GENDER ISSUES

Neither here nor there: of the female in legal education
L A Obiora
21 *Law & Soc* 2, 1996, pp. 355–432

Feminist research on legal education in the United States has sought to establish that, despite similarities in the experiences of all law students, female students confront some unique ordeals and dilemmas. This literature critiques aspects of legal education that conflict with the social conditioning of women and engender psychological complexities for them. Few studies have interrogated the applicability of the findings of these feminist studies for women who are not white and middle class. An examination of select interdisciplinary materials suggests that crucial dimensions of the realities of many women are marginalised and mystified if the impact and implications of race, class, and other variables mediating gender experiences are not factored into consideration.

There is a case for reconstructing the feminist problematic in ways that are sensitive to the convergence between seemingly gender-based experiences in legal education and the experiences of other students. These other students are those whose values and standards - by reason of race, culture, class, sexuality, spirituality and other parameters of existence - have had a marginal influence on the dominant modality, structure and culture of legal education. For historical and other reasons, these students, like middle class white women, tend to labour under the legacy of exclusion.

Experiences of women from various classes and non-white cultures illustrate the limitations of the popular paradigm of femininity that underlies many feminist critiques of legal education. It appears that competence in such cultures should enable the women who participate in them to thrive in some aspects of legal education. Yet available records tell a different story. These women face at one and the same time certain problems by reason of their gender and other problems by reason of their race, ethnicity, class, and the like. In some respects, they share a mutual fate with men from similar backgrounds. Even when they adopt a low profile or attempt to assimilate into the dominant professional model, it appears that many of them experience immense difficulties. In a manner of speaking, they seem to be damned if they do and damned if they do not.

Much of the feminist literature argues that the educational setting is a microcosm that reflects, reinforces and reproduces the asymmetrical gender relations of the society at large. Because of its origin and long existence as the exclusive preserve of white male elites, these critics argue that legal education is structured in a way that replicates the images, mores, and aspirations of its makers and pioneers. Despite women's increased access to legal education, ample evidence points to a compelling need for inclusionary substantive and procedural reforms to accommodate the objective realities of women in the law community. The law school curriculum continues to marginalise and omit issues of particular concern and interest to women. It is not uncommon for standard instructional materials to contain stereotypic and pejorative characterisations of women. The behavioural norms elicited and rewarded by dominant pedagogical transactions are at fundamental variance with socio-cultural norms of female behaviour and cause high levels of alienation and role conflict for women in law school. Women are disproportionately likely to quit the legal profession altogether.

Perhaps more pervasively than any other institutions, schools judge, define and categorise scholastic ability on the basis of linguistic performance. Several studies of classroom dynamics report that the occurrence of silence-inducing events in the classroom ultimately affects the participation of female students and other similarly situated students. But cross-cultural comparisons undermine the assumption of universal gender differences in speech styles.

Although male bias or patriarchal hierarchy may be factors in explaining some educational experiences of law women, it is not decisive when analysing relational dynamics and experiences of women from non-mainstream racial and socioeconomic backgrounds.

Feminists who echo the contents of the traditional ideal of femininity in critiques of legal education ought critically to explore the scope of the paradigm's applicability. The failure to interrogate the extent to which the ethos and values inscribed in the paradigm obfuscates the realities of relevant law student communities and perpetuates an unfortunate paradox. It is a paradox because a defining feature of feminist inquiry is its posturing as a corrective against patriarchal obliterations and entombments of the realities of women. It is a paradox whereby behavioural patterns manifested by women from marginalised communities are objectified and adjudged pathological, deficient and deviant because they differ from mainstream gender stereotypes. It is a paradox that operates in the manner of a double standard that denies the opportunity to succeed to some types of law students who are, at least in appearance, constituted for success.

Specifically, there are two faces, or rather two layers, concerning the same issue. The first concerns the fact that the ability of some black women to stand their grounds and assert their voices may jeopardise their interests in the very circumstances that a similar behaviour would enhance the interests of elite white men. The second layer derives from the plight of black males whose law school experiences contradict mainstream feminist analyses that assume gender to be a dispositive factor. Apparently, the 'maleness' of these students is supposed to imbue them with the appropriate credentials to thrive and pull ahead of their female counterparts in legal education. However, black males do not have a particularly easy transition in law school; the norms and strategies of the dominant pedagogy militate against their opportunity to establish and realise their expectations of success. Like women and students from other minority groups, many black male students participate and interact in legal education as the 'other' whose traits and presence are no less reduced to a difference. This convergence of the experiences of minority males with female law students points to the complexity of the issue as well as the dangers of overdetermining gender, race, and the like as discrete, independent variables.

INDIVIDUAL SUBJECTS/ AREAS OF LAW

The last ten years: what your students know that you should know
46 *J Legal Educ* 4, 1996, pp. 467–626

Editor's Note: This issue (Dec, 1996) is almost entirely given over to the publication of a series of papers presented at a workshop conducted under the above title by the Association of American Law Schools. The underlying premise of the workshop was that, although law teachers and scholars are presumed to keep up to date on developments within their own fields, they are often out of touch with pertinent developments in adjacent fields. At the workshop specialists in 13 areas of substantive law described what had happened in their fields over the past decade, with special attention being devoted to developments that impinge on other subjects and to the needs of those not teaching in those areas.

LEGAL EDUCATION GENERALLY

Thinking 'culture' in legal education
A O'Donnell
7 *Legal Educ Rev* 2, 1996, pp. 135–153

It has become a commonplace to say that we live in a 'multicultural society'. However, contemporary Australia could more properly be characterised as a society with a multicultural population, regulated and governed by a monocultural power structure. One aspect of that power structure is the legal system and the gap between a monocultural legal system and a diverse population has been the subject of commentary for over 30 years. This commentary has highlighted issues of access and equity. It has been recognised that law schools and the traditional law curriculum must bear part of the blame for the ongoing failure of the legal system to respond to issues of cultural diversity.

The full value of cross-cultural perspectives on the law may be realised when they contribute to a broader pedagogy in which relations of power and racial identity become paramount as part of a language of critique and possibility. Despite renewed attention to the law school curriculum, the field of legal scholarship remains relatively impervious to trends elsewhere in the academy. A United States commentator has observed that 'law schools are behind the times in confronting the issues posed by the debate over the canon. Our basic core curriculum stands astonishingly unchanged and unexamined compared to that of the rest of the academy.' An Australian academic has echoed these concerns: 'Scholars in law have remained disturbingly content with regimes of truth, designed within agencies of the state, which often naturalise or elide questions of oppression and inequality.'

Secondly, cross-cultural perspectives must be integrated throughout the curriculum to avoid a perceived marginalisation of cross-cultural issues as disassociated from the remainder of students' studies. In particular, the challenge is to examine precisely those most 'opaque' areas of the curriculum, where we confront the accumulated, taken-for-granted and common sense assumptions the law uses to understand the complex social world.

The actual content of 'cultural awareness' education is usually described only in the vaguest of terms. In the context of legal education, such training has been incorporated through practical training or through the introduction of discrete, optional, specialist courses to the undergraduate curriculum, such as 'Aborigines and the Law' or 'Law and Cultural Diversity'. Those seeking models for integrating cross-cultural content into the core undergraduate curriculum have relatively few models on which to draw.

Certain assumptions underpinning 'mainstream' multiculturalism present particular hazards for cross-cul-