4-1-1996

Teacher Power In The Law School Classroom

Julie Macfarlane
University of Windsor

Julie Macfarlane*

Teacher Power In The Law
School Classroom

Law teachers make choices over syllabus material, teaching methods and assessment formats, and thus inevitably exercise some control over what and how students learn. The actual power of each individual law professor will depend on the context of her particular classroom and her perceived credibility, generally defined by the university as the demonstration of a particular (rationalist) model of subject expertise. The intrinsic hierarchies and highly competitive culture of law school sustain this traditional model of knowledge along with its congruent image of the professor as autonomous, powerful and the focus of the classroom. Feminist law teachers and others who wish to reject an authoritarian and teacher-dominated model of legal education need to develop alternative frameworks for understanding and redefining their use of teacher power. Critical pedagogy and feminist pedagogies provide some insights into the complexity and ambiguity of how law teachers can, and should, exercise power in the classroom. Drawing on the verbatim comments of law students interviewed about their experiences of teacher power, the paper suggests a pedagogy for refocusing the process of teaching and learning in law school on self, and away from the professor, hence reconceiving the character and purpose of the student/teacher relationship.

Les professeures de droit exercent leur priorité dans les choix contenu des cours, des méthodes d'enseignement et des procédés d'évaluation. Ainsi, ils déterminent inévitablement un contrôle sur ce que les étudiants apprennent, ainsi que la façon dont ils apprennent. Le pouvoir réel de chaque professeure de droit dépend du contexte propre à sa classe et de la crédibilité dont elle fait l'objet, généralement définie par l'université comme étant un modèle particulier de maîtrise de la matière qui repose sur une démarche rationelle. La culture hiérarchique et hautement compétitive propre aux facultés de droit appuie ce modèle traditionnel du savoir, de même que cette conception du professeur comme étant souverain, le détenteur du pouvoir et l'élément central de la salle de classe. Les professeures de droit féministes, ainsi que ceux et celles qui rejettent le modèle d'éducation juridique basé sur l'autorité magistrale et la domination du professeur se doivent de développer des cadres de références alternatifs pour assurer à la fois une nouvelle compréhension et redéfinition de ce pouvoir. Les théories critiques et féministes en matière de pédagogie fournissent un aperçu de la complexité et de l'ambiguïté de cette problématique: de quelle façon et dans quelle mesure le pouvoir professoral peut-il et doit-il être exercé en salle de classe? S'inspirant des commentaires d'étudiantes en droit interrogées sur leur expérience relative au pouvoir des professeurs, l'auteure suggère une approche pédagogique visant à

réorienter le processus d'enseignement et d'apprentissage du droit vers l'apprenant, plutôt que vers l'enseignant, redéfinissant ainsi la nature et le sens de la relation maître/élève.

Introduction

This paper is an exploration of one aspect of our role as teachers which in my experience is seldom discussed, and only rarely brought to the level of conscious reflection. Its focus is our authority and status as definers of the classroom agenda and arbiters of student achievement; in short, our "teacher power". My examination of this issue is illuminated by the commentary of twenty-five law students who were interviewed as I first began to develop the ideas for this paper. The interviews were conducted by two research assistants and resulted in more than 250 pages of interview transcript.[1] Students were asked to describe their ideas about and their experiences of "teacher power" in law school and in particular its impact on the learning environment inside and outside the classroom. Their insights are included throughout the paper in their own words.[2]

The stimulus for this paper came from a questioning of my personal use of teacher power in the classroom as a feminist teacher. At first glance, feminist principles in the classroom imply the rejection of hierarchical structures; it is my impulse to reject an authoritarian use of power as being unambiguously oppressive.[3] However, the more thought I gave it, the more ambiguous the issue of power appeared. As a university teacher one is constantly reminded of the subtle but pervasive influence of the institutional traditions of teaching and learning, traditions in which the authority and the legitimacy of the teacher rest on clear lines of hierarchy. Professorial power seems inherent in university culture, rather than something I can choose to use, or not. In this sense power is more than simply the property of certain individuals in the institution; as Foucault has put it, "individuals are the vehicles of power, not its points of

---

1. Grateful thanks to my two research assistants, Rachel Black (LL.B. Windsor 1994) and Patricia O'Reilly (LL.B.2, Windsor) as well as to the Windsor law students who volunteered to be interviewed for this project.
2. The interviews were conducted in May 1994 and February–March 1995. The interviews followed a semi-structured format (see the appendix for prompt questions for both interview sets). In the first set of interviews in May 1994 students were also asked to listen to and comment on an audio-tape of classroom interaction. All interviews were audio-taped and the tapes transcribed, in order to maintain student anonymity. The other details which were attached to the final transcripts were the gender and the LLB year of the student. The transcripts are on file with the author.
3. P. Treichler & C. Kramarae, "Women's Talk in the Ivory Tower" (1983) 31:2 Communication Quarterly 118 at 124.

application."[4] To assume that professorial power is only the property of certain individuals (rarely women) and that feminist educators can reject it entirely, may disguise the role each of us plays, both consciously and unconsciously, in shaping student ideas. When I examine my own teaching, the issue of power seems to be present in both interaction and in silences. It takes both explicit (for example grading student papers, setting the agenda for reading and lectures) and implicit forms (for example devoting more class time to discussion of one topic but ignoring another, affirming or rejecting student contributions to class). Understanding power in this way places the issue of teacher power on the agenda of all professors who wish to be reflective about their teaching practice.

Part of the ambiguous nature of teacher power is the significance of context (including but not limited to, gendered relations) in shaping relationships of power in the classroom. It is clear that the context of the classroom, including our relationship to our students and their expectations of us, who our students are, and possibly the substance of what we teach, affects just how much power each of us may actually exercise. The classroom environment may be supportive or hostile;[5] or it may be indifferent.[6] It may be difficult to challenge student expectations of what they should be learning, or how they should be learning it.[7] As women faculty our attention is often arrested by the need to legitimate our status as professor in front of the class.[8] The relational nature of power also means that we are not afforded the same power in each and every teaching context we face.

---

4. M. Foucault, "Two Lectures" in C. Gordon, ed., *Power/Knowledge: Selected Interviews and Other Writings 1972–77* (New York: Pantheon Books, 1980) at 98.
5. See for example, T. Scassa, "Violence Against Women in Law Schools" (1992) 30 Alta. L. Rev. 809; S. McIntrye, "Gender Bias within the Law School: The Memo and its Impact" (1987) 2 C.J.W.L. 362 especially 375–82; see generally R. Hall with the assistance of B. Sandler, *The Classroom Climate: a Chilly One for Women* (Washington, DC: Project on the Status and Education of Women, Association of American Colleges, 1982); and B. Sandler, "The Classroom Climate : Still A Chilly One for Women" in C. Lasser, ed., *Educating Men and Women Together: Coeducation in a Changing World* (Urbana: University of Illinois Press, 1987) at 113.
6. An evocative example of this is given by Ira Shor in *Empowering Education* (Chicago: University of Chicago Press, 1992) c. 1 at 2 [hereinafter *Empowering Education*]. Shor looks into the classroom on the first day of a new course and sees the students sitting "waiting for the teacher to arrive and do education to them."
7. See the description of teaching using narrative about "subway stories" by Patricia Williams in *The Alchemy of Race and Rights* (Cambridge, Mass: Harvard University Press, 1991) at c. 3.
8. For a recent study of the impact of gender on student expectations and faculty behaviours in university teaching, see A. Statham, L. Richardson & J. Cook, *Gender and University Teaching: a Negotiated Difference* (Albany: University of New York State Press, 1991) [hereinafter *Gender and University Teaching*]; and see the discussion below at section III.2.

The classroom is not the only context in which power is relative for law professors. It may be that as a result of the pressure exerted by the institution, and felt especially by untenured faculty, we feel obliged to follow previously established practices in the teaching and assessment of a given course. A person who is relatively powerful in a given situation (for example, in her classroom) may be less powerful or even powerless in another (for example, in a Faculty Council meeting with her peers). All these factors influence how we as teachers may actually exercise power, differentiated as we are by our job security, gender, ethnic and cultural background, and any other ways in which our identity as teacher might depart from expected norms. They also affect how much power we perceive ourselves as having. Nonetheless, wherever we might place on a scale of actual or perceived power, "the pedagogical relation of teacher to students is, at some fundamental level, one in which the teacher is able to exercise power in ways unavailable to students."[9]

The impact of the exercise of teacher power on the learning environment is also ambiguous. The idea of power in the context of teaching has both positive and negative connotations. Students are accustomed to seeing many different facets of the use of teacher power, and hold diverse views on how teacher power can "best" be used. Teacher power was described by one first-year law student as "the power to light a fire . . . a fire of interest within the student." Another student talked about the potential for a teacher to "motivate . . . really ignite interest in a topic . . . it doesn't have to be directing or dictating, but just fostering that interest which is the ideal scenario. . . ." However, many students also described what they considered to be negative dimensions of teacher power. For example, "teacher power can also mean the power to persuade and direct and, in the worst case scenario, can be used against the students by the professor. It can work both ways . . . if a professor is really adamant and believes fundamentally in something, [s/he] might try to ram it down the students' throats." Another student remarked that the professor who apparently has no agenda for class—who comes to class unprepared and talks "off the top of their head"—also exercises power. "Where the professor who comes into the classroom ill-prepared but seemingly requiring an awful lot of the students, that's a form of power."

Inevitably, many students made reference to the teacher's power in the grading process. None questioned the right of the professor to determine marks and there was no reference to peer or self-assessment input

9. J. Gore, "What Can We Do For You! What *Can* 'We' Do For 'You'? Struggling Over Empowerment in Critical and Feminist Pedagogy" in C. Luke & J. Gore, eds., *Feminisms and Critical Pedagogy* (New York: Routledge, 1992) at 68.

(approaches to grading which are almost unknown in law school). Having accepted this, however, students are clearly sensitive to power imbalances manifested in what they perceive as unfair grading procedures. One commented that on one occasion she had felt "cheated" because she felt that the professor "didn't put as much effort into marking my paper as I put into writing the paper for this professor." Several students described occasions when they asked for clarification of a grading procedure and were dissatisfied with the response; others talked of wishing to seek clarification of a grading procedure but were uncomfortable about doing so. All the students we spoke with were painfully aware of the impact of grading and professorial assessment (for example via letters of reference) on their future careers.

It is obvious that instructional choices and teaching and assessment practices are understood and experienced differently by different students, and in different classroom contexts. This diversity is inevitable and is one of the reasons that teaching (especially in large classes) is such a complex process. For example, student comments reflected many different views on the appropriate degree of control that should be exercised by the professor in the management of classroom discussion to ensure that it stays "on track" (as the student understands that), and to control and monitor potentially offensive comments. The ambiguous character of the "best" use of teacher power and its impact on the learning environment is a constant theme throughout this paper.

Another theme is the relationship between our personal power as teachers in our own classrooms and the power that we are *deemed* to have as a consequence of our institutional status. On one level, the issue of teacher power is wholly personal. It is inextricably linked to how we define ourselves as teachers. At the same time teacher power can also be understood as an institutional phenomenon, inherent in the institutional structure of the university and in the position of professor and an inevitable consequence of the role expectations of professor and student; what Nicholas Burbules calls the "template" of that relationship.[10] A number of students in our study talked about the distance conventionally maintained between student and professor, which often results in an aura of mystique and sometimes in intimidation. One student described it in this way: "there is a clear delineation between teacher and student. This is the line, and we are going to keep this distance between us." A number of students described signals they picked up from their professors which they saw as telling them to "keep their distance", for example, "a sideways look down from the eyes, a hand on the chin or a tongue to the

---

10. N. Burbules, "A Theory of Power in Education" (1986) 36:2 Educational Theory 95 at 97.

cheek, or a roll of the eyes." Role expectations may be reinforced by the traditional physical and interactive style of the classroom, with the professor lecturing from a podium. Several students described their surprise at finding that their professors were actually quite approachable outside the classroom; for example, "sometimes profs may seem a little distant and removed . . . but what I find is that they may not actually be that way [outside class]. It may be just the image they convey when they are standing at the front of the class." Analysing teacher power from both a personal perspective and as an institutional phenomenon illustrates its complexity and relativity. Both personal and institutional power imply both freedoms and, inevitably, constraints.

It has been my experience that law professors—whatever their relative power—rarely assume or reject the use of power at a conscious level. Indeed, we are largely without frameworks to enable us to do so. As one student put it, "I think that the professors should be made more aware of the power that they have, and I think that they should be more accountable for that power. . . . I don't think that they take responsibility, generally, for that power." This paper suggests some frameworks for thinking about these issues. I begin by considering the relationship between our personal approaches to the subject matter we teach (what we understand by knowledge in our discipline), and the choices we make over the selection and presentation of course content. This serves as a starting point for considering what power we have in our classrooms and how we might explain or justify its use.[11] The following section considers some of the ways law school culture produces experiences of teacher power.

I shall then look at the nature and use of teacher power through two different lenses. The first is what I shall call the "traditional institutional" approach to the question of teacher authority. This reflects the traditional view that the teacher is the "master" of "his" domain and that he alone is responsible for student learning. I shall argue that this view continues to be influential in the development of new teachers and in the socialisation of more experienced faculty, and is reflected in the culture of the law school. Finally I look at alternative analyses of the nature of teacher power made by critical pedagogy and by feminist pedagogy, and their implications for classroom practice. In doing so I offer one model for resolving the "living contradiction"[12] of being both a feminist and a law professor.

---

11.   While the control we may exercise over the substance of the curriculum is by no means the only potential of teacher power, for teachers and for the students we talked with during this study it may be the most recognisable.
12.   K. Pauly Morgan, "The Perils and Paradoxes of Feminist Pedagogy" (1987) 16:3 Resources for Feminist Research 49.

I. *Meaning-making in the classroom: knowledge and power*

My preoccupation with the nature of teacher power arose out of earlier discussions of how personal epistemology—ways of knowing, understanding and valorising substantive material—is critical to the development of personal identity as a teacher.[13] Our sometimes unselfconscious assumptions about what it is to learn and an implicit hierarchy of knowledge ("real" law contrasted with "fringe" materials) steer our choices over teaching method, course material and assessment strategies. Each of these choices is not necessarily obvious, but is critically shaped by what we see as "truth" in our discipline. It is a consequence of what we valorise in knowledge and learning. Moreover, these choices go to the nature of what counts as knowledge and learning. Can we teach law as rules? In which case, what are the core rules? Similarly, are there core subjects in the curriculum? Why are these subjects understood as core? And what types of intellectual and affective achievement do we reward in assessment of student achievement—Effort? Progress? Creativity? Accuracy? Memory?

Within the constraints of the law school syllabus, many teachers will acknowledge that they have some personal power in relation to choices over what information is presented in the classroom, and how. Students recognise this too. As one first-year law student expressed this, "the amount of control that they [teachers] have comes across very clearly in the various ways the teachers can manipulate the materials and do what they want with them." While most teachers feel comfortable assuming control over the selection of materials for presentation in the classroom, we often think less about the manner in which we actually execute these ideas in choices over teaching method. However, choices over course material and those we make about teaching method are, in practice, hard to disentangle.

Our chosen teaching methods imply significant epistemological and ethical choices. The execution of such choices—conscious or unconscious—over the content and process of teaching and learning illustrates the relationship between how we define our authority as teachers and our personal epistemologies and understandings of "truth" in our disciplines.[14] Implementation of our ideas in classroom teaching moves us beyond the theoretical world of our own ideas and scholarship and into

---

13.   J. Macfarlane, "A Feminist Perspective on Experience-Based Learning and Curriculum Change" (1995) 26 Ottawa L. Rev. 357.
14.   Similarly (but maybe less often) our teaching practice may affect or alter our personal epistemology, for example when we see particular teaching methods producing welcomed results.

the fluid, unpredictable context of the classroom itself.[15] Nona Lyons suggests that such choices are reflective of the interaction between epistemology and the ethical or practical dimensions of teaching. Lyons describes three dimensions to this interaction. First, our stance (as teachers) towards the relationship between known and knower (how far does the individual law student play a role in the construction of her own knowledge of the law?); our stance towards the students in our class as knowers and learners (our evaluation of the particular individuals whom we are teaching); and our stance towards the nature of knowledge in our discipline and/or subject area (for example, is law a set of rules or a socially determined and constantly evolving collection of practices?).[16] The translation of these stances into practical pedagogical choices is not arbitrary—although it may sometimes be unselfconscious—but instead is the consequence of our efforts to resolve the dilemmas we face every day in the classroom in attempting to present information and ideas in ways that reach our students. In Lyons' words:

> For as teachers hover in thought and imagination around the needs of their students, a body of subject matter knowledge, and the ways they endeav-our to have their students encounter it, they hone a craft responsive to all the elements on the horizon.[17]

The synthesis of the content of what we teach with the process of teaching is described by Roger Simon in the following way:

> [E]very time we help organise narratives in our classroom we are impli-cated in the organisation of a particular way of understanding the world and the concomitant vision of one's place in that world and in the future.[18]

The consequence of our choices is the organisation of narrative in particular ways. When we organise narrative in the classroom, as we inevitably do, we exercise power. In the words of one first-year student:

> Teacher power is . . . the power that the teacher has over the ideas that students draw from what it is she is saying in the classroom. . . . [I]f the teacher defines things or stresses certain things in class, these are the things that . . . the class is going to come out with the idea that *this* is the most important thing. . . . I think that especially people who come to class without any preconceived ideas about what it is they are studying, then the teacher has total control, I think, over how they interpret whatever it is that's going on in any class. . . .

---

15. J. Williamson, "Is There Anyone Here from a Classroom?" (1985) 26 Screen 90.
16. N. Lyons, "Dilemmas of Knowing: Ethical and Epistemological Dimensions of Teach-ers' Work and Development" in L. Stone, ed., *The Education Feminism Reader* (New York: Routledge, 1994) at 208.
17. *Ibid.* at 196.
18. R. Simon, "Empowerment as a Pedagogy of Possibility" (1987) 64 Language Arts 370 at 377.

The selection of course materials and the analysis of that selection are powerful teaching tools. One student described the course materials as "completely infallible". Another student described a process which we would all recognise:

> When you present a book to students which deals with actual cases . . . a professor can pull out the opinion of one judge versus another judge and point out that this judge had a superior opinion to the other judge even though (the former) . . . was in the majority.

Just how much power we can or chose to exercise in organising and presenting narrative, and just how "infallible" our materials and analysis are seen to be, depends in part on our choice of teaching methods—for example the adoption of a lecture style or encouraging a more open discussion format—but also on our credibility within the institution. In this way, our relative teacher power reflects not only our epistemological and ethical approaches to our subject matter, but also our situated positions within our schools and faculties. In this sense, the personal and institutional dimensions of our power as teachers coalesce in our class-rooms. In order to understand our use of power in the classroom we need to explore the relationship between meaning (our personal epistemolo-gies and values) and action (our teaching practices). Are our meaning and our actions congruent? Are there contradictions between the ways in which we use power and our ways of knowing? If so, do the means justify the ends?

II. *Teacher power in law school: a special case?*

Relatively little has been written about the impact of "teacher power" on relationships of teaching and learning in the law school environment.[19] Considerable attention has been given to the negotiation of power dynamics between teacher and student in other disciplines[20] and this has formed part of a debate taking place in academic journals over the basis

---

19. Duncan Kennedy has written about the role played by law teachers in the creation and maintenance of hierarchies of authority and deference among, and within, law schools and as 'preparation' for the hierarchies of the profession itself (D. Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System* (Cambridge, Mass: Asfar Press, 1983) [hereinafter *The Reproduction of Hierarchy*]). Toni Pickard has written about the hierarchial relationship of professor to student (in "Is Real Life Finally Happening?" (1986) 2 C.J.W.L. 150) and her own innovations with 'powersharing' ("Experience as Teacher: Discovering the Politics of Law Teaching" (1983) 33 U.T.L.J. 279).

20. See for example the work of Frances Maher and Mary Kay Tetreault with feminist professors at six colleges and universities in the United States in *The Feminist Classroom* (New York: Basic Books, 1994) [hereinafter *The Feminist Classroom*]; and the work of Anne Statham, Laurel Richardson and Judith Cook with professors and students at a large Midwest-ern state university in *supra* note 8.

of teacher power and methodologies of "empowerment"[21] and "student voice".[22] It appears at first glance that the law school environment presents a number of distinctive features which make an exploration of "teacher power" significant. One starting point for this discussion is the status and function of law school as a "professional school". Graduate and professional programmes tend to generate a more elitist and competitive climate than undergraduate programmes. Admission to law school is highly competitive, as is securing of summer placements and, increas-ingly, articling positions. The elitist ethos of professional schools may be reflected in accepted modes of communication and interaction in the classroom, for example in more formalised and competitive forms of classroom exchange which are presided over by the professor. It seems likely that this results in greater pressures on students to succeed, by surpassing both their own past achievements and their new colleagues. The pressure cooker atmosphere of law school—especially acute for first-year students who are uncertain about expectations and standards—is inevitably reflected in the relationships of power that develop between students and their professors.

This environment may present particular difficulties for women stu-dents, as they participate in what has been described as "the increasingly 'male' climate at the graduate and professional school level; for example, male professors are usually even more predominant, ... [and] the proportion of women students often smaller."[23] Although there is an increasing equalisation of numbers of women and men entering law schools in Canada, many women law students would agree with the suggestion that "despite the fact that they [women students] are highly self-selected and often begin study with better grade averages than their male classmates, women graduate students frequently encounter even more doubt . . . about their own seriousness of purpose than do women undergraduates."[24] One female student in our study suggested that the socialisation of women and girls prior to law school meant that they coped less well than their male colleagues with disappointing marks at mid-term. "Males, because of their upbringing, can jump back on the wagon

---

21. First described in the writing of Paulo Freire in *The Pedagogy of the Oppressed*, trans. M. Bergman Ramos (New York: Continuum Publishing, 1993)(first published 1970) [hereinafter *Pedagogy of the Oppressed*]. See also *supra* note 6 and H. Giroux & P. McLaren, "Teacher Education and the Politics of Engagement : The Case for Democratic Schooling" (1986) 56 Harvard Educational Review 213 [hereinafter "Teacher Education"].
22. I. Shor & P.Freire, "What is the 'Dialogical Method' of Teaching?" (1987) 169 Journal of Education 11 [hereinafter "Dialogical Method"].
23. Hall, *supra* note 5. In Canada, see The Chilly Collective, eds., *Breaking Anonymity: The Chilly Climate for Women Faculty* (Waterloo: Wilfrid Laurier University Press, 1995).
24. Hall, *ibid.* at 10.

a lot quicker than females, who are taught that if you fail, that's just you, because you're a woman." Another of the female students we interviewed described how her levels of self-confidence and self-esteem had been affected by the climate in law school.

> I found that until now I was really confident in my academic abilities. But the minute I hit law school I had no confidence. I have no idea now when I'm right or when I'm wrong. . . . [I]t's just bizarre.

This student pondered whether part of the reason was the increased pressure she felt as a woman to succeed in law school:

> Sometimes I feel that if I don't have something really worthwhile to say, I shouldn't bring it up because I seem to be letting them [peers and professors who want women to succeed and speak up in class] down. Its like an extra pressure being put on me to perform well in the classroom.

The elitist status of law school as a professional programme may account in part for the entrenchment of the view that the appropriate relationship between a law school professor and a student is that of "king" to "courtier".[25] As one student expressed it, "some [professors] . . . have an attitude, like they're too good for anybody to approach them. Almost like, I'm this well-informed, knowledgeable person, don't touch me, kind of thing. You almost feel intimidated when you want to approach this person." Legal education continues to be dominanted by lecture-style delivery, in which interaction between teacher and student is often minimal and/or perfunctory. Question and answer style lecture formats often follow a Socratic or quasi-Socratic model where all the questions are set by the teacher and she or he is the only arbiter of the "right answer". In North American law schools, classes are usually the sole responsibility of a single professor; co-teaching (in contrast to many European schools) is unusual.

In a professional school pressure for grades and tensions around grading may be especially acute. "Grading is a hell of a weapon. It may not rest on your hip, potent and rigid like a cop's gun, but in the long run it's more powerful."[26] Grading—and future professional success—is certainly uppermost in the minds of students when asked about teacher power in law school. In the words of one student, "teacher power . . . conveys to me the possible influence, power, control even the teacher can

---

25. For a defence of this traditional view of the relationship between professor and graduate student, see G. Phillips, "The peculiar intimacy of graduate study: a conservative view" (1979) 28 Communication Education 339 at 341.

26. J. Farber, *The Student as Nigger* cited in S. Stanford Friedman, "Authority in the Feminist Classroom: a Contradiction in Terms?" [hereinafter "Authority in the Feminist Classroom"] in M. Culley & C. Portugues, eds., *Gendered Subjects: the Dynamics of Feminist Teaching* (Boston: Routledge & Kegan Paul, 1985) 203 at 207 [hereinafter *Gendered Subjects*].

have over the students' future. The student is going to be evaluated and that evaluation will often determine what the student can go on to do . . . the teacher definitely exerts some sort of power in that way." Inevitably students feel that future assessments direct and drive their work. "The student may have ideas that are different (from the teacher's). If the teacher doesn't agree with them it's hard, because the law school environment is so oriented towards your final grades and the end result." Another student admitted,

> a lot of times in exams, rather than giving my own opinion, I'll write towards the professor's perspective, simply not to have to defend my position. There is a perception that if you're going to challenge the professor you had better have a whole lot more to back you up than if you're agreeing—then the professor can simply fill in the blanks themselves.

There is an almost exclusive emphasis in Canadian law schools on individual graded work marked by one professor. Choices over assessment are rare, and any element of peer or self-assessment is almost unheard of.[27] Combined with an increasingly competitive marketplace for articling and summer positions, grading by a single professor ensures significant teacher control over the process of teaching and learning.

The hierarchial nature of the relationship between teacher and student in law school is one of multiple hierarchies of power and favour in the law school. The intensity of the law school experience permeates all dimensions of student life, both inside and outside the classroom. A constant of that experience is judgement and evaluation, both formal and informal, apparent even in "academic street-corner talk at which one is informally tracked as excellent, good, fair, poor or terrible."[28] As one student interviewee put it, "there are a lot of judgements passed around in the law school. [Law school] is a capital for that." Law students quickly assimilate this judgemental norm. One student who was surprised at how guarded her peers were about asking questions or offering answers in class commented, "other students . . . told me that in law school you don't let anyone know how intelligent or stupid you are." This continual process of judgement feeds into the final formal ranking of students using a forced average system. For many professors operating effectively as a bell curve, this system ranks students in relation to one another; not in relation to what they have achieved. The use of a forced average to rank

---

27. In addition, second marking by another professor before marks are handed back seems unknown in Canadian law schools (this would be standard practice in many U.K. schools). Clearly this relates to the sole proprietorship of classes by a single professor. Where a class or course is "team taught", second marking can be fairly undertaken by others in that team.
28.   A. Hochschild, "Inside the clockwork of male careers" in F. Howe, ed., *Women and the Power to Change* (New York: The Carnegie Commission on Higher Education, 1975) at 64.

students in relation to one another demands the application of the same, fixed criteria to all students alike and works to further consolidate the hierarchy of what counts for "success".[29]

In an intellectual culture in which hierarchies and dichotomies are characteristic of the learning environment, the hierarchy of the student/ teacher relationship may become even more entrenched than it might otherwise be.[30] The continual assertion of the neutrality of the law in legal reasoning and decision-making allows the substance of legal education to assume a power in and of itself.[31] The substance of law itself reflects a hierarchial decision-making process which inevitably imposes itself on legal education. A decision of the Supreme Court of Canada appears to be decisive in settling debate, at least from a practitioner perspective. Some, possibly many, law teachers would consider it a primary responsibility to teach students to critically analyse past decisions, and to challenge the alleged neutrality of judicial decision-making. Nonetheless a reverence for doctrine and the objectifying of precedent is reflected in dominant teaching and assessment practices in law schools.[32] It is tempting for the professor to become caught up in waving this badge of authority as she strives to assert her credibility. By cloaking ourselves in the asserted neutrality of the law and relying on a hierarchy of decision-making the professor can always safely play a trump card in classroom discussion and if she does so, assumes the power of the law for herself as teacher.

Intellectual hierarchies are also pervasive in the traditional approach to legal reasoning, whose internal definition of relevancy excludes certain types of argument and includes others.[33] Debate is consistently dichotomised, reflecting the dominant paradigm of rights-based argument in a win/lose system. Law students are instructed in the "adversary

---

29. A formal bell curve or a forced average system are examples of "competitive" grading policy, to be contrasted with an "individualistic" or a "co-operative" model. See N. Schniedewind, "Co-operatively Structured Learning: Implications for Feminist Pedagogy" (1985) 20(3) Journal of Thought 74 at 75.

30. *The Reproduction of Hierarchy, supra* note 19.

31. See for example, C. Smart, *The Power of Law* (New York: Routledge, 1989).

32. For an analysis of the impact on teaching and assessment practices in law schools, see J. Macfarlane, "Look Before You Leap: Knowledge and Learning in Legal Education" (1992) J.L.S. 292 at 297–301.

33. See, for example, the critique of "relevancy" made by M.J. Mossman in "Feminism and Legal Method: the Difference it Makes" (1986) 3 Australian Journal of Law & Society 30 especially at 44–45.

method"[34] of argument, in which positions have more significance than principles. Systems of hierarchy between persons—the acceptance of qualitative divisions between persons or ideas, including those between professors and students—flourish in an environment which constantly dichotomises and "grades" ideas. Examples of this include the differential valorising of student contributions to class discussion (for example the emotional/intuitive versus the rational/logical), and standards for written work for evaluation purposes (valorising the descriptive/analytic over the narrative).

Law students are rapidly assimiliated into this hierarchical culture (first-year students are quickly "put in their place" by upper-year students).[35] The assimilation process—insofar as it accepts without serious question the existing structural and epistemological hierarchies of legal education—shores up the institutional power of the law professor who shares these values. According to Conklin, assimilation is sustained by law teachers through the language of law as a "secondary genre", which is detached and remote from the "primary genre" of lived experience.[36] Students can only participate in legal education and contribute to classroom discourse if they learn, from the professor, how to use this secondary language. Apparently law students need to learn to use this language if they are to succeed in law school and to excel in practice. Students choose to co-operate in the assimilative process insofar as their own objectives match these goals. The power of the professor in a legal education culture is sustained through her easy access to legal language (in the same way as a practitioner's power *vis-à-vis* her client is sustained by her access to specialised information). Furthermore, this language demarcates not only the appropriate vocabulary but also the acceptable approaches to reasoning and critique.[37] Hidden behind this barrier of legal

---

34.   J. Moulton, "A Paradigm of Philosophy: the Adversary Method" cited in L. Code, *What Can She Know? Feminist Theory and the Construction of Knowledge* (Ithaca: Cornell University Press, 1991) at 23–24 as follows:

> The adversary method is most effective, Moulton claims, in structuring isolated disagreements about specific theses and arguments. Hence it depends for its success on the artificial isolation of such claims and arguments from the contexts that occasion their articulations.

35.   In my experience this becomes apparent as early as orientation week, when upper-year students impart their evaluation of how to "shape up" and survive in law school to the entering first-year class. It is also apparent when upper-year students sit as judges for first-year moots. Upper-year students quite often, in my experience, take this opportunity to "grill" and "put down" students, in whose place they stood just 12 or 24 months earlier.

36.   W. Conklin, "Teaching Critically within a Modern Legal Genre" (1993) 8:2 Canadian Journal of Law & Society 33 at 41.

37.   On the other hand, assimilation into the dominant culture simultaneously encourages students to marginalise and denigrate the approach of professors who challenge these values

language and sharing only as she sees fit, the professor acts as the gatekeeper to the assimiliative process. Unless she can learn the language and join up, the law student remains "an out-law, an outsider, a victim until s/he becomes assimilated into the genre."[38]

Resistance to assimilation may be weakened further in a recessionary period with law students experiencing intense competition amongst themselves. Assimilation increasingly includes adopting a competitive attitude and avoiding any co-operation which might reduce one's chances of being scored over a peer by a professor. For example,

> People are really secretive about stuff, for example, one of the team of two that I'm mooting against, she and I are trading case briefs and talking to each other and saying, do you want me to help you to prepare? . . . [W]e're going to get together and ask each other questions and prepare all the arguments. Meanwhile our partners won't talk to each other. . . . [T]hey are after "pass with distinction" . . . .

In this climate, encouraged by the individualistic and highly rationalistic traditions of legal education, it may be that law school professors are especially susceptible to illusions of grandeur which sustain them in a traditional position of power in relation to their students. The origins of that tradition are explored further in the next section.

III.   The "traditional institutional" perspective on "teacher power"

1.   The university tradition and teacher power

Both historically and in contemporary times, the rationale of the university as an institution has rested largely on its asserted status as the domain of the expert. The mission of the university is the search for truth in its rationalist, objectivist sense; the searchers are those on whom the status of expert is bestowed. The traditional definition of the university ideal, originating in the work of Newman in the last century,[39] is that it should pursue knowledge (as "truth") for its own sake and not for any reasons of utility. This conception of the university's mission is now subject to sustained critique from within the academic community, both by those who question the characterisation of knowledge as truth and by those who

---

and ways of knowing. In this way, assimilation is a weapon in the control of the dominant faculty group. The self-serving nature of the rationalist university culture allows "experts" to both set and meet their own standards. See T. Burgess, *Education After School* (London: Penguin, 1977) [hereinafter *Education After School*].

38.   *Supra* note 36 at 41.

39.   J.H. Newman, *The Idea of a University* (Oxford: Clarendon Press, 1976). This work was first published in 1852.

would replace the autonomous tradition of Newman with a service orientation[40] or an entrepreneurial model.[41] Nevertheless the assumption in the wider society of the objective basis of the university's claims to expertise remains remarkably untouched by the academic debate. Perhaps this is because it is a comforting safeguard for the public to assume a standard of expertise which is described in terms of "truth" or "objectivity".[42] Despite increasing calls for accountability and the efforts of governments to exert stricter budgetary control over university activities, the university remains protected by the status derived from its assumption of expertise. The legitimation of the university as an institution and its authoritative status remain deeply tied to its assertions of expertise and mastery.

The continuing significance of this justification of the role of the university has many consequences for pedagogy in general, and the role of the teacher in particular. The university endeavour in its most traditional sense is reflected in the dominant pedagogic structures it adopts. As Maher puts it,

> the structure of the university, in which large lecture courses are a dominant mode, is a paradigm for the traditional concept of knowledge as a fixed store of information and expertise to be pumped into passive student minds.[43]

This approach to education is described by Freire as the "banking method" whereby the "teacher's task is to 'fill' the students by making deposits of information which he or she considers to constitute true knowledge."[44] As one student described her experience in a law school class, "what results is . . . passive learning and just accepting whatever it is a professor has to offer and that's it—go in, take whatever it is the professor has to offer and then walk out without anything new being proposed or discussed." In this way, the university ideal is perpetuated by what Burgess calls "the myth of the given",[45] where what is "given" is imparted by experts whose authority goes unquestioned. The traditional conception of the teacher/student relationship is one in which the professor, and not the students, is solely responsible for determining what should be learned and how. As Maher and Tetreault put it,

---

40.   *Supra* note 37.
41.   C. Kerr, *The Uses of the University* (Cambridge, Mass: Harvard University Press, 1982).
42.   R. Barnett, *The Idea of Higher Education* (Philadelphia: Milton Keynes, 1990) at 47.
43.   F. Maher, "Classroom Pedagogy and the New Scholarship on Women" in *Gendered Subjects, supra* note 26 at 45.
44.   *Pedagogy of the Oppressed, supra* note 21 at 57.
45.   *Supra* note 37 at 47.

> Most faculty perceive students as apprentices in the faculty's disciplines rather than learners *in charge of their own knowledge.*[46]

In the classroom it is the teacher who is the subject of the learning process, while students are merely "receiving objects".[47]

The process of classroom discourse in this model is necessarily dominated by what Ira Shor calls "teacher-talk".[48] When teacher-talk dominates, students feel that they are unable to ask for clarification even if they have formally been told at the outset that they may ask questions.

> It seems that because of the pace at which the material is done, whenever people ask for clarification it is an interruption in the classroom. The teacher does ask for questions so it's not a rude interruption but it is definitely an interruption of the flow. . . . [I]t seems the [request for] clarification is made as a sort of hiccup in the process of teaching.

The relationship between the teacher and the student is characterised by control; Freire describes it as the possession of the minds of the students if they were mere objects.[49]

In the traditional/institutional model, the basis of teacher authority both in the institution and in the classroom is as deemed subject-expert (usually defined in terms of research and publications). On an institutional level, the ability to teach is secondary to subject expertise in hiring, promotion and tenure. In law school, teaching is seen as less important than research and publication and teaching standards for tenure—in sharp contrast with standards set for research and publication—are characteristically set at the merely passable. Good teaching is rarely rewarded and where it is recognised it is generally assumed to be an alternative to research achievement, rather than complementary to such work. Research is seen as scholarly activity in the public sphere and teaching as activity in the private sphere; and it is with the public sphere that the university is most concerned. It is assumed that the teacher will be the "master" in the private sphere.[50] It is on the basis of this subject-expertise that the teacher is separated from her or his students and afforded a higher, authoritative status.[51]

---

46. F. Maher & M.K. Tetreault, *The Feminist Classroom* (New York: Basic Books, 1994) at 7 [hereinafter *The Feminist Classroom*] [emphasis added].
47. *Pedagogy of the Oppressed, supra* note 21 at 54.
48. *Supra* note 6 at 93–99.
49. *Pedagogy of the Oppressed, supra* note 21 at 58.
50. *Supra* note 46 at 6.
51. The gap is made broader or narrower by other factors including the seniority of the professor, the gender and ethnicity of the professor and whether it is the same or different from more senior professors, and so on. However I believe that classroom experience shows that perceived subject-expertise is the most important single factor. A young woman teacher will be "tested" more strenuously by students in her class than a male colleague with greater

In the classroom, students expect the teacher to demonstrate her subject expertise in order to justify her authoritative position. In order to achieve the requisite status of subject-expert, the professor will engage in a series of expected in-class behaviours, all of which may be subsumed under the general heading of "teacher talk".[52] These behaviours play an important part in solidifying the image of the teacher as expert and as controller. Most teachers are familiar with the sense that they are being tested by students in a new class before the class settles down. That "testing" is generally limited exclusively to matters of substance and references to subject-matter expertise in the sense of propositional knowledge; in law school, principles of law and legal rules.[53] Such testing rarely focuses on the teacher's analysis, but instead on her or his ability to provide an answer in a manner which assures students that this teacher is a subject-expert. Whether or not the students comprehend the answer, whether or not they accept the analysis (if any), is probably less important than that they hear an assured tone and can recognise the symbols of competence; for example, the use of appropriate terminology, references to caselaw, or even simply the expected language of the law professor (for example "*ratio decidendi*", "disposition", "jurisprudence", "legitimacy" and others).[54] Some testing might also take place over class management issues, for example, the teacher's response to a disruptive student or a student who takes up a great deal of class time. However, in keeping with the bias of institutional culture which sees expertise as defined by

seniority; but if she can demonstrate her subject expertise she will become "acceptable". This obviously compounds the difficulties of a teacher in this position confounding student expectations by rejecting a model of authority based on subject expertise. See *supra* note 7 at c. 3.

52.   The range of "teacher-talk" behaviours identified by Ira Shor provide us with a checklist of controlling mechanisms for the teacher who practises the banking method. However these may also be recognisable by those who eschew the banking method but nonetheless continue to use these behaviours. They include:

> doing anaylsis ahead of and without the students . . . talking quickly or too long in academic or technical jargon . . . talking over the students: interrupting them before they finish speaking, behaving impatiently when they speak . . . asking questions requiring only brief or one-word answers the teacher knows already . . . not offering choices for themes or readings . . . discounting the students' reaction to the material when it strays from the ideal answer in the teacher's mind. . . .

Supra note 6 at 94–95.

53.   Several students suggested that "testing" is conducted differently by male and female students, with men being generally more aggressive and more challenging of the professor. "The women . . . tend to question the text rather than the professor . . . the men question the professor . . . a male would be much quicker to jump on the professor [for an error]."

54.   There is no suggestion here that there is anything wrong with the use of such words. My interest is in what words and expressions have a symbolic impact on students seeking legitimation of the teacher's authority.

knowledge and knowledge as limited to an objective, rationalist explanation of materials, the outcome of such a test rarely feels as critical to continued credibility as testing over subject expertise.

Departure from the relative safety of subject-expert is dangerous for teachers precisely because it can produce hostility where the prior experience of the students—and consequently their expectations—is that education is something that is "done to them".[55] Law teachers always face difficulties when they avoid responding to student questions with answers which are categorical; when they deal with legal rules as socially constructed and context-specific; when they make efforts to break down the hierarchy of the teacher/student relationship by suggesting that they are there to learn along with the students; and especially when they are courageous enough to tell a student that they "don't know" or "are not sure" about the answer to a question. Student discomfort with a teacher who does not conform to their expectations of a subject-expert model is quickly apparent.[56]

In this way students often consciously or unconsciously reflect the values of the institution. One study suggests that "the passive, intellectually subordinate professor might appear 'deviant'"[57] in the eyes of students. Other studies have found that teachers who encourage participation are judged by their students to be less competent in their grasp of subject matter than those who control the classroom through "teacher talk".[58] As one student put it, "teachers who are in control of the classroom ask questions as opposed to fielding questions." One student described his view in the following terms:

> You have to give the teacher power, you have to give them control of the classroom, or else really there is not much point in them being there. You could just have big group discussions. I like teachers to teach as much as some do and rather more than others do.

While these comments reflect more traditional views of the pedagogic relationship between professor and student, some of the law students we interviewed were critical of traditional teaching styles. Not all students perceive an interactive classroom as a reduction of professorial power or efficiency.

---

55. *Supra* note 6 at 2.
56. This is discussed in the words of students in J. Macfarlane & P. Boyle, "Instructional Design and Student Learning in Professional Legal Education" (1993) 4 Legal Education Review 63.
57. See *supra* note 8 at 5.
58. This perception is inevitably tied to student assumptions about "relevance". See also P. Treichler & C. Kramarae, "Women's Talk in the Ivory Tower", *supra* note 3 at 121.

> I have one professor right now, who has a syllabus, I think they all have to
> have one but she's not afraid to allow the class to converse amongst one
> another and then bring up new issues and ingenious things and just work
> on those ideas and put aside whatever it is she had set up for the day and
> just do it the next day . . . she'll bring some . . . notion in . . . something very
> controversial . . . and then you'll get the class start in with their different
> opinions and there it goes, they are conversing amongst each other and not
> to her [the teacher], and that's great. I've learned so many things that way
> because you know we all come from [our] one experience and then you get
> exposed to all these different perceptions and different attitudes, and
> you're like, wow, I never thought of it being that way . . . .

Another commented on the format of a particular class:

> Questions were welcomed at all times, thoughts and opinions were put
> forward and weren't ignored but addressed. The floor was open to
> discussion and it seemed to me to be a much more positive learning
> environment.

Despite challenges by some professors and students, traditional ideas about the role of the teacher, and the appropriate relationship of power with her students, are pervasive in the university culture and in law school. The assumption remains that the singular role of the teacher is to transfer his or her subject-knowledge to students. This (in the form of summative assessments) is the most significant external (institutional) measure of the teacher's ability in the otherwisè private sphere of the classroom.[59] The test of the teacher's ability is not, did the students *understand* the material well enough to succeed in the examination, but rather, reflecting the ethos of the banking method, were the students given sufficient accurate information by the teacher to allow them to pass the examination? Teaching techniques appear to be almost wholly irrelevant so long as the requisite information is conveyed. The traditional pedagogic method gives full responsibility for learning to the teacher. Neither power nor responsibility is shared with students through even minimal negotiation over the syllabus, the teaching method or the form of evaluation the course will employ.

There are many intrinsic contradictions and imbalances in this formulation. While the dominant ethos appears to be one of student passivity, occasionally it is displaced by an active account of the student's role. For example, in practice teachers are often able to escape any responsibility for students who "fail" to learn. The banking method approves the

---

59.   The other potential source of external evaluation of teaching, student evaluations, provide qualitative information about teaching which is rarely afforded the same institutional significance as the simply quantitative measure of how many students passed the course. See also *supra* note 58.

adoption of a "tough" or "macho" approach to grading in which students often fail or score poorly, without any reflection—indeed often the contrary—on the teacher's own teaching abilities. Students who do not succeed are characterised simply as those who do not have the necessary intellectual ability to grasp the subject matter. Somehow the burden of learning shifts back to the student in the event of failure, while remaining totally within the control of the teacher so long as there is success.

A related ambivalence may be seen in the treatment of students in a traditional classroom as passive spectators who are wholly dependent on the teacher for information and learning—while assuming that they must function wholly independently outside the classroom. Higher education in general—and possibly law school in particular—is dominated by a individualist ethos which implicitly encourages (or at least does little to discourage) competition among individuals whose grades (as a result of the use of the practice of forced averaging) ultimately depend upon their position in relation to their classmates. Just how the entirely passive crowd sitting in the lecture theatre having education "done to them" are transformed into the independent, competitive individuals we expect them to be outside the classroom is not clear. For a few professors, a further shift back to the characterisation of students as dependent and inferior comes at the end of the year when the professor receives the student evaluations. If these are less than satisfactory, they are liable to be dismissed by some professors on the grounds that students are not deemed to be in a position to make "these sorts" of judgements.[60]

2.   *The university tradition/traditional pedagogy as a "male" model*

The university is often described by feminists as a masculine culture, based upon a "malestream" vision of knowledge.[61] The enhancement of the (supposedly gender neutral) life of the mind to which the university ideal is dedicated is, in fact, "organised to reflect the politics of the mind,

---

60.   This is not to minimize the potential problems which can arise with student evaluations, some of which reflect the extent to which student expectations are gendered. See also *supra* note 8.

61.   M. O'Brien, *The Politics of Reproduction* (Boston: Routledge & Kegan Paul, 1981). See also the work of numerous feminist scholars on the dominant epistemology of their disciplines which have been in turn dominated by male scholars and patriachial assumptions; for example, M. Gergen, ed., *Feminist Thought and the Structure of Knowledge* (New York: New York University Press, 1988); *Gendered Subjects, supra* note 26; M.F. Belenky, B.M. Clinchy, N.R. Golberger, & J.M. Tarule, eds., *Women's Ways of Knowing: the Development of Self, Voice and Mind* (New York: Basic Books, 1986) [hereinafter *Women's Ways of Knowing*].

particularly the politics of a wholly male-centred culture."[62] This reflects
the acknowledged domination of men as professors, scholars and admin-
istrators in the university system for the past 100 years. In every
discipline, content is shaped by the experiences and ideas of men; the
experiences of women have long been hidden or excluded.

> University teaching is historically a male activity; the faculty club, a male
> province. The expectations of the university context—rationality and
> logic, distance and objectivity—have been associated with "masculinity"
> rather than "femininity".[63]

Not only the values which sustain the university's position but also the
playing out of those values in the classroom may be seen as masculine.
When the search is for objective truth, lectures and classroom discussions
are inevitably characterised by the assertion of the "right answer" and
generally competitive forms of speech. Research on speech and interac-
tion patterns both inside and outside the classroom suggests that this style
of presentation of argument is more characteristic of males than females.
Women learn to participate in discussion by suggesting, rather than
categorically stipulating, their viewpoint and end contributions by signal-
ling for input from others. Interaction patterns between males are more
often characterised by monologue and assertion which are directed to the
establishment of hierarchy within any given group.[64] It is the latter style
which is characteristically both modelled and rewarded in traditional
university classrooms. This has led some writers to describe a "male"
style of teaching and learning which may be contrasted with a "female"
style.[65]

---

62.   C. Heilbrun, "The Politics of Mind: Women, Tradition and the University" in S. Gabriel
& I. Smithson, eds., *Gender in the Classroom: Power and Pedagogy* (Urbana: University of
Illinois Press, 1990) 28 [hereinafter *Gender in the Classroom*].

63.   *Supra* note 8 at 23. For a discussion of how criteria developed by male "gatekeepers"
continue to dominate the process of tenure and promotion in many universities, see J. Cook,
& M. Fonow, "Am I My Sister's Gatekeeper? Cautionary Tales from the Academic Hierarchy"
(1984) 8 Humanity & Society 442 at 447–49.

64.   For an excellent review of the literature in both education and psychology, and its
implications for women in the university classroom, see *supra* note 3.

65.   See for example *supra* note 8; and C. Kramarae & P. Treichler, "Power Relationships in
the Classroom" in S. Gabriel & I. Smithson, eds., *Gender in the Classroom: Power and
Pedagogy* (Urbana: University of Illionis Press, 1990) at 41. Maher and Tetreault have gone
so far as to argue that within the institution "education as a discipline is often demeaned as a
'woman's field'", *supra* note 46 at 6. The "public sphere"/"private sphere" dichotomy of
research and teaching they identify can thus be seen as a gendered division of roles within the
institution, where women professors are expected to excel at teaching and their male
counterparts at research:

> Research is a high-status "male" activity even when women do it; teaching is a low-
> status "female" activity even when men do it.

The characterisation of teaching styles as "male" and "female" is often understood as shorthand for the development of alternatives (generally characterised as "female", for example by the development of feminist pedagogies) to a rationalist, authoritative and sometimes authoritarian approach to teaching traditionally adopted by male teachers and scholars. The association of so-called "male" values with a pedagogy which valorises objective knowledge and assumes the ascendancy of the subject-expert, is a reminder that the teacher/student relationship in this model is characterised by values which are an important part of the socialisation of males in many cultures; for example, fend for yourself, sink or swim, hang tough, prove yourself, and so on. The traditional institutional ("male") view of the appropriate nature of the teacher/student relationship includes all these "male" or "macho" values which it valorises as "strength" in a teacher (at least, where that teacher is male; where the teacher is female the same qualities may attract resistance).[66] Strength is generally characterised as setting a high passing standard in a tough 100% final exam and refusing to spoonfeed students.[67] In the words of Ira Shor, "a serious classroom is one where the teacher does most of the talking and gives lots of tests."[68] This can be contrasted with the "weak" teacher[69] who offers choices in assessment, coaching and maybe the opportunity for practice or formative assessments to correct errors and allow for improvement before final testing. By characterising this type of teaching practice as weakness, the institutional culture denigrates such deviations from the norm.[70]

However I am uncomfortable with adopting a "male" and a "female" characterisation of teaching styles. Certainly I am conscious that many of my female colleagues are concerned with the development of relationships between student and teacher in ways which may be different from our male colleagues and suggest that greater significance is attached to

66.   See student comments in text following *infra* note 142; and see also *supra* note 8 at c. 4.
67.   Law school may place a special gloss on this. The dominant ethos of professionalism legitimates "tough" because "this is what it will be like in the world of practice."
68.   *Supra* note 6 at 117.
69.   Duncan Kennedy describes student perception of "the softies [who] seem to get less matter across, . . . let things wander . . . [whose] niceness is at the expense of a metaphysical quality called 'rigour' thought to be essential to success on bar exams and in the grown-up world of practice." *Supra* note 19 at 5.
70.   I am suggesting that these values are characteristically associated with males in the dominant culture. However note that some feminist educators—for example Adrienne Rich—explicitly set "tough" standards for women teachers and students. See A. Rich, "Taking Women Students Seriously" in *On Lies, Secrets and Silence* (New York: Norton, W.W. & Co., 1980) at 237–46.

developing these relationships.[71] However I am also aware that I have male colleagues who do not fit the "male" model. To assume that "feminist" or "a female" style of teaching is synonymous with good teaching loses the argument for change before it has begun. Furthermore, there is a real danger in adding to the pressure already felt by many women teachers to assume essentialist "feminine" attitudes towards teaching and learning. It may be more helpful to think of the influence of gender on teaching styles as one of a number of factors—which must also include class and race—that are indicative of certain tendencies, rather than as predictive or prescriptive of the behaviour of any one individual. The real significance of identifying university culture, along with the pedagogical models implicated by this culture, as masculine does not lie in arguments over whether such models are properly described as "male" or "female", but in the fact that the culture of the university is an entrenched one which historically reflects the norms of men. The culture of masculinity and its values are embedded so deeply in the institution that men and women alike, both faculty and students, often accept it without question; and deviate from it only at some cost.

Many of the students we spoke with in interviews appeared to be conscious of gender-related differences in teacher-style. For example, "there was talk among the students in this class that the professor used a male model of learning. The message that was given [by the professor] was that anything that isn't specifically to do with law, don't bring it up." There is also an awareness that male and female students might take different approaches to learning—for example, "the females seem to want to tie it [the topic under discussion] into their personal lives and experiences, and the males seem to have have more 'nitty gritty' questions about the application of the law itself." Differences in teaching styles were also commented upon. A number of the students we spoke with commented that their female professors seemed to adopt a more personal, caring style which several analogised as a maternal style. Another student remarked that

> whereas a male professor who has been teaching for twenty to twenty-five years, he would stand in front of the class and basically lecture, I really enjoy the way the female professors teach. They get to know the students

---

71.   An illustration of this is the number of hours which many women faculty spend counselling students outside class, compared to the contribution made in this respect to the life of the law school by male faculty. This difference was recognised made by the report of the Canadian Bar Association on gender equality in the legal profession and the law schools. See *Touchstones for Change: Equality, Diversity and Accountability—Report of the Canadian Bar Association* (Ottawa: Canadian Bar Association, 1993) at recommendation 8.10 [hereinafter *Touchstones for Change*].

and they are not just in the 'ivory tower'; they are there to interact and to make sure that these students learn. Its not that they're there just to mark papers and exams, they're there to talk to.[72]

There is ample evidence to suggest that gender is significant in both constraining and encouraging pedagogical choices for university teachers. Whether male or female, each teacher is constrained, to some extent, by the expectations of the institition and of the student body. Women teachers are often seen as less competent than their male colleagues, and as a consequence students are often unable or unwilling to accept a female professor as a subject expert equal or better to a male faculty member.[73] Students may respond differently to forms of teacher power and authority management in the classroom depending on whether they have a male or female professor. This reaction may be critical in the future choices made by that professor in her or his relationships with students. One student stated this bluntly: "With a male figure at the head of the class, we're going to allow that person much more leeway in responding to students. If that person cut us down, we may not be as critical as if a female professor had done that." One student described the reactions of students to their professors as follows:

> with male [students], I think there is less the view of the [female] professor as an authority figure and perhaps, subsequently, they may feel less need to establish difference because they are dealing with a woman who commands, generally speaking—of course this is not my opinion—less respect or who commands less difference. So they [male students] are much more willing to give that to the male professors, one, because they feel they deserve it and two, because they probably feel that the person would expect that.

The following statement gives a vivid insight into the reactions of students to their male and female professors—reflecting the traditional association of subject-matter expertise (in this case related to length of time spent in teaching) with competence:

> When everyone was thinking of what course to take in second year, you go to the upper year students and ask them what they think. A lot of the second years would say, "Well, I like the male professors who have been teaching for 20 years because they know their stuff." . . . [T]hey would try to steer you away from the newer female professors.

---

72. Another factor in the differences noted by students in our study may be that the female professors are generally younger than their male colleagues, many having been hired in the last six to eight years.

73. See for example, "Power Relationships in the Classroom", *supra* note 65; and *supra* note 6 at 1–11.

Labelling of teaching styles as "male" (read "traditional") and "female" (read "alternative") also reminds us that it is safer for women in an institution to adopt a masculine style (characterised by intellectual rigour and emotional detachment). Research has pointed to the fact that "successful" women in professional fields dominated by men tend to be those who have adopted a masculine style.[74] Susan Stanford Friedman describes female colleagues who become "100 per centers", to achieve authority, often taking pride in being tougher and less personal than their male colleagues.[75] There is no doubt that some women teachers conform to traditional models of classroom practice in order to legitimise their work and ideas.

Despite the fact that half our classes in law school are now composed of women students, the learning environment still feels "male". Women faculty and students may be conforming to traditional pedagogic assumptions and expectations in the absence of any clear picture of alternatives, having themselves been educated in a masculine culture. Until this culture is challenged and fundamentally changed—epistemologically, pedagogically—the traditional authoritarian image of the teacher in the classroom will remain the mainstream perspective and the alternative construction of the teacher's role proposed by critical pedagogues, feminists and others will continue to be only marginal.

IV.   *Alternative constructions of teacher power*

Any alternatives to the traditional institutional perspective on teacher power must begin by challenging the basis of the teacher's authority in the traditional pedagogic model; that is, the assumption of subject-expertise in its most narrow, objectivist sense. As such, a natural starting point is with the critiques made by feminist and critical scholars of the epistemological assumptions of the rationalist model of knowledge which sustains both the university ideal and the traditional authoritarian structures of the classroom. This approach to knowledge, it is argued, both constructs and protects false rationalities, and may be especially prevalent in a discipline whose legitimacy has traditionally rested upon an allegedly objective and

---

74. For discussion of the difficulties faced by women working to "succeed" in male-dominated professions see for example G. LaRussa, "Portia's Decision: Women's Motives for Studying Law and their Later Career Satisfaction as Attorneys" (1977) 1 Psychology of Women 350; and C. Menkel-Meadow "Portia in a Different Voice: Speculations on a Women's Lawyering Process" (1985) 1 Berkeley Women's L.J. 39 (law and the legal profession); and S. Brown, & R. Klein, "Women-Power in the Medical Hierarchy" (1982) 37 Journal of the American Medical Women's Association 155 (medicine and the medical profession).
75. S. Stanford Friedman, "Authority in the Feminist Classroom", *supra* note 26 at 206.

hierarchical model of decision-making.[76] Challenge to this dominant epistemology also requires a pedagogic transformation, in which the relationship between teachers and students (and the basis of teacher authority) is reconsidered. Teachers who understand the process of teaching and learning in ways that differ from the institutional tradition— for example, those teachers who see education as a process in which knowledge is not understood as truth—must look outside the traditional pedagogic model to find a satisfactory explanation for, and legitimation of, their role as teacher.

1. *Critical pedagogy and teacher power*

Critical pedagogy, originating in the work of Paulo Freire,[77] has been highly influential in shaping ideas about the transformative potential (and the potential for transformation) of the teacher/student relationship. Freire's pedagogy of "empowerment" charges teachers with the responsibility of "liberating" students through education, and assumes a potential for self-development and personal growth through education far beyond that envisaged or claimed by the traditional "banking method". Critical pedagogy provides both the process and the means to enable each person to critique and to act to change the world around them. Freire argues that human beings are not separate from the world, as the banking method assumes, studying the world as a spectator in an abstract, detached manner (exemplified in law school by the dispassionate dissection and analysis of the human stories which make up caselaw). Instead, critical pedagogy assumes that knowledge and growth is wholly dependent upon our ability to critically understand our relationship with the world and our experience within it, through "problem-posing education" in which students learn from problems which originate from or become a part of their own experience. Learning thus becomes "an act of cognition which unveils reality."[78]

The principles of critical pedagogy reconceive the traditional relationship between teacher and student as a dialogue. Dialogue demands that student voices as well as the voice of the teacher be heard in the classroom,[79] and a new form of classroom process emerges in which responsibility for learning is shared. Dialogue assumes that knowledge is

---

76. See *supra* notes 31–35.
77. Freire's work spans 25 years but his first work of influence was *Pedagogy of the Oppressed, supra* note 21, first published in 1970.
78. *Supra* note 6 at 64.
79. See the discussion in R. Simon, "A Pedagogy of Possibility" (1987) 64 Language Arts 370 at 374–79; and in "Teacher Education", *supra* note 21 at 234–37.

not the possession of any one individual—traditionally, the teacher—but rather something that teacher and students alike place on the table and "meet around", to use Freire's metaphor.[80] The so-called "dialogical method" is not only a technique for learning but a means of recreating knowledge. In this way, Freire argues, the traditionally distinctive roles of teacher/student become blurred and reformed; the "teacher-of-students" becomes the "teacher-student", and the "students-of-the-teacher" become "students-teachers".[81]

It is a fundamental assumption of critical pedagogy that the acquisition of knowledge and the process of learning cannot be an individual experience. Rather, what is learned only has meaning insofar as an individual relates her knowledge and learning to her experience within society. Learning from our peers through dialogue occurs through hearing the views and ideas of others. It also takes place through seeing our own ideas reflected back to us—for example in their questions—in the way in which our peers can understand or relate to our own position. An emphasis on individual development for autonomy ignores, according to Freire and other critical theorists such as Giroux and Shor, the essential relationship between individual learning and the transformation of social relations, the "inevitable" connectedness of personal morality and democratic life.[82] Individualism creates and sustains the very conditions under which an oppressive elite may flourish. Instead, learning is something that only takes place in relation to others—the teacher, one's peers—and the world. As Freire puts it, "knowing is a social act."[83]

The rejection of learning as an individual activity lies at the heart of the assumptions of critical pedagogy and is in clear contrast with the highly competitive individualistic ethos of law school. Critical pedagogy suggests new processes of teaching and learning—including shared responsibilities for learning, extended classroom dialogue, groupwork, experience-based learning—which are relatively uncommon in law school. However, the rationale that sustains the position of the teacher in critical pedagogy may not be very different from that assumed by some professors of law. For critical pedagogy does not advocate that the professor relinquish control of the learning process, but rather that it is conceptualised and organised in a different way. Freire writes that "education is always

---

80. P. Freire & I. Shor, "Dialogical Method", *supra* note 22 at 14.
81. *Pedagogy of the Oppressed, supra* note 21 at 61.
82. H.A. Giroux, *Schooling and the Struggle for Public Life* (Minneapolis: University of Minnesota Press, 1988) at 53 [hereinafter *The Struggle for Public Life*]. However, note that personal morality in this sense is conceived of in relation to participation in public—democratic—life.
83. *Supra* note 22 at 13.

directive, always. The question is to know towards what ... it is directive."[84] The overall directive responsibility of the teacher is never in doubt. Liberation in this model means freedom to discover oneself and one's potential, but along a path mapped out by the teacher. There is no longer the authoritarianism of the banking method; but the authority of the teacher is still critical to the process of empowerment. "[I]n this tension, authority continues to be because it has authority vis-a-vis *permitting student freedoms* which emerge."[85]

While critical pedagogy rejects the use of power as an oppressive tyranny (since the intention is that everyone—students and teacher alike—should be empowered through knowing), the teacher is still the most significant person in the classroom. It is she who must direct the dialogue and determine how that dialogue should be both framed, and, ultimately, validated (for example in terms of time spent on topic, emphasis placed on a particular analysis, its overall synthesis and so on). Importantly, the teacher may no longer presume to speak for or over students—indeed student voices are critical to the notion of dialogue[86]— but the teacher still sets the agenda.[87] The basis of this authority is no longer the subject-expertise of the traditional pedagogic model, narrowly constructed in rationalist terms, but it is still built on content, now *critical* content. Jennifer Gore writes, "what separates the emancipatory authority of critical pedagogy from other types of authority is not so much its form but its content."[88] Specifically, the teacher's authority is legitimated by moral and political referents—generally, the promotion of participative classroom democracy and critical citizenship and in law school the advocacy of particular forms of critical analysis.

> Authority in this view becomes a mediating referent for the ideal of democracy and its expression as a set of educational practices designed to empower students to be critical and active citizens.[89]

In this approach any pretence of neutrality—an important part of the justification for traditional teacher authority—is abandoned. Instead the new moral basis of the teacher's authority links the pedagogical practices of the classroom directly to the struggle to transform society. The role of

---

84. *Ibid.* at 22.
85. *Ibid.* at 21 [emphasis added].
86. H.A. Giroux, "Radical Pedagogy and the Politics of Student Voice" (1986) 17:1 Interchange 48.
87. Giroux and McLaren describe this as the "emancipatory authority" of the teacher and the task of the teacher as "redefining the notion of authority in emancipatory terms." See "Teacher Education", *supra* note 21 at 224–27.
88. J. Gore, *The Struggle for Pedagogies: Critical and Feminist Discources as Regimes of Truth* (New York: Routledge, 1994) at 106.
89. *Supra* note 82 at 88.

the teacher is to be a "transformative intellectual"[90] whose skills and primary responsibilities lie in drawing out and legitimating individual student experiences in order to recreate knowledge.

This is an understanding of teacher power used "for good". As Nicholas Burbules notes, "certainly a major rationale for assuming power over others, or justifying it to them, is the presumption that one knows better and can best serve their interests."[91] Many of the students in our study identified this model of teacher power. One student described the role of the professor as "sort of opening doors for students . . . [to] open the students' eyes." This comment captures some of what Giroux is saying when he writes that

> such intellectuals [teachers] can link knowledge to power by bringing to light and teaching the subjugated histories, experience, stories and accounts of those who suffer and struggle within conditions rarely made public or analysed through the official discourses of public schooling.[92]

To a significant extent the analysis of critical pedagogy reflects my own semi-conscious rationalisation of my right to authority in the classroom. I am in a position of authority which I can use to open the minds of my students by providing them with new and different critiques of the material they are presented with in class (and which, acting within some significant constraints imposed by the traditional syllabus of law school, I can select). I can feel magnanimous about my willingness to hear their voices and my avowed openness to their ideas. I want my students to leave "empowered" with new and critical perspectives on the world, and when I think that I see this happening I am excited and feel that I have achieved something worthwhile.

Nonetheless, there are significant difficulties with this analysis. The context in which Freire's ideas were originally developed is dramatically different from the elite environment of the North American university law school. Freire's original work was with (mostly illiterate) Brazilian peasants. The focus of the endeavour was to empower these individuals through literacy and learning in order that they might critique and ultimately reform their society. Critical pedagogy is a theory of social transformation, and while social transformation may be an attractive goal for legal education, it is an unlikely and probably unrealistic one. We cannot assume that our students come to law school in order to participate in social transformation; most of them come because they want to practise law and make money. Even those students who are selected to enter law

---

90. *Ibid.* at 99–101; and "Teacher Education", *supra* note 21 at 227.
91. *Supra* note 10 at 99.
92. *Supra* note 82 at 228.

school on the basis of their work on social and political issues are an extremely diverse group. Arguably if as law teachers we wish to transform legal education we should also be taking responsibility (which we cannot) for transforming the way that law is practised.[93] Furthermore, to the extent that Freire's empowerment pedagogy assumes the potential for social transformation, it also requires the willingness of the institution to co-operate in this process. When we consider the fact that empowerment pedagogy critiques many of the ideas and values that traditionally underpin the status of the university, Freire's objectives may look unrealistic in the context of university legal education. At the same time, however, universities have historically played a role in challenging the status quo and in fermenting change. As Magda Lewis points out, "educational institutional are contradictorily both the site where reactionary and repressive ideologies are entrenched *and* the site where progressive, transformative possibilities are born."[94]

Freire's work has been widely critiqued by feminists. It is unremittingly male in both language and perspective; "freedom and the experience of patriachial manhood are always linked as though they were one and the same."[95] Gender is never taken into account and there is no acknowledgement of differences in learning between those who are, and are not, members of the dominant group. In rejecting autonomous learning and individualistic goals, Freire also implies a formal equality between all learners which echoes the assumption of the "banking method." However the process of teaching and learning is different in many ways for women than for men. In substantive terms this is the result of what Jane Roland Martin describes as the "epistemological inequality" of the content of education.[96] In addition, the experiences of men and women differ in relation to how learning might actually be translated into meaningful change, both personal and social. Overlooking differences in the experiences of men and women students applies equally, of course, amongst and between women students and members of other marginalised

93.   This is not to suggest that the culture of legal education cannot have a significant impact, over time, on the way in which law is practised. Duncan Kennedy has vividly described how the present culture of legal practice is sustained by legal education, *supra* note 19.

94.   M. Lewis, "The Challenge of Feminist Pedagogy" (1989) 96 Queen's Quarterly 117 at 126.

95.   b. hooks, *Teaching to Transgress: Education as the Practice of Freedom* (New York: Routledge, 1994) at 49. However, hooks is at pains to emphasise the importance to her of Freire's work, and her willingness to get past problems with his analysis in order to learn from his ideas. See generally chapter four.

96.   J. R. Martin, *Reclaiming a Conversation: the Ideal of the Educated Woman* (New Haven: Yale University Press, 1985) at 3 [hereinafter *Reclaiming a Conversation*].

groups in the classroom.[97] Who we are and what we become as learners is critically shaped by our social lives, including, for many women, experiences of oppression and of hardship.[98] Freire's insistence that learning only has meaning insofar as it enables us to better understand and critique our society overlooks the importance for women of personal awareness and self-confidence (factors in affective development) in effectively challenging the patriachial assumptions of that society. In common with traditional perspectives on knowledge and pedagogy, critical pedagogy seems preoccupied with intellectual/cognitive development, to the detriment of the affective, emotional and intuitive aspects of personal growth.

A further difficulty arises from critical pedagogy's justification of my use of classroom authority—including my control over curriculum materials, presentation, emphasis and discussion, and the ultimate evaluation of student achievement—by the overriding need to prepare students for participation in "public life". In Brazil, "public life" was the participation by the disenfranchised peasant classes in political and cultural life; not issues for law school students in North America who are already the elite of their society. In law school, assumptions about the substance and form of preparation for public life tend to reflect traditionally masculine perspectives on what should be taught at school, and why (described by Jane Roland Martin as the "productive processes" of society, including politics, culture and the economy and contrasted with the "reproductive processes"—for example personal development, child-rearing, communication and relationships—which are generally excluded from any conception of public life).[99] The separation between a private and a public sphere operates to exclude women and women's experiences from education, policy-making, economic planning and so on. This separation is reflected in the law curriculum in many ways; for example, in the prevalent assumption that the ethics of legal practice are removed from the sphere of personal morality and decision-making, and should be

---

97. Frances Maher writes,

    ignoring women as oppressed in a particular and specific way means ignoring and
    subsuming different forms of oppression, ones that entail varied and complex forms
    of resistance, including sruggles between members of oppressed groups.

"Toward a Richer Theory of Feminist Pedagogy: A Comparision of 'Liberation' and 'Gender' Models for Teaching and Learning" (1987) 169 Journal of Education 91 at 97.
98.   One woman student recently pointed out to me that it would be difficult for her to excel in the 10% of the final grade for my Contracts course I had assigned to "participation", since she had just come out of a twenty-year marriage in which she had been told every day that she was stupid and to shut up.
99.   *Supra* note 96.

understood as a matter of public obligation rather than private choice;[100] and in the absence of attention to personal relationships in traditional analyses of dispute resolution processes.[101] Allowing the agenda of the public sphere to dominate tends to reinforce existing power relations.[102]

Despite these intellectual difficulties with applying the principles of critical pedagogy to teaching in the law school, I nonetheless find Freire's analysis of the potential of learning to radicalise thinking a compelling one. I have no doubt that his ideas influence my teaching practice. However I also have some lingering intuitive difficulties with this analysis. Critical pedagogy can allow me to rationalise my instructional choices over content but does not free me from anxiety over the appropriateness and the fairness of these choices. The content has changed but has the pedagogy? As another feminist professor (of English) has put it, "[a]t the moment that the feminist teacher's readings become the content of the course, the women student is in precisely the same relationship to that teacher as she stands to any other teacher. As feminism becomes another variety of interpretation, the feminist is overriden by the teacher".[103]

My part in determining the "best interests" of others is clearly a power issue itself. I am simply without the means to represent the ideas and experiences of many of those in my classroom; the students of colour, students from working class backgrounds, students from cultures outside my own. If they do not speak, or are not in the classroom, I cannot speak for them. My perceptions and understandings are limited by my own race, class, gender and other experiences. I cannot assume what they want to speak about, nor how. Freire does not address this diversity nor "those forms of power based on the teacher's subject position as raced, classed, gendered and so on."[104] There is an assumption that the teacher is "on the same side as the oppressed."[105] Critical pedagogy justifies my choices and

---

100. The artificiality of the separation of the public/private in the relation to professional ethics is effectively critiqued by Donald Schon in *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983).
101. For a classic account of the deficiencies of traditional dispute resolution analysis, see C. Menkel-Meadow, "Toward Another View of Legal Negotiation: the Structure of Problem-Solving" (1984) 31 UCLA Law Review 754.
102. Carmen Luke makes the point that the only "private" matters which appear on the public stage at all do so in response to challenges to dominant male visions of family life (for example anti-abortion, pro-family debates) C. Luke, "Feminist Politics in Radical Pedagogy" in C. Luke & J. Gore, eds., *Feminisms and Critical Pedagogy* (New York: Routledge, 1992) at 36.
103. N. Baym, "The Feminist Teacher of Literature" in *Gender in the Classroom, supra* note 62 at 64.
104. K. Weiler, "Freire and a Feminist Pedagogy of Difference" in K. Geismar & G. Nicoleau, eds., *Teaching for Change: Addressing Issues of Difference in the College Classroom* (Harvard Educational Review Reprint Series No. 25, 1993) at 76 [hereinafter *Teaching for Change*].
105. *Ibid.*

my use of power from a detached, ideological perspective; but does not help me resolve dilemmas that arise which in the context of my classroom always, of course, concern individuals. They are increasingly individuals whose experiences I recognise as culturally, socially, economically and otherwise very different to my own. Certainly I accept, as critical pedagogy assumes, that we can learn from one another. But does this further assume that we all buy into the same classroom process and the same agenda for debate?

2. *Feminist pedagogies and teacher power*

Feminist pedagogies rest upon an understanding of knowledge and the process of learning which is in clear contrast to the traditional "banking" approach. Feminist pedagogies are critically shaped by feminist analysis and feminist epistemologies (although by no means all feminist analysis is taught using feminist pedagogies).[106] Writing on this subject reflects—indeed, celebrates—diversity of method and approach. Some character-istics of a feminist approach which appear to directly inform teaching practice include, "a conception of knowledge as a comparision of multiple perspectives leading towards a complex and evolving view of reality";[107] the recognition that "theory is a practice, that it must emerge from an understanding of diverse, lived realities and be tested against those realities";[108] an ethic of "caring" in the classroom;[109] and a collabo-rative, interactive and co-operative classroom.[110] Feminist teachers have begun to question the traditional values of the classroom, placing special emphasis on the value of personal experience and affective development in the process of learning and communication.[111] These perspectives on teaching and learning implicitly critique the authority basis of traditional subject-expertise and raise many complex questions about teacher power.

The first collections of writing on feminist pedagogy, which began to appear during the early 1980s, adopted many of the radical premises of critical pedagogy, including the goal of challenging the rigid classroom

106. See the parallels drawn between feminist analyses and feminist pedagogies in M.J. Mossman, "Gender Issues in Teaching Methods: Reflections on Shifting the Paradigm" (1996) Legal Education Review [forthcoming].
107. F. Maher, "Classroom Pedagogy and the new scholarship on women" in *Gendered Subjects, supra* note 26 at 33.
108. P. Goldfarb, "A Theory-Practice Spiral: The Ethics of Feminism and Clinical Educa-tion" (1991) 75 Minnesota Law Review 1599 at 1630.
109. N. Noddings, *Caring: A Feminine Approach to Ethics and Moral Education* (Berkeley: University of California Press, 1984).
110. M. Torrey, J. Casey & K. Olson, "Teaching Law in a Feminist Manner: a Commentary from Experience" (1990) 13 Harvard Womens Law Journal 87.
111. *Supra* note 13.

hierarchies separating student and teacher. The emphasis of the early
feminist collectives on group consciousness-raising (both as a process
and as an objective) for political ends fitted neatly into the frameworks of
liberation pedagogy. Both shared a sense of urgency and optimism about
the potential for social transformation. There was and is in some feminist
writing about teaching an echo of critical pedagogy's idea of directive
power used "for good", a sense made more acute by a recognition of the
need—the obligation even—for women to take and to use whatever
authority they might have. The positioning of women to be the "transfor-
mative intellectuals" of critical pedagogy has consumed the energies of
many feminist teachers over the past several decades.

However, as the gender balance within the law faculties and the larger
university community begins to change, the experience of women as
students and as university educators has begun to reframe the basis of the
teaching and learning relationship. Increasingly—and for some of the
reasons outlined at the end of the preceding section—feminist teachers
have begun to develop their own questions about teacher power, which
relate specifically to their position as female professors and a desire to
adopt women-centred pedagogies. Both the questions, and the answers,
are diverse, as Margot Culley points out:

> Some academics who are female (in an effort to deny that they are born
> without legitimate claims to authority) cling to exaggerated forms of
> arbitrary power invested in their positions . . . others renounce all claims
> to power and authority . . . most of us muddle about, caught between the
> contradictory realities of power we shouldn't want—and can't have even
> if we should want it.[112]

Many women law professors feel they need all the power in the
classroom they can lay hands on. A feeling of the need to hold tightly to
institutionally recognised positions of authority has been further height-
ened by a growing awareness of backlash against women in positions of
authority generally, including women law professors.[113] In light of the
already gendered expectations of the institution, which significantly sets
the terms of "competent" teacher behaviour effective to command
student respect, this serves only to increase the siege mentality of many
junior women faculty. While the hiring of women into junior faculty
positions over the past decades has greatly enhanced the visibility and
contribution of female legal scholars, it has also created a sometimes

---

112. M. Culley, "Anger and Authority in the Feminist Classroom" in *Gendered Subjects*,
supra note 26 at 215.
113. See generally S. Faludi, *Backlash: the Undeclared War Against American Women* (New
York: Crown, 1991). In relation to women teaching in the law faculties a backlash of
harassment is described and documented in the Wilson Report, *supra* note 71 at c. 8.

isolated and often vulnerable group of untenured professors within the faculty. The reactions of some colleagues and students to women falling within this group include direct hostility and outright challenge along with more subtle forms of undermining; for example, setting different standards of scholarship for men and for women faculty, not accepting feminist scholarship as "real" scholarship (evidenced by its appearance in journals outside the "mainstream") and so on. Against this backdrop it is often difficult and even counter-intuitive to question the basis of our authority as teachers.

a. *The feminist professor as role-model*

Many feminist law teachers feel that their decisive taking and using of authority in the classroom is justified by the need to provide powerful role-models to younger (and sometimes older) women who are entering the law schools as students. It is vitally important that these women can be given a female role-model who, in institutional terms at least, holds intellectual authority. In the words of Susan Stanford Friedman, "in our sensitivity to the psychology of oppression in our students' lives, we have often denied ourselves *the authority we seek to nurture in our students lives.*"[114] Women teachers provide politically significant role-models for women students in ways that male instructors cannot; "one would not want to deny the many positive thanks that can happen when a male is the instructor of female students. . . . But these teachers cannot be the agents of the deepest transformations in a culture where women have been schooled to look to male authority and to search for male approval as the basis of self-worth."[115]

The central significance in feminist theory of learning through expe-rience, and through the internalisation of values, underscores the impor-tance of role-models who can sensitise, educate and challenge. These are lessons "best learned through identification with and emulation of a role model whose own practice provides a powerful example of the exercise of such a sensibility."[116] A number of the students we spoke with in interviews talked about particular teachers who had had a powerful influence on them in high school or in their undergraduate work. Others remarked on the importance of women professors in the law school as symbols of "normality" in what they experienced as a competitive male

---

114. "Authority in the Feminist Classroom", *supra* note 26 at 207 [emphasis added].
115. M. Culley, "Anger and Authority in the Introductory Women's Studies Classroom" in *Gendered Subjects*, supra note 26 at 211.
116. K. Pauly Morgan, "The Perils and Paradoxes of Feminist Pedagogy" (1987) Resources for Feminist Research 49 at 50 [hereinafter "Perils and Paradoxes"].

environment. Stanford Friedman argues that if we want women students to become confident and assertive in their intellectual lives, we should be demonstrating this by example. In so doing, feminist teachers can challenge the traditional dichotomies of public and private spheres of learning, intellectual and emotional development, objectivity and subjectivity, and so on.

> The feminist teacher can be more than a "facilitator", if only she will grant herself the authority to be so. Ideally, she has a rich storehouse of knowledge—intellectual as well as emotional, scholarly as well as personal.[117]

However it is also apparent that role-modeling produces tremendous pressures on women professors. There is an inherent conflict between the role of the female professor as detached, authoritative intellectual and as the traditionally feminine, nurturing figure;[118] the paradox of the "bearded mother".[119] The metaphor of the "beard" refers to the masculinisation of expert power and rationality in our culture; while "mother" refers to the nurturing role expected of women as mothers. As Kathryn Pauly Morgan puts it,

> we need to ask whether such supportive nurturance is compatible with teaching critical theorising since the very concept of mothering . . . involves unconditional support whereas the process of teaching involves interacting with one's students as a model of critical thinker.[120]

Role-modeling may provide a partial answer to how we mediate our relations with students but it is problematic in a number of other ways. It is subject to the further criticism that role-modeling behaviours may simply appropriate the dominant, male model of authority, replicating the king/courtier model in a female form. In which case, as Kathryn Pauly Morgan points out, "feminist autonomy is compromised by the very educative process which is designed to foster it."[121]

b. Some strategies for a positive use of power

Without thinking harder about classroom teaching strategies, it is not clear how different the female role-model of authority might or could be from a traditional male model. Some feminists have pointed out that for women simply to reject a traditional idea of (teacher) power is in fact an

---

117. "Authority in the Feminist Classroom", *supra* note 26 at 208.
118. *Supra* note 8 at 6–7.
119. The phrase is attributed to the poet Anne Halley in *Gendered Subjects, supra* note 26 at 14.
120. *Supra* note 116 at 50.
121. *Ibid.*

implicit acceptance of the dominance of a masculine definition of power.[122] If we are seeking to transform the nature and the basis of our authority as teachers to reflect women-centred pedagogies, women teachers need to think concretely about how they might develop "positive forms of authority, given by their institutions, their experience and their human relations skills"[123] which provide "a way for us to speak with an authentic voice not based on tyranny."[124]

Much feminist and critical literature stops short of discussing actual techniques and strategies for change which might enhance the learning environment through the "positive" use of teacher power. In attempting to develop both a theory and a practice for the positive use of authority, I have focused on strategies that enhance the personalisation of the teaching and learning process. I have drawn on critical pedagogy, but by emphasising the critical significance of *individual* needs and goals in learning and development attempt to be more genuinely responsive to the diversity of the classroom. My ideas also reflect feminist analyses of the teaching and learning process, but this does not imply that all feminist teachers would find themselves in agreement with them.[125] The suggestions I make are based on my own teaching experiences, and do not resolve all the potential tensions and ambiguities surrounding the use of teacher power; however they do offer some concrete strategies for change.

The traditional approach to classroom relations draws a clear line around the teacher which neither she nor her students will cross. Her thoughts and ideas are worked on in private and in advance of the class. She is expected to behave towards students at all times with the same detached objectivity on which her authority rests. Emotions—anger, excitement, divisiveness, either her own or her students—are excluded from the classroom. Personalising the relationship between teacher and student—for example through knowledge of personal circumstances, by encouraging students to relate material or ideas to their own experiences, by encouraging openness, self-disclosure and reflectiveness by both students and professor,[126] or caring about students beyond the responsibility

---

122. See C. MacKinnon, "Difference and Dominance" in *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass: Harvard University Press, 1987).
123. *Supra* note 97 at 94.
124. "Authority in the Feminist Classroom", *supra* note 26 at 207.
125. On the contrary, some feminists disavow any "righteous" or "positive" use of power. See the discussion accompanying *infra* note 145.
126. See E. Torton Beck, "Self-Disclosure and the Commitment to Social Change" in C. Bunch & S. Pollack, eds., *Learning Our Way: Essays in Feminist Education* (Trumansberg, NY: Crossing Press, 1993) at 285 [hereinafter *Learning Our Way*].

to ensure that the student is made aware of professorial expectations—is considered inappropriate, unprofessional, even gauche. However I would argue that this personalisation of learning is a first step in transforming our pedagogic goals and challenging the traditional model of teacher power.

Advocates of the so-called "banking method" shrink from the idea of personalising classroom relations and dynamics in any of these ways, either by revealing more about themselves, their ideas and experiences or by encouraging these kinds of discussion by students. Moreover, those who would reject the banking method may also, although perhaps less consciously, assume that a depersonalised classroom is desirable and "professional". After all, teachers are not therapists and the classroom is not a therapeutic setting. The essence of personalising classroom relations, however, is simply a refocus on the self as the subject of the learning process.[127] In the banking method, students are the *objects* of the learning process; they are, in Ira Shor's words, "waiting for the teacher to do education to them."[128] If we understand learning as something we do *for* ourselves, not something that is done *to* us, the basis of the professor's classroom authority is radically altered. Furthermore, recognising that there are important differences between the experiences, goals and needs of individual students rather than assuming their formal equality, makes the depersonalised and impassive pedagogy of the banking method not only undesirable but ineffectual also. Effective pedagogies, in contrast, must both acknowledge and on some level respond to differences in personal learning needs, styles and goals. Such pedagogies must be flexible, open and capable of engaging both teacher and students on a personal level.

Redefining the subject of education as the learners, rather than the teacher, is an inversion of the traditional model of authority. As an acknowledgement of the potential of the relationship between the knower and what is known, it upsets the predictability and control of the banking method.[129] This is of critical importance in reshaping the authority relationship between teacher and students. Knowledge is no longer the private property of the teacher. Many of our students already recognise this reality. In the words of one, "the professor isn't the be all and end all of knowledge. I think that students can offer, if not as much as individuals,

---

127. F. Maher, "Classroom Pedagogy and the New Scholarship on Women" in *Gendered Subjects, supra* note 26 at 41–42.
128. *Supra* note 6 at 2.
129. See S. Miller Gearheart, "If the Mortarboard Fits . . . Radical Feminism in Academia" in *Learning Our Way, supra* note 126.

at least more collectively than that little chunk being offered by the professor." Belenky *et al.* describe a more appropriate role for the teacher as "midwife", in the sense that the teacher draws out the knowledge and experience of her students rather than simply depositing her own ideas.[130] The teacher-midwife is neither a detached observer nor a full participant in the classroom. She may never be a full participant since she carries special power, which she may use to refocus the curriculum on self (for example by the introduction of new material, focusing discussion in particular ways, structuring participatory exercises into the class, and so on). However she cannot be a detached observer either, since she is personally implicated in the commitment of personalised learning to openness and self-conscious reflection.[131]

Increasingly large classes in law school make a personalised approach to teaching and learning a daunting task. In a class of fifty or seventy-five it is rarely possible to develop a relationship with each and every student that acknowledges his or her personal goals. However, even in a large class there are a number of strategies that enhance the personalisation of the teaching and learning process and help to refocus learning on self. In the spirit of openness that is critical to personalised learning, a necessary (although not sufficient) first step is to make our students aware of the learning values of the class and the professor. I try to begin my first class with a new group of students by talking about the learning values that are considered important in this course, and how these relate to expectations of students both in class and in assessed work. Sometimes this takes the form of a structured exercise on classroom climate and how responsibilities for an open classroom dialogue should be shared between professor and students; or on other occasions an explanation of why a particular assessment mechanism (for example, small group work) has been chosen, followed by an invitation for questions or comments. I may also invite students to collaborate with me on the development of assessment criteria (beginning from a *pro forma*) for a particular exercise. These may be seen as risky strategies, especially for teachers who feel that they need to use the first few classes to build up credibility. However my consistent experience has been that such an introduction, if planned and effected carefully, is received positively by the majority of students, who welcome the space to talk about what they will learn and how in other than purely substantive terms (for example an overview of the syllabus).

---

130. *Women's Ways of Knowing, supra* note 61 at 217–19.
131. M. Culley, "Anger and Authority in the Feminist Classroom" in *Gendered Subjects, supra* note 26 at 209.

On an informal level, commitment by the professor to a refocus of learning on self and away from "teacher talk" will rapidly become evident to students. It will be quickly apparent how much "airtime" the professor is prepared to share with students in class discussions and other in-class activities. It will also be manifest in many subtle ways throughout the course to which, our interviews revealed, students are highly sensitive; for example in the way that classroom discussions are handled, the effort to learn (at least some) student names, the clarity with which assessment expectations are set out and formative feedback provided, and the professor's availability to and interest in students outside class. From the first class on, teachers in both large and small classes can make choices over teaching and assessment methods which further the goals of personalised learning. The primary means through which learning may be personalised in the classroom is by the validation of personal experience, both past and present. The process of learning should encourage students to relate and where possible to integrate their life experiences into their new studies, rather than suggesting—as law school orientations often do, either implicitly or explicitly—that everything a first-year student has experienced before is irrelevant as they enter the vacuum-sealed world of legal study. Students should also be encouraged to reflect on their ongoing experience in law school in order that they at no time become mere spectators of their own education. Learning activities can reflect the importance attached to personal experience by emphasising "learning by doing" and always including an element (however brief) of feedback and evaluation (whether for final credit or not). The types of structured experiential learning activities which might be used include problem-based learning (where students work in groups on a simulated client file),[132] clinical work or action-based research outside the classroom, and simulation and role-play both inside the classroom (for example acting out a case and argument), and as part of assessment (for example making a live or videotaped presentation). Exercises which require the active engagement of students should also allow them to develop and work towards their own learning objectives. Work in small groups can also be used to explicitly encourage reflection on learning and group process, and to expose students to the different learning styles and interests of their peers.

---

132. See generally S. Kurtz, M. Wylie, & N. Gold, "Problem-Based Learning: an Alternative Approach to Legal Education" (1990) 13 Dalhousie Law Journal 797; and for a specific example see J. Macfarlane & J. Manwaring, "Using Problem-Based Learning to Teach Contracts" paper presented at the CALT Pedagogical Day, Montreal June 1995 [available from the authors].

Working with students engaged in experiential learning exercises affords the professor extraordinary access to her students' personal goals and motivations, and academic strengths and weaknesses. Although many of these exercises are time-consuming to prepare (in the first year) and to manage (especially where a large group has to be broken down into smaller groups), they are highly rewarding and in my own experience extremely effective in practicalising personalised learning, even in large classes.[133]

Often—although not always—the validation of experience and the development of self requires dialogue amongst students and professor, either on an individual basis or in the form of small group or whole class discussion. The encouragement and management of discussion, especially in a large class, is extraordinarily challenging. A number of students in our study commented that in their view, their professors took insufficient responsibility for classroom management, in particular the management of class discussion. An initial orientation to the class "policy" on dialogue can help to clarify student expectations, but maintaining an open and tolerant dialogue in a diverse classroom is a complex task. Student participation in all its forms raises questions of trust, fear and safety. If education is genuinely to offer the opportunity for individual development and even empowerment, teaching and learning strategies need to acknowledge and take account of inequalities and differences inside the classroom which reflect systemic power imbalances outside. Providing a relatively safe space, in which the participation of all students is maximised, requires much more than simply "opening up the classroom" for discussion. If the classroom is to become a place in which individuals feel that they will be listened to respectfully and protected from insult or offence (whether by the teacher or by peers) some rules and structure need to be established for which primary responsibility for enforcement must rest with the professor; for example, placing limits on how far one person may be able to dominate discussion, constraining what may be said which would chill the climate for others and sometimes intervening to rule offensive or potentially offensive

---

133. There are many ways to reduce the practical burden of the management of the small groups and other experiential exercises. One is to introduce an element of peer and self-assessment using prepared forms. It is also evident that once students and/or the small groups become motivated, there is little difficulty ensuring that tasks are completed adequately and on time, whether inside or outside class time. See "Teaching Contracts Using Problem-Based Learning", *ibid.*

remarks "out of order".[134] Sometimes establishing safer space for discussion may be achieved through breaking down a large class into smaller, self-selected groups, with some system of reporting back to the whole group.[135]

In order to more effectively understand and manage classroom discussion we also need to pay close attention to the reasons why dialogue does not occur. While the development of student "voice" is a critical part of power-sharing in a personalised classroom, voice takes many forms and does not always mean speaking out. Rather than understanding silence as falling short of the objective of declaiming one's voice, some feminist educators have suggested that instead teachers should "hear" women's silence and seek to understand the reasons for it, in order to properly include women in both curricula and classroom process.[136] Many feminists have made the point that any assumption of equal standing is misplaced for many women and others whose socialisation has done little to encourage speaking out. Adrienne Rich's description of classroom interaction is instantly recognisable in the context of law school:

> Look at a classroom: look at the many kinds of women's faces, postures, expressions. Listen to the women's voices. Listen to the silences, the unasked questions, the blanks. . . . Listen to a woman groping for language in which to express what is on her mind, sensing that the terms of academic discourse are not her language, trying to cut down her thought to the dimensions of a discourse not intended for her . . . or reading her paper at breakneck speed, throwing her words away.[137]

Understood in this way, it is clear that classroom silence or the withdrawal of persons from classroom interaction is as much the result of

---

134.   Roger Simon has argued that in the context of power-sharing, it may be pertinent to ask whether a balance needs to be struck between this responsibility falling entirely to the professor, or being shared, sometimes, with students:

> By ensuring that there are multiple voices in the classroom . . . (we may find) ways in which these voices can interrogate each other.

R. Simon, "Empowerment as a Pedagogy of Possibility" (1987) 64 Language Arts 370 at 379. My own view is that while I may invite students to consider how responsibility for maintaining dialogue might be shared, I should assume primary responsibility for "enforcement" of class protocols. However, it is possible that in some classes and contexts this strategy could be made to work. See also the discussion below under 'Continuing Dilemmas'.
135.   In one first-year course I have been experimenting with the use of upper-year teaching assistants who work with me in the classroom and whose primary role is the facilitation of small group discussions during class time. These exercises are carefully planned before class and debriefed afterwards with the teaching assistants to explore levels of participation and comfort.
136.   For a fascinating exploration of the question of women's silence in academic settings, see M. Lewis, *Without a Word: Teaching Beyond Women's Silence* (New York: Routledge, 1993).
137.   A. Rich, "Taking women students seriously" in *Gendered Subjects, supra* note 26 at 27.

life experiences of talking and being listened to (or not), as it is a positive or negative response to "teacher talk". Just how student voice gets expressed is also complex. The experiences of some students mean that they do not so much speak out as talk back, often in anger.[138] Voice may also be expressed in discussions with peers outside class about ideas raised in class. The metaphor of voice, describing a cognitive process which focuses on the development of self, captures something of the nature of personalised learning. In one study of women as college students, the authors found that "women repeatedly used the metaphor of voice to depict their intellectual and ethical development; . . . the development of a sense of voice, mind and self were intricately intertwined."[139]

Moving between instructional choices over teaching strategies and the organisation of curriculum materials, we may also select classroom topics which redirect attention towards the traditionally private dimensions of our understanding of ideas and materials. As a deliberate curriculum choice, this is at one time both a use of our power, and a strategy that potentially subverts our authority as the subject of learning and the controller of what is learned in the classroom. Curriculum choices can reflect the ethos of personalised learning by explicitly including the development of self and psyche, and comprehending moral and ethical as well as intellectual development.[140] In this model emotions are recognised as valid and legitimate means of expressing ideas and experiences; what Audre Lorde describes as "hidden sources of power from where true knowledge, and lasting action, comes."[141] Moral, ethical and emotional considerations are often either explicitly excluded from the law school classroom as "irrelevant" or simply never raised. Instead, an implicit or sometimes explicit message is given that "good lawyers don't let their feelings intrude" and that "morality and law, in practice, are two separate things."[142] Several students in our study discussed the raising of personal ethical and emotional questions in relation to a taped excerpt from a classroom discussion which was used as a stimulus in the first set of

---

138. See E. Ellsworth, "Why Doesn't This Feel Empowering? Working Through the Repressive Myths of Critical Pedagogy" (1989) 59 Harvard Educational Review 297 at 308–12 [hereinafter "Repressive Myths of Critical Pedagogy"]. "Any student's individual voice is already a 'teeth gritting'. . . ." at (312).
139. *Women's Ways of Knowing, supra* note 61 at 18.
140. See for example W. Perry, *Forms of Intellectual and Ethical Development in the College Years* (New York: Holt, Rinehart & Winston, 1970) and *Women's Ways of Knowing, supra* note 61. On the limitations of liberation models of pedagogy from a feminist perspective, see also *supra* note 97.
141. A. Lorde, cited in *supra* note 104 at 86.
142. These statements by professors and a number of variations on this theme have been described to me by students on a number of occasions.

interviews (see appendix). In that excerpt, I (the professor) suggested to the class that their emotional response could not be separated from their intellectual consideration of any subject matter. This was how one of the students remembered the reaction in the classroom to this suggestion.

> Well, I remember this part . . . I think maybe some of them [the students] may have heard for the first time from a professor that you can't separate the emotions. Because I remember a kind of "hum" in the classroom after this . . . like the class was kind of "humming" knowing that this was going on.

This student saw my suggestion and its impact as a clear use of power.

> I think it is comments like these that give the teacher power. Because anybody can take the facts and go, "this is the fact and this is the fact and this is the fact" but the power, I think, for the teacher, comes from what [the teacher] does with those facts . . . because I think the facts are always influenced by the emotional, the personal.

As this comment illustrates, these and other strategies aimed at personalising the teaching and learning process do not resolve all the tensions that remain between aspirations to share power with students, and a desire to manage the classroom. Strategies for personalising teaching and learning may still represent a justification of power based on "we know best". However, the use of teacher power to build pedagogies more responsive to the different conditions under which students arrive in law school might claim to be a positive form of authority. Such strategies offer a new dimension to what we might think of as professorial authority, in some respects diminishing it (for example we can no longer predict with certainty where class discussions may take us); but at the same time asserting our authority as more than a matter of subject expertise.

This approach to learning and development has the potential to fundamentally alter the ways in which we as teachers relate and respond to our students. If we genuinely value the experiences and ideas of our students, and consider the independent personal development of each of our students to be one of our pedagogical goals,[143] we can only see them as individuals (some of whom we may like more than others, but individuals nonetheless). As Judith Williamson poignantly puts it, "which do we ultimately care more about; our ideas, or the child/student we are trying to teach them to?"[144] What is most significant for me about a personalised approach to teaching and learning is that the individuals are

---

143. L. Kohlberg & R. Mayer, "Development as the Aim of Education" (1972) 42 Harvard Educational Review 449.
144. Williamson cited in "Teacher Education", *supra* note 21 at 234.

made more important than the ideas. This resolution resonates better with my intuitions as a teacher and as a feminist than either the controlling passivity of the banking method, or the revolutionary consciousness-raising of critical pedagogy.

c. *Continuing dilemmas*

Some feminists argue against all claims to the "righteous" use of teacher power, whether through the use of conscious strategies directed at de-centering power, or more simply through role-modeling. These writers stress the context-specific nature of power and the fluidity of the relationship between teacher and student, which depends on who the students in the class are, and who the teacher is. They argue that we over-estimate both the actual authority and the capacity of a teacher to provide a meaningful role-model for any more than a handful of students who share her background—for example, white, middle-class, educated—or to competently oversee and understand the goals and development of all the individuals in her classroom. "I as a professor could *never know* about the experiences, understandings and oppressions of other participants in the class."[145] It is unrealistic, it is argued, to imagine that *any* professor could be this powerful. Any effort to constructively de-centre teacher power appears to assume a powerful and all-knowing professor, which suggests the paternalism of traditional "banking" education. "The only call for change is on the part of the students. The only people who get 'worked over' are the students. The only call is for student voice. Critical and feminist teachers, we are to assume, have already found and articulated theirs."[146]

Some feminists have gone further to suggest that efforts to transform the teacher/student relationship and de-centre teacher power will be at best ineffectual and at worst manipulative. If as a professor I continue to be the person who determines the classroom agenda and grades student work, surely I still exercise power, but simply more covertly than before? Elisabeth Ellsworth is one of a number of writers who have articulated this concern. "Practices which decrease overt regulation can increase surveillance and regulation through covert . . . means."[147] It is still the

---

145. *Supra* note 138 at 310.
146. M. Omer, "Interrupting the Calls for Student Voice in 'Liberatory Education': A Feminist Poststructuralist Perspective" in *Feminisms and Critical Pedagogy, supra* note 102 at 87. See also J. Gore, "What Can We Do For You? What Can 'We' Do for 'You'? Struggling over Empowerment in Critical and Feminist Pedagogy" in *Feminisms and Critical Pedagogy, supra* note 102 at 54 [hereinafter "Struggling over Empowerment"].
147. "Struggling over Empowerment", *ibid.* at 68. See also V. Walkerine, "Progressive Pedagogy and Political Struggle" in *Feminisms and Critical Pedagogy, supra* note 102 at 15.

professor who ultimately passes judgment on the student (through the process of grading and providing references), no matter what changed criteria we might propose.

How valid is this skepticism about the reality of classroom power-sharing? Certainly I recognise that while encouraging students to speak out, the critical (or feminist) educator nonetheless pursues her own agenda. Power-sharing in this way may be a more dishonest use of power than simply occupying the space oneself and acknowledging one's agenda. Skepticism about the possibilities of genuine dialogue may also be borne out in some respects by our more negative experiences of classroom discussion, for example when we intervene only to find that we have stifled discussion, or when we fail to intervene and later regret the hurt that open dialogue may have caused someone in the classroom. Expecting students to take responsibility for the "interrogation" of others may impose an unfair burden on particular students; and at worst it may appear voyeuristic.[148] The assimilative process of law school is also evident in patterns of classroom discussion and is another cause for skepticism; students who speak out in different voices at the beginning of first year are usually silent by the following January. Most importantly perhaps, the continued dominance of males and whites in classroom discussion in law school—despite the influx of women, native students and students of colour—and the predominant discourse of rationality and logic serve to demonstrate that simply *inviting* dialogue is wholly inadequate to fundamentally alter both the form and the substance of classroom dialogue. At the same time, laying down explicit standards for the moderation of class discussion encounters a range of other problems. When a professor takes a strong position on either a substantive or a procedural dimension of classroom dialogue—for example by disapproving an offensive statement, or by asking some students to say less in order that others might say more—it may silence some voices. Certainly the taking of a strong position always risks an adverse student reaction. As one student put it,

> When something is basically forced on you by a person in authority it may backfire . . . especially when those views are expressed by professors. I think that students tend to get a bit defensive and may even reaffirm . . . inappropriate beliefs because they feel that they are not going to be forced to change.

---

148. See Roger Simon's suggestion that students may share in responsibility for tolerant dialogue by "interrogating" others, *supra* note 134. For a critique of this approach see *supra* note 138 at 312.

Resistance to restructuring power relations in the classroom may take many forms, of which this reaction is just one example. Resistance may also come from those who feel that the imposition by a professor of so-called "communicative virtues"[149]—such as patience, respect for differences, a willingness to listen and tolerance for the speech of others—is a replication of liberal, gendered values.[150] Inevitably it will be the perceptions of the student herself, rather than our intentions in aspiring to a supportive, tolerant climate, which will be decisive for the learning outcomes. In the search for a de-centred pedagogy responsive to the systemic power dynamics of the classroom, how then do we begin?

Conclusion

In the face of the systemic inequalities of the classroom and of life, one possibility is to disclaim our responsibility to exercise teacher power altogether. Some of those most skeptical of critical pedagogy's claims to empowerment appear to argue that to do otherwise is to add to its oppressive potential.[151] For me, this feels close to giving up altogether on the enterprise of teaching and learning. I find it an irresistible conclusion that if we are willing to assume any or all of the responsibility for restructuring power relations inside the classroom, we must make use of what power we have as professors. Many of the critiques of empowerment pegadogy seem to rest on the assumption that these methods will be manipulated by teachers who either believe they are, or desire to be, all-knowing and all-controlling. In contrast, the pedagogy I have described as the personalisation of teaching and learning requires that we genuinely rethink how we understand our role as teachers. In particular, it challenges us to consider whether we possess the capacity to continue as the universal subject of the learning process and whether such a goal, in any case, is desirable. In making subsequent judgments about curriculum content and pedagogy, we shall inevitably continue to exercise forms of power; but our understanding of the character of that power will be very different from that which grounds traditional assumptions about the professorial role.

---

149. N. Burbules & S. Rice, "Dialogue Across Differences: Continuing the Conversation" and "Can We Be Heard?" in *Teaching for Change, supra* note 104 at 1 and 34.
150. M. Leach, "Can We Talk? A Response to Burbules and Rice" in *Teaching for Change, supra* note 104 at 29. "How can appeals to abstract virtues that currently have a differential impact on gendered individuals promote equitable nurturing conditions for all?".
151. "Struggling thrugh the Repressive Myths"; "Struggling over Empowerment in Critical and Feminist Pedagogy"; and M. Leach, "Can We Talk? A Response to Burbules and Rice" in *Teaching for Change, supra* note 104.

In responding to critiques of power-sharing, some themes emerge which may inform and augment whatever strategies we adopt. One is the importance of openness. It is critical that we are open about what we are hoping to do. Being open and honest about my goals for the class, both substantive and procedural—for example, to explore a feminist and critical analysis of law, to create a safe space for dialogue which may require some people to say less in order that others can say more—does not resolve the tension I feel about my use of power, but it helps both the students and myself towards a better understanding of our relationship. Another pivotal principle in the restructuring of classroom power relations is the importance of humility. Humility may mean being willing to admit that we are sometimes wrong, or mistaken. It may also mean "thinking out loud" when we have not considered an idea before, or when we have not had time to perfect our thoughts yet in private.[152] On occasion it may mean asking students to share with us some further responsibility for what is happening in the classroom; for example when we are faced with a difficult or divisive classroom power dynamic. We may also need to consider responding with some humility—rather than simply defensiveness—when questioned or critiqued by students. This is often very hard to do. Some critiques will be unfair and inaccurate. Some of those made against female professors will be sexist. However our very defensiveness speaks volumes about our implicit sense of power and authority. Unintentionally, our defensiveness is sometimes communicated to our students with surprising clarity. The more defensive we feel, the more we fall back on traditional assertions of power.

> One day in class a student said "I think you're a bit off-base here," and the professor replied, "Well, I could take another look at this but I don't think I'm wrong, and I have to tell you I've written a number of books on this subject so I know what I'm talking about." The student was mortified.

Another student described the reaction of a professor to her stated anxiety about the course she was taking with him.

> I approached him in the first term and asked him . . . [if] his class could be taught in a more straightforward manner. He said (a) that maybe he should give me 200 pages of readings a night, that was what other professors did in other law schools and on other courses did that and (b) that I was obviously missing the boat. That ended my conversation with him. I felt very intimidated and almost fearful.

Openness and humility are difficult virtues to practise in a climate which does little to support women professors. Any of the strategies for sharing power in the classroom which I have considered in this paper may

---

152. *Women's Ways of Knowing, supra* note 61 at 214–19.

cost too much, in both institutional and personal terms, for women and other law teachers to consider using them. However, my initial interest in exploring these questions arose not from concerns about my institutional and personal insecurity, but instead out of a need to feel more comfortable with the decisions and compromises I make every day in my classroom and in my relations with the students I teach. This tension is well captured by Nina Baym:

> The issue of power is assuredly amongst the most difficult that feminists face. Power is most often experienced as oppression, and hence the desire for it is frequently disavowed. Yet, insofar as power is the energy and control that *gets things done*, it is not only an ineluctable dimension of any situation, it is something that feminists require.[153]

I believe that questions of teacher power are of deep personal significance to educators who wish to be effective in challenging traditional norms of hierarchy in the substance, process and culture of the law school. How teacher power is exercised is understood by law students themselves as critical to what they will learn in law school. As one of the students in our study put it, "after three years of law school you've changed as a person and you've been influenced so much. It has been done at a really subtle level and you don't even know where some of these ideas came from. Actually, they're coming from the professors." We use teacher power every day both inside and outside our classrooms. We have some responsibility to ask ourselves how we understand its complexities and subtleties. In the words of Jennifer Gore, "all regimes are dangerous, but perhaps less so to the extent that one becomes conscious of, and sensitive to, the specific dangers of one's work."[154]

---

153. *Supra* note 103 at 66 [emphasis added].
154. *Supra* note 88 at 64.

Appendix

Interview formats

The interviews were conducted on a one-on-one basis. All discussions were audio-taped and later transcribed. This was done in order to both protect student anonymity and to ensure full reporting of what was said in each interview.

Only prompt questions were used. This was to ensure that interviewees spoke about whatever they felt was relevant to the discussion with minimal leading. The prompt questions are reproduced below. The same prompt questions were used throughout all the interviews, with the exception that the opening stimulus material/question differed between the interviews carried out in May 1994, and the second set carried out in February–March 1995.

In the first set of interviews, each interview began with the interviewee listening to an audio-tape of a short sequence of classroom discussion from the author's Contracts class.

The following prompt questions were then asked.

What are your reactions to what was happening on the tape?
• then?
• now?

How do you think the teacher handled this situation?

What was the feeling/atmosphere in the classroom? Can you remember?

Do you see any examples here of teacher power?
• used appropriately?
• used inappropriately?

Can you extrapolate from this situation to any other classroom situations you have been in over the past year? Any other examples of teacher power and its use/abuse this brings to mind? (Be as specific as possible about the interactions but we do not need the name of the teacher.)

Do you and your peers ever discuss questions of teacher power? If so, what sorts of issues come up?

Do you notice any divergence of views among students, and if so what kinds of examples characterise this?

Do you notice any difference in the way that you or your peers react to issues of teacher power exercised by male/female professors? If so, can you think of any classroom examples of this?

In the second set of interviews with another group of student interviewees, we did not use a tape as a stimulus point. Instead the interview began with the interviewee being asked

What comes to your mind when you hear the expression, "teacher power"?

Thereafter the same prompt questions (above) were used.