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Marie Failing

Mitchell Hamline School of Law, marie.failing@mitchellhamline.edu

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Abstract

In the style of philosopher Emmanuel Levinas, who has written about the ethics of the Face, this essay challenges the complacency of most American law schools in response to the plight of the poor and proposes ways in which the law school curriculum, space and programs can be re-configured to bring the poor into community with legal educators and students.

Keywords

Law schools, Volunteer service, Law--Study and teaching, Totality and infinity (Essay), Emmanuel Levinas

Disciplines

Legal Education

LEVINAS, LAW SCHOOLS AND THE POOR: THEY STAND OVER US

Marie A. Failinger*

They stand over us, hospitable and destitute.¹ The height of their welcome and their need is infinite, and we are fearful.² We are accused, and justly so.³ We are hostages to their immeasurable Otherness, and that is our humanity, our reality.⁴ When we peer into these faces, we see not our own reflections but an alienage that is inalienable. Much as we try to wrest ourselves free of this demand, we cannot. Our thrashing about simply enmeshes us further in the web in which they catch us, as they demand of us a humanity that we have tried to leave behind.⁵

Philosopher Emmanuel Levinas tells us that this is reality: we are not, as we suppose, architects of a safe and livable world, not consumers of a life that we can select off a shelf. In fact, we are hostages of the Other standing over us.⁶ His immense need demands our complete surrender, our ultimate sacrifice.⁷ This is reality. It is not legal ethics, as

* Marie A. Failinger, Associate Dean, Hamline University School of Law. This paper was given at a 2008 conference at Valparaiso University School of Law.

1. See EMMANUEL LEVINAS, *TOTALITY AND INFINITY: AN ESSAY ON EXTERIORITY* 197, 199–200 (Alphonso Lingis trans., Duquesne Univ. Press 1969) (1961) [hereinafter *TOTALITY AND INFINITY*] (describing the “welcome of the face” as an ethical structure and arguing that the infinite other “from the depths of defen[s]less eyes rises firm and absolute in its nudity and destitution”).

2. *Id.* at 200 (describing the simultaneous destitution and height of the other person).

3. See Emmanuel Levinas, *Substitution*, in *BASIC PHILOSOPHICAL WRITINGS* 88 (Adriaan T. Peperzak et al. eds., 1996) (describing the accusation of the self as responsible for others and what they do) [hereinafter *Substitution*].

4. See *id.* at 91, 118 (describing the ego as a hostage for others that permits compassion for and relationship with them).

5. See, e.g., *id.* at 95 (describing “the impossibility of evading the neighbor’s call . . . the impossibility of distancing ourselves”).

6. *Id.* at 118 (describing how the self is provoked into responsibility against his will by substitution as a hostage).

7. See *TOTALITY AND INFINITY*, *supra* note 1, at 200 (describing how the Other imposes himself by the appeal of his destitution).

we claim to our students, as if they could reason out a relationship with these Others from a text, an abstraction, a rule, or an American Bar Association pronouncement. Instead, it is the reality that precedes our first moment of consciousness, our first moment of being and of reasoning, our first moment of reacting to our world.⁸

Levinas warns us how we deny this reality by assuring ourselves that we can totalize the Other.⁹ Whether we represent him or oppose him, we shrink the immense Otherness of the Indigent into a doll-like miniature within our consciousness. Or we reconstruct the complex nuance of the Face into a few lines of caricature that fits our preconceptions of who the poor must be, in order to be poor.¹⁰ In case conferences and among ourselves in law classrooms, we talk as if we might package “our” poor person into a neat white box—the good, but unfortunate woman, down on her luck, battered by others’ perfidy—so we can deliver her, gift-wrapped, shiny, and virtuous to those who would expose and defeat her: the judge and the executioner, the welfare worker, and the radio talk show host excoriating her need. We teach our students that their objective should be to use their lawyering skills to present her as presentable to those who will decide her fate. We encourage them to suppress that irrepressible roughness and brokenness, that uncooperative or passive surprise that makes fitting her into our gift-wrap very difficult indeed.

With Levinas’ reminder, we can identify our fear and our anger at our helplessness before our client’s Need. We can acknowledge how we make a circus of the relationship with the Indigent Other whose Face keeps demanding the justice that we want to give and yet deny. We can confess how we take to the trapeze of legal professionalism: how in our own minds we flip ourselves upside down so that we can believe that we look down into the face of the Other instead of up into its reproach. Heeding his prophesy, we can acknowledge how we are willing to vault into the unknown: demanding true justice for the poor, the justice that

8. Levinas describes the moment when we see ourselves and others in relationship with the Face, in which decisions about what is due each person must be made, as the “birth of thought, of consciousness, of justice, and of philosophy.” *Substitution*, *supra* note 3, at 95.

9. See TOTALITY AND INFINITY, *supra* note 1, at 198 (describing the attempt to “murder” the difference of the Other); see also Adriaan T. Peperzak, *Preface* to BASIC PHILOSOPHICAL WRITINGS, *supra* note 3, at x (describing how the ego inhabits the world by attempting to totalize it, even though the Other remains “ungraspable or incomprehensible”).

10. TOTALITY AND INFINITY, *supra* note 1, at 198.

can only come if we move well beyond the legal resolution of the case. But we impose a condition on pushing off from our platforms: we will make the attempt only if the net of respectability secures us below, only if the invisible guidewire of our peers' approval is sure to catch us before we plunge into the darkness with our clients. We can acknowledge, too, how, as lawyers, we dress up the Other in the costume we have selected for her, paint a smile on her face, or a tear, anything to make the tragedy or joy of her life seem artificial, removed and thus not demanding our whole lives.

We must confess, too, how we attempt the "murder" of so many Others¹¹ by pressing the welcome and urging of their Faces flat onto the map of the world. We can make the poor as nondemanding as those colorful countries spread thin on our table. We can rest smug in the assurance that they are not ours to worry about because their place on the map is not ours—they are not suffering or dying in the United States, not here in this state, not here in this city, and not on this street. They are not in our *chez soi*, our place at home.¹² In our anxiety to try to deny reality, we can and do try to convince ourselves that others will now be responsible, that it is only our job to take our clients "through the system," that it is only our job to teach our students how to play the lawyer game, and no more. But the Face breaks into our moment of satisfaction, the moment when we are convinced that we have alleviated our responsibility. She demands our community and our courage in the midst of her nudity, her need.

How have we as lawyers, students, and teachers of the law come to this pass? First, consider the demands of our own discipline. The law itself is an exercise in containment, in finding a way to comprehend and limit incomprehensible suffering and oppression. Indeed, it is especially when the oppressed stand over oppression in their majestic power that the law, in its anxiety, must suppress. I offer just two brief examples. First, remember how quickly the courts fell to reading the law to suppress the American civil rights movement as it gained momentum in affirmative-action and desegregation cases. Even though 250 years

11. Levinas describes our response to the Other as an attempt, in violence, to grasp and possess him within our own understanding, an attempt that tries to negate him, though the Other always eludes us. Emmanuel Levinas, *Is Ontology Fundamental?*, in *BASIC PHILOSOPHICAL WRITINGS*, *supra* note 3, at 9.

12. In Levinas' view, I resist the demand of the other by "sojourning, [by] identifying [myself] by existing here at home with [myself]" at a site where I can be free of the Other, where I can possess everything. *TOTALITY AND INFINITY*, *supra* note 1, at 37.

separate Jamestown's slave trade¹³ and the Fourteenth Amendment,¹⁴ barely twenty years separate the mountain high of *Brown v. Board of Education*,¹⁵ which essentially proclaimed that we are bonded to and responsible for the opportunity and dignity of the Other,¹⁶ and the beginning of its suppression: *Milliken v. Bradley*, decided in 1974, found that we in the suburbs were not constitutionally responsible for what happens in our cities.¹⁷ *Regents of the University of California v. Bakke*, decided in 1978, found that we in higher education are not constitutionally responsible for the state of our public schools.¹⁸ In *City of Richmond v. J.A. Croson Co.*, decided in 1989, and *Adarand Constructors, Inc. v. Peña*, decided in 1995, the Court found that we as a community are not constitutionally responsible for what our fathers and their fathers before them did to deny opportunities to minority contractors and construction workers.¹⁹

Or consider the "right to welfare" cases—from *Griffin v. Illinois's*

13. See Jonathan A. Bush, *The First Slave (and Why He Matters)*, 18 CARDOZO L. REV. 599, 601–02 (1996) (placing the first African slave in the colonies in 1616 or before).

14. See *Hurd v. Hodge*, 334 U.S. 24, 32 & n.11 (1948) (describing the joint resolution which became the Fourteenth Amendment as passing in Congress on June 13, 1866).

15. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

16. See *id.* at 493 (noting that "education is perhaps the most important function of state and local governments" and that "[s]uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms").

17. *Milliken v. Bradley*, 418 U.S. 717, 757 (1974) (holding that absent intentional official segregation of Detroit's schools from its suburbs, which was necessary to constitute a constitutional violation, no interdistrict desegregation remedy was permitted since such a remedy would go "beyond the governing equitable principles established in this Court's decisions").

18. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 297 n.36, 307 (1978) (rejecting racially based affirmative-action programs aimed at remedying the effects of societal discrimination though "[n]o one denies the regrettable fact that there has been societal discrimination in this country against various racial and ethnic groups").

19. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498–99 (1989) (holding that "a generalized assertion that there has been past discrimination in an entire industry provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy" despite evidence of such societal discrimination and "the sorry history of both private and public discrimination in this country [that] has contributed to a lack of opportunities for black entrepreneurs"); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 220 (1995) (noting that "[s]ocietal discrimination, without more, is too amorphous a basis for imposing a racially classified remedy" (quoting *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 276 (1986))). In *Adarand Constructors*, affirmative-action programs for minority contractors were required to surmount the strict-scrutiny standard despite "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country . . ." *Id.* at 236–37.

and *Douglas v. California*'s stirring pronouncement that we are all responsible for the equality of justice,²⁰ to *Lindsey v. Normet*'s constitutional distancing of the body politic from the call of the poor for a roof over their heads²¹—a moment of hope that lasted not even sixteen years.

The law's categories impose a security that, much of the time, merely suppresses conflict and does not heal it. Its rules and its procedures are the absolutes of victory or defeat—not understanding, not pleasure, not amazement at the very difference of the Other, but surrender or imposition. Robert Cover reminded us of this violence of the law repeatedly, perhaps most clearly in *Nomos and Narrative*:

[T]he jurisgenerative principle by which legal meaning proliferates in all communities never exists in isolation from violence. Interpretation always takes place in the shadow of coercion. . . . Courts, at least the courts of the state, are characteristically “jurispathic.”

[They are needed] to suppress law, to choose between two or more laws, to impose upon laws a hierarchy.²²

And yet, faced with the reality that our law suppresses law, that it destroys the call of the poor, we plaintively ask, who can live with no order?

But just as we are recognizing the violence of the law, we must also consider who we lawyers, law students, and law professors really are, down deep. Many scholars have tried to tell us that law school, like a

20. See *Griffin v. Illinois*, 351 U.S. 12, 17 (1956). The Court found that a state could not deny an appellate transcript to an indigent criminal, and noted “the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, ‘stand on an equality before the bar of justice in every American court.’” *Id.* (quoting *Chambers v. Florida*, 309 U.S. 227, 241 (1940)); *Douglas v. California*, 372 U.S. 353, 357 n.2 (1963). “When society acts to deprive one of its members of his life, liberty or property, it takes its most awesome steps. . . . The methods we employ in the enforcement of our criminal law have aptly been called the measures by which the quality of our civilization may be judged.” *Id.* (quoting *Coppedge v. United States*, 369 U.S. 438, 449 (1962)).

21. *Lindsey v. Normet*, 405 U.S. 56, 74 (1972) (noting that “the Constitution does not provide judicial remedies for every social and economic ill” and that there was no “constitutional guarantee of access to dwellings of a particular quality” or “the assurance of adequate housing”).

22. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 40 (1983).

meat grinder, crushes the social imagination of our students, their passion for the good, their enthusiasm for justice.²³ Roger Cramton was among the first, but has not been the last, to describe what law school “does to” us. He identified

[t]he essential ingredients of the ordinary religion of [our classrooms as] a skeptical attitude toward generalizations; an instrumental approach to law and lawyering; a “tough-minded” and analytical attitude toward legal tasks and professional roles; and a faith that man, by the application of his reason and the use of democratic processes, can make the world a better place.²⁴

We come out of law school, he claims, with a stock-in-trade that defies the immense demands which, in the very living out of their differences, the Others place upon us.²⁵ We live out the values of “moral relativism tending toward nihilism, a pragmatism tending toward an amoral instrumentalism, a realism tending toward cynicism, an individualism tending toward atomism, and a faith in reason and democratic processes tending toward mere credulity and idolatry.”²⁶

Even granting Professor Cramton the symptoms he noted, their etiology is not quite so clear. Look at those of us who become lawyers. How we love our order. How we love to straighten out, to make right, an unruly world, even before law school “calls us out” to live in this kind of imagination. From the very first, when our family and friends begin to

23. See, e.g., Kirsten Edwards, *Found! The Lost Lawyer*, 70 *FORDHAM L. REV.* 37, 69 (2001) (quoting several authors as arguing that “elite law schools have been perceived as destroying the humanity of students”); Peter L. Davis, *Why Not a Justice School? On the Role of Justice in Legal Education and the Construction of a Pedagogy of Justice*, 30 *HAMLIN L. REV.* 513, 519 (2007) (noting: “[L]aw school has made almost a fetish of discouraging exploration of morality, fairness, and justice. . . . Currently, our emphasis on process in our teaching constitutes a form of reductionism. This reductionism sorts out such values as fairness and justice, which are rejected as “soft” and “fuzzy,” unbefitting law school classroom discussion.”); Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 *S. CAL. REV. L. & SOC. JUST.* 23, 40 (2006) (noting that students enter “brimming with optimism and energy to engage in public interest work . . . [and] altruistic goals and idealistic visions of the law . . . [but] embark on their careers having forsaken their idealism and commitment to social justice issues”).

24. Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 *J. LEGAL EDUC.* 247, 248 (1978).

25. See *id.* at 262.

26. *Id.*

tell us who we are, to reflect how we interact with them and our world, they might as well say, “How you love order more than any other thing.” And in our very souls, from the very day that we draw breath, what we lawyers love about the law is the way it portrays the immensity of the Other as chaos to be ordered, sequenced, and completed.

Those of us who teach in the academy see it in the neat, uncluttered lives that many of our students present in the pages of their applications: no tragedies, no coloring outside the lines, no hint of failure. Indeed, those who serve on the admissions committee, and certainly those at elite law schools, cherish “top” students’ penchant for order, reflected in consistently outstanding grades over time, in a matching Law School Admission Test (“LSAT”), and in useful but “safe” community service work.²⁷ No “Stop Huntingdon Animal Cruelty” members or other convicted animal-rescue terrorists need apply.²⁸ No “Earth Liberation Front” lawyers, thank you very much.²⁹ Our students and alumni are steadfastly loyal to the discipline of creating and maintaining order in the universe: their passion is reflected when they talk about why they came to law school, rehearsing their plans for a comfortable life, their hopes of making the world a safer place, and their pride in being a steady anchor in their communities.

In the thick of law school, we law professors see also a side of this passion for order that is not so irenic, not so world-maintaining. We see this attachment to the certain and the known in the way our students respond, in anger and despair, to our refusal to give them rules and

27. See Lawrence S. Krieger, *Human Nature As a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 274–75 (2008) (noting that an Association of American Law Schools president had asked “law schools to ‘do the right thing’” and not engage in hypocritical practices such as “skimming students with attractive numbers from other schools through targeted admission or transfer practices; manipulating statistics reported to the ranking organization . . .”).

28. Mary Ann Liebert, *Animal Activists Sentenced to Prison*, 25 BIOTECHNOLOGY L. REP. 677 (2006) (describing convictions of Stop Huntingdon Animal Cruelty advocates for web-based harassment of Huntingdon Life Sciences employees for testing drugs and household chemicals on animals. One convicted activist cried after she was sentenced because “she had wanted to go to law school but would not be admitted in the wake of the felony conviction.”).

29. Joshua K. Marquis & Danielle M. Weiss, *Eco-Terror: Special Interest Terrorism*, 39 PROSECUTOR 30, 30, 32 (2005) (describing the Earth Liberation Front’s (“ELF”) mission to inflict economic damage on those exploiting the earth and noting that ELF “appears to be an intellectual, cunning and dangerous single-issue terrorist group made up of autonomous cells that should . . . be continuously monitored and their attacks investigated”).

answers in our classes. We see it when they respond to human context and suffering as a nasty complexity that prevents them from understanding a case or succeeding in law school. We hear it in the cynicism they express about whether “it depends” can be a faithful answer to a legal question. We see it in the diminishment and disempowerment they experience when they get their first exam grades, when they realize that their hard work and exacting memorization has not yielded them mastery of their craft or the approval of their masters.

So, rather than simply excoriating law school for robbing the innocence of our students, we might imagine that all of us gathered in the law-school community are really nothing more than security addicts in the twelve-step program that is real life. Much as we might SAY that, as we write our articles, we are not vying for the “most promising proposal to create order out of chaos” (especially in First Amendment doctrine, I should say as a constitutional lawyer), we are. We want to believe that we are open to the chaos the Indigent lugs with her like mismatched luggage, that Other who appears suddenly to demand justice from the legal system. Yet, we hold our arm out to stop her from coming too close, from overpowering us with her Need; we retreat into the office, desperately needing to be with others who understand and prize our addiction to orderliness.

Indeed, we love the neat rhythm of fourteen week class endings, of trials with final statements and jury verdicts, of deals and corporations that can be sealed within the four corners of a piece of legal paper. We love the way that jurisdiction suppresses the messiness of injustice, the way the elements of a cause of action stifle reality so that it can fit inside the four corners of the box we construct, the box that is law. We enter law school for its order. We thrive because law school allows us to be perfected in the techniques of suppressing human disorder. We practice law in the comfortable company of others who share our obsession. And yet, we find that our life in the law is not orderly, not nearly as orderly as we hope or expect.

To be perfectly fair, lawyers are at one and the same time realists; there is an ambivalence to the way in which we court order. Most of us, at least unconsciously, are somewhat attracted to the creativity, the novelty inherent in the disorder of the real world. We see and are entranced by the Other pulling us forward into her need, even as we resist being drawn into her magnetic demands. In a moment of weakness, we can briefly acknowledge our desire for the Other’s need.

We recognize it in the satisfaction of a just judicial decision, or a case well-trying for our clients. We accept that disorder when we come out to play with open-textured constitutions and four-factor tests. We recognize and thrive in it as we continuously re-open once-closed discussions about the law, the essence of common-law adjudication.

But by the end of the class hour, or the case, our desire for order the law is expected to give is stronger; we cling to the concrete expressions and stone-like principles that overtake these playful moods, these attractions. At the end of the law-school day, after we have experimented with argument, policy, and values, the seething question or the plaintive voice will rise: “tell me the black-letter law that you have been hiding from me.” At the end of the day, after we enact the drama of litigation, we demand of the judge on behalf of our clients: “give me a clear verdict, a clear victory, or, if you must, a clear loss. Let it be the end for my client and for me, the end of our needing to deal with this disrupter, this other party.” As a man recoils from a woman he thinks has overpowered him in her seduction, we withdraw from the complications that the Face of the Other presents to our ordering, our finding an ending.

We see that ambivalence, indeed, in Cramton’s litany—we are as much skeptical about reduction, about generalization, as we embrace it.³⁰ We temper our attraction to open-endedness, our very unbuttoned-down faith in progress and in democracy with the life-defeating (because reductive) process of analysis. We are, at once, instrumental: we are doers in the world, and yet its naysayers, skeptics about the possibility of rapprochement between us and the Other, between one client and his adversary.

To say that we lawyers are naturally compulsive in our attraction to order is not to absolve law schools themselves from complicity in feeding our addictions. As with all of our experiences in the law, law school creates its own unique geographies of order that are both shaped by and shape the law student and lawyer’s anxieties.

The first of these maps is the physical geography of the law school building itself, announcing the separateness of our class. One has only to see the bewilderment of an indigent client trying to find the clinic in many a law school to understand how we construct our order to subvert the need and the height of the One standing over us. The bricks and

30. Cramton, *supra* note 24, at 248.

mortar of some law schools, designed like an august temple for a vengeful God, are themselves imposing. But we go further: we mimic the segregationist architecture of the Old South, designating clinic entrances that are located off some back or side entrance, or in some far away corridor.³¹ We require that our clients buzz themselves into the building or show a pass to armed guards, to demonstrate that they have been selected to be welcome. Are you a member of the fraternity? Do you know the secret handshake?

Or conversely, we may not mark our clients' way to the clinic at all. We thereby signal that the poor are beyond our sight; we put them in their place by our oversight. We allow clients to wander, like strangers in grungy coats in a small town, avoiding the greeting glances of suspicion and hostility from students and staff (what are they stealing?). These messages—we exclude you unless we have selected you, or we do not bother to recognize that you are coming—diminish the command of their Need just as surely as a bar on the door.

Or sometimes our law schools use the geography of place to isolate the poor like a disease that needs to be quarantined: we push the clinic off onto an unused building on campus, or a far-off part of town. The Property class will not be held where the clients come. The student lounge will not be adjoined to suffering.

Or we simply refuse to venture into the worlds that our clients inhabit: the law school is a place where we shelter young, vital intellectuals; no others need apply. Steven Berenson notes how our students, in particular, “inhabit very different physical and social realms” than our senior citizens, and how their distance operates to screen seniors from our view.³² We do not often send our students out to the elderly, as if they were bringing justice like Meals on Wheels. Too often, our students are more comfortable talking with prisoner clients by phone or e-mail than entering the barred doors behind which those clients live.

We see this love of security, too, in the micro-geography that

31. See, e.g., Marjorie Anne McDiarmid, *What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y.L. SCH. L. REV. 239, 264 (1990) (describing frequent placement of clinics in law school basements and other out-of-the-way places); Paula Gaber, “Just Trying to be Human in This Place:” *The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165, 211 (1998) (noting physical segregation and lesser status of clinical faculty at Yale).

32. Steven Keith Berenson, *Can We Talk?: Impediments to Intergenerational Communication and Practice in Law School Elder Law Clinics*, 6 ELDER L.J. 185, 194 (1998).

students and lawyers sometimes create to hold their clients off. Who has not read the advice to student lawyers that they should not sit behind a desk, imposing a physical barrier between themselves and the client?³³ Paul Tremblay notes how such advice, amended by the admonition that ““five and one-half feet is the preferred distance between people,”” reflects “[t]he academy’s dominant culture training [that establishes] . . . certain relatively reflexive feelings about social distance, [upon which you, the student lawyer, would rely] in deciding how close to your client you will sit, how you might arrange your furniture, and so forth.”³⁴ While Tremblay emphasizes how a well-meaning student may try to follow the norms of the client’s culture on these matters, he implies that, too often, even attentiveness may reflect stereotyping,³⁵ i.e., a way for lawyers and law students to impose their order in a situation of uncertainty. Tremblay asks us to admit that we impose these rules because of our fear of the ethical Height of the Other over us, and our attempt to bring our indigent clients “down to size.”

What is at stake for us, in terms of our own security, can be illustrated by the reaction of law students at a Southern school where the law library was adjacent to a hallway open to members of the public. The students did not like it that members of the public could look at them through the windows while they studied. They were so flummoxed at the experience of being stared at by strangers, at being viewed rather than being the voyeurs of others in the public world, that their dean had blinds placed upon the windows, so no one could look in.³⁶

Law school also reinforces a secure geography of thought upon

33. Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 389 (2002) (noting that one interviewing and counseling text suggests “that lawyers [h]ave an area of your office which is conducive to personal conversation rather than attempting to communicate across a large and often messy desk,” while another suggests “reduc[ing] the psychological barriers between lawyer and client by meeting face-to-face rather than across a desk”).

34. *Id.* at 389–90 (quoting THOMAS L. SHAFFER & JAMES R. ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL 225 (3d ed. 1997)).

35. *Id.* at 388. Tremblay notes:

When you meet with a client from a different culture . . . [y]ou can rely on some generalizations (the heuristic) about how your client will react to social distance. . . . Of course, your own social background and cultural influences cannot be ignored either, so you will search for a setting that accommodates the (possibly) different preferences of your client with your own comfort levels.

Id. at 390.

36. This story was related with a request for anonymity as to its source.

minds eager to embrace it. Turning to food to describe how his legal research students imposed order upon the reality of complex cases, Michael Jordan noted:

[the s]tudents seemed to approach cases with a set of stock answers which they assumed would address most, if not all, issues presented in the case. . . . Essentially, the case was viewed as a lifeless mass (“dough”) that could—should—be forced into [a cookie cutter composed of their] previously acquired knowledge molds that imposed a limited set of forms on the case. The mold literally made the case. If the issues could not be forced into the mold then there was something wrong with the client, facts, law or whatever. Certainly it was not the mold. Knowledge of the molds and the ability to force the dough into the mold was viewed by the student as persuasive evidence that he was thinking like a lawyer.³⁷

Indeed, he reports, even such a potentially creative and open-ended task as legal research became trapped in the students’ anxious search for the certainty they believed could be found in their lawyering role.³⁸ Responding to their plea to get them “started in the right direction,” he met their more and more pressing questions until:

it became clear that the operating premise of the student was that I really knew the “right answer” and the assignment was nothing more than a test to determine if he could find the answer in as few steps as possible.

This process bore a striking resemblance to a popular television game show, “Wheel Of Fortune.” Like the contestant, the student could win the game by determining what the right answer was, with as little assistance or prompting as possible. Presumably the prize was recognition that he was “thinking like,” or “acting like,” a lawyer by quickly discovering the correct answer.³⁹

37. Michael Jordan, *Law Teachers and the Educational Continuum*, 5 S. CAL. INTERDISC. L.J. 41, 43 (1996).

38. *Id.* at 44.

39. *Id.* (footnote omitted).

Professor Jordan attributes this anxiety to law school, to students' attempt to apply the Socratic method to their first real experience with the law.⁴⁰ Indeed, such anxiety is so palpable and the belief in certainty so real, when he terminated one of these fishing expeditions by saying he "neither knew the right question nor the right answer [and] [t]he student did not believe [him]!"⁴¹

At best, in law school, we do not do enough to contest the way in which our students attempt to map order onto the messy world of conflict that stands in challenge to them. At worst, Professor Jordan perhaps rightly accuses us of encouraging students to draw the easy lines around human conflicts to make them fit the categories we have so willingly embraced.

A third geography we use to make order is the one by which we chart our relations with others, particularly with clients. In our classes, Professor Shalleck notes:

Within legal education, clients are paradoxical figures. Although they are mostly absent from classroom discussions, devoid of lives or places in the world, they can suddenly emerge, as if from nowhere, with clear identities and characteristics, to fill critical gaps in the classroom discussion. The clients who make these sudden appearances are seemingly unproblematic figures. Professors and students easily presume agreement as to who they are and what they want. Within the legal system, all seek wealth and freedom.⁴²

And yet, the poor call us out, they call us to reality. They are the disrupters of our solitude, our at-homeness. Professor Shalleck described the ones who are not present in the way we conduct the daily business of the law school:

The clients who are missing from legal education are clients with particular identities who are situated in distinctive ways within the social world, facing often critical choices about their participation in the legal world. Defying the presumptions of the

40. *Id.*

41. *Id.* at 45.

42. Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 *STAN. L. REV.* 1731, 1731 (1993).

professor and students, these absent clients may have not only their own understanding of what they want from involvement in the legal system, but also their own visions of the legal order and social and political life. They are, however, banished from the classroom, forced out by the presumptive clients who serve as an invisible but necessary pillar of the legal discourse of the classroom, made to supply in unobtrusive and unproblematic form the ends that the law and the legal system are working to achieve.⁴³

As Levinas would tell us, the Face tells its own story, makes its own demand. And yet, we see no Face when we are talking about *Williams v. Walker-Thomas Furniture Co.*⁴⁴ or *Shapiro v. Thompson*.⁴⁵ Their stories are not before our students, nor are the stories of other poor clients, except for the compressed hypotheticals we offer our students, bleaching out the pain and the joy of their daily lives. We do not invite poor clients in to discuss how the legal doctrines that students are learning have made an impact on their ability to get reasonable credit, to vote, or to seek justice with the help of an appointed lawyer. We do not ask them how wide the gap between their lives and justice remains, despite these legal rules. We do not invite them either in the flesh, or by proxy, through videos and photos, through narrative or poetry. We do not ask our students if they have read *The Grapes of Wrath*⁴⁶ when they are studying

43. *Id.*

44. *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 450 (D.C. Cir. 1965) (holding that a court could refuse to enforce an unconscionable furniture contract). What we learn about Ms. Williams from the case is that “the stereo contract listed the name of appellant’s social worker and her \$218 monthly stipend from the government” and that “with full knowledge that appellant had to feed, clothe and support both herself and seven children on this amount, appellee sold her a \$514 stereo set.” *Id.* at 448. Eben Colby has followed the effect of this case on the furniture company, noting that the company continued aggressive collection against poor customers even after the decision. Eben Colby, Note, *What Did the Doctrine of Unconscionability Do to the Walker-Thomas Furniture Company?*, 34 CONN. L. REV. 625, 658–59 (2002).

45. *Shapiro v. Thompson*, 394 U.S. 618, 623–25 (1969), *overruled by* *Edelman v. Jordan*, 415 U.S. 651 (1974). Professor Lynne Henderson described how the plaintiffs’ second set of lawyers were able to obviate justices’ stereotypes and evoke their empathy by telling the plaintiffs’ stories. Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1610–20 (1987). And yet, viewing the opinion, these stories that apparently touched the majority of justices were still a truncated expression of how the states’ welfare rules affected these plaintiffs. *Id.*

46. For a synopsis of JOHN STEINBECK, *THE GRAPES OF WRATH* (Viking Press 1967) (1939), see Edstephan.org, *Steinbeck: Book Blurb—Penguin 1976*, <http://edstephan.org/>

the commerce clause, or Jody Raphael's *Saving Bernice* when they are thinking about domestic violence in Family Law.⁴⁷ We do not ask them if they know the life of a child carpet weaver in India when they study Children's Rights, or why so many women die in childbirth when we tackle reproductive rights. Indeed, how many times have we seen their classmates silently mock them when our students try to tell such a story; somehow, we have taught them that this is "not the law," it is an irrelevance.

It is not simply that we bar the real poor from the cases in the classroom. In fact, other than the clinics, we bar them altogether from the life of the law school. In our mock trial simulations, meant to simulate reality, we most often choose as clients and witnesses not those who have indeed suffered the injustice we are simulating, but law students pretending to be clients. Law students are manageable; they can learn their lines and behave in the scripted ways. In seeking witnesses, we do not go out into the welfare offices and streets and say, "come, teach us how you really live, testify to us about your life." In Counseling and Negotiation classes, we rarely send our students out to a Legal Aid office or a welfare line. We may not even send them to the clinic to see whether they actually can learn the story of a poor person, much less begin to grasp the complex way law informs their lives. Yet it is hard to see, without such experiences, how they can become adept at counseling the client about what the law can and cannot be made to give, or bargaining with another for a just result.

The thought that the poor might be our partners in shaping our mission and programs seems unimaginable in most law schools. They do not sit on our Boards of Directors, our Dean's Advisory Councils. Rarely do we see a law-school sponsored conference or program invite a poor person to tell his story, or give his views about the topic at hand, ironically, even when the program is on the very stuff of his life such as public benefits programs or homelessness. When we send out our brochures, they do not go to welfare or Social Security offices; we do not invite the poor to join us to debate the merits of the laws that compress their lives.

Steinbeck/grapes.html (last visited Dec. 18, 2009) (describing the travels of the Joads from their lost tenant farm in Oklahoma to California).

47. For a synopsis of JODY RAPHAEL, *SAVING BERNICE: BATTERED WOMEN, WELFARE, AND POVERTY* (2000), see Northeastern University Press, *SAVING BERNICE*, <http://www.upne.com/1-55553-439-2.html> (last visited Dec. 18, 2009) (noting the book's description of "Bernice's ordeals at the hands of her abusive partner").

Nor, when we are discussing how the law school might be more effective in its outreach or service to the community, do we ask the poor to come around the table to talk with us about what differences our community service might make in their lives. They do not serve on our task forces or our self-study committees. Whether we do not invite them because we do not see their faces, because they have become invisible to us, is unclear. Whether we do not invite them because we in the academy have come to think we are looking down on the poor and they have nothing to teach us—there is that upside down on the trapeze again—remains a challenge to us. It may well be that we do not invite them because we fear that we might, indeed, be captured by their need and their vulnerability, that our students may lose sight of the paying clients who can give them jobs.

Yet, the Face will not be diminished, even when we diminish it. The Face shows itself before us, even when we are not paying attention. We can, however, make a new beginning for ourselves. We can turn toward the Face. The turn toward the Face is not just a hospitable act on our part. It is an act by which we receive the hospitality of the poor, the welcome of their unpredictability, their irrepressibility. It is an invitation to behold reality and to engage the rushing and vibrant waters of the human spirit, as much as it is a command. For our own part, we have only to turn our faces to look.

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