1996

Into the Thicket: Pursuing Moral and Political Visions in Labor Law

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Recommended Citation

John W. Teeter, Jr., Into the Thicket: Pursuing Moral and Political Visions in Labor Law, 46 J. Legal Educ. 252 (1996).

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John W. Teeter, Jr.

A problem in legal education is that we tend to shove ethical discourse into the ghetto of Professional Responsibility, a required course many students endure simply to prepare for the MPRE. That is myopic, for moral and political thickets pervade all subjects we teach. This is particularly true in labor law, where both the thistles of ethical uncertainty and the fruits of self-discovery are ever abundant.

Regardless of whether they represent management or unions, labor lawyers inevitably confront serious ethical issues. By "ethical," I do not necessarily mean situations that invite formal discipline from the bar, but rather the types of problems that can make it unsettling to look in the mirror. I doubt we can—or even should—resolve these issues for our students; each must follow the pull of her own moral and political beliefs. But at least we should assure that our students consider the ethical implications of life as a labor lawyer. This enriches the course by placing students in real-world predicaments and enables them to reflect on the careers they hope to build.

Lee Modjeska has captured the ethical problems labor lawyers confront in a rather pithy way. Modjeska explains:

> Labor practice does not afford safe haven from moral and ideological inquiry. Indeed, it is not always easy to defend discriminatory practices, construct runaway shops, crush union democracy, draft repressive legislation, preserve minimum wage structures, or otherwise facilitate institutional arbitrariness if not corruption. As another saying has it, however, someone has to do it.[1]

Modjeska's statement serves two purposes. First, it offers a handy sampling of the moral and ideological conundrums our students will confront. Second,

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For Cheryl Michiko Kuwada and Derek Kuwada Teeter. This article developed from my participation in the AALS Labor and Employment Law Section's program on Innovations in Teaching at the 1996 annual meeting. I am grateful to Douglas E. Ray for his words of encouragement. As always, I am indebted to Jon Dubin, Aurelia Vincent, and my students.

1. Reflections of a Labor Lawyer, 8 Lab. Law. 1, 3 (1992) (footnote omitted). Modjeska also notes that one's "racial, ethnic, sexual and religious sensitivities are sorely tested." *Id.* at 2.

it humorously conveys the sad truth that we typically dismiss such concerns with a flippant shrug.[2]

Here I build, albeit slightly, on the platform Modjeska has provided. Initially, I mention several additional areas where labor lawyers commonly wrestle with ethical concerns. Then I share several visions of lawyering which you may find useful to introduce in your classroom. Both efforts, of course, are woefully incomplete in this limited space. I hope, however, that I will stimulate your thinking both on the ethical issues you discuss in class and on the competing perspectives that can be applied to them.

Ethical Vineyards

This bushel is easy to supplement, for it simply plucks a few of the more obvious ethical concerns one can harvest from a standard casebook.[3] In addition to those mentioned by Modjeska, a teacher may want to examine the issues set forth below.

Factual Misrepresentations

Under the *Shopping Kart*[4] (or *Midland*[5]) doctrine, a labor representation election will not be set aside on the basis of factual misrepresentations, even if they were made deliberately and may have tipped the election's outcome.[6] So, should one ever advise one's client to lie? This question often prompts a student to smile and reply, "Why not?" Well, there are a series of *why nots* that merit discussion. First, regardless of whether your client is an employer or a union, simple self-interest frequently counsels against telling lies. Once the workers learn of the deception, it could destroy your client's credibility and have a disastrous effect on the morale of the unit. Second, what about *your* reputation as an attorney? Do you really want to be known as the lawyer who can never be trusted? What impact is that likely to have on your ability to negotiate collective bargaining agreements and settle grievances? And third, is *this* why you sweated through seven years of higher education? To teach people to lie?

Sexual Harassment

This issue is not confined to courses on Employment Law; it rears its head in good old-fashioned Labor Law as well. *Mueller Brass,* for example, is an interesting case where a union supporter was fired after confronting a female coworker with "a mechanized artificial male sex organ."[7] This scenario raises

2. Or, alternatively, with the bromide that "[e]ven a goddamn werewolf is entitled to legal counsel." Hunter S. Thompson, Fear and Loathing in Las Vegas 132 (New York, 1971) (quoting Oscar Acosta, aka Dr. Gonzo).
3. See, e.g., Archibald Cox et al., Cases and Materials on Labor Law, 11th ed. (Westbury, 1991), which I use despite the editors' contumacious refusal to cite my articles.
4. Shopping Kart Food Mkt., Inc., 228 N.L.R.B. 1311 (1977).
5. Midland Nat'l Life Ins. Co., 263 N.L.R.B. 127 (1982).
6. The NLRB has stated, however, that it will continue to intervene in cases involving forgery. *Id.* at 133.
7. Mueller Brass Co. v. NLRB, 544 F.2d 815, 818 (5th Cir. 1977).

questions for management and unions alike. From management's perspective, does your client really have a commitment to assuring a nonhostile environment for female employees? Or, in contrast, is it only union supporters who are barred from engaging in sexually offensive practices? If the latter, does your client understand the legal ramifications under Section 7[8] (for discriminatory enforcement) as well as under Title VII[9] (for maintaining a hostile environment)? And from the union's perspective, is it making any real effort to assure that its members—both leaders and rank and file—interact with female coworkers in a respectful and nondiscriminatory manner?[10]

This leads into a source of continuing pain and controversy. What should the union do when one of its members is discharged for sexual harassment?[11] Should the union grieve the case on the grounds that it owes the accused a duty of fair representation? Alternatively, should the union decline to grieve on the grounds that it also owes its female members a duty of fair representation? Should the answer depend on the union's private assessment of who is telling the truth? On its estimation of whether the worker can be rehabilitated? On the harassed worker's sense of justice? This area is certain to generate intense interest and heated discussions among your students.[12]

Tactical Delay

As an associate in a management-side firm, I was told to apply the "risibility test," which meant using any argument that would sow delay, frustration, and expense for the union or the NLRB but did not get us laughed out of the hearing. Every labor lawyer is familiar with this tactic: to make labor represen-

8. 29 U.S.C. § 157 (guaranteeing workers the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection").

9. 42 U.S.C. §§ 2000e to 2000e-17 (barring employment discrimination based on race, color, religion, sex, or national origin).

10. The level of abuse female workers endure from both management and union supporters constitutes an ongoing injustice that receives far too little attention. For representative cases, see Domsey Trading Corp., 310 N.L.R.B. 777, 779 (1993) (manager subjecting female strikers to sickening racial and sexual insults), *enforced*, 16 F.3d 517 (2d Cir. 1994); Transportation Enters., 240 N.L.R.B. 551, 557 (1979) (male striker admittedly shouting sexist profanity at female replacement worker). For a perceptive analysis, see Marion Crain, Women, Labor Unions, and Hostile Work Environment Sexual Harassment: The Untold Story, 4 Tex. J. Women & L. 9 (1995).

11. A prime case for class discussion is Chrysler Motors Corp. v. International Union, Allied Industrial Workers of Am., 959 F.2d 685 (7th Cir.), *cert. denied*, 506 U.S. 908 (1992). In *Chrysler*, the court upheld an arbitrator's reinstatement of an employee with only a 30-day suspension after the employee had grabbed a female coworker's breasts. *Chrysler* raises troubling questions regarding the strength of our commitment to ending workplace harassment and compels students to examine the ethical and practical problems labor lawyers can face.

12. For a provocative treatment of this problem, see Douglas E. Ray, Sexual Harassment, Labor Arbitration and National Labor Policy, 73 Neb. L. Rev. 812 (1994). See also Christie L. Roszkowski & Robert F. Wayland, Arbitration Review: Is the Public Policy Against Sexual Harassment Sufficient Cause for Vacating an Arbitration Award? 44 Lab. L.J. 707 (1993); Donald J. Petersen, Vacating Arbitration Awards Dealing with Sexual Harassment in the Aftermath of *Misco*, Proc. 46th Ann. Meeting Indus. Rel. Res. Ass'n, ed. Paula B. Voos, 361 (Madison, 1994); Chris Baker, Comment, Sexual Harassment v. Labor Arbitration: Does Reinstating Sexual Harassers Violate Public Policy? 61 U. Cin. L. Rev. 1361 (1993).

tation campaigns as long and expensive as possible, to talk the union to death at the negotiating table, and to play hardball in 8(a)(3) cases,[13] exercising every means to assure that the worker's reinstatement and the union's vindication come too late to be of real benefit to either.[14]

This is the type of issue many students never pause to consider. Does a lawyer's duty "zealously" to represent clients include a duty to drag matters out whenever one can claim with a straight face that the tactic is not used *solely* for purposes of delay?[15] What makes this particularly difficult is that often mixed motives are at work. A primary goal of the strategy might be to impose delay and expense, yet it could also seek to achieve some legitimate substantive result. And if there is *any* likelihood of a favorable substantive impact, can one refuse to pursue the dilatory tactic and still represent the client in good faith? This naturally leads into a discussion of how the National Labor Relations Act[16] or NLRB procedures could be amended to discourage unnecessary delay.

These are just a few issues that are common in practice, have important social ramifications, and are likely to spark the students' interest. Many more could also be pursued, ranging from an employer's reliance on permanent replacements to a union's decision about whose interests to sacrifice in an era of downsizing and wage concessions. Regardless of the precise issues selected, your students should appreciate that labor law entails ideological and moral dilemmas that go far beyond the black letter.

Visions of Lawyering

How one confronts moral and political issues naturally depends on one's underlying conception of the ethical and professional duties of an attorney. Rather than preaching a particular dogma, I prefer to acquaint students with a diversity of perspectives. Here are several of the visions (and I know I am guilty of omissions) that I try to weave into my course.

The "Lawyer as Agnostic" Vision

Reaching into the past, one might want to acquaint students with Dr. Johnson's response to the faithful Boswell when questioned as to the propriety of supporting a cause which he knows to be bad. Johnson reasoned:

> Sir, you do not know it to be good or bad till the Judge determines it. . . . An argument which does not convince yourself, may convince the Judge to

13. 29 U.S.C. § 158(a)(3) (forbidding employer discrimination against workers based on union sympathies).

14. See, e.g., Paul Weiler, Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA, 96 Harv. L. Rev. 1769, 1795–803 (1983).

15. See Model Code of Professional Responsibility Canon 7 (1980) ("A Lawyer Should Represent Clients Zealously Within the Bounds of the Law."); Model Rules of Professional Conduct Rule 3.2 cmt. (1983) ("Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose.").

16. 29 U.S.C. §§ 151–169.

> whom you urge it; and if it does convince him, why, then, Sir, you are wrong, and he is right. It is his business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the Judge's opinion.[17]

Dr. Johnson's position is difficult for many of us to defend (or even fathom), but its very foreignness can spur insightful class discussion. Moreover, given the hubris of many attorneys, it might be healthy to inject the novel concept that the lawyer doesn't necessarily know *everything.*

The "Lawyer as Friend" Vision

This conception of the legal counselor as a friend to her client has been espoused most distinctly by Charles Fried. Fried asserts:

> [T]o assist others in understanding and realizing their legal rights is always morally worthy. Moreover, the legal system, by instituting the role of the legal friend, not only assures what it in justice must—the due liberty of each citizen before the law—but does it by creating an institution which exemplifies, at least in a unilateral sense, the ideal of personal relations of trust and personal care which (as in natural friendship) are good in themselves.[18]

Fried's analysis is intriguing and may offer balm to lawyers who help clients pursue strategies or achieve goals the lawyers find repugnant. Regardless of whether one buys into the friendship analogy, Fried's thesis will generate debate among the students.

The Feminist "Ethic of Care" Vision

All of us (but perhaps especially men) should be careful not to seize upon *one* feminist perspective and label it as *the* feminist perspective.[19] As Carrie Menkel-Meadow says, there is good reason to believe that "women lawmakers speak with many voices."[20] A powerful current, nonetheless, can be found in feminist jurisprudence, one that focuses on centering our legal practice around an ethic of care.[21] Menkel-Meadow explains:

17. James Boswell, The Life of Samuel Johnson, ed. R. W. Chapman, 388 (New York, 1976).

18. The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation, 85 Yale L.J. 1060, 1075 (1976). Furthermore, Fried argues, "[t]he notion of the lawyer as the client's legal friend . . . justifies a kind of scheming which we would deplore on the part of a lay person dealing with another lay person—even if he were acting on behalf of a friend." *Id.* at 1087.

19. See, e.g., Marion Crain, Feminizing Unions: Challenging the Gendered Structure of Wage Labor, 89 Mich L. Rev. 1155, 1187–92 (1991) (discussing conflicts among cultural feminism, radical feminism, and critical race feminism); Martha Minow, Beyond Universality, 1989 U. Chi. Legal F. 115, 136 (acknowledging "divergences within feminism worthy of analysis"). Mary Joe Frug was especially eloquent in her recognition of both the descriptive and prescriptive pitfalls of assuming that feminists possess one homogeneous background and perspective. As she explained, her postmodern analysis sought to extend "political goals for women through law beyond the single, amalgamated image of women which other forms of feminist legal scholarship have tended to invoke." Postmodern Legal Feminism 18 (New York, 1992).

20. Portia in a Different Voice: Speculations on a Women's Lawyering Process, 1 Berkeley Women's L.J. 39, 62 (1985) (footnote omitted).

21. Teachers interested in exploring the ethic of care would do well to begin with Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (Cambridge, Mass., 1982). Gilligan's thesis has inspired a wealth of feminist scholarship. See, e.g., Leslie Bender,

> An "ethic of care" in law could mean a number of concrete things. It might mean involving all the parties to a dispute, rather than only formal plaintiffs, defendants, and intervenors. It would invoke client participation in decision making. It might alter some of the professional ethics prescriptions under which lawyers currently operate that preclude them from "caring" for the other side or the other side's lawyer. It might alter behaviors even within the conventional adversary system to include more trust and altruism and less unnecessary aggressive behavior. . . . [T]he elaboration of an ethic of care as a counterpoint to much of what we hold most dear in a legal system (an ethic of justice) did come from feminist theory and research and is changing, broadening, and influencing the theoretical constructs we use to explain our behavior.[22]

In some ways, this vision is the most challenging of all. How, pray tell, does one implement an "ethic of care" when opposing counsel from the Teamsters or General Dynamics is howling for one's head on a pike? It is precisely this difficulty, however, that underscores the vision's virtue. It is the prevalence of unduly nasty behavior in labor law that should prompt us to seek room—if only a smidgen—for an ethic of care.

The "You Are What You Do" Vision

This school emphasizes that one's work inevitably presses its will upon one's soul, and that adopting a professional/personal dichotomy (union buster by day, liberal Democrat by night) exacts a heavy spiritual price. As the theologian Huston Smith says:

> Occupation is an exact word, for our work occupies most of our waking attention. Buddha considered spiritual progress to be impossible if one's occupation pulls in the opposite direction. "The hand of the dyer is subdued by the dye in which it works." Christianity has agreed. Luther, for example, while explicitly including the hangman as exercising a tolerable Christian vocation, ruled out the late medieval usurers and speculators.[23]

This quotation is useful in at least two ways. First, it challenges the supposedly lawyerly illusion that one's soul is a faucet that can be twisted from hot to cold as convenience dictates. To the contrary, *something* must give when one's ideological commitments conflict with one's role as an attorney. Furthermore, Luther's judgment that one could hang convicts and yet be a good Christian is certain to shock numerous students. So be it. Certain of my acquaintances were outraged that someone from a union family could ever represent man-

A Lawyer's Primer on Feminist Theory and Tort, 38 J. Legal Educ. 3 (1988); Stephen Ellmann, The Ethic of Care as an Ethic for Lawyers, 81 Geo. L.J. 2665 (1993); Jennifer A. Fryer, Women Litigators in Search of a Care-Oriented Judicial System, 4 Am. U. J. Gender & L. 199 (1995); Theresa Glennon, Lawyers and Caring: Building an Ethic of Care into Professional Responsibility, 43 Hastings L.J. 1175 (1992). Other feminists, however, have warned that the ethic of care could be a pernicious impediment to women's empowerment. See, e.g., Naomi R. Cahn, Defining Feminist Litigation, 14 Harv. Women's L.J. 1, 3 n.13 (1991) (pointing out "the dangers of an ethic that glorifies women's powerlessness").

22. Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Charge, 14 Law & Soc. Inq. 289, 316–17 (1989).

23. The Religions of Man, paperback ed., 119–20 (New York, 1965).

agement. Former colleagues at my old firm may feel betrayed by what they perceive as a pro-union slant to my scholarship. The point is not to reach consensus on what is "right," but to emphasize that students will have to decide for themselves when the mirror starts to crack.

The "Lawyer as Statesman" Vision

Anthony T. Kronman has argued that the ideal lawyer is more than just an instrument of his client's will. Instead of being a mere tool the client uses to achieve predetermined goals, the lawyer-statesman helps clients choose which ends are truly worthy. Kronman reasons:

> A lawyer whose only responsibility is to prepare the way for ends that others have already set can never be anything but a deferential servant. The lawyer-statesman is not a servant in this sense. . . . [O]ne important part of what he does is to offer advice about ends. An essential aspect of his work, as he and others see it, is to help those on whose behalf he is deliberating come to a better understanding of their own ambitions, interests, and ideals and to guide their choice among alternative goals.[24]

Kronman's nostalgic vision of the lawyer is romantic, perceptive, and beautifully presented. It is sure to inspire students, although many of them will feel frustrated by Kronman's gloomy predictions regarding the future of law practice[25] and his paucity of practical suggestions on how a young lawyer can combat the economic and social forces that threaten to crush the inner statesman.[26]

The "Lawyer as Rebel from Principle" Vision

If Kronman is too sentimental for your students, you can always wake them up with a dose of Duncan Kennedy. Kennedy says:

> What I am suggesting is the politicization of corporate law practice, which means doing things and not doing things in order to serve left purposes, not because they fit or don't fit the Canons. The point is to turn down clients because they want you to fight unionization, or because they want to delay implementation of environmental controls, even though it's all totally within the law. But the point is also to reconceive the internal issues of firm hierarchy as an important part of one's political life, fighting the oligarchy of senior

24. The Lost Lawyer: Failing Ideals of the Legal Profession 15 (Cambridge, Mass., 1993).

25. Kronman concludes that "the likelihood that the profession as a whole will awaken to the emptiness of its condition and that there will be a great resurgence of support, at an institutional level, for the vanishing ideal of the lawyer-statesman seems to me quite low." *Id.* at 380. For what he terms an "optimistic postscript" to his book, see For the Record: Dean Anthony Kronman, Am. Law., Jan.-Feb. 1996, at 85, 93 (expressing a rather desperate hope that the "electronification of legal information" will render it feasible for more attorneys to seek fulfillment as sole practitioners).

26. This inability to offer concrete assistance may be attributable to the fact that Kronman has been ensconced safely in academia since graduating from law school. It can be difficult for those in the towers to advise those in the trenches. Kronman also has been criticized for "plac[ing] his faith in an artifact that privileges the mind and character of elite, white, male, large-firm private lawyers." Anthony V. Alfieri, Legal Education and Practice: Denaturalizing the Lawyer-Statesman, 93 Mich. L. Rev. 1204, 1230 (1995).

> partners, opposing the oppression of secretaries by arrogant young men who turn around and grovel before their mentors.[27]

Kennedy's proposal is certain to inflame your students, albeit in very different ways. Some will be inspired to believe that they can work for meaningful change within a corporate structure; others will condemn Kennedy as an advocate of treason; and a few will find him just plain silly.

The Vision of "Rebellious Lawyering"

Although Gerald P. López, like Kennedy, uses the unlikely metaphor of the lawyer as rebel, his focus is far different. López has emphasized the need to depaternalize the practice of law by working with clients to develop their own empowerment. López asserts:

> The reorientation of a lawyer's work most characteristic of today's rebellious idea involves what I call "teaching self-help and lay lawyering." Such teaching entails the participation of lawyers in helping everyone (themselves included) to see that the skills they have already developed to cope with problems in everyday life can be used to solve less familiar problems—that their stock of stories and storytelling techniques may be extended beyond the world they know best. In particular, if people subordinated by political and social life can learn to recognize and value and extend their own problem-solving know-how, they (and others, not coincidentally) may gain confidence in their ability to handle situations that they would otherwise experience as utterly foreign and unmanageable, with or without a lawyer as representative. Helping people to see that they can identify, understand, and contribute to solving their own and others' problems is one way of helping them gain more control over the life we share. By reorienting their practice around this view of problem-solving, [rebellious lawyers] hope to help those subordinated in this world to play an increasingly potent role in the struggle to shape our common social reality.[28]

López's vision has particular resonance in labor law, where many workers are unrepresented by counsel and even unions often rely on unlicensed advocates to handle arbitrations, negotiations, and other "legal" matters. Furthermore, López can encourage students with the thought that many of the essential tools of lawyering—such as common sense—are not dependent on a formal degree, much less law review status at a top-tier school.

My Visionless Vision

Colleagues occasionally express annoyance at what they consider my ethical pluralism. Do I *really* believe all visions are of equal merit and, if not, how

27. Rebels from Principle: Changing the Corporate Law Firm from Within, Harv. L. Sch. Bull., Fall 1981, at 36, 39. On a related theme, see Derrick Bell, Confronting Authority: Reflections of an Ardent Protester (Boston, 1994) (describing the risks and rewards of challenging institutional elites and ideologies). I do not always agree with Bell, but I love the way he bedevils academic orthodoxy without seeming mean-spirited, pious, or snotty. His breed appears to be vanishing.

28. Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice 70–71 (Boulder, 1992).

can I pedagogically justify inflicting all of them on my classes? I respond as follows.

I personally subscribe to the Buddhist conception that one's career must proceed in harmony with one's spiritual development.[29] This is rooted in my homespun notion that if you spend your life helping nasty people do despicable things, then you will be a bad—and in all likelihood—rather alienated creature. I feel somewhat modest, however, regarding our ability as teachers to decide what is moral and immoral for our students. I do not think this makes me one of the dreaded nihilists one hears so much about.[30] I freely share my perspectives with students; I simply refrain from indoctrinating them.[31] With students, it is healthy to recall that we do not live in their skins, we have not walked in their moccasins, and it is easier for safe and comfy academics to preach virtue than it will be for our graduates to practice it.

For that reason, I counsel guiding rather than preaching. We should attempt to illuminate the moral and political implications of life as a labor lawyer and encourage students to reflect critically on what *they* think is ethical and why. My vision is thus visionless in the sense that I cannot see what my students must discover for themselves. Epictetus put it best when he remarked:

> For to one man it is reasonable to hold a chamber-pot for another, since he considers only that, if he does not hold it, he will get a beating and will not get food, whereas, if he does hold it, nothing harsh or painful will be done to him; but some other man feels that it is not merely unendurable to hold such a pot himself, but even to tolerate another's doing so. If you ask me, then, "Shall I hold the pot or not?" I will tell you that to get food is of greater value than not to get it, and to be flayed is of greater detriment than not to be; so that if you measure your interests by these standards, go and hold the pot. "Yes, but it would be unworthy of me." That is an additional consideration, which you, and not I, must introduce into the question. For you are the one that knows yourself, how much you are worth in your own eyes and at what price you sell yourself. For different men sell themselves at different prices.[32]

29. Buddhism, like feminism, comes in a rich array of flavors. See generally Peter Harvey, An Introduction to Buddhism (Cambridge, England, 1990). To learn more about the form which speaks most deeply to me, see Selected Writings of Nichiren, trans. Burton Watson et al., ed. Philip B. Yampolsky (New York, 1990). Exemplifying how we learn more from students than they could hope to learn from us, I am grateful to Kathleen Yoko Takamine and Minako Shibazaki for acquainting me with Nichiren Daishonin's Buddhism.

30. See, e.g., Paul Carrington, Of Law and the River, 34 J. Legal Educ. 222, 227 (1984) (apparently linking critical legal studies with nihilism and asserting that "the nihilist who must profess that legal principle does not matter has an ethical duty to depart the law school"). Since Carrington's assault, bandying this term about has been quite the rage. I recently typed "nihilis!" in the Lexis allrev file and was confronted with 881 entries. *Zuviel ist Zuviel!* Scholars should either stop accusing their intellectual adversaries of being nihilists or offer a twelve-step program for their salvation.

31. In any event, I suspect such efforts simply bore the bejeebers out of our students.

32. 1 Epictetus: The Discourses as Reported by Arrian, the Manual, and Fragments, trans. W. A. Oldfather, 17 (Cambridge, Mass., 1925).

Trouble in the Thicket

The journey I'm pushing entails risks. First, there is the danger of false closure. Students may interpret the visions as mutually exclusive (which they needn't be) or conclude that these are the only legitimate contenders for the role of moral touchstone. To counter, you should emphasize that these are only "some" ideas and invite students to bring forth new and different conceptions. Katharine T. Bartlett has argued: "Truth is partial in that the individual perspectives that yield and judge truth are necessarily incomplete." For that reason, "the key to increasing knowledge lies in the effort to extend one's limited perspective" as opposed to claiming the riddle has been indisputably solved.[33]

A second peril is that of appearing a dilettante. Small knowledge breeds sizable errors, and you should be prepared to supplement any vision you share with some familiarity with the relevant literature. I reject, however, the exclusionary notion that you must be a certifiable expert before daring to present any particular school of thought. Too often professors invoke false modesty to excuse their reluctance to traverse new fields. The visions should be tools rather than totems, and the goal is to stimulate rather than tutor.

Third, of course, is the ever-present limitation of time. Students grow understandably peeved when professorial musings preclude coverage of the basic doctrine they seek to grasp. But again you should question your motives. Is it the time crunch or complacency that curtails ethical inquiry? Visions must not monopolize the course, but they should empower students to continue their moral odysseys long after the semester has ended.

Bringing the Harvest Home

How do you bring home the fruits? Regurgitating visions will do little to enliven your classes, and students can be obtuse when it comes to recognizing the ethical dimensions of the cases they cram. Role-playing can be a splendid means of bringing the issues and competing visions into focus.[34] Instead of just discussing *Mackay Radio*,[35] for example, ask students if they would urge the university to hire permanent replacements if the janitors—or the faculty—went on strike. Ask whether teachers should be free to lie to students since management and unions often deceive workers without any legal repercussions. And, with regard to sexual harassment, have students debate what the university's policy should be on teacher-student relationships.

33. Feminist Legal Methods, 103 Harv. L. Rev. 829, 881 (1990). On my good days I am inclined to agree with her. At worst, I can only concur with the forlorn Brick (in Tennessee Williams's *Cat on a Hot Tin Roof*) that "truth is something desperate."

34. C. John Cicero of the City University of New York and Roberto Corrada of the University of Denver have raised role-playing in the labor law classroom to a fine art. See, e.g., Cicero, The Classroom as Shop Floor: Images of Work and the Study of Labor Law, 20 Vt. L. Rev. 117 (1995) (describing his interactive approach to teaching); Roberto L. Corrada, A Simulation of Union Organizing in a Labor Law Class, 46 J. Legal Educ. (forthcoming 1996). My own efforts have been far more timid but nevertheless quite fruitful.

35. NLRB v. Mackay Radio & Tel. Co., 304 U.S. 333 (1938) (proclaiming right of employers to hire permanent replacements for their economic strikers).

Another issue that invites role-playing involves the interrogation of workers regarding their union sympathies.[36] Many students just don't perceive this as raising any ethical concerns. I try to bring it home by using the example of teaching evaluations. How would students react if neither their bluebooks nor their evaluations of us were anonymous, and we read their evaluations before deciding on their grades? Even if we were forbidden from punishing students who trashed us, most students would feel distinctly uneasy about this process and view it as somehow immoral or coercive. But if that's true, why don't they feel equally queasy about questioning a worker who might fear for her job if she admits she supports a union? In this way, the issues become palpable for our students and they turn to the visions for possible guidance.

* * * * *

I have included, of course, only a minute sample of the voices to be heard on competing styles and visions of lawyering. Every teacher will have her own list of voices—including her own—to bring to bear. Similarly, every teacher must choose from a plethora of legal issues when deciding where to explore the ethical dimensions of labor law. The problem, in truth, is that we possess an embarrassment of riches. We can and should disagree over which issues and voices deserve extended discussion, but there can be no excuse for neglecting a tour of the thicket.

36. The NLRB has ruled that the test of such questioning's legality is whether under the circumstances it tends to restrain, coerce, or interfere with the rights of workers. Sunnyvale Med. Clinic, Inc., 277 N.L.R.B. 1217 (1985).