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Samuel W. Calhoun

Washington and Lee University School of Law, calhouns@wlu.edu

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Impartiality in the Classroom: A Personal Account of a Struggle to Be Evenhanded in Teaching About Abortion

Samuel W. Calhoun

As I approached my fortieth birthday several years ago, I was encouraged to learn that Charles L. Black, Jr., Sterling Professor of Law Emeritus at Yale, “was nearly forty before [his] life in law began.”¹ It was only then that he recognized his calling to civil rights advocacy.² Professor Black’s experience meant that there was hope for me, who had not yet discovered my “real calling”³ as a law professor. I had enjoyed teaching, in the commercial law field, for over a decade, but had never found a legal issue which “quicken[ed] in me any creative stir.”⁴

If my colleague Lyman Johnson had had the opportunity to diagnose my problem, I believe he could have done so. In a recent essay on his specialty, corporate law, Johnson suggests that their subject will not be truly important to those who do corporate law unless “corporate law issues somehow implicate an inner core of ultimate personal values,” enabling legal discourse in the field to be carried on in the participants’ “moral voice[s].”⁵ For me, commercial law, although socially significant and intellectually stimulating, did not engage me at anywhere near this level. While I hope that eventually I could have done worthwhile scholarly work in the area, my efforts could never have brought deep personal fulfillment.⁶

Samuel W. Calhoun is Professor of Law, Washington and Lee University.

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1. Reflections on Teaching and Working in Constitutional Law, 66 Or. L. Rev. 1, 16 (1987).
2. See *id.* at 5–6.
3. *Id.* at 3.
4. *Id.* at 5.
5. New Approaches to Corporate Law, 50 Wash. & Lee L. Rev. 1713, 1713 (1993).
6. I do not, of course, suggest that commercial law could not bring such fulfillment to others. Black, for example, recognizes that others have “real calling[s]” to tasks which, although they may be of some interest to us, are not those to which we are truly called. See Black, *supra* note 1, at 3, 5–6.

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Ironically, within a short time my concern that I would never find a legal issue that would challenge my heart as well as my mind dissipated in the face of a converse problem. I became engrossed in not one, but two disputes, either of which could provide a lifetime of engagement not only to my mental faculties, but also to my “inner core of ultimate personal values.”⁷

My first efforts to speak with a “moral voice” involved the proper relationship between law and Christianity. More recently, my focus has been on the abortion debate. The abortion issue soon became so all-encompassing that I began to feel frustrated with my regular teaching assignments, which continued to be in commercial law. I fought against resentment each time I had to put aside the life-and-death concerns implicated by the abortion controversy for the time-consuming task of preparing to teach, for example, the intricacies of negotiable instruments. A colleague, sensitive to my distress, suggested that I alleviate my dilemma by formulating a course concerning abortion. After several years of delay, I finally followed through. In the spring semester of 1994, I taught for the first time a two-hour seminar entitled *The Abortion Controversy*.

My concept of the course was stated in a preregistration memorandum that I circulated to all upper-class students:

I believe abortion to be the most significant moral and public policy issue of the last third of this century. Consequently, I believe that it deserves a more thorough examination than is possible in those courses in which it can only be touched upon. The seminar will not emphasize the “law” of abortion. We will instead discuss the issue in as broad a manner as possible. Topics will include: the development of American abortion law; the rhetoric of the abortion controversy; the use of visual imagery; the role of religious values; fetal personhood; the morality of a decision to abort; abortion and feminism; the role of fathers; abortion and civil disobedience; and the appropriateness of violence as a response to abortion.

The memorandum also described the course mechanics, which were very simple, all designed to ensure that class discussions would be as informed and thoughtful as possible. The basic mechanism consisted of my distributing, a week before our discussion, a packet of materials pertaining to the topic. The packet, drawn from a variety of sources—books, law review articles, magazines, newspapers, etc.—and maintaining a balance between prochoice and prolife viewpoints, served as the raw material for our discussions (supplemented by video materials that I placed on reserve in the library). To help the students focus their thinking, I usually required each student to submit, before our class discussion, one or two pages responding to the material in the packet. The format for this reaction piece frequently was as simple as “State the point of view in this packet with which you disagree the most. Explain.” In addition,

7. Johnson, *supra* note 5, at 1713.

before our class discussion each student had to exchange reaction pieces with a classmate and then engage in conversation.⁸

Of particular concern to me was how students would react to the course proposal in view of my known prolife sympathies. I was worried that prochoice students would not want to enroll. I considered team-teaching the course with a prochoice colleague, and I had several conversations with one possible teammate, but it turned out that she was unable to participate. Another idea was to teach the course by myself but invite different colleagues to participate in various sessions; I thought this would interject different faculty perspectives and thus offset my prolife perspective in the students' eyes. But when I mentioned the idea to one colleague, he said he thought having other professors there might be disruptive; it might, for example, lead to debates between the visitor and me, which would probably not be productive. Ultimately, I decided to go ahead and teach the course alone, but in my memorandum to the students I tried to allay any fears that I would be presenting only the prolife position:⁹

Some of you, knowing of my prolife perspective, may have wondered how this would affect the manner in which the seminar is taught. I do not consider the course as a soapbox for me to proselytize about abortion. Rather, my chief goal is to challenge all students, regardless of their position on the issue, to think more deeply. This will require that the very best arguments on both sides be presented and evaluated.

An important secondary goal is to ensure that the seminar demonstrate the possibility of discussing this most controversial issue in a calm and respectful manner. I hope that the atmosphere will be such that each participant will actually *hear* other points of view before rushing to assert his/her own.

The seminar's prospects of achieving my two goals will obviously be significantly impaired if the students who take it are either all prolife or all prochoice. I therefore encourage students on both sides of the controversy (plus those who are unsure of their position) to take the course.

Anecdotal evidence suggested that the memorandum was well received, but I somewhat nervously waited to see what the class composition would be. It turned out that I had seventeen students, ten men and seven women. It was evident in the first session that the mix of abortion viewpoints was ideal: seven prolife students, seven prochoice, and three in the middle.

As the first session of the seminar drew near, my anxieties ran rampant. Most of the weekly packets of material were still more imagined than real. I also worried about the best way to conduct the class discussions. I was particu-

8. For the first few weeks of the semester, I had the students exchange written responses to one another's reaction pieces. I soon learned the chief weakness of this approach: sometimes one student misunderstood the other's position and so the response would be largely irrelevant. Conversation helped resolve this difficulty and also contributed to the cordial atmosphere which largely characterized the seminar. It is not so easy to view as the enemy someone with whom you have talked face to face.
9. My desire to allay these fears was in fact what led me to take the unusual step of distributing a memorandum to all potential registrants instead of simply posting a course description in the registrar's office.

larly concerned about my interaction with prochoice students. But two developments alleviated my fears. One was that a prochoice female colleague expressed an interest in attending the seminar regularly; I believed that her presence would help reassure prochoice students.¹⁰ Second, Dan Gary, a prochoice seminar member who had worked as my research assistant the previous summer, agreed to meet with me regularly during the semester to help me monitor how things were going.¹¹ Dan had already been helpful in planning the seminar and preparing the preregistration memorandum. As the rest of this essay will reveal, his help as class monitor proved to be invaluable.

Much of what follows is drawn from a course log which I kept for roughly the first five weeks of the semester. That was how long it took me to feel reasonably comfortable with the way I was teaching the class.



For the first session I had asked students to prepare a two-minute oral statement addressing two questions: What is your current position on the abortion issue? And what is your opinion of those who disagree with you?¹² After the oral presentations, I asked the students if they thought the exercise had been worthwhile. I was surprised when the first few students said they thought it had been a bad idea because it might have polarized students and

10. Our understanding was that she would not be a co-teacher. (This was not the colleague with whom I had previously discussed the possibility of team-teaching.) Rather, she would view herself as a student; she would be free to speak to the extent any student would, but subject to the same constraint of not dominating any particular session. Her agreement to be student-like, plus the fact that she had asked me if she could attend, distinguished this situation from the multiple-guest-colleague model which I had earlier rejected. Other commitments soon made it impossible for my colleague to attend, but her presence early on was very helpful.
11. Another person who helped me monitor the seminar was a friend/colleague from another law school who was visiting temporarily in Lexington. When he asked if he could attend (but not participate), I felt that I needed the students' permission. I earlier had told them that in general I would follow a no-outside-guest policy. The issue had been raised when several people in the local community asked if they could attend the seminar as nonparticipants. I believed that such guests, whose identity and interest in the abortion issue would be largely unknown to students, would constrain discussion. Since my friend was regularly present in the law school, I viewed his request in a different light. The students graciously agreed to allow him to attend.
12. A few of the students failed to address both questions. And some statements were not well argued. I was not prepared for this; I had not thought through how I would police inadequate student work. Since the statements were somewhat confessional, I felt uncomfortable with criticizing them on the spot. I felt especially ill at ease with the poorly supported prochoice statements. How could I, a known prolife proponent, critique the skill with which the prochoice position was defended without being perceived as simply disliking the prochoice view per se? I struggled with this dilemma for the entire semester.

More generally, throughout the semester I was occasionally troubled by the lack of any way to ensure a high level of effort by all students. Although the quality of our class discussions and of most reaction papers suggested that hard work was going on, there really was no way for me to be sure. A student, for example, could write a reaction paper in response to the first item in a packet of materials and read nothing else in the packet. But similar problems face the teacher in any course without the incentive of a comprehensive final exam, and even an exam is no guarantee of uniform student diligence. Ultimately, one must rely on students' professionalism, good faith, and interest in the topic.

contributed to stereotyping. Upon reflection, I still think the statements were worthwhile. Preparing them, I believe, actually combated polarization. Since students could reasonably expect that the class would contain both prolife and prochoice, the knowledge that one's statement was to be read publicly probably induced moderation in choice of language. As for stereotyping, it might have been beneficial if stereotyping had actually occurred. I am convinced that, as the students got to know each other better, anyone who did initially stereotype a classmate on the basis of a prolife or prochoice label learned an important lesson about the shortcomings of stereotyping.

My visiting colleague also made a two-minute statement. This was not something that we had talked about in advance, but one student asked her pointblank to make a statement and she did. It was a very articulate presentation of the prochoice position. My own internal reaction was perhaps not surprising: it was something like "Oh yeah, well let me tell you what my position is." My emotional sense was that I needed to counteract my colleague's expression of her views. But I resisted my strong desire to respond, because my intention from the beginning had been to be as nonpartisan as possible in teaching the course.¹³

After the class, my colleague and I talked about the issue of my partisanship. I told her what my goal was for the course. She said that she understood my position, but didn't think I needed to worry about being absolutely nonpartisan; she thought the students would suffer if I failed to express myself on occasion in an advocacy mode. She said that since I had thought so long and hard about the issue of abortion, it would be a shame if I could not share that with the students. But I still thought I needed to strive for impartiality.¹⁴



The second class involved a discussion of the prochoice and prolife versions of the pre-*Roe* history of abortion in America. The session seemed to me to go

13. One way in which I sought to downplay my prolife advocacy was not to follow my usual practice of posting prolife literature on the bulletin board outside my office during the week marking the anniversary of *Roe v. Wade*. This was a spur-of-the-moment decision, but I believe it was the right thing to do. I was not trying to deceive the students, who already knew of my prolife perspective. I just did not want to highlight my prolife stance at this critical time in getting the seminar underway.
14. My colleague Lyman Johnson, after reading a draft of this article, pointed out an apparent paradox between my desire to speak with a moral voice in teaching the seminar and my commitment to nonpartisanship as a teaching style. But we agreed that there is no real conflict. The mere fact of offering the seminar makes a statement about the importance, in my view, of the abortion issue. Moreover, my nonpartisanship helped free the students to develop and speak with their own moral voices—a significant teaching accomplishment. Finally, I never sought to achieve absolute nonpartisanship. (If I had, I would have failed anyway, as will be made abundantly clear later.) There were occasions—sometimes in class—when I intentionally spoke as an advocate; I might preface such remarks by saying something like "Now, let me speak as an advocate for a minute." More often, my advocacy was in conversations with individual students outside of class.

Another issue related to impartiality merits more extended discussion. In planning the seminar, I had thought of devoting one session to a defense of my prolife essay, *Is It Possible to Take Both Fetal Life and Women Seriously?* Professor Laurence Tribe and His Reviewers, 49 Wash. & Lee L. Rev. 437 (1992) (with Andrea E. Sexton). I wondered, though, whether

well, but immediately after the class I talked with three prolife students about whether the class had been conducted in an impartial manner. One student felt that I had spent a disproportionate amount of time critiquing the prochoice account, without leaving enough time to critique the prolife version. Upon reflection, I tended to agree that I had emphasized critique of the prochoice interpretation. This raised an interesting point. I honestly believe that the prochoice version of history is far weaker than the prolife version. Does this mean that it is okay for me to spend more time critiquing the prochoice account, or should I try to be evenhanded?

Later that week, I discussed the impartiality issue with Dan. He agreed that the historical discussion had been somewhat imbalanced. He thought I needed to be very careful about the allocation of time during the class. He suggested that I give equal time to the prolife and the prochoice views. (Later in the semester a prochoice student told me that this imbalance had made him skeptical of my earlier claims that I was not going to stress the prolife perspective; he felt that the semester had gotten off on the wrong foot.)

Dan and I also discussed the way I had conducted the class. Dan said he was surprised that I had directed the class so tightly. He had thought I intended to ask a question or two and leave the discussion to the students; instead, by controlling the conversation so closely, I had curtailed student involvement. I told him that I had felt the need to control the session on history, but that in later sessions I would be much more loose. If Dan had sought an explanation, I think I would have told him that there was nothing uncommon about presenting several introductory classes in a more structured manner, to be followed by more freewheeling classes.

doing so would be consistent with my objective of nonpartisanship. After several conversations with Dan, I decided to go ahead. I thought the article was appropriate, as a comprehensive statement of the prolife position, for seminar consideration, and the fact that I was an author should not disqualify it. But I did take my authorship into account. First, I scheduled this particular session towards the end of the semester, after the class had been exposed to the prochoice perspective on the issues dealt with in the article. Second, I deviated from the normal procedure of requiring a reaction piece before the session. I thought it might be asking too much to require prochoice students to critique in writing the work of their prolife professor. Instead I asked the students to come to class with three typed questions to be directed to Ms. Sexton (who would be present) and me.

In retrospect, I believe that the session was worthwhile. The classroom discussion was good, but what happened following class was better. There was not time for Ms. Sexton and me to comment on each student's questions, or even each student's number-one question. I instead wrote an individual response to each omitted student. These in turn led to several meaningful conversations in my office.

I realize that, even conceding the value of the session on my article, one could still reasonably contend that this focus on the prolife view should have been balanced by a session devoted to the prochoice perspective. (One prolife student commented to Dan after the session, "Should we have a prochoice day?") At the time that did not occur to me. Even now, although I have no objection to the idea, I can't say that I would be willing to make the effort to find a qualified prochoice advocate, or to give up an existing session to make room in the schedule.

Postscript: It turns out that when I offered the seminar a second time, I eliminated the session on my article. Because of our unequal semesters, the seminar was one week shorter than it had been the first time. One topic had to be dropped. Somewhat reluctantly, I chose my article.

I also said to Dan that I had worked hard on the history material, and wanted to share the results of my hard work with the class. Dan's response was striking: he said he too had worked hard, and yet because of the way the session had been conducted, he had not had the opportunity to share his thoughts. (Of course Dan could have raised his hand, and of course I would have recognized him; but the point is that my teaching approach apparently had kept him from volunteering.) I told Dan that I guessed I did not trust the students' ability to extract from the material the things that I thought needed to be stressed. Dan said I needed to have more confidence in the students. I told him that I would try.



The third class focused on *Roe v. Wade*, *Doe v. Bolton*, and *Planned Parenthood v. Casey*.¹⁵ I felt that it went very well. I had been especially pleased with some of the insights I had gained in analyzing *Roe*; I felt that I had done a good job of showing the serious flaws in *Roe* as a persuasive analysis of constitutional issues. My good feelings were reinforced when a student, a day or so after class, told me what a wonderful session it had been. He said I should take my discussion of *Roe* on the road! I should have borne in mind that this student was prolife.

I looked forward to my weekly session with Dan and to his telling me how great the class had been. I knew I was in trouble when he began, "First, the positive things." He went on to relay the comments of several students after the class: "He's not as impartial as he thinks he is"; "Why didn't he just ask us what we thought of *Roe*?"¹⁶ The major point was that my focus in leading the discussion had been on the weaknesses in *Roe*. Dan could not recall a single instance in which I had highlighted what might be called the prochoice slant on the decision. I explained that I really believe *Roe* to be a bad decision as constitutional law. Can it be illegitimate for me to convey that opinion, as long as I support it?¹⁷

15. Initially, I had been reluctant to include a session on Supreme Court decisions; that seemed unnecessary to my vision of the seminar as a broad look at the abortion controversy. But Dan convinced me that it was important for the students to know the applicable constitutional framework. And, on reflection, it occurred to me that this knowledge would provide a useful common ground for our ensuing discussions.
16. It is important to say that in all of our conversations Dan never disclosed the names of any students whose comments he relayed to me. Even so, Dan worried that some of his classmates might be upset if they learned of his reporting role (which, while we didn't actively try to keep it secret, we also did not broadcast). We ultimately concluded that as long as we were careful about anonymity, the benefits of Dan's reporting outweighed any attendant risks.
17. My approach to *Roe* revealed the same problem as had my approach to the material on pre-*Roe* abortion history: a difficulty in advocating a position on abortion with which I do not personally agree. I realize that it is the meat and potatoes of a law professor's job to stimulate thought and discussion by pressing students on virtually every point, even if doing so requires teachers to challenge a position with which they agree or to defend a position with which they disagree. I am quite comfortable with that as a general proposition. But it is one thing to play devil's advocate when the issue is the proper interpretation of a UCC provision, and quite a different thing when it is a life-and-death issue like abortion on which my feelings run so deep. My struggle comes from an emotional aversion to advocating, even if only for the sake of argument, the prochoice perspective, and from a desire to be completely honest about my own position. Still, I will continue the struggle, because I believe that maintaining a professorial neutrality in class can best accomplish the goals I have for the seminar.

Dan once again brought up the way I conducted the class. He used the metaphor of the spokes of a wheel. A student would direct a comment at me and then I would respond. Then another student would do the same. The governing principle seemed to be that all student comments should go through me. Dan said he thought my original concept had been that students would converse directly with one another. I said that for some reason I felt differently about the class on *Roe*, as I had felt about the preceding session on pre-*Roe* history. I was not comfortable with looseness; I felt a need to be in control. I said that the *Roe* materials were more amenable to a controlled approach than some of the materials to come. Dan did not agree:¹⁸ he thought *Roe* could have been done in a less controlled way (e.g., by simply asking the students what they thought, with perhaps a question or two from me as needed). Dan said it was a matter of my will: if I wanted to, I could control the topics to come just as I had done the previous topics. I needed to decide how I wanted to conduct the class. In his view, the looser way was highly preferable.

I now believe that a chief source of my need to control was, to put it bluntly, fear. I was simply afraid to let the class develop in whatever direction the students might take it. While part of this fear reflected a legitimate (but perhaps mistaken) concern that the students could not do as good a job as I could, another element was my anxiety about the unknown. What if the students brought out points that I had not considered? What if the dialogue heated up in ways I had not anticipated? If the discussion bogged down or otherwise did not go well, would the students hold me responsible for a bad class?

Dan also reminded me that I had said the previous summer that one of my goals for the course was to challenge all students to think more deeply about the issue. He said that I needed to be content with being silent. If a prochoice point was made, I should not feel the need to respond to it. If prolife students could not come up with an answer, then let them go away troubled. Doing so would encourage them to struggle with the issues, rather than relying upon my answers.¹⁹ I told Dan that it seemed odd to have the goal of saying

18. It should be obvious by now that Dan and I had an unusual teacher/student relationship. While many students are comfortable with challenging a professor's position on a particular substantive issue, I believe it is rare for a student to be willing openly to critique, almost contemporaneously, a teacher's methodology. Even though I had invited just this sort of critique, Dan told me several times that he felt uneasy about the process. I am grateful that our friendship and mutual trust made it possible for Dan to proceed despite his qualms.
19. There is an interesting contrast between Dan's advice and something he said to me after the seminar was over. My goal in preparing the course materials had been that they be balanced: I wanted the students to be exposed to the very best arguments on both sides of the debate. But on one occasion I intentionally deviated from this model. In a packet which covered a variety of justifications for abortion, one issue addressed was fetal deformity or handicap. I included materials presenting the prochoice position but, after discussing the matter with Dan, omitted the prolife response; we thought it would be beneficial to challenge prolife students to formulate their own response.

In the end Dan thought this strategy had been a mistake. The class failed, during that session, even to discuss fetal deformity, perhaps because there was no clash on the issue in the materials. In any event, it is regrettable that whatever benefit may have accrued to prolife students by the omission was counterbalanced by the loss to prochoice students of the challenge of responding to the prolife perspective.

practically nothing. He said that "saying nothing" was not his view of my role. Rather, I should be a facilitator of conversation. By an appropriate question here and there, I could keep the discussion going.

Dan said he thought it was very important that I challenge the prolife students equally if not more than the prochoice students. His impression so far had been that the hard questions I asked were directed primarily at the prochoice position. I was doing the work for the prolife students, and I was negating my professed goal of impartiality.

Dan felt that the prochoice students had not been vocal in the class thus far. He wondered if they might not be somewhat intimidated. He said the prochoice students had more of a psychological barrier to overcome: because they knew of my prolife position, they might well be more reluctant to speak openly. To free them to speak, I needed to be seen as someone who put equal pressure on the prolife students.²⁰

After our conversation, I really felt that I had let down the prochoice students, who had shown courage in taking the class with a prolife professor. In thinking of questions to ask in class, I needed to work harder for balance. I felt a real eagerness for the next session so I could show that I could be silent. The paradox did not escape me: again, the hallmark of a good teacher is to say little.²¹



The fourth class, in which I debuted my new approach, dealt with the rhetoric of the abortion controversy. Afterwards, I was encouraged. The

20. Another way to encourage prochoice student involvement occurred to me during a conversation with a prochoice student who took the seminar during its second offering. He wondered if I had noticed how quiet all the prochoice students had become towards the end of one of our sessions (I had not). His theory was that they had been temporarily cowed by the prolife momentum in the class at that particular moment. While several prolife students had just spoken sequentially, he thought the real demoralizer for prochoice students had been the fact that I, with my professorial weight, had interjected a comment supportive of the prolife perspective. He saw nothing intrinsically inappropriate with my comment, but, coming when it did, it had effectively silenced the prochoice students.

The student's observation was a real eye opener. It highlighted the fascinating complexity of the personal dynamics within the class. It was also a sobering reminder of just how careful I have to be to avoid being an obstacle to freewheeling student debate. My natural tendency as a prolife proponent would be to add my voice to any prolife argument with which I agree—to serve the advocate's goal of blowing away the opposition. But my goals as a teacher demand that I exercise self-restraint and not contribute to a prolife stampede. In fact, ideally, if I sense the scales tipping in the prolife direction, I need to help right them, either by a comment of my own or by inviting a prochoice student to respond.

21. One of my colleagues goes further than this in teaching his own seminar: his goal is to say nothing. In several valuable conversations, we have discussed the pros and cons of various levels of professorial activism. His basic perspective is that students' activism in a seminar is in inverse proportion to the teacher's. When the teacher dominates the conversation, the students are quite comfortable to sit back and let the professor do most of the thinking. A teacher's silence makes the students uneasy because it shifts to them the responsibility for what occurs in class. My colleague's experience is that the students generally respond well and the sessions are more productive when he keeps quiet.

The notion that professors should talk less no doubt has substantial benefits, perhaps cosmic, beyond that mentioned above, but it may fail to persuade our inveterately loquacious

discussion was lively. All but one student spoke, many on more than one occasion. The prochoice students spoke freely. At the break, one prochoice student approached me with some misgivings about her position that the materials had caused her. And I noticed several knots of students continuing the conversation we had been having in class.

Later, a prolife student said he thought the class had gone well; he saw no evidence of partisanship on my part. I said I was glad he felt that way but I had learned that I needed to hear the reaction of prochoice students before I felt too optimistic.

I had a long conversation with Dan. He asked me how I had felt about the class. I said I felt good. He asked me if I thought that leaving the discussion largely to the students had meant overlooking issues of importance. I said that in fact a few points had not been covered but the tradeoff was more than worth it.²² Dan agreed. He recalled that my purpose from the beginning had been to encourage dialogue between prochoice and prolife students, and in the days after the class he had noticed people talking in the halls. He thought that my teaching in this particular session had met his model of impartiality. In fact, he thought I might have gone too far: there was actually room for more participation on my part. He did not want me to feel that I needed to be a "quiet mouse."

I told Dan that I wanted to come away from the seminar with relationships that would continue with prochoice students. I wanted them to feel free, in the future, to speak to me about abortion.²³ I told him that I had put some materials on the carrel of one prochoice student related to a point he had raised in class. My hope was that he and I would have the chance to discuss the issue he had raised. Later that same day I happened to run into him. He said that I "had the students talking in the halls." He said he was having conversa-

profession. In addition, many may share with me the disquiet, perhaps flowing from a deep puritanical strain, that if I am not saying much in class, I must not be working hard enough. This sentiment was confirmed by the lurking uneasiness I felt in joking with my colleague during the recent visit to Washington and Lee of the AALS/ABA Site Evaluation Team. We could just picture the report of any team member who happened to visit our seminars while we were following the nonactivist model: "Professors Samuel Calhoun and John Doe are the laziest two teachers I have ever encountered." For an interesting discussion of a different, but related nonactivist approach to teaching a seminar, see Paul Wilson, *Talking in Circles*, Law Tchr., Spring 1994.

22. One part of the tradeoff was that the students brought up issues in the material which I had not seen. I must admit, though, to occasional powerful feelings of regret when the points that did not get raised included some favorable to the prolife side.
23. There are at least two things I must keep in mind if such relationships with prochoice students are to be possible. First, the students must believe that while I strenuously oppose their position on abortion, I feel no personal, moral condemnation of them as individuals. Teaching the seminar was a key step in an ongoing process in which I am being cleansed of such negative personal judgments of prochoicers. Second, the students must sense that I am not desperate to convince them to change their minds concerning abortion. While there is no result that I would rather see, I do not believe that it is my personal responsibility to bring it about. This realization has been enormously freeing. It has enabled me to relax around prochoice students. It is also key to their being able to relax around me. If prochoice students discern in me a zeal to proselytize, they will react aversely, in much the same way that most of us try to escape an uninvited insurance salesman or fundraiser.

tions now about abortion which he had once avoided; he and several prolife students had been out together the night before and had had a long conversation. This was very encouraging news.

From what I could tell, session four was a great success. I was grateful to Dan for encouraging me to change my teaching methods. I intended to follow the new method hereafter.



The fifth session focused on the use of visual imagery in the abortion debate. Dan and I had spoken at great length about the proper use of fetal models. I thought these were an appropriate means to convey factual information to the class; it was unfair to view them strictly as prolife material, since they represented the reality of fetal development. Dan agreed, though he was sure that some students' initial reaction would be "Here's a bunch of prolife propaganda." He suggested that I make a preliminary statement to the effect that the models should not be viewed as either prolife or prochoice: they simply communicate information—indisputable information—about fetal development which is relevant in making a decision concerning fetal personhood. But people disagree as to whether personhood depends on the extent of fetal development at any particular stage. Dan suggested that I point out that, to some proliferers, a fetus should be viewed as a person even at a stage of development when it does not look human; and, to some prochoicers, the fetus should not be treated as a person even at a stage when it clearly does look human. This seemed an excellent idea to me, and I did as Dan suggested.²⁴

Although this class rivaled session four for liveliness of discussion, two events revealed the complexity of the impartiality issue. One involved my pressing hard to help the class recognize the inconsistencies in a particular prochoice argument. When the students did not readily catch on, I explicitly stated my viewpoint. Immediately after the class, I felt remorse at having gone too far.²⁵ But that evening a counteraction set in: if I had not rigorously critiqued the prochoice position, I would have let the students down. In a later conversation, a female prochoice colleague agreed: it was our responsibility as teachers to press our students, she thought, as long as our arguments were analytically sound. Even though I might be contributing to laziness on the part of prolife students, she still believed that it would be unfair to the prochoice students not to press them. Dan had no substantive objections to this ap-

24. In reading this paragraph of my course log now, it strikes me as odd that I used the fetal model in connection with the session on visual imagery, rather than with a later session on fetal personhood. I plan to make this change in future offerings of the seminar.

25. An interesting aspect of teaching the seminar was that it made more traumatic what would otherwise be a law professor's typical experience. There is nothing unusual about having to decide what to do when one is unsuccessful in attempts to draw out a particular argument from the students. Should the matter be dropped in the hope that students will eventually puzzle the matter out, or should I directly state the point I am driving at? Choosing one route over the other ordinarily would not be grounds for self-reproach. In the abortion seminar, however, my sensitivity to the impartiality issue meant that even commonplace tasks were potentially fraught with emotion.

proach, but did worry that some prochoice students might be intimidated by it. He observed that the prochoicers still did not seem to be stating their position as strongly as he had hoped they would. He suggested that I “really hammer” the prolife students as regularly as possible.

The second event was triggered when a student asked me a direct question about the incidence of health risks to women from legal abortion. The question was prompted by an article in the packet in which Nat Hentoff commented on a *60 Minutes* episode describing a Maryland abortion clinic’s involvement in the death of one woman and serious injury to two others.²⁶ The student essentially wanted to know if these were isolated occurrences. I wasn’t sure how to answer. While I knew that a mainstay of the prochoice position is that legal abortion is safe for women, I also knew of many other accounts of physical harm to women from legal abortion. I worried that such an answer might be viewed as a prolife response, but I gave it anyway because I believed that the students needed to have the information.

My doing so created quite a tumult. In the hall during the break I heard the students debating whether I should have done what I did. I decided it was best to address the issue directly, so I began a class discussion after the break. I said I saw nothing wrong with my responding to a question by telling students what I knew, even though my knowledge was incomplete—in this instance, I did not know the specific statistics on the health risks of legal abortion.

After class, I felt irritated with the criticism I had received. These feelings intensified over the next few days to the point that I hotly told Dan, in our weekly conference, that student complaints on the matter were outrageous and that I would not capitulate. Dan said that although some students were still grouching, he believed their criticism to be unwarranted and I should not cater to them.

In reflecting on this incident later, I decided that there was an important lesson for me to learn. As a prolife person striving to be evenhanded in teaching about abortion, I bear an especially heavy responsibility to know and to present the prochoice side of the debate. I should not be ignorant on key points. I resolved to redouble my efforts to familiarize myself with the prochoice position. (By the way, shortly after the blowup, I obtained from Planned Parenthood a fact sheet detailing its view of the health risks of legal abortion. I included this information in a later packet.)



During the rest of the semester, we continued to have thoughtful, sometimes intense, discussions on various aspects of the abortion controversy. Several riveting moments will be forever fixed in my mind. In one session a prolife student, who had consistently been one of the most articulate advocates of the view that personhood begins at conception, struggled with his

26. Covering Up Destructive Abortions, *Village Voice*, June 18, 1991, at 20.

response to the zygote destruction inherent in a genetic testing procedure designed to help a couple avoid the tragedy of a Tay-Sachs baby. When the student at last indicated that he would be willing not to seek legal prohibition of such procedures, he was stunned by the comment of a prochoice classmate: "Welcome to the prochoice movement." This same prochoice student was later reduced to troubled silence when trying to explain, in response to a classmate's question, how it is that Planned Parenthood apparently no longer holds the view of abortion expressed in its 1963 pamphlet explaining that birth control is not an abortion: "Birth control merely postpones the beginning of life," while "abortion kills the life of a baby after it has begun." (It is instructive to note that both of these dramatic moments were precipitated by one student's challenge to another, not by me.)

I believe that such troubled silences reveal the real value of the course. Students on both sides were exposed to the full moral force of their opponents' position. It was no longer possible lightly to dismiss the other side with a derogatory phrase or stereotype.²⁷ This education came at a cost. We were all emotionally exhausted after almost every session—not only because the subject matter was upsetting, but also because of the energy needed to exercise restraint in expression when feelings run so high.²⁸

My belief that the seminar ultimately was successful in stretching students strengthens my opinion that my attempt at nonpartisanship was the best approach. I am aware of other possible models. Charles Black may be suggesting an alternative by his statement that he likes "to teach from commitment, thus to give the students something firm to grow against."²⁹ While he does not elaborate, this could be taken to mean that a teacher should consistently confront the students with a particular viewpoint. While this approach may have merit in other courses, I believe it would have been disastrous for the abortion course. The issue is so explosive and commitments run so deep that I believe the students would have expended most of their passion in anger toward me rather than in thought about the issue. As things turned out, while I have described instances of student irritation with me, I am unaware of any feelings of rancor. To the contrary, one of the most gratifying aspects of the

27. I do not mean to suggest that the students were necessarily guilty of this practice before my seminar, but certainly it is common in the abortion controversy. The atmosphere in the seminar was quite different. From the very beginning, the students treated one another with great respect. Their attitude of respect included, as well, prolife and prochoice students not known to them personally. It also included, to varying degrees, the substantive arguments made by the other side. This was especially evident in the final session of the seminar. The students had been asked to present a statement on one of two possible topics: either suggest and defend a compromise on the abortion issue, or discuss what most supports your current position concerning abortion and what causes you the most disquiet. The exercise revealed that the students had been greatly influenced by exposure to the other side's arguments. Virtually every student had moved toward the center from their position on abortion as articulated in the first class. A few students respected their opponents' arguments so much that they switched sides completely.
28. A prolife student shared with me later her method of being so calm in class. Many items in the packets upset her tremendously, but she vented her emotions in advance upon her roommates.
29. Black, *supra* note 1, at 9.

course was that by semester's end I had had cordial conversations concerning abortion with each of the prochoice students, some on more than one occasion. These exchanges were initiated more often than not by a student's simply dropping by my office.³⁰

While I count my personal relationships with prochoice students as one of the course's greatest successes,³¹ I freely admit to challenges yet to be overcome when I teach the course again. Perhaps the greatest involves my difficulty in keeping silent. Even though I believe that I made significant progress on this front throughout the semester, I was taken somewhat aback by Dan after the course was over. During a class postmortem, he revealed that he had been angry at me for weeks because I had let prolife students off the hook when he had posed to the class a particularly difficult question: "What would persons with a broad prolife perspective say to the couple to whom they would deny the opportunity to avoid giving birth to a second Tay-Sachs baby?"³² Dan's question had produced a profound silence, which grew progressively more uncomfortable as the seconds mounted. Finally, I could stand it no longer, so I jumped in: "I can tell you one possible response by such a person . . ." I see now that the very silence which I found so intolerable could, by placing the burden squarely on the prolife students, have taught more eloquently than I ever could.

All in all, though, I am glad that I did not get everything right on my first effort. As Professor Black put it so well, "I hope I shall always have the grace of being somewhat unhappy with my teaching."³³

30. To encourage this student contact (with prolife students as well), at the suggestion of a student I tried something new during the seminar's second offering. I announced that I would occasionally write my own comments on students' reaction pieces. I told the students that they were not required to respond, but should consider my comments as an invitation to converse. This experiment lasted only one week. A prochoice student dropped by to say that my comments on her paper had made her very uncomfortable, not so much on the merits of the issue being discussed, but because they put pressure on her to respond to defend her position. As we discussed the matter, I concluded that my written comments would have a negative impact on the seminar. Besides not wanting students to feel indirectly coerced into speaking with me, I decided that concern about how I might respond might well impede student candor in writing their reaction pieces. I also feared that my written critique, especially on prochoice papers, would contribute to the sort of adversarial atmosphere that I was otherwise trying so hard to avoid.
31. One indication of my success is that of the fourteen students who took the seminar during its second offering, eight were prochoice.
32. Our class defined the "broad prolife perspective" as the view that life begins at conception and that no abortion beyond that point should be allowed except to save the life of the mother. Genetic screening to prevent the birth of a Tay-Sachs child can involve the destruction or loss of one or more fertilized eggs.
33. Black, *supra* note 1, at 9.