

# WGLING TOWARD JERUSALEM: WOMEN'S DIVERSITY AND LEGAL EDUCATION

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## 1 The Problem

As a white male from a middle class, Christian, classical-liberal, contemporary-conservative background I am a perfect example of the person to whom the ideology of North American law should be wholly invisible. For want of a better name, I shall call myself and others like me “white-guy liberals”, or WGLs for short. WGLs view race, gender, economic background (we don't believe in class), language, culture, sexual orientation and the like as being relevant to legal education only as personal factors making it more, or less, difficult to learn what are assumed to be the neutral, ideology-free techniques and procedures of the law. That the basic assumptions and techniques of law are not neutral — equally representative, available, and useful for everyone — is not likely to occur to us. The content of law may at times be strange, wrong-headed and even perverse, but we see the basic structure as an extension of ordinary human reason and a “natural” view of society. Ideology is what Communists and other radicals have; open-mindedness and truth are what *we* have. How then, can I say anything even remotely useful in this seminar? In the eyes of critical theorists of law I was born to the power and privilege of defining the standard against which all “others” are measured.

Until fairly recently people with my background *have* had something important to say about diversity, justice and the law. The liberal ideals arising from the Greek and Roman Stoic tradition include what has come to be called the *rule of law*: political power is to be exercised through law, and the same laws apply in the same way to everyone. Historically this ideal has been far from realized in Western societies. Even within the past two hundred years people of various descriptions have been considered property, infantilized into political and economic impotence, barred from knowledge and education, denied the right to control their own bodies, prevented from practising professions for which they were qualified, assumed to be unreliable witnesses in court, and so on. Yet within the Stoic/liberal tradition these practices must be considered unjust, for they differentiate legal status according to criteria unrelated to the only bases for full

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participation in law and politics: the capacity for reason, and its exercise in purposeful action.<sup>1</sup>

WGLs, then, could seek justice and social reform by being true to the fundamentals of their perspective. They need not step outside that perspective or question its neutrality. All but the most radical and impatient critics must admit that this approach has served society. The demand for consistency in the application of Stoic ideals provided a powerful intellectual base for abolishing slavery and apartheid, enfranchising all adults and dismantling a considerable number of discriminatory practices and laws.<sup>2</sup> WGLs could feel satisfaction, and occasionally even a bit of pride, at the accomplishments of the civil rights movement of the 60s and the women's rights movement of the 70s. These movements were not led by WGLs, but they resonated with WGL ideals. The outcomes may have tested the WGLs' sincerity — remember Spencer Tracy in *Guess Who's Coming to Dinner?* — but those who proved pure of heart could accommodate the changes. If women and blacks were willing to play by the rules, what harm could there be? Women and “minorities” in law school are not a

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<sup>1</sup>Although many thinkers have had exceedingly elevated notions of reason, this is unnecessary for Stoic strategies to take root. Reason can be considered anything from the “divine spark”, and our participation in God's divine order, down to a rather homely capacity to choose goals and strategies by considering and being guided by reasons. From the perspective of utilizing Stoic thought the basic questions are: 1) whether a being can think about what s/he should do, what s/he desires and how s/he can achieve these things; 2) whether her thought about these things is influenced to a meaningful degree by reasons; and 3) whether her behaviour is influenced to a meaningful degree by these thoughts. We need not be calculating machines or purely “rational men”, although the great thinkers had a clear preference for this purity. The tradition tends to make reason an all-or-nothing capacity, but those of us who reject such a view might nevertheless use Stoic patterns of argument: If a being can reason about good and evil, and act accordingly, they should be accorded equal status within a moral, political or legal community.

<sup>2</sup>Scholars frequently appeal to economic and other social forces rather than ideas as the best historical explanations of the abolition of slavery in Europe and North America. While I do not claim that these analyses are incorrect, I believe it is unnecessarily short-sighted to suppose that the climate of ideas created and expressed by Stoicism, Christianity, liberalism, contractarianism, the American revolution, the French revolution, and a host of liberal thinkers was a mere epiphenomenon. Long ago Stoic thinkers had no doubt that slavery was contrary to the “natural law”. A millennium and a half before the abolitionist movement reached fruition Stoic ideals of equality based on reason were absorbed into what we know as Christianity. This provided at least part of the intellectual backdrop against which the abolitionist battle was fought. A recurring theme of pro-slavery rhetoric from the time of Aristotle onward was the claim that slaves are simply incapable of taking care of themselves, incapable of thinking (reasoning) and controlling themselves to the extent necessary for a life of freedom. Domination was thus made to appear as benevolent paternalism. Whatever economic and other forces were operating, it is but doctrinaire positivism to insist that rejection of this argument by people of conscience had no effect on human attitude, resolve and action in the abolitionist struggle. The Stoic, Christian tradition provided at least part of the conceptual structure in which the politics were played out. Similar things can be said about the struggle for the vote, civil rights movements, and so on. Historical explanations which exclude moral thought and ideals are as suspect as those which consider nothing else.

problem as long as they do the work and meet the standards expected of everyone else. Politically and educationally, "colour" in the WGL classroom is like colour in the natural world for the classical empiricist: a purely secondary quality existing "in the mind" rather than "in the world".

By the mid 1970s the faces in class were beginning to look different but the WGL law professor could continue on more or less as before, secure in his understanding and mission. Law was law and teaching was teaching. Students were, after all, just students, however unusual their appearance, speech and opinions. They still came to law school "with a head full of *mush*" and his task was to see that they left "thinking like a lawyer".

A decade later the WGL law professor was under siege. His curriculum, syllabi, casebooks, textbooks, teaching techniques, expectations, and even language were called elitist, classist, sexist, racist and Goddess knows what else. From being the defender and purveyor of justice, equality and harmony, he had become the instrument of oppression and injustice, a speed bump on the highway to the promised land. His deeply held views of justice and equality were dismissed not only as yesterday's solutions, but worse yet, as today's problems. If he could not be re-educated out of his problematic liberalism by public embarrassment, consciousness-raising workshops or devoted private study of the new non-canon, he should tread softly and retire early. The day of the WGL in law school was past.

What I propose to do in this brief essay is consider the extent to which the intellectual tradition out of which the white-guy liberal comes has reached the end of its resources. To what extent can I, as a WGL, draw upon the tradition out of which I come to help me find my way in the newly diverse classroom? Does the Stoic/liberal Western tradition of law have anything but opposition left to offer the struggle for justice in diversity?

## 2 The Critique of WGL Rationalism

The most prominent feature of the Western legal, moral and political tradition is its use of the ancient Greek rationalist, scientific model. In particular, the tradition has relied heavily on treating legal, moral, political persons as abstract variables, and law as a rational system regulating the interactions among these abstract persons. Legal *equality* consists in abstracting legal persons — who are equal in all relevant ways — from concrete, unique individuals who are frequently unequal in power, position, ability, etc. *Justice* consists of treating these legal persons with consistency in a rational system of laws.

As Marxists have pointed out, this approach perpetuates the actual inequalities among concrete, particular, non-abstract people. Describing the first phase of Communism, Lenin put it this way:

“Equal right,” says Marx, we indeed have here; but it is *still* a “bourgeois right,” which, like every right, *presupposes inequality*. Every right is an application of the *same* measure to *different* people who in fact are not the same are not equal to one another; that is why “equal right” is really a violation of equality and an injustice. ...But different people are not alike: one is strong, another is weak; one is married, another is not; one has more children, another has less, and so on. “...With equal labour — Marx concludes — and therefore an equal share in the social consumption fund, one man in fact receives more than the other, one is richer than the other, and so forth. In order to avoid all these defects, right instead of being equal must be unequal.”<sup>3</sup>

Marx’s solution, unequal right, strikes at the very heart of the rationalist model, for it entails treating citizens or legal persons differently under the law, which is the very essence of injustice.<sup>4</sup> Within the scientific model, entities which are essentially identical are equally and indistinguishably governed by the same natural “laws”. A scientific, rational system of law must likewise treat all legal persons equally or indistinguishably within the law. Such a society is just when its laws form a coherent system and apply equally, and in the same way, to all people or, more precisely, to all people who qualify as legal persons or citizens.

Radical feminists take this critique one step further, arguing that not only does abstract equality frequently ensure concrete inequality, but it also renders invisible “real” systems of inequality, power, hatred and domination which operate outside (beneath? behind?) the rational system of law and politics. Patriarchy, class oppression, racism, heterosexism and similar systems of domination do not depend on liberalism or rationalism for their fundamental concepts, values and processes.<sup>5</sup> As a result they can use rational social organization to their own ends without being dependent or wholly determined by any rational social system. Liberal equality and justice are not only *consistent* with real differences in power between women/blacks/workers-as-a-group and men/whites/capitalists-as-a-group, they

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<sup>3</sup>V.I. Lenin, *The State and Revolution* (New York: International Publishers, 1971) at 76–77.

<sup>4</sup>One reason why the state must wither away is that it is expressed through law, the very form of which treats individuals like commodities, i.e. as existing only within a market in which they are freely interchangeable.

<sup>5</sup>David Theo Goldberg makes a persuasive case for the contrary position, the essential linkage of racism and liberalism, in *Racist Culture* (Cambridge, Mass.: Blackwell Publishers, 1993). In this essay I take no position on whether liberalism necessarily generates racism. I do not, however, see any good reason to believe that the kinds of power relationships we now call racist did not find expression in pre-liberal times. Since I do not accept postmodernism’s conveniently limited anti-essentialism, I am willing to entertain the notion that racism as presently constructed shares something important, if only a family resemblance, with earlier forms of oppression based on tribe, skin colour, or place of origin.

may actually *further* those differences by providing a dominant discourse of law, politics and morality in which equality is identical to abstract(ed) equality.

It follows from these critiques that the application of liberal, rational ideals to legal education may, or perhaps even must, perpetuate the inequalities embodied in the non-liberal systems of domination. This is not to say, of course, that consistent application of liberal ideals to legal education is wholly without benefit. Liberal consistency guarantees that the *same* standards of access and achievement apply to members of dominant and subordinated groups, and this is a marked improvement over the illiberal application of different or even arbitrary standards which effectively exclude members of subordinated groups. As the faces and minds of my students change in ways that reflect backgrounds and identities which function to disempower people within systems of domination — woman, black, gay, working-class, etc. — how am I to respond if not by ignoring the differences, pretending they do not matter? That is what the WGL does. He tries to think and act as though individuals do not have a gender, race, or sexual orientation since he honestly believes that these characteristics are legally, politically, morally and educationally irrelevant. He aspires to teach *people*, not women, men, black women, poor gay men, etc.

WGLs are told, however, that blindness to race, gender, etc. will not do. We must reform our language, books and syllabi to be *inclusive*. We must be *sensitive* to the differential effects we have on people with diverse backgrounds. We must acknowledge our *privilege* no matter how hard we may have worked to achieve our positions. We must not presume to speak for non-WGLs, nor should we *arrogantly impose* WGL standards of speech, writing, argument, reasonableness, soundness, significance or truth on “others”. If the critics are to be believed, WGLs exclude and impose while being privileged, insensitive and arrogant.

WGLs' response to this critique is to point out that we are perfectly willing to give up whatever true privileges we might have — fair opportunity is fundamental to liberalism — even if that means affirmative action. And our willingness to embrace a rich conception of fair or equal opportunity shows we are *not* insensitive and arrogant. Indeed, the inner life of the WGL is more one of guilt than arrogance: the political influence of liberal guilt leaves no doubt about the capacity of WGLs to aspire to sensitivity and “right attitudes”. But the critical theorists tell us that even if we were perfectly well intentioned and exquisitely sensitive we would nonetheless be *incapable* of adequately understanding the oppression from which we benefit. Our experience of oppression is abstract or disembodied, being an experience of privilege. WGLs do not have an immediate experience of oppression in the way that those who are oppressed do, for while being the subject of oppression is experienced individually, oppression is most frequently perpetrated systematically. WGLs benefit from the oppressive systems which effectively isolate them from the immediate, personal experience of that

oppression. For example, while the WGL law professor experiences a particular exchange with a student as exercising his role as teacher in a system of legal education, transmitting an understanding of legal relevance, his student may experience it as oppression in the form of devaluing or silencing the expression of her experience.

If this view is generalizable, the oppressed are necessarily in an epistemologically superior position to the oppressor. The WGL law professor *cannot* understand oppression in its most important aspect, as it is experienced. He is thus in a poor position to respond adequately to diversity in the classroom. Whatever his *attitudes*, his *knowledge* will be inadequate. He is, to use current language, “epistemically challenged”, a very distressing disability in a teacher. One might even be tempted to argue that such a mental disability goes to the very heart of the WGL’s competence as a professor. He may be a nice guy with a good attitude, but he is, quite simply, intellectually incompetent to cope with social diversity.

### 3 Emotion and Knowledge

This division of a person’s psyche into “attitude” or “emotion” and “knowledge” is common, even among those who reject liberalism and so-called modernism. These self-named “postmodern” critics argue that no amount of reform or manipulation of the former will assist the latter to the extent necessary for a sound analysis of oppression. The epistemological “situatedness” of the WGL is a near absolute which cannot be altered by “good attitude”. Exploring postmodern feminist and race theory, Peter Halewood summarizes the position in this way:

The problem is ultimately not one of malice or failure of empathy, but rather that certain epistemological perspectives on oppression are not inherently open to white male scholars. Attitude, intention, and empathy are *subjective*, alterable characteristics which certainly contribute to a scholar’s ability to comprehend oppression, but one’s epistemological perspective — the human categories of one’s experience — is *fixed*.<sup>6</sup>

This is a curious position indeed. Relapses into objectivism and essentialism aside, the postmodern view embraces one of the most troubling aspects of modern empiricism, the strict dichotomy of emotion (or attitude) and knowledge. This schism of feeling and thought can be traced to the ancient Greeks, if not earlier. It may be that the dichotomy is a characteristic of patriarchal thought generally, or it may be a result of the unique Greek scientific and artistic revolution which took place in the context of a vicious, militaristic patriarchal social system. This

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<sup>6</sup>P. Halewood, “White Men Can’t Jump: Critical Epistemologies, Embodiment, and the Praxis of Legal Scholarship” (1995) 7 *Yale J. L. & Feminism* 1 at 10 [emphasis added].

is not the place to pursue these matters. It is enough to note that ancient Greece established the ground rules, as it were, for political, moral and legal theory in the West. For the purposes of this paper the most important of these are:

1. Reason is the final arbiter of truth and the sole basis for science. *Logos* replaced *Mythos* as the dominant epistemological stance.
2. Reason and the knowledge it produces are universal and objective.
3. Rational science provides a better method for revealing the essential nature of human society than history, myth or art, since it alone produces objective truth.
4. Rational science provides a model for the just or good society. Morality, law, politics and economics, the primary formal modes of regulating social behaviour, can thus aspire to be sciences.

Reason and science excluded narrative, emotion and particularity, except as subjects for investigation. Emotion was the proper end or object of art, which was now firmly associated with *fiction* and *illusion*. Knowledge was the exclusive preserve of reason and science. If knowledge is then extended to human society and justice, social theory of all kinds must marginalize emotion. For the Greek rationalists and their many descendants, justice and goodness cannot be revealed by "mere feelings", but must result from the proper application of reason.

*Modern* political thought modified these ancient beliefs and aspirations only to the extent of elevating the epistemological status of sensory experience. The modern scientific mind had become skeptical that reason could directly grasp universal truths about the natural world — the laws of nature — but it had abundant faith that the human mind could uncover these truths through rational manipulation of the data of our senses. Classical liberals, of course, continued to allow direct knowledge of very limited set of *moral* truths in the form of rights: "We hold these truths to be self-evident..." Thus in the social realm Stoic natural law was reduced to liberal human rights. The Republic became the liberal commonwealth, and economic efficiency became (con) fused with justice and goodness, but the state was to be based on rational models nonetheless. What did not change was the strict exclusion of "mere feelings" from a central role in understanding and guiding the just, efficient or otherwise good society.

*Postmodern* thought modifies the rationalist system of belief even further by rejecting the universal claims of reason and science while maintaining the primacy of experience. In a sense this completes the empiricist thrust toward the individual. But whereas the classical empiricist had faith that universal knowledge could arise from individual experience, the "postmodern empiricist" is content to

find the limits of knowledge in the limits of individual experience.<sup>7</sup> S/he goes beyond old-fashioned relativism, however, by also insisting that all experience is socially “constructed”. In so doing postmodernism renders Greek-style justice and goodness impotent as social ideals. Even if we can know what is just and good, that knowledge does not transcend our society since knowledge is based in experience and experience is constructed by that very society. The WGL’s experience is the only possible basis for his knowledge of justice and goodness, but his experience is constructed by a system that privileges his position. The most he can hope is that the social system(s) which formed him can be made consistent in the expression of their ideology. Once consistency is attained, there can be no further grounds for criticism, no *rational* grounds for reform.

This broad-brush history offers little hope to the WGL. He is the helpless captive of a grand march of rationalist, patriarchal ideology over a period of at least twenty five hundred years. The non-WGL, on the other hand, is partially immunized against helplessness by the concrete particularity of her victimization or oppression. By virtue of their “otherness” non-white men, women of all colours, homosexuals, the disabled, etc. are free to rise above the dominant ideology, understanding it with an insight denied mere WGLs. Or so the story goes.

One response to this thesis of epistemic impotence and empowerment is to portray the WGL as a victim as well: white men are oppressed by the system too. We are all siblings in our common victimization by patriarchy, capitalism, racism and heterosexism. On this view, the WGL’s contribution to enlightenment can then be his unique experience and understanding of his own oppression by “the system”. To the extent that social oppression shares a common “deep structure”, WGLs could then make a real contribution to understanding oppression of all kinds. I find this altogether too ingenuous. For example, the white man’s “victimhood” from sexual violence most often consists of “suffering” from his own lack of gentleness, love and trust, and his fear for the safety of the women in his life. But as a child he was much less likely than his sister to be sexually abused by a relative, and as an adult he is much less likely to be beaten by a spouse. His racial, and other, “victimhood” is similarly vacuous. He is unlikely to be considered lazy, dumb, unreliable, and prone to drunkenness, rape and violence because of the colour of his skin. He walks the streets and enters the boardrooms

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<sup>7</sup>Professor Sherene Razack points out that “postmodern empiricist” might appear to be a contradiction in terms. The classical empiricist believes that human experience is *universal* — essentially the same for everyone — and that from it *objective* knowledge can be derived. The postmodernist believes neither of these things; experience is socially *constructed*, and knowledge is always *situated* within a limited set of social conditions. There is, however, a continuity I wish to emphasize. Both accept the epistemological centrality of individual experience: knowledge comes from (and is limited by) an individual’s experience.



of the nation with an assurance and safety unknown to women and non-whites. His "victimhood" is of a very peculiar kind indeed.

#### 4 Instrumentalism and Wisdom

If WGL law professors cannot realistically find solidarity in victimhood with the increasingly diverse student body, what can they do? Are there unseen, or at least *unused*, options in the tradition? I believe so. The one which I shall consider here can be found in virtually all historical periods and in a wide variety of cultures. It is the tradition of *wisdom*. Admittedly this does not look like a very promising start. Wisdom is out of fashion. It seems more appropriate to another era, one less complex and dynamic. Ours is an age of knowledge, power and change, an age in which the intellect is measured by what it can do or accomplish, by the diseases it conquers, the Nobel prizes it garners, the gross national product it generates, the number of articles it publishes, the career it pursues. We are in the age of the instrumental intellect, and the final purpose or goal of mind is power: *mastery* over the world, others and even ourselves.

The instrumental view of mind is quite at home in the classroom, of course. More and more today the university is treated instrumentally. Students want marketable skills, business wants trained and compliant workers, and political discourse demands efficient contribution to the gross national product. Not unexpectedly, the pressures toward instrumental education are especially intense in law and other "professional" schools.

Not only is the educational mission of the university instrumentalized, but its scholarly, intellectual enterprise is similarly imbued with an instrumental ethic. The funding of departments and faculties depends on scholarly output: number and size of grants, number of books and "peer reviewed" articles, positions of power in national or international scholarly or research organizations, and so on. The motivational techniques of the modern university as an institution embody this instrumentalism: the appropriate end products have been made part of academic *careers*, the psychological space within which professors are assumed, or expected, to operate. Among other things, careers are institutionalized — indeed, ritualized — systems of social power constructed to ensure a level of worker commitment, compliance and effort which the base activity/product would not otherwise attract. In exchange for money, institutional power and recognition, professors are directed toward the appropriate scholarly output.<sup>8</sup>

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<sup>8</sup>One of the most detrimental results of the insitutionalized academic *career* is its tendency to convert communities of scholars into adversarial, competitive hierarchies.

As if the incentives to instrumental intellect were not enough to guarantee its ascendance, strong social pressures also work against the inclusion of wisdom and non-instrumental intellect in the academy. The very mention of wisdom in an academic setting is more likely to cause embarrassment than excited discussion. Even philosophers seem reluctant to mention wisdom after the first class of Philosophy 101. Wisdom is as unwelcome in a university as justice is in a law school. And yet wisdom and justice are the most worthy of goals and the most precious of attainments. How can a society which does not value wisdom and justice hope to find any degree of harmony in the diversity of its citizens? And if members of the university community do not value wisdom and justice, who can be expected to do so?

The university is most fundamentally a society of *learning* — not of teaching, not of research, not of academic careers, and certainly not of government grants or training the work force or enhancing competitiveness. It would seem more than a little strange that a society of learning would eschew learning those things which are most precious. And yet much in the university conspires to drive out, or at least underground, the dreams of learning what really matters. The instrumentalist ideology leaves little room for the gentler ideologies of wisdom. If we think of the university as a society devoted to *teaching* and/or *research* — goals which are easily understood in instrumentalist terms — it is not at all strange that wisdom and justice should find thin soil here. It is unlikely that wisdom and justice themselves can be taught or discovered, even though examining the results of *folly* and *injustice* fuel the academy.

## 5 The Nature of Wisdom

What do I mean by “wisdom”? I can attempt only the barest sketch here. When we think of people whom we would consider truly wise, what characteristics do we find? The physical attributes of the person are irrelevant: wisdom is as compatible with physical weakness, deformity, ugliness and decrepitude as with strength, perfect form, beauty and vitality. Intellectual characteristics such as problem-solving intelligence, wit, eloquence, business acumen, devastating debating skill, encyclopedic knowledge of the law and so on are similarly neither necessary nor sufficient for wisdom. “World class” scholars and scientists are probably no more likely to be wise than subsistence farmers in Africa or street sweepers in South Asia.

Nonetheless, wisdom is an attribute or attainment of mind. It does not appear to be an inborn skill, or a skill acquired at an early age. Children are sometimes musical or mathematical prodigies, but never wisdom prodigies. Wisdom is most often associated with age, or more precisely, with *experience*, although sometimes a relatively young person is touched by the divine and exhibits an unexpected

degree of wisdom. It seems to involve knowledge, but knowledge of a peculiar sort: an active, embodied knowledge of the significance of those things which determine the meaning and value of life. For example, the wise person knows that love is more important in human life than money or political power. But while many may say this, the wise have made it part of their very being. The wise person is characterized by an integration of thought and feeling, intellect and emotion, the very thing denigrated by the rationalist tradition with its suspicion of emotion.

Wisdom is not limited to the "big things" like love and death. It also encompasses innumerable "little things": the flower growing through a crack in an abandoned parking lot, the smell of babies and warm dogs, the beauty of countless stars on a clear night, the rustle of leaves on a summer evening, the silent communication between long-married people, the inevitability of a Beethoven sonata, the shock and sorrow for an animal killed on the road, and so on. The wise among us experience these things from a perspective or in a manner appropriate to a life fully lived. The wise person exhibits a harmony of thought, feeling, knowledge and activity embodying those values which constitute goodness in human life. To use a current expression, most of us "just don't get it" when it comes to living a good life, a life fully human. The wise person *does* "get it", and lives a life fitting for a human being.

I take this one step further. I believe that the truly wise show an integration of thought, emotion and sense of appropriateness which embodies a specific set of values. These are the gentler values, the values of love, compassion, concern, care, kindness, respect, responsibility, non-violence, humility and the like.<sup>9</sup> To the extent that we think of Hildegard of Bingen, the Biblical prophets, Jesus, Mohammed, the Buddha and innumerable others as wise, we think of them as compassionate, loving, concerned or something of the sort. To say, "She is a very wise woman, but cruel, inconsiderate and filled with hate," is to utter sheer

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<sup>9</sup>It is difficult to find a single term which adequately captures the moral content of wisdom. Some of the terms that come to mind have histories of abuse in which they are implicated in relationships of domination: compassion has been used as an excuse, and even a justification, for imposing Western values on supposedly "underdeveloped" peoples, and respect (as in "equal respect") is a crucial part of contract theories and Kantian style rationalist ethics. Others are incomplete: non-violence is too limited in scope, and kindness is too passive. Still others have inappropriate connotations: humility too often suggests weakness, and love too often suggests Dionysian excess or erotic forces. "Care", as used by Carol Gilligan and other feminists, may be developing an appropriate sense, but it remains saddled with a long history of women's duty to "care for" others, thus making it easy to dismiss as part of a "morality of oppression". In the end it may be impossible to find a single term which adequately covers the moral core of wisdom. It does not follow from this that there *is* no moral core, however. There may well be a family resemblance between the various concepts which inadequately express that core, a resemblance that has no name other than "wisdom". This is not the place to investigate these conceptual details.

nonsense. Great intelligence and knowledge are perfectly compatible with callousness, cruelty, malice and hate, but wisdom is not. Wisdom involves a moral element, and in particular care, love, compassion, kindness or something similar. The Buddha would not *be* the Buddha were he not compassionate. Care for the homeless, the widowed, the orphaned and the stranger is not an accidental part of the wisdom literature of the Bible or the teachings of Jesus and others in the prophetic tradition. The high spirits and testosterone of youth may lead us into reckless battle over trivial pieces of land and vanishingly small differences of belief, but only folly — lack of wisdom — can explain such actions among older people. Violence, cruelty, greed, intolerance and hatred are failures of wisdom. And they are failures of wisdom in a wide variety of cultures.

## 6 Dare to be Wise<sup>10</sup>

### 6.1 Wisdom and Social Relations

Even this brief discussion should make it clear why wisdom receives so little formal recognition in our social institutions. Its very essence includes the unification of thought, emotion, value and action. The rationalist tradition, including the rationalist tradition of legal, moral and political thought, has insisted on marginalizing emotion and rationalizing value and action.<sup>11</sup> Yet appropriate attitude, emotion or appreciation is essential to wisdom: Knowledge alone completely misses the point of the flower in the parking lot or the significance of *those* leaves rustling on *that* night.

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<sup>10</sup>The title of this section comes from a lovely essay of the same name by Richard Taylor, originally written for philosophy students at the University of Rochester and later published in *The Review of Metaphysics* XXI, No. 4 (June 1968), 615. Professor Taylor borrowed the title from McTaggart (presumably John McTaggart Ellis McTaggart). The phrase is perhaps best known in its Latin form *sapere aude*. Anne Crocker, the Law Librarian at UNB, and Professor Thomas Kuttner both reminded me that in this form it constitutes the motto of the University of New Brunswick. In a wonderful example of scholarly process, Professor Kuttner then talked with Professor William Kerr of the Department of Classics about the origins of the phrase. Being pressed for time, Professor Kerr phoned Mary Flagg of the Harriet Irving Library at UNB, and in approximately five minutes Ms. Flagg provided the following source:

Dimidium facti qui coepit habet: sapere aude:  
incipere.

S/he who begins has done half the work: dare to be wise:  
begin!

Horace *Epistles* 1.2 ll 40-41.

Horace was urging a young person to study philosophy.

<sup>11</sup>Those few philosophers who have based ethics on emotion have either insisted that it be only the raw material for a rational process — utilitarianism, for example — or have given up any pretense to truth or universality in ethics — emotivism, for example.

For modernists and other rationalist thinkers, compassion, love, kindness, etc. can be nothing more than devices of social coordination with survival value, or something similar. These gentle motives and experiences may even divert us from doing our "duty" as demanded by governments, corporations and other institutions. Kant, the greatest rationalist of them all, thought that compassion and other "inclinations" were at best irrelevant to the moral value of action, which should be done solely for the sake of duty.<sup>12</sup> From the perspective of the rationalist tradition, compassion and emotions generally are anarchic. They represent the wild, untamed forces of chaos which must be controlled by reason. As a practical matter, the wise person can be tolerated in our rational society as long as her wisdom does not corrupt the youth into thinking we should be kind to enemies, open and generous to the weak and humble, or gentle as we walk in the land. Should the youth succumb to the siren call of the Luddites, tree-huggers, vegetarian purveyors of Bambiism and witches of pagan wisdom, "progress" would cease, we would be helpless before our enemies and our economy would collapse.

The wisdom tradition is at odds with postmodernism as well. While postmodernists are fond of trashing rationalism in the name of individual experience, they are at the same time perfectly willing to subjugate that individual experience to systems of social power. Individual experience can at best reveal knowledge that is true-for-me-as-constructed-by-my-society. Perhaps such knowledge can extend the breadth of a society, but certainly can go no further. For the postmodernist, the individual is epistemologically and axiologically<sup>13</sup> limited by culture, tribe or clan. To maintain the impotence of the individual outside of her immediate clan, and thereby castrate current power elites, the postmodernist is driven to reject the very features of mind or soul which hold promise for connecting one culture or "situation" with another: the gentle emotions such as love, compassion and care. Mere attitude, the postmodernist says, cannot generate true understanding of, or experience of, oppression and other cultures, and without such understanding and experience we can neither criticize others nor overcome our own prejudices and oppressive systems.

By refusing to isolate knowledge and feelings or emotions, wisdom threatens this neat method of shifting power, or moral status, from the "elites" to the "oppressed". Wisdom does not fit into the patriarchal game of them-versus-us politics. It offers hope of meaningful association, if not actual transcendence of difference. Postmodernism, on the other hand, can offer only self-defeat as long as it continues to embrace adversarial politics. Oppositional, group-against-group politics contains the deep structure of all oppressive systems: sexism, racism, classism, etc. Unfortunately, postmodernism itself does not derive from a political

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<sup>12</sup>E. Kant, *Foundations of the Metaphysics of Morals*, first published in 1785.

<sup>13</sup>The postmodernist views feelings of right and wrong as socially constructed, and hence situated, as well.

vision incompatible with adversarial competition. It is, at best, only *part* of the answer to oppression.

The postmodern defeat of reason — and hence the oppression of “modernism” — merely releases the forces and systems of hatred without dissolving them. The postmodernist skeptic may be correct in dismissing the power of reason to overcome hatred, which, incidentally, is not necessarily *evil* in a postmodern world. But that does not justify us in believing that hatred is solely a *product* of reason, and so will disappear once reason is defrocked. The forces and systems of hatred, cruelty, callousness and malice need to be replaced by forces and systems of love, kindness, concern and compassion. But this cannot be done as long as the separation of thought and emotion is maintained in political, legal and moral thought. We can find the unification, or at least serious attempts at such unification, in the ancient and continuing wisdom tradition. Indeed, it is tempting to see the wisdom tradition as a kind of feminist underground in which a pre-patriarchal unity of thought and feeling is preserved, though perhaps in distorted ways.

There are two reasons to believe wisdom might provide social bridges between people of different cultures, groups and power, even between WGLs and all the “others”. First, the gentle values of love, compassion, generosity and kindness embodied in wisdom are found *as a group* in so many different cultures throughout history that it seems extremely unlikely that it is mere accident. It is as though these values are inter-related at a deep level which involves something profound about the nature of humans or perhaps all conscious beings. That this “deep system” of love or gentleness is an insistent part of human life is evidenced by the enormous resources expended all over the world on socialization, training and propaganda plainly calculated to ensure that kindness does not break out between individuals and spoil the plans of war and petty political rivalry. Patriarchal, racist, nationalist cultures show a continuing need to suppress a tendency toward kindness that transcends those cultures of hate.

Not only are compassion and the gentler virtues the recurrent nightmares of hatemongers everywhere, but they would win a fair popularity contest in virtually any society. Although cruelty, callousness and hatred are as much a part of human “nature” as kindness, compassion and love, there are very few people in any culture or any era who would suggest that the former are preferable to the latter, other things being equal. It is thus not unreasonable to assume that the gentler values will be shared by people of different genders, races, cultures etc. However else we may differ, we probably agree on this: kindness is better than cruelty; love is better than hate; gentleness is better than violence; compassion is better than malice; and so on.

The second reason for believing that gentle values may bridge cultures, genders, races, etc., is that they express themselves in ways which diminish barriers and help connect, if not unify, perspectives. It is not accidental that we advise people who want to understand a confusing book to "read it sympathetically". Only when we open our hearts to others can our minds be open as well. And because the gentle virtues and values are nearly universally honoured, when we approach others in this spirit they are more likely to respond in kind. Once the respect and concern is mutual, suspicion, fear, defensive stubbornness and other blocks to understanding tend to diminish. At the same time, mutual concern and respect undercut hierarchy and the disrespect, arrogance, insensitivity and so on that tend to thrive in such settings.<sup>14</sup> Gentleness is more likely to yield mutual understanding than competition, aggression, cool reason, or any other common approach.

## 6.2 The Discipline of Kindness<sup>15</sup>

The kind, compassionate, caring, concerned and respectful stance of the wise person is as important a base for understanding others as objective observation and analysis, the stance of the rationalist. And just as observation and analysis are best treated not as isolated, individual acts but as parts of an intellectual discipline (typically a science), so kindness, caring, love and compassion are best treated not as isolated, individual acts, but as parts of something more: something more demanding, more difficult, more fruitful. Perhaps it sounds odd to speak of a "discipline of kindness", or a "discipline of love", but we all know how difficult and demanding kindness and love can be. The impulsive act of kindness is a blessing to everyone when it hits the mark, but kindness demands more than this. It grips our soul and transforms us. It sets other desires, other projects, other values along-side our own and asks us to embrace them. I may be ignorant of what these "other" projects and desires are, but kindness demands that I take them into account nonetheless. They may even conflict with my own. No matter; kindness demands that they not be treated as "other" but be mixed with my own. Among other things, to be wise is to embody this discipline, or these disciplines, of kindness, compassion, respect, love and so on.

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<sup>14</sup>Perhaps the major reason why political power is said to "corrupt" people is that it places them in positions in which the virtues of wisdom are strongly discouraged while the aggressive, adversarial virtues are applauded. Most modern political systems are designed to accommodate political authority modelled in some degree on that of the patriarchal God-King-Father.

<sup>15</sup>In this section I refer most frequently to the discipline of kindness rather than love, compassion or other relations primarily for the sake of simplicity and clarity. "Kindness" carries somewhat less cultural baggage than the other terms while still clearly embodying the root social or political value(s) of wisdom. "Discipline of wisdom" might seem to be the most accurate title, but it lacks intuitive presence for most people, in addition to covering elements *beyond* the social or political.

The relevance of this to diversity in the classroom should be obvious. Wisdom, with its discipline of care, provides both a common ground on which individuals can meet in the study of legal materials and a mode of interaction which maximizes the likelihood of mutual understanding. Wisdom itself cannot be taught, of course, as philosophers have noted since the time of Socrates. Not even parents can teach their children to be wise. Certainly law professors cannot teach it to law students, even if they are themselves wise. But a commitment to wisdom and justice as well as analytic rigour and “professionalism” can have a meaningful impact on both the “product” and the “process” of legal education.

Although wisdom cannot be taught, it does not follow that it cannot be learned. How is it learned? I have already suggested that it is learned from, or at least as a result of, experience. What is the most common method of teaching and learning law? The case method. And what is a case if not a story, a story of problems, conflict, responsibility and resolution? As I argue elsewhere, stories or narratives are devices whereby humans expand their experience without the normal costs and risks. The legal case is an opportunity to enter into a different world, a different set of experiences, from the relative safety of a classroom. While it cannot have the impact of actual experience, it need not be wholly void of the effects of such experience. If we refuse to over-intellectualize cases and thereby strip them of their individual/personal and social contexts, they provide all of the materials needed to vicariously expand our experience in ways that call upon justice and wisdom.

If we are willing to flesh out at least some of the cases and engage our “wise emotions” — our love, compassion, respect, concern, etc. — as we consider them, we provide a common framework in which diverse individuals seek, and probably find, common ground. The cases are more than expressions of authority. They are our laboratories of vicarious experience in which we and our students are asked to be wise as well as just and rigorously analytic. If I am right that there is a more-or-less common core of values and insights among the wise of all cultures and backgrounds, the search for wisdom and justice in the *materials* of legal study can help provide a degree of commonality which might otherwise be missing among those separated by “difference”, that is by oppressive power.

At the same time, the study of law, both inside and outside the classroom, is part of our experience, and thus itself calls upon us to practise justice and wisdom. If the very atmosphere of the classroom and the school is antithetical to the gentle values of wisdom, we diminish the opportunities for mutual understanding only they make possible, while betraying our own commitment to wisdom. If we are wise in our treatment of students — if we are responsible and treat them with concern, kindness, compassion and, yes, even love — we maximize the likelihood of taking the intellectual sting out of power and privilege, and of bringing down



the barriers of hurt and protectiveness which make understanding extremely difficult. Wisdom is good educational strategy.<sup>16</sup>

However misguided and inadequate the WGL tradition might be, with its extreme emphasis on abstraction, universality, and reason, it has been accompanied in its long history by a companion tradition of wisdom. The canonized version of wisdom preserved by rabbinic Judaism formed the basis for an important part of our modern conception of justice, and allowed the basic conception of wisdom to find a place, albeit a small one, in the dominant Christian church.<sup>17</sup>

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<sup>16</sup>The search for wisdom has yet another benefit in the academy. Because wisdom involves kindness, care, compassion, love and the like, it offers some hope of bypassing the practical difficulties of "intersectionality" in a way not open to "rational", ruled-based approaches. The gentle emotions constitute specific relationships between individuals. We cannot meaningfully be kind to categories or classes of people. We can only truly be compassionate, loving or kind to *individuals*. So no matter how the intersectionality problem is resolved, wisdom ties us to the uniqueness of a specific intersection not only of race, gender, class and sexual orientation, but also of family, physical stature, beauty, intelligence, brain chemistry, health, hopes, humour, and all the other things that make each of us unique. The discipline of care tells us that all of these factors, the 'private' as well as the overtly 'political', may well be *relevant* to that person's learning experience in law school. These things may equally well be relevant to understanding the individuals about whom we tell our law-stories or cases. The very practice of wisdom undercuts the politicization by patriarchy, capitalism, heterosexism, racism, nationalism, etc. of only a very narrow range of categories or properties of individuals. At the same time, of course, because wisdom involves caring it cannot be blind to the special significance of those politicized differences which constitute the interdependent systems of oppression. The wise must respond to the politically 'real' while simultaneously seeing through it to the more complex individual.

<sup>17</sup>The wise person probably plays a more important formal or quasi-formal role in Judaism than Christianity. The wisdom tradition of the "Old Testament" continued to be part of Judaism while finding little resonance in a "New Testament" Christianity fixated on sin, salvation and deliverance. Professor Thomas Kuttner has suggested to me that some of this difference may be explained by Christianity's emphasis on believing a particular creed, this a result of struggling to define and distinguish itself from other religious sects at the time of its formation. The central expression of the Christian's faith is a set of beliefs about God, Jesus, sin, salvation, etc. The central expression of Jewish faith is participation in a community life imbued with a unifying set of traditions and values. In "Constitution as Covenant" (1988) 13 (2) Queen's L. R. 32 at 44-45, Professor Kuttner puts it this way:

[W]hereas under the Covenant of old is forged a *community* of faith, under the new is born a community of the *faithful*. There is much in the tenor and language of the two Covenants which testifies to this difference of thrust, perhaps nothing more clearly so than the profession of faith of each: "*Shema' Yisrael... Hear, Oh Israel the Lord is our God, the Lord is one*" in the old; "*Credo in unum Deum I believe in one God, the Father Almighty...*" in the new.

Since *participation* in a living tradition — acting rather than believing — is a central part of Jewish identity, wisdom, with its appropriate integration of thought, feeling, sense of significance and action is more important to Jewish identity than Christian. In this regard Christianity is sharply distinguished from Islam as well. It is probably not accidental that Christianity provided the

Wisdom thus maintained some small formal recognition in the dominant Western culture. Outside of formal structures, of course, wisdom plays an ongoing role in everyday life not limited to the any particular group. It knows no limits of class, culture, nation, religious sect, gender, ability or sexual orientation. It is part of the tradition of nearly everyone, including WGLs.

If WGLs along with everyone were to recognize and embrace the traditions of wisdom which have long coexisted with Stoic-liberalism, diversity in society and within the classroom might not present an impenetrable wall to understanding and justice. We need to recognize that the rationalist tradition must be supplemented in the classroom and in politics, as it is in "private" life, by wisdom. We must once again dare to be wise. The disciplines of kindness, compassion, love and justice must once more become part of the discipline of law as they were long ago for the prophets of ancient Israel and, most likely, for the mothers of prepatriarchal society. The white-guy liberal can play a role in this along with the most "post" of postmodernists and the most "pressed" of the oppressed. Wisdom and justice reach out to everyone. Reason alone cannot unite a diverse society, for it cannot distinguish diversity (equality) from difference (hierarchy). Only when wisdom is set along-side reason do we have any hope of reaching Jerusalem, the promised land of harmony, peace and justice.