the opinion writer that it is unsatisfactory. Frictions and false steps are unavoidable. Pretensions to certainty are easy to attack. The absence of perfection does not mean that the process is a farce, but is instead a consequence of the fact that the answers are complex. The law is both one more monument to the futility of our assumption that we can know each other and an indication that even those who most realize that this is true have not stopped trying.

I introduce a considerable amount of economics in the torts course, in part because it dramatizes the difficulty of understanding complex behavior and the naivete of the assumption that there is a neat connection between legal opinion and real-world result. Economics demonstrates the attractions of certainty and precise answers. Yet, through its explicit awareness of the need to describe assumptions and limit inquiry, and in the elaboration of model and counter-model for even very simple behavior, economics reveals the difficulty of attaining those answers.

There are other reasons why I attempt to slip in and out of "legal" and other ways of thinking about the problems presented in a class. I hope to demonstrate that many of these other approaches can be translated into a legal framework and introduced to a jury or a judge. But I also hope to show that many cannot—that clients have other problems, often larger problems than those that they bring to lawyers, and that lawyers see only a small part of their clients' lives.

I teach torts as a method of dealing with other people's problems. A lawyer must make these problems her own, but she must also respect the fact that these problems become her own

only in a very special sense. A good lawyer can draw attention to the way in which an experience was lived—what it felt like to be a victim, or to be someone who seems to have caused another harm. But lawyers have been less successful at, even callous to the need for, drawing attention to what it feels like to be a client. The process of argument, trial, and decision can be a drama of empathy and reconciliation for lawyers. I would like my students to ask whether it always feels that way to the litigants. I would like to impart some skepticism about legal solutions, to raise the question whether the practices that give a lawyer personal or professional satisfaction might, in some cases, simply increase the client's pain. Obviously, this is also a question that can be asked of the law school classroom. I try to take care, when I see myself in my students, that our professional satisfaction is shared.