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Befehl Ist Befehl

James K. Weeks*

THE DIFFICULTY IN DELIVERING oneself of a protest regarding student attitudes is the problem of avoiding vituperation or sounding too "cute," a perennial problem with some younger professional types. The drawback in the first approach is that the angry-young-man bit has fretted its hour upon the stage and departed without fully venting its rage, and with the second that it is apt to sink into smug cynicism. Neither of these fates is wished for a critique of student shortcomings. One could say in dealing with student shortcomings that they are legion at worst or kaleidoscopic at best.

Over the years educators have railed against poor scholarship, lack of interest, poor grammar and the general incompetence or ineptness of students. Many of these criticisms were correctly laid at the door of students. The attitudes developed early in life, nurtured in elementary and secondary schools and ripened in undergraduate colleges and universities, were often harvested by the graduate schools. These attitudes, good or bad but more often merely neutral, would supply a list of almost inexhaustible possibilities. It is this writer's purpose to focus in on four which, because of their influence upon law students, can be carried on into the practice of law with adverse effect.

These are lack of imagination, absence of creativeness; lack of concern about people, whether individually or in the larger term—the human condition; and a mercenary Philistinism.

Unquestionably, these attitudes are far from uncommon in all of society, and many observers of the current scene have expended numerous words in describing them. However, it appears that little has been publicly uttered about the possession of these attitudes by law students and, alas, all too often by legal academicians and practitioners themselves. One could shrug and quite appropriately say, "So what—these are the result of long treasured values in our culture; so what would you expect?" It is a dangerous oversimplification to attribute these to the strong thread of anti-intellectualism in American life and the not inconsiderable pull to be a lifetime member in the conspicuously consumptive society—but these tenets of American life have produced a society with "the outlook of a robber baron and the habits of a piranha."

Let it also be understood that this author does not for a moment believe that he has discovered new truths or even that he is participating in a "new wine-old bottle" gambit. It is merely that years of silent protest have at last given way to a basic law of physics—that for every action (in this case inaction) there must be a reaction. It is time to tack

* Associate Professor of Law, Syracuse University College of Law.

the theses on the cathedral door, this being a more or less symbolic and more prosaic door. There may also be a wee element of wanting to join the bandwagon of protest—after all, when one is over thirty, one must do what he can to dispel the aura of mossbackism.

It should be expected that among individuals training for entrance into a profession, or particularly the legal profession, which is charged with a key role in the establishment, that one would find a high degree of incipient conservatism. When one observes a lecture hall full of individuals whose peers have manned the barricades at Columbia and Berkeley, have marched on the Pentagon or have gone to, as well as smoked, pot, one discovers that there is an intra-generation gap. Why is it that law schools seem to attract “old men” in their early twenties? A number of studies have indicated the essential conservatism of youth and that the young radicalizers of our society are a small percentage indeed. In one way or another too many are taking the cop-out route; whether they go kicking and screaming in protest, not realizing that they are actually not with it at all, or depart passively, the net effect is approximately the same.

In these days of academic and social unrest, it seems that perhaps the wrong segment of academe is revolting—the other segment being already sufficiently revolting. It appears to this writer that it is time that someone laid this foundling of warped values at the doorsteps of the graduate schools, and more particularly law schools. The Bar itself should shoulder its share of the responsibility for the perpetuation of these attitudes, but that lies beyond the scope of this brief polemic. It is time for law school faculties to remove their privately voiced concern about student attitudes from the faculty commons room to a larger arena. The danger in doing so lies in the fact that it may be cozy to escape responsibility for aiding and abetting and, in some cases, actively cultivating these attitudes in law students. One suspects it is easy to apply the doctrines of comparative negligence here with the resultant effect that constructive measures become impossible of application and that the whole affair degenerates into a most untidy business. So I would enter the *caveat* that at the outset a faculty should form further views based on the premise that the assessment of culpability is far less important than the need to find a method for correcting this imbalance of values. This should be the *de minimis* rule at worst, but the more optimistic should labor toward the implementation of the method or methods initially discovered.

At this juncture the cries of the wounded interests, prides and egos can already be discerned from the critics. The opposition is already forming for the counterattack. The strength of these countermoves indicates perhaps the best evidence of the accuracy of the view that there is something seriously out of tune in our profession and our acolytes.

Basic to this problem of attitudes *cum* values is the problem of whether to cast all blame on their development at the source, *i.e.*, home or early schooling, or society generally, and thereby provide a rationalization for doing nothing; or whether to expend all energies on their elimination rather than providing a palliative, which makes them easier to live with. This latter approach can soon be likened to fighting a pyromaniac with a water pistol, and, when the futility of this becomes apparent, the same rationalization for doing nothing presents itself. So, like Buridan's ass, we may die without arriving at workable approaches. Unless law schools are prepared to undertake wholesale changes of personality, which they are not, or alternatively to foist the problem on to other entities, which we in good conscience should not do, correction of the current student attitudes calls for a more moderate appraisal and development of curriculum, teaching methods and the like which will stimulate and provoke self-change on the part of students. This presupposes such ability on the part of students, but such must be presumed unless one is to wind up in the quagmire of rationalization for doing nothing. The siren song of that is most attractive when the enormity and seeming-futility of making unimaginative, uncreative and uninterested students into humans that feel for others, know themselves and are able to pass from more technical competence into the rarefied atmosphere reserved for the great artisans of the profession, makes itself felt.

One senses that the typical law student today has little real interest in society outside the college and fits very appropriately the description of being in the world but not of it. It is hoped that this is changing and some glimmer of hope is occasionally discerned which would indicate that maybe it is possible to reach a few students and to make them truly give a damn!

It seems incredible that the fervor of change in today's world has not reached into many law schools. There have been, of course, new additions to the curriculum in the areas of poverty law, updating of criminal law, property and constitutional law courses, as well as more emphasis being placed upon teaching methods and the like. Much lip service is given as the litany of relevancy and functionalism are intoned in public addresses, law review articles and gatherings of the academic covens. But little attention has been paid to instilling concern for mankind and developing the imagination and creativity required to successfully cope with the world as it is today and as it is going to become as the next millennium approaches. By far the greater number of law students adopt the same mental attitude that the title of this article conveyed time and time again as it was uttered in the halls at Nuremberg and in other war crimes tribunals: an unquestioning, though not necessarily obedient, acceptance of things as they are. There are few who have a dream and

even fewer who can emulate the words of the late Senator Kennedy: "Some men see things as they are and say why? I dream things that never were and say, why not?"

More law professors should encourage the inculcation of the attitudes which motivate the student to start his quest to "reach the unreachable star." By this is meant not just emphasizing the "great" concerns of the world, but the development of the appreciation for the smaller and even at times prosaic qualities. As it is, law schools are turning out in mass-produced quantity a commodity for which, unfortunately, little product liability is available. Besides, it is not suggested that the bulk of these graduates are not competent as skilled technicians; only that they lack the more elemental qualities that really lend dignity to the individual and make them compassionate human beings. The sensitivity to life which should be there is not there. The lawyer should be an artist, a creator, a poet, a lover. He should be what many of us have mistakenly thought he already was (and at one time in the distant past may have been)—a generalist. However, today he needs be more than that—he must additionally possess the skills and knowledge of the specialist as well. It does not seem that this is an impossible task. I am hopeful that the wherewithal to accomplish this exists; what I am less hopeful of is the ability to draw the law student and law faculty away from the current paths of parochial self-interest. It seems that the current societal climate makes such a move possible if we do not succumb to the Panglossian view but ascribe rather to the Dickensian dictum that "it was the best of times, it was the worst of times . . ." and capitalize on the former by defining it as the best of times for change.

When one is confronted daily in the classroom by pedestrian values and attitudes, passive stagnation, unconcern with knowledge beyond its immediate application to a bar examination or convertibility into legal tender, one should be overwhelmed by a sense of nausea. The final lament is for what might have been and what could still be if we as concerned human beings will become involved and demand this involvement from our students. The greatest calling should be to develop students who, when looking at the sky, can see the stoning of St. Stephen in the clouds and not the more mundane shapes that children see, or who can see beauty and the value of life everywhere and, where it cannot be seen, to make it appear.

To paraphrase another Kennedy, the elimination of restricting attitudes and values may not be finished in three years of law school, or even in the lifetime of the current professors, but let us begin.