Women in Law School

Elizabeth Gorman Nehls

Dear Dick:

It was a pleasure to return to the Law School earlier this month, and I enjoyed our interesting discussion concerning the experience of women students. You indicated, at that time, that a written discussion of the issues raised in our conversation would be helpful, and I am happy to respond to that request.

We agreed that we have both made the observation that women students at the Law School, as a group, have not achieved the academic and professional success that might be expected, given their numbers. I would add that I have observed women students of great intelligence and ability fall short of the success that might have been expected of them as individuals. This phenomenon is by no means unique to the University of Chicago Law School; rather, it appears to be widespread through the legal profession, and indeed in other professions and occupations as well. Yet institutional barriers to women's advancement have been almost entirely dismantled. Pathways to success that were once closed to women now stand open to them. Why, then, do many women seem to have difficulty moving forward? And if the source of the problem can be identified, is there anything that a law school can do to help?

One explanation, and perhaps the one that comes most readily to mind, is that women continue to experience discrimination against them, only in more subtle forms, from male faculty, administrators, and practicing lawyers. This explanation certainly seems to tell at least part of the story. Subtle forms of prejudice continue to affect the perceptions and judgments of many men in positions of authority, including those with the best of conscious intentions, with the result that they treat men and women subordinates differently. For example, male law school professors often feel uncomfortable about becoming friendly with women students, and they are frequently more willing to enter into an avuncular teacher-student relationship with a student who is also male. As a result women have fewer opportunities to obtain advice and guidance from their professors. Without the establishment of personal friendly relations with their female students, male professors are also less likely to be willing or able to write strong letters of recommendation for them; the professors simply do not know their women students well enough.
Men professors may also have difficulty in appreciating the quality of some of their women students' work because it presents ideas and perspectives that are unfamiliar to them. As Suzanna Sherry has pointed out, women's different upbringing and experiences "may provide insights and approaches that are less natural to, and therefore less available to, male lawyers and judges." Male professors who encounter such insights and approaches in papers and examinations may find them obscure or odd. Work that reflects a feminine perspective may thus tend to receive lower grades than work that reflects a traditional masculine perspective.

However, although such subtle discrimination has a real effect on women, it is not the primary obstacle to women's success. The principal impediment to women's achievement lies more in the attitudes, values, and priorities that women are brought up to hold and that they bring with them to law school. Many of these ideas and beliefs are inconsistent with the notions of ambition and of striving for achievement and success. As a result, the female law student is faced with a sharp conflict between one set of values and beliefs instilled in her during childhood and adolescence, and a new set of values, emphasizing academic and professional success, encountered in law school.

Among the values and beliefs that are widely held among women and that directly conflict with ambition and commitment to professional achievements, three distinct ideas emerge as the most powerful.

1. The Ethic of Selflessness. Women are typically raised to accept an ethic of selflessness, of positive duties and responsibilities to others, and of giving first priority to the sustenance of interpersonal relations. In this ethical framework, any conduct that is seen as "selfish" must be condemned. When choosing a course of action, a woman's first consideration should be, not her own desires or goals, but the benefit of others. Only after she has assured herself that her conduct will satisfy her ethical obligation to help others may she concern herself with her own welfare. Indeed, the moral ideal is one of complete self-denial, in which the woman's energies are focused entirely on giving to others. Men, by contrast, are typically raised to accept an ethic of self-assertion, limited only by a negative duty of noninterference in the activities of others. The man believes that it is morally acceptable for him to choose his course of conduct by placing his own interests first, then restricting himself only insofar as he unreasonably interferes with other people's pursuit of their own interests. These fundamental differences in the moral development of men and women have been traced by Harvard professor Carol Gilligan in an influential study. Gilligan's research confirms "the continuing power for women of the judgment of selfishness and the morality of self-abnegation that it implies."4

The ethic of selflessness that women are trained to accept stands in sharp contrast to a system of values in which respect is paid to professional success. As Gilligan points out, "The notion that virtue for women lies in self-sacrifice has complicated the course of women's development by putting the moral issue of goodness against adult questions of responsibility and choice." The pursuit of academic and professional success is an activity centered on the self, rather than on giving to others; it is therefore selfish, and can be undertaken only after obligations to others have been satisfied. Moreover, the pursuit of success becomes actively wrong in situations involving competition with others, where one person's gain necessarily means another's loss. Under this ethical conception, the woman may not pursue a goal if her success would entail the defeat or deprivation of another. For the woman law student, the ethic of selflessness creates a difficult dilemma. On the one hand, the law school environment communicates to her in innumerable subtle ways that if she does not achieve academic and professional success, she will be worthy of less esteem than the students who do. On the other hand, her previous training tells her that if she attempts to achieve success, she will be selfish and therefore bad.5

2. The Linkage between Femininity and Passivity. Women have traditionally been raised to identify femininity with passivity and inaction. As children, they have this lesson instilled in them from two sources: observation of the interaction of adult men and women around them and, more directly, from the protective and restrictive attitudes taken toward them by their own parents. Girls are rewarded for passive, nonchallenging, "nice" behavior. As Colette Dowling says, "Physical timidity or hypercautiousness, being quietly 'well behaved,' and depending
on others for help and support are thought to be natural—if not outright charming—in girls. Boys, however, are actively discouraged from the dependent forms of relating, which are considered ‘sissyish’ in male children. Gradually . . . the son will be pushed toward and rewarded for independent behavior. . . .

While girls are rewarded for passive behavior, their efforts at an independent, active approach to life are frequently discouraged by parental overprotection. In adolescence and adulthood, the link between passivity and femininity is reinforced in social interaction with boys and men, in which the traditional female role is completely passive and reactive. As a result of this training, women learn that proper feminine roles include those of observer, cheerleader, and follower, rather than those of decision maker or leader.

Why do women care whether their behavior is “feminine”? One can readily see why women would avoid conduct that they feel is morally wrong. It is less clear why they should be troubled by conduct that is merely “unfeminine.” There seem to be two reasons why women tend to avoid unfeminine conduct and feel anxiety and discomfort when they engage in it. At one level, there is the pragmatic realization that most men continue to prefer traditional feminine conduct in their female companions. The woman who engages in unfeminine conduct therefore risks a lifetime of loneliness. Indeed, that understates the matter, because a circular effect is at work here. The woman who has learned to be passive and helpless believes herself to be incapable of dealing with the world on her own; she therefore believes she needs to attract a man not only for companionship but for protection. To attract that man, she must make every effort to stay helpless and dependent, thereby reinforcing the condition that was her original problem. On another level, women avoid unfeminine behavior because their sense of self is closely tied to their perception of gender. Thus, conduct that is unfeminine is experienced by women as inconsistent with their own sense of identity.

A woman who believes that her conduct should be passive and reactive, in order to be feminine, will find that her standards of conduct conflict with a commitment to professional achievement. The pursuit of academic and professional success demands that the individual take responsibility for planning her own future, actively assert her own preferences in identifying goals, and exert control over herself and her environment in moving toward those goals. However, taking responsibility, asserting preferences, and exerting control are experienced by the woman student as masculine activities that she should not engage in and that feel odd, uncomfortable, and inappropriate if she does engage in them. As a result, for many women, professional ambition and achievement produce a sense of anxiety that has been labeled by psychologist Matina Horner as fear of success.
3. The Expectation of Failure. Many women approach challenges with the expectation that they will fail, or perform merely adequately, rather than perform well. Women often harbor a deep-rooted belief that their intelligence, judgment, and other mental and physical abilities are inadequate to meet the challenges they encounter or to effect change in their environment. When they encounter a difficult task or problem, women frequently believe that they are incapable of controlling the situation to reach the desired resolution, and that they must depend on the help of others. One source of women's expectation of failure can be sought in the lessons they learn as children from their parents and other adults. Parents tend to feel and express more anxiety, more apprehension of hurt, over a girl's activities than over a boy's. By observing this adult apprehension, the girl learns to be apprehensive herself and to lack confidence in her own ability to deal with challenging situations. Parents are also more likely to restrict a girl's activities. The son is allowed to climb a tree or to drive the car, while the daughter is not. As a result, girls are often prevented from encountering fear-inducing situations, and they fail to gain experience in mastering such situations. Another source of women's sense of powerlessness in confronting challenges lies in their recognition of their physical weakness in relation to men. This point is driven home to any woman who walks down a city street. The stares and comments of the men she passes serve to remind her that, if any one of them chose to make a physical attack on her, she would lose the struggle. The woman who must walk down the street conscious of her own powerlessness will have difficulty experiencing herself as strong and capable once she enters the law school building.

Women's expectations of failure and lack of confidence in their own abilities are serious obstacles to professional achievement. Because women believe that significant forms of success are beyond their power to attain, they lower their aspirations. They decide not to pursue attractive opportunities. Moreover, when competition and risk cannot be avoided, women frequently experience anxiety and discomfort in a degree that impairs the quality of their performance. Poor or mediocre performance then simply reinforces the woman's perception of herself as incapable of meeting challenges.

Faced with the conflict between the attitudes and beliefs with which they were raised and the values they find prevalent at law school, women law students react in one of three ways. A few women virtually abandon the struggle, reverting to the traditional conception of women's roles that they find more familiar and comfortable. These women de-emphasize their studies and emphasize other activities. For some, this takes the form of increased attention to dress and appearance and to social or romantic relationships. Others focus on "doing good" through charitable or political activities. This group of women opt for low career aspirations in terms of what is generally conceived of as success.

Probably the largest group of women remain throughout their law school years in a state of conflict and ambivalence. They value professional achievement and success and desire it for themselves, but they find it difficult to shake off attitudes and beliefs that have been deeply instilled in them. As a result, they often sabotage their own advancement by making self-defeating choices. Examples of the selflessness ethic at work include: the student who, the night before an important examination, spends hours on the telephone comforting a distressed friend; the student who repeatedly misses classes or fails to prepare for them, spending the time in an effort to salvage a failing relationship; the woman who turns down law review membership in order to spend more time with her husband; the law review editor who neglects her course work in order to assist the staff members or do the work they have failed to do; and the woman who deliberately chooses a less prestigious job or clerkship in order to avoid what she sees as a selfish, uncaring approach to life. The links between femininity and passivity lead many women students to avoid situations in which they must take action. These women avoid talking in class; they fail to make an effort to get to know professors who could advise and assist them; they avoid making plans for the future and delay important career decisions until the last minute; they fail to seize opportunities that come their way. When action is unavoidable, these women find it difficult to take control of the situation. As a result, they may make tentative, disorganized, and unpersuasive arguments on examinations and papers, or they may be hesitant.
When required to exercise authority over others in student organizations. The expectation of failure interrelates with and reinforces these behavior patterns. Thus a woman who expects to fail to meet a given challenge can often justify her avoidance of the challenge on the ground that she is behaving properly in terms of either morality or femininity. It is also important to note that all of these internal conflicts are also detrimental to this group of women students, simply because they consume a great deal of mental energy that could better be put into intellectual effort.

Finally, there are a few women law students who resolve their internal conflicts by rejecting self-defeating attitudes and values and committing themselves to self-assertion and self-development. But even their successful resolution of these conflicts comes only at the cost of time and energy that could otherwise have been devoted to furthering academic and professional goals. Because success in law school has an important determinative effect on the shape of a lawyer’s later career, measures to counteract the handicapping effects of women’s traditional ideas and beliefs, and their resulting internal conflicts, should ideally be taken during the law school years, rather than later. It may be possible for law schools to take an active role in that process. A step in the right direction would be accomplished with the simple recognition on the part of faculty and administrators that women take part in the competitive experience of law school with special handicaps not applicable to men. Beyond that, consideration might be given to the possibility of establishing some kind of program designed to assist women in making academic and career decisions. Such a program could take various forms. One approach would be to offer presentations, panel discussions, or workshops to students who are interested. Another approach would be to establish an effective system of career counseling, either through an expanded conception of the Placement Office, or perhaps through a network of women lawyers, so that guidance would be available when the students themselves feel they need it. Either sort of program could be specifically aimed at women, or it could be made available to men as well. Further study of the considerations involved would be required before any recommendations could be made.

The Law School’s purpose is to prepare all of its students for legal careers, but the preparation it now offers is designed with the assumption that students will base their actions and decisions on values and beliefs that are traditionally masculine. The Law School’s current educational approach has failed to take into account the fact that women students have been taught a different set of values and beliefs. The resulting disparity in the performance of men and women is troubling and demonstrates the need for further discussions of the issues raised here.

With best regards,

[Signature]

Elizabeth Gorman Nehls
Cynthia Fuchs Epstein noticed similar attitudes among women law students: “Women seemed uncomfortable about what they perceived as pressures, subtle and direct, that were leading them to become less ‘caring.’” Supra note 1, at 73.


The man initiates the contact and selects the activity, the woman merely responds; the man drives the car, the woman is the passenger; the man opens doors, holds coats, and pushes in chairs for the woman while the woman does not reciprocate; the man pays for the activities, the woman does not; the man is the sexual aggressor, while the woman reacts to his advances.

8The most destructive aspect of this emphasis on passivity is that women also learn to accept the role of victim. Thus battered wives who remain in abusive homes are conforming to the appropriate standard of feminine conduct.

9Virginia Woolf vividly described the way in which traditional notions of femininity interfered with her commitment to her work:

I discovered that if I were going to review books, I should need to do battle with a certain phantom. And the phantom was a woman, and when I came to know her better I called her after the heroine of a famous poem, The Angel in the House. It was she who used to come between me and my paper when I was writing reviews. It was she who bothered me and wasted my time and so tormented me that at last I killed her. . . . I will describe her as shortly as I can. She was intensely sympathetic. She was immensely charming. She was utterly unselfish. . . . She sacrificed herself daily. If there was chicken, she took the leg; if there was a draught, she sat in it—in short she was so constituted that she never had a mind or a wish of her own, but preferred to sympathize always with the minds and wishes of others. . . . And when I came to write I encountered her with the very first words. Directly I took my pen in hand to review that novel by a famous man, she slipped behind me and whispered: “My dear, you are a young woman. You are writing about a book that has been written by a man. Be sympathetic, be tender; flatter; deceive; use all the arts and wiles of our sex. Never let anybody guess that you have a mind of your own.” And she made as if to guide my pen. I now record the one act for which I take some credit to myself. . . . I turned on her and caught her by the throat. . . . Had I not killed her she would have killed me. . . . For as I found, directly I put pen to paper, you cannot review a novel without having a mind of your own, without expressing what you think to be the truth.

Virginia Woolf, “Professions for Women,” in The Death of the Moth and Other Essays, 236-38 (1942).