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Democratic Community and Privilege: The Mandate for Inclusive Education

Stephanie M. Wildman*

MEDITATION FOR TRINA GRILLO

When Trina Grillo died all words seemed empty. Words in large part formed the bond between us, because we wrote together, we planned classes together, and we pursued institutional change together. This work with words was interwoven with the daily, lived parts of our lives, also conveyed by words. Our language took many forms, transmitted by voice, pen, computer bytes, and electronic impulses.

The same words, which had formed my relationship with Trina, were, of course, also susceptible to miscommunication and lack of understanding. At the funeral service for Trina, mere words were all I had to explain the many connections between us.¹ I ended saying that most of all we had been “mothers together.”

A lesbian friend who attended the service told me that at this point, upon hearing these words “mothers together,” her partner (who hadn’t known Trina or me well) leaned over to her and said, “I didn’t know they were lovers.” She had misheard the words “mothers together” to be “lovers together.” Yet even this “failed” communication culminated in understanding: the listener had indeed heard correctly that I lost the woman I loved.

* Copyright © 1997, Stephanie M. Wildman, Professor of Law, University of San Francisco School of Law. Special thanks to my many friends who also loved Trina Grillo. You have sustained me through this sad time. Thank you to Leslie Cogan, Adrienne D. Davis, John Denvir, and Catharine Wells for reading early drafts of this Essay, and thanks to Laurie Dechery for thoughtful editing. Koosh ball is a registered trademark of Oddzon Products, Inc., Campbell, California.

1. I introduced a poem, written by her children, Luisa and Jeff. See Jeffrey Grillo & Luisa Grillo-Chope, *Our Mother's Spirit*, 81 MINN. L. REV. 1541 (1997). I was grateful to be reading their words, the only words that did not seem empty.

Some of the writing that Trina and I collaborated on, along with Adrienne Davis,² has been about using words to create categories which impart meaning. Yet here for our important relationship there remains no name, no vocabulary to describe this love between women. "Sister" is the closest our language allows us to come, and I use it with the blessings of Trina's mother Catherine and her birth sister Elisa. The absence of the right words to describe our lived reality serves to perpetuate the status quo in human organization, insulating our lives from the possibility of transformation.³

The desire to heal and transform the world was part of the bond of my sisterhood with Trina. To honor her memory, this Essay reflects on our educational institutions and the classrooms within them. In these locations Trina toiled toward transformation with all her heart. Perhaps the best way to honor her is to continue this work by engaging the issues with which she continued to struggle even in the months before her final illness. Part of that struggle remains finding the words to describe the reality in these places.

DEMOCRATIC COMMUNITY AND PRIVILEGE

Trina Grillo was dedicated to the idea of inclusive, democratic community. Community is a complicated idea. The classic concept of community seemed to refer to residential communities. We retain this concept in the notion of neighborhoods, but in modern life we often don't know the people who live two houses or two apartments down from ours. In modern urban life we live in conditions of alienation and isolation, yearning for connections and community. The nature of our potential communities has changed.

2. These working papers, though never published, were presented at various conferences. One version, Adrienne D. Davis et al., *Categories and Koosh Balls: Rendering Privilege Visible and Other Subversive Practices* (1982) (unpublished manuscript, on file with author), influenced our later work. See, e.g., STEPHANIE M. WILDMAN ET AL., *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* (1996) (with contributions by Margalynne Armstrong, Adrienne D. Davis, and Trina Grillo); Adrienne D. Davis, *Identity Notes Part One: Playing in the Light*, 45 AM. U. L. REV. 695 (1996); Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16 (1995).

3. For the importance of thinking about transformation, see Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659 (1995).

We each participate in multiple transient communities, from the community of parents who bring their children to the park every day in the late morning to the group riding the bus at the same time. Sometimes community is found between two "sisters" who talk on the phone at the same time everyday. In law schools, legal educators, law students, and staff are part of the community of our workplaces, which are educational institutions.

These institutions don't always feel like "community" to us, although much lip service is paid to the idea of colleagues and the collegial sharing of governance within them. So some may resist the idea that our institutions have much in common with community, which resonates as a warm, fuzzy ideal, just like "mom and apple pie." Students come and go every three years, increasing the sense of the transitive nature of the whole enterprise. But if we consider the concept of institutional culture, we realize that there are traditions and components that make each of these law school communities what they are in a way that seems more fixed and intractable than transient.

While it is true that communities are only made up of the people in them, the people in the community of legal education, within each individual law school and the legal education community as a whole, reflect the privileges and norms prevalent in the dominant culture. This world is "raced" and "gendered,"⁴ and these institutions reflect the race and gender privileging of the world that they inhabit. These race, gender, and many other privileges are real, existing in the communities both inside and outside of the law school.

In response to these systems of privilege, legal education (indeed all education) shares a responsibility to consciously educate students for participation in democracy and with appreciation of democratic norms such as equity, civil rights, and mutual respect for the ideas of others.⁵ A participatory perspective, fostering these democratic values through practice, needs to inform the legal educational enterprise.⁶

4. See WILDMAN ET AL., *supra* note 2, at 9 (describing ways in which the world is raced and gendered).

5. See DEBORAH MEIER, *THE POWER OF THEIR IDEAS: LESSONS FOR AMERICA FROM A SMALL SCHOOL IN HARLEM* 7 (1995) (describing democratic norms).

6. See Stephanie M. Wildman, *The Legitimation of Sex Discrimination: A Critical Response to Supreme Court Jurisprudence*, 63 OR. L. REV. 265 (1984) (discussing the need for a participatory perspective in evaluating sex discrimination claims).

Transformation is part of the enterprise of education. In addition to the basic curriculum, the so-called canon of legal education, the introduction of new ideas to expand both the mind and sense of possibility must be part of a learning environment. For the democratic enterprise to succeed, inclusion of those from both sides of the line, privileged and not privileged, is essential. We live "[a]t a moment in history in which our destiny never depended more on reaching out beyond our immediate circles."⁷ Legal educators can reach beyond our own circles in admissions, in reading assigned in the classroom, and in subjects we include in the curriculum as well as in individual class hours.

Faculty hiring is another way that the community may be transformed; perhaps that is why hiring is so contested in many places. This hiring process interacts with systems of privilege.⁸ There are many different systems of privilege, just as there are many different communities. *Privilege Revealed: How Invisible Preference Undermines America*⁹ focused on systems of privilege based on race, gender, and sexual orientation, but other systems such as class, religion, disability, and many others deserve greater attention. In the book, the Koosh ball, a children's toy, serves as a metaphor for the interconnection between these systems of privilege in each individual, because there is no one perfectly privileged or unprivileged person.¹⁰

But the Koosh ball could also serve as a metaphor for the many strands of privilege operating in a community. Each strand is present, but the shape changes, depending on how you look at the ball or how it is tossed in the air. The Koosh ball suggests the interlocking nature of these systems of privilege; what they create is greater than the sum of their parts in how they affect the creation and possibility of community. These privileging dynamics, which are often unspoken and hard to name, affect the potential for creating community.

Most of us, when we were hired, were not asked whether we would like to come and integrate legal education, making it

7. MEIER, *supra* note 5, at 78 (writing in the context of the necessity of public elementary education). Yet the same need for inclusion and "reaching beyond" our own circle is true for professional level education.

8. See WILDMAN ET AL., *supra* note 2, at 103-37 (discussing the hiring process).

9. WILDMAN ET AL., *supra* note 2.

10. See *id.* at 22-24. It was Trina Grillo who exclaimed, "It's a Koosh ball." *Id.* at 184 n.34.

a place where people of color, lesbians, gays, and white women can feel comfortable. If we had been asked that question, we might have said, "You can't pay me enough." Yet that is the job many of us have been performing; it was certainly the job Trina Grillo undertook.

It is time to make this work visible. We need to ask our institutions to create Faculty Diversity Committees. Every law school has an Appointments Committee which is funded; every law school has an Admissions Committee which is funded. We need a committee to show that bringing issues of race, gender, sexual orientation, wealth, and other-abledness into our institutional culture both matters and is serious work. This is not an extracurricular activity. It is legitimate work for the institution that should be recognized. The way we structure our institutions does give a message about what we support and what is important. We need structural support to work on building inclusive community.

In spite of the difficulty in naming these dynamics, it is important to take the notion of community seriously by not addressing community as an abstract concept. Our communities do not exist after all in the abstract, but rather within the community of legal education, legal scholarship, and ultimately membership in the bar, the community of lawyers. We are the gatekeepers to this profession, which professes to be concerned with justice.

We as a nation continue to find the ideas of justice and community alluring.¹¹ And so we should be trying to create, in the educational community, the possibility of both nurturing these ideals and creating a world in which they may flourish. Recognizing the formative power of educational institutions at the elementary school level to shape students' values, Deborah Meier has commented that "[y]oungsters learn their place in the social order and develop a system of responses to their placement that are hard to dislodge. They form 'an attitude' toward work, adults, the large public setting and what counts and what doesn't on the basis of schools."¹² These observations also hold true for law students. For many students, law school is their first encounter with the legal profession. Even for students with lawyers in their families, law school marks the be-

11. See *id.* at 139-59 (discussing the quest for justice).

12. MEIER, *supra* note 5, at 10.

ginning of their own process of defining their own roles within the profession and of assimilating professional values.

We in the community of legal education should be particularly concerned about ensuring that democratic values are part of "the attitude" that is instilled. As Meier observes, "Democracy is based on our power to influence by our public statements and actions what we want the future to look like."¹³ Legal education needs to provide training for political conversation across divisions of privilege based on race, gender, class, sexual orientation, wealth, and others.¹⁴

Meier also comments that "[i]deas—the ways we organize knowledge—are the medium of exchange in democratic life, just as money is in the marketplace."¹⁵ The classroom is the primary location where ideas are exchanged. Many law school classrooms, while paying lip service to this idea, do not actually provide a space for disagreement across these lines of difference. Yet the possibility for transformation is most possible in the classroom because it is the microcosmic community that we enter afresh at the start of each new semester.

In each new classroom we have the possibility of nurturing inclusive community and the aspiration for justice. The classroom community also has traditions, which resonate through sixteen years of our students' previous education, not the least of which is privileging each of us as the professor. We can use that privilege to set a classroom culture that fosters democratic values and the exchange of ideas.

THE CLASSROOM COMMUNITY

We re-create a new classroom community, within the existing educational tradition, every time we start a new course. Each of these re-creations of community has some potential to transform institutional culture as well as those of us within the classroom itself, as the students and ideas nurtured in that classroom spread out across the institution and beyond.

This trickle-out effect may not always be a positive one. I come back to a story I told in *Privilege Revealed*.¹⁶ Maybe my

13. *Id.* at 8.

14. *See id.* at 7. Meier argues that public schools can provide such training. "It is often in the clash of irreconcilable ideas that we can learn how to test or revise ideas, or invent new ones." *Id.*

15. *Id.* at 8.

16. WILDMAN ET AL., *supra* note 2, at 163-64.

return to it shows the extent to which I am troubled by it. I assigned students in a torts class to write "think pieces" on tort reform. This was a group exercise; part of my purpose was to create a setting in which the students could discuss the issues with each other. I wanted them to think together about what a more perfect world would look like. The local legal newspaper published the best of these essays, submitted by the group, along with the students' photographs, in a tort reform symposium.

One of the groups, whose work was published, consisted entirely of women of color. After the piece appeared I said to one of the women, "You must feel good about having your work published."

She just shrugged, and said, "People are saying that our piece was chosen because we've done so badly in law school that you were just trying to help us out. You know, because you are sympathetic to minorities in law school."

I just looked at her in disbelief, as many thoughts swirled through my brain. This rumor was unfounded and untrue. Yet this rumor mill reaction that came out of the community prevented these students from enjoying the experience of publication in the same way that a white student could. For this Latina student, even her fleeting happiness at seeing her name in print and having her article published was taken away. She was denied even this shred of self-confidence and achievement by the unnamed entity of "they" that defined the community as white and this student as outsider and excluded.

I looked at her in shock and said, "You can't even enjoy having your work published, like the rest of the students in the symposium."

She nodded, "It's just the way it is here. I'm not surprised."

But I was surprised that students would act that way toward each other. Part of my white privilege is being able to be surprised, to forget what people of color cannot forget in order to survive in predominantly white institutions. To build community we need to think about how to make our institutions hospitable to everyone who inhabits them, not just the privileged few.

One lesson from this story is that we have to take the conversation about systems of privilege into the classroom, where many components of the institutional culture are spread, if we are to have any hope of building community there. When a professor makes an off-handed remark like, "So they have to

prove discrimination, whatever that is," making clear his scorn for the federal Civil Rights Act and the notion that discrimination even exists, a message is underlined to everyone in the room. Students who have faced discrimination feel discounted; students who agree with the professor do not have their ideas challenged.

This story and the tort reform episode show that even safety to participate in the institution and in the classroom is not distributed equally. We need to think seriously about establishing the safety to express ideas and even to be present in the institution in order to create a community that aspires to justice.

In another book about teaching, *The Power of Their Ideas: Lessons for America from a Small School in Harlem*,¹⁷ Deborah Meier describes how an intellectually curious child, age five, makes the argument that a rock is alive—little ones break off from big ones, they move and change shape over time (think of glaciers).¹⁸ Meier muses on how we "educate" by polishing this kind of thinking off with some version of "you're wrong" (sometimes milder or often more severely) and some pat explanation, without paying attention to the inevitable by-product of squelching intellectual curiosity.¹⁹

In *The Law Teacher*, the Gonzaga Law School publication, a torts professor commented on how he did the same thing with a classroom conversation about *Katko v. Briney*,²⁰ the Iowa spring-gun case.²¹ In that case the plaintiff, who had been a burglar breaking into a farmhouse, had won a huge judgment against the farmer who had set a spring gun. The professor was asking students why this had happened. One student, an older woman, had said, "Plaintiff won because he was a hunk." (The plaintiff's picture had been reproduced in the casebook.)²²

After the professor had been dismissive of her answer, explaining the "right answer"—no, rocks are not alive, *P* won because *X* (whatever reason), he realized that the student had made a point—about jury dynamics and litigation. He also realized that she might never speak in class again, given the

17. MEIER, *supra* note 5.

18. *See id.* at 1.

19. *See id.* at 2.

20. 183 N.W.2d 657 (Iowa 1971).

21. *See* Andrew J. McClurg, *Poetry in Commotion: Katko v. Briney and the Bards of First-Year Torts*, THE LAW TEACHER, Fall 1996, at 1.

22. *See id.*

silencing laughter of the other students, even without his comments.²³

Deborah Meier muses that "some children recognize the power of their ideas while others became alienated from their own genius."²⁴ We need to think about how the systems of privilege operate in our classrooms and institutional hallways, in these places where we want to be educators, to decide whether all of us, not only children, will recognize the power of our ideas or become alienated.

What can we do as legal educators to ensure safety within our classroom communities, given the operation of these systems of privilege? Being aware that privilege exists is an important starting point. White privilege, heterosexual privilege, male privilege, and economic wealth privilege are not distributed equally among our students. The heritage of legal liberalism, that we are all equal, is so powerfully ingrained in all of us that it permits those of us with privilege to forget that equality remains our aspiration, not our reality.

Those without privilege are more likely to be excluded from the community of the classroom because they are outside the unspoken norm. This norm says most judges, lawyers, and law professors are white males. The norm doesn't even contemplate sexual orientation. So we as professors need to pay attention to who is speaking in the class and about what. Are all judges men in classroom discourse? Do only heterosexual couples have legal problems? Are women only victims? What vision of community is being constructed in our classrooms? We need to make sure that voices of color, that women's voices are heard. We can assign readings featuring scholars of color and gay and lesbian scholars, if those voices are not otherwise present in our classrooms.

Race, gender, and sexual orientation are in the classroom whether we make them explicit or not. Everyone pretends they are not noticing. I am suggesting that we need to notice and to discuss these subjects with respect. We cannot build community through silence.

But the dangers of raising these issues must be confronted as well. Listening and valuing everyone in the classroom as part of the community means that systems of privilege will be replicated, even as they are challenged and examined. Racist

23. *See id.* at 1-2.

24. MEIER, *supra* note 5, at 3.

remarks will be made; silence in the face of such remarks will reinforce white privilege and make students of color feel undermined. Those without privilege are more at risk when such conversations occur.

Yet what is the alternative? If we don't attempt an inclusive pedagogy that engages everyone, we reinforce the existing systems of privilege as well.²⁵ Perhaps all we can do is admit that the practice is vulnerable and undertake it with caution. As legal educators, we have to admit that we, too, are learners during these teaching moments. And we must use the privilege we have from the front of the room to protect the most vulnerable, ensuring that their participation is voluntary.

TOWARD SAFETY IN THE CLASSROOM COMMUNITY

The phrase "safety in the classroom" provides another instance in which lack of words to describe the reality stymies even the ability to discuss the issue. Safety is a problematic word. Trina and I used it in conversations about teaching to emphasize that people cannot learn when they are afraid or excluded. Learning is enhanced when people feel safe to be able to take risks and to try on new ideas for size. Yet some academic support students do not like the use of the term "safety." They are concerned it will be understood to mean that students outside the dominant cultural norm of law school need special coddling, treatment, or handholding in order to learn. "It makes them feel less than . . ." ²⁶

But the risks entailed in learning are not shared equally where systems of privilege permeate the classroom. Generally, a professor will have more ability to take a risk than students, but a white male student may be less vulnerable to some class discussions than a professor who is an untenured woman of color. Each classroom context is unique. A willingness to share ideas must be a goal of a democratic classroom. As good will builds in a classroom community, trust in such sharing can also grow. But trust can only be based on respect for all students in the room. Safety should mean feeling privileged and

25. For articles that emphasize the need for legal educators to include issues that reach the diverse student body, see Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140 (1995), and David Dominguez, *Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training for All Students*, 44 J. LEGAL EDUC. 175 (1994).

26. Conversation with Professor Laurie Zimet (January 18, 1995).

able to take the risk to think, speak, and learn in a diverse classroom. One must feel that one belongs.

This trust or safety cannot be assumed. White faculty often make the mistake of putting students of color on the spot for issues perceived to be particularly racial. Such conduct is not trust, it is a side-show. Opinions of students of color and scholars of color have to be part of classroom discourse before the trust-building process can begin.

A teaching conference plenary session, devoted to discussing what helps students learn, was conducted in a typical amphitheater, similar to those used in most first year classrooms. In this setting the "students" were all law professors. The conveners of the session, inviting audience comment, called on a white woman professor who stated how important it was to create space in class to discuss issues of diversity. A black male professor responded, saying it was important not to give people a chance to be as racist as they wanted to be in class. He had no interest in "teaching" that required him to sit and listen to such dialogue. One or two comments followed about whether the two professors were engaging the same issue. Then the conveners ended the conversation because we had to achieve "coverage" of the material about how students learn. Exploration of the issue never happened.

This dynamic seems to occur in law school classrooms again and again. Whether it is because a subject is sensitive and the teacher wished to avoid it or whether the lesson plan genuinely requires turning away to new material, these teaching opportunities are often lost. The re-creation at the conference of this oft-repeated classroom dynamic resulted in making people of color feel marginalized, giving the message that their concerns were unimportant to the conference discourse. Building trust means ensuring that all students can believe their concerns deserve attention and response.

As a "student" in this class, I did not feel empowered to intervene. I said and did nothing. At the end of the session a Latino man rose to say that those interested could come to a meeting about exclusion. Here was one possible response, to engage the issues outside of class at the students' own initiative. Much important learning comes from such student activism, but as a professor I am troubled at this abdication of teaching responsibility. Student initiative is only a partial solution.

What could I have done as a student in that class? Would I have acted differently had I been the teacher? Will I even be

able to recognize this dynamic in the classroom when it is going on? After the session, several people discussed racist comments that were made during the program. I had sat in the same room, but I had not heard them. What will I do when I see this dynamic again?

Trina Grillo believed there was no one right script, but that we need several ideas and models about what to do and how to work out these issues in the classroom. Finding ways to privilege the unprivileged and to ensure their classroom participation and safety seem imperative.

In large classes I have used the technique of law firms, dividing students into groups of six to eight from the first day of class. They work with these groups on hypothetical problems and questions based on articles from different perspectives, both inside and outside of class.²⁷ I try to assign roles for volatile subjects, so students are speaking as advocates for a position they do not necessarily identify with. In seminar classes, students regularly present and respond to the course material. Throughout the semester the diverse views within the class are shared and explored. The students also write weekly reflections, available for the class to read, allowing additional time to process intense subjects that arise during class. No technique is foolproof nor can any be applied by rote. Perhaps that is why computers have not yet replaced educators.

CONCLUSION

These are radical ideas: unmasking privilege, privileging the unprivileged, and doing it in the law school classroom within the institution of the law school. They challenge the fundamental precepts of capitalist individualism on which we base the system of legal education. These ideas place equal inherent value in the contributions of the unprivileged—the Latina who fights her way into law school—and the privileged—the fourth generation Harvard graduate who is a Rhodes scholar. The ideal of democracy requires no less.

27. For discussions of collaborative work and other learning techniques, see Calleros, *supra* note 25; and Dominguez, *supra* note 25.