

Some Assumptions behind this Course

I have been doing some reading recently about “critical thinking,” and it has made me particularly aware of the importance of working to become conscious of underlying assumptions at work in the legal system or educational system – the beliefs and taken-for-granted views of the world that lie behind many of our laws and policies and institutional practices. My reading has also made me aware of the importance of bringing my *own* assumptions into conscious view.

That awareness in turn has led me to think that it would be a good idea for me to share with you what I believe are some of the assumptions that lie behind my own design of this class. Of course, the idea is not that you should agree with any or all of these assumptions, although knowing what they are may help you decide whether this is a class for you. Instead, by articulating some of my basic assumptions about matters related to this class, my hope is that those assumptions will become more transparent and open to your critical consideration, that the process might help you to think about your own assumptions about these matters, and that in any event, some of the decisions I make about structuring and guiding the class over the course of the semester will be more understandable to you.

So here goes. These are what I believe to be some of the key assumptions at work in my vision for this class:

1. Our contemporary society, both American and global, is characterized by pervasive and unconscionable inequalities of opportunity, life circumstances, and power – inequalities that strongly track divisions of race, gender, economic class, language and nation.
2. By combining grassroots organizing, mass mobilization, and carefully designed legal strategies, people in many parts of the world over the last couple of centuries have won some important and admirable high-profile reforms aimed at guaranteeing legal equality to traditionally subordinated groups, and broader rights of participation in decision-making. Such victories include the spread of formal universal suffrage to vast numbers of people around the world, and the ending of many overtly unequal and violent regimes, such as the caste system in India, the rule of Jim Crow in the U.S. South, and apartheid in South Africa.
3. Nevertheless, many areas of “formal” inequality remain (that is, areas in which the rules are overtly unequal). It is especially common to find formally unequal regimes applied to indigenous people and to women around the world. Beyond these types of difference in legal forms, huge differences of actual condition and life chances continue to exist, and group-based inequalities continue to reproduce themselves perniciously in succeeding generations even under the facially “neutral” legal regimes that have followed victories for formal equality.
4. Not only have inherited hierarchies persisted even after the demise of many formally unequal systems, but disparities in wealth, power, and knowledge, both within and among national states,

are rapidly increasing. Further, the wider the gap between haves and have-nots becomes, the more difficult it is for the have-nots to effectively mobilize for meaningful change, and the harder it is to achieve democratic control over momentous decisions that are affecting everyone on the planet.

5. The inequalities and disparities described above should matter to thinking and caring people, both for reasons of social justice and for reasons of social peace.

6. Law plays a powerful role in maintaining and legitimating inequality, but law can also play a powerful role in challenging and transforming it. And at any rate, a sophisticated understanding of how the legal system works is of great value to anyone who wants to bring about social change. Lawyers therefore have significant contributions to make toward efforts to challenge illegitimate hierarchy and efforts to bring about a more egalitarian order.

7. Law schools should therefore bring questions of legal, social and economic inequality to the attention of law students, should encourage students to consider their present and future responsibility, both as professionals and as members of civil society, not just to provide charitable pro bono services to the needy, but to help end oppression and inequality. They should also work to provide students with skills and experiences that will better equip them to do all this. True, this is not a neutral stance for law schools to take, but neutrality is not really an option. Schools that do not question inequality, that train students only to succeed as individuals within an unjust system, are making a decision to reinforce the status quo.

8. Lasting and meaningful change that significantly redistributes power and resources will not be given as a gift from the haves to the have-nots, but must be achieved in large measure through mobilization and organizing from below. Accordingly, more law students and lawyers should become involved in modes of lawyering that focus on bottom-up empowerment of grassroots groups in workplaces and communities. This sort of lawyering is characterized more by collaboration and mutual learning than by top-down, expert-dominated relationships and work styles. It deploys multifaceted problem-solving that is not confined to narrowly legal approaches. The design and execution of lay legal education (or “community legal education” as we are calling it in this class) often plays a central role in this sort of lawyering.

9. In the search for teaching methods that are effective tools for an empowering kind of action-linked education for and with people from subordinated communities, lawyers and others involved in community legal education should draw upon the important knowledge base already gathered by educators from various spheres, including the following:

- Teachers of “adult basic education” in the U.S., a world that includes literacy teachers, GED teachers, and teachers of English for speakers of other languages (ESOL), a profession that has developed significant expertise in how adults learn and methods that are successful with groups that have experienced failure and frustration in formal schooling;

- Practitioners of “popular education,” a tradition of adult education for social change with strong roots in Latin America (hence the term popular education, taken from the Spanish

educación popular) and elsewhere in the global South, but with important and expanding instances in the global North as well, including Tennessee's own Highlander Research and Education Center near Knoxville, the site of our upcoming workshop;

- Lawyers who have worked in various ways to develop “know-your-rights” presentations, ranging from the more traditional one-way, talking-head lecture, to more interactive and creative approaches, better informed by pedagogic and cognitive theory; and
- Artists, who know that emotion, creative expression, and cultural sharing can unlock the doors to learning.

10. Becoming rich and acquiring social prestige are not admirable goals for a human life, nor is achievement of those goals particularly likely to assure personal happiness. Legal education ought to do more to give law students varied glimpses of alternative aspirations.

Some Alternative Assumptions

Of course, my assumptions are hardly the only ones that a person might consciously or unconsciously adopt in this situation. I thought it might be interesting to sketch out some sample alternatives, any or all of which a given individual might prefer to any or all of the ones I identify above. Surely the list below does not exhaust the field.

1. Our contemporary society does have some inequality, but it is not such a terrible thing. Inequality is not as bad as Ansley suggests, because in most cases it is temporary in two important senses. First, any given individual's position in society is not fixed, but can change. In fact, there is lots of upward mobility in the system. Second, as the economy grows and thrives, the pie expands for everyone, and wealth realized “at the top” of the system trickles down, thus diminishing the gap between haves and have-nots without penalizing those at the top whose creative and risk-taking investments are what create wealth in the first place, and without whose contributions the whole system would regress.

Actually, the existence of inequality is in many ways a healthy thing. Scarcity is an important motivator of activity. Hunger for a higher standard of living is an incentive that induces productive behavior. Without this competitive drive, growth would grind to a halt, and everyone would be worse off.

2. The growth in formal legal equality is indeed a great achievement of recent centuries. However, mass mobilization of the lower classes had less to do with it than did the work of educated, reform-minded professionals and experts. Further, free markets favor meritocracy over aristocracy, and the triumph of the free market has had a natural tendency to produce liberal democratic forms of government which prize formal equality.

3. It is true that even after formal equality is achieved, some scars and setbacks of the past still have an effect. But the best solution for this problem is patience. It is foolish to abandon principles of neutrality or to create taxpayer-funded programs that breed dependency just because things have not changed overnight.

4. The gap between haves and have-nots is exaggerated. Just look what a high standard of living even poor people have in America today, as measured by things like televisions, air conditioning, and automobiles. Further, Ansley makes a really big mistake when she starts to talk about exerting “democratic control” over the economy. Her approach is basically the road to socialism. It condones and celebrates political interference with the market, which is far better left in its free and natural state.

5. Certainly “thinking and caring people” should be concerned about global inequality, especially to the extent that significant numbers of people are trapped in true poverty. But critics should avoid being sentimental or naive in a way that hurts the very people they say they are trying to help. They should face the fact that global economic growth is ultimately the best cure for poverty, and global economic growth should be left to those who have already shown they know how to produce it.

6. Law does play an important role in assuring stability in society and also enabling gradual change. But this doesn’t mean lawyers need to jump into every law-related endeavor in society. Lawyers should stick to professional behavior, making and interpreting laws or contributing their technical skills to the process of incremental reform. It is both inappropriate and inefficient for lawyers to run around playing at being organizers or agitators (much less performing artists!). The level of legal education needed by most grassroots groups can be met through paralegals or other non-lawyers.

7. Law schools have no business pushing any particular analysis on the student body. Their purpose is to provide skills training to people who want to be lawyers, not to brainwash students. They should alert students to the pro bono obligation imposed upon them by the ethical rules, just as they alert them to other aspects of their professional responsibility. But beyond that, schools can and should be neutral. Law students will and should decide for themselves what their values and priorities are, and whether they think there is a need for some kind of social change. Schools should not allow, much less encourage, faculty members to push their politics and personal preferences under the guise of “public interest” or “pro bono.”

8. Important social change is more likely the product of competition and debate among a society’s educated classes, and the result of outstanding individual leadership, than it is the product of mobilization or pressure from below. Even if it were not, lawyers who want to help bring about social change should stick with lawyering. That is what they are trained and paid to do, and that is the most efficient use of their time and the social investment that has been sunk into their training.

9. Lawyers should make use of all kinds of teaching methods. There is nothing wrong with that. But they should maintain a dignified and professional demeanor that inspires respect for the bar. They should not try to deny their special training and superior knowledge, or hide behind some wishful fantasy of interdisciplinary egalitarianism.

10. Wealth and prestige are important sources of material reward and personal satisfaction in our society. In addition, much good is created by the productive efforts of people who are striving to acquire these things. Law schools should not try to dissuade law students from making the personal acquisition of wealth and prestige their primary goals, not only because such efforts will fail, but also because they *should* fail. We need the energy and high quality performance inspired by people's quest for personal advancement. Further, Ansley's moralistic and pious assumption suggests a false dichotomy. There is nothing to prevent someone from doing well and doing good at the same time.

By the way, what are some of your own assumptions? Can you generate "devil's advocate" alternatives to them?