

## BYU Law Review

---

Volume 2000 | Issue 4

Article 7

---

11-1-2000

# Socratic Misogyny?--Analyzing Feminist Criticisms of Socratic Teaching in Legal Education

David D. Garner

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>

 Part of the [Law and Gender Commons](#), [Legal Education Commons](#), and the [Women's Studies Commons](#)

---

### Recommended Citation

David D. Garner, *Socratic Misogyny?--Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. Rev. 1597 (2000).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2000/iss4/7>

This Note is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

## Socratic Misogyny?—Analyzing Feminist Criticisms of Socratic Teaching in Legal Education

*Remember those horror movies in which somebody wearing a hockey mask terrorizes people at a summer camp and slowly and carefully slashes them all into bloody little pieces? That's what the first year of law school is like.*

...

*The professor has a black belt in an ancient martial art called "the Socratic method." After the professor completely dismantles a student for sheer sport and humiliates several dozen others, he then points out forty-seven different things in the two-paragraph case that you failed to see and still don't understand.*

...

*[Many students] spend most of their time wondering what the hey is going on, and why don't the professors just tell us what the law is and stop playing "hide the ball" and shrouding the law in mystery/philosophy/sociology/nihilistic relativism/astrology/voodoo/sado-masochistic Socratic kung fu?<sup>1</sup>*

### I. INTRODUCTION

If legal education were known for nothing else, its pedagogical claim to fame would undoubtedly be the widespread use of a unique method of classroom instruction bearing the cryptic moniker: "The Socratic Method" (or, if you prefer, "Socratic kung fu"). The Socratic method is so entrenched in modern American legal pedagogy that a law school just isn't a law school without the Socratic method.<sup>2</sup> As the above tongue-in-cheek caricature attests, the popularity of the Socratic method in legal education has made it the subject of numerous jokes, parodies, and humorous personal anecdotes.

---

1. James D. Gordon III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1684, 1685, 1687 (1991).

2. A paraphrase of the slogan of recent Miracle Whip commercials. The actual slogan is "A sandwich just isn't a sandwich without Miracle Whip."

Some, however, are not laughing.<sup>3</sup> Among the unamused are a rising number of scholars who have challenged the methodological foundations of the Socratic method. These scholars claim that the Socratic emperor's clothes are in fact imaginary garments that have been fabricated and perpetuated by methodological swindlers.<sup>4</sup> They have joined students who have "attacked the Socratic method as infantilizing, demeaning, dehumanizing, sadistic, a tactic for promoting hostility and competition among students, self-serving, and destructive of positive ideological values."<sup>5</sup> In recent years, the liberated voices of feminist legal scholars have joined in the imperial exposure and have revived the debate over the continued vitality of the Socratic method in law school classrooms. These scholars have raised additional concerns regarding the method as it specifically affects female law students.<sup>6</sup>

This Comment explores the vitality of the Socratic method in light of the newly raised concerns of feminist critics. Part II defines the Socratic method and summarizes the history leading up to its adoption as the primary methodology for legal education. In addition, Part II sets forth the rationales generally proffered to justify Socratic teaching. Part III discusses the general criticisms leveled against Socratic teaching. Part IV focuses on women's entrance into the legal profession, with specific attention given to the implications of this entrance for legal education. Part IV also discusses the results of recent studies that probe accusations that the Socratic method creates or exacerbates gender differentials in legal education that adversely impact female law students. Part IV concludes with an evaluation of the Socratic method as viewed through the lenses of various feminist theories. Part V considers the continued vitality of the So-

---

3. One study, in requesting students to describe their instructors, elicited the following responses:

a "fearful trial court judge," an "inquisitor," or a "pounding . . . adversary." All [in the study] who professed nervousness thought they detected faculty hostility and perceived some degree of intimidation. . . . A number pointed to their "pathological fear of being called on in class," particularly in larger groups: "There's the fear of being exposed as an intellectual weakling in front of a lot of people you don't know."

Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 641 (1973).

4. See Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 583 (1991) (introducing the fairy tale analogy).

5. Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 407 (1971).

6. See *infra* Part IV.B-D.

cratic method in legal education and explores the contours of a “modified” Socratic methodology that accommodates feminist criticisms in a way that “humanizes” Socratic teaching without undermining the fundamental benefits of the method. Part VI provides a concluding summary of the analysis and recommendations addressed in this Comment.

## II. BACKGROUND

### *A. What Is the Socratic Method?—Definitions and Descriptions*

#### *1. Origins of the “legal” use of the Socratic method*

The origin of the term “Socratic method,” as used in the legal context, has generally been attributed to Christopher Columbus Langdell, Dean of Harvard Law School and (in)famous originator of the case method.<sup>7</sup> Langdell, whose deanship began in the early 1870s, saw “the Socratic dialogue [as] a necessary adjunct to the case method of study.”<sup>8</sup> No historical record contains an explicit definition of the Socratic method as Langdell perceived it; however, in application, Langdell’s use of the case and Socratic methods in the classroom has been described as follows:

Langdell began his actual teaching by having each of the cases, which the students had to study carefully in preparation for the class, briefly analyzed by one of them with respect to the facts and the law contained in it. He then added a series of questions, which were so arranged as gradually to lay bare the entire law contained in that particular case. This stimulated questions, doubts, and objections on the part of individual students, against whom the teacher had to hold his ground in reply. Teacher and pupils then, according to Langdell’s design, work together unremittingly to extract from the single cases and from the combination or contrasting of cases their entire legal content, so that in the end those principles of that particular branch of the law which control the entire mass of related cases are made clear. The two ideas taken together suggest and are sufficiently well described by the term “Socratic

---

7. See JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS* 12 (1914).

8. Stone, *supra* note 5, at 406.

method,”—an expression which was indeed early employed by Langdell and his pupils.<sup>9</sup>

Thus, the rudiments of the Socratic method entered the law school classroom on the heels of the case method, and, indeed, the two have continued in tandem ever since.

## 2. *Contemporary definitions of the Socratic method*

Since Langdell's time, many definitions of the Socratic method have been proffered. The dictionary defines the Socratic method as Socrates' "philosophical method of systematic doubt and questioning of another to reveal his hidden ignorance or to elicit a clear expression of a truth supposed to be implicitly known by all rational beings."<sup>10</sup> In the law school context, the Socratic method has been defined as "involv[ing] a teacher asking a series of questions, ideally to a single student, in an attempt to lead the student down a chain of reasoning either forward, to its conclusions, or backward, to its assumptions."<sup>11</sup> Another commentator described the method as "a pedagogy characterized by self-discovery, in which the student learns to approach legal problems through a dialogue guided by the law teacher."<sup>12</sup> More cynical definitions of the Socratic method resemble the following:

[T]he modern Socratic dialogue resembles a game of "hide the ball" in which the professor asks questions that he knows the answers to while his students do not. The object of the game is to produce the answer that the professor thinks is correct. If the

---

9. REDLICH, *supra* note 7, at 12. Interestingly, the use of the Socratic method is actually older than Langdell. It had been employed by at least one practitioner, "Richard M. Pearson of North Carolina, whose private law school lasted into the 1870s." LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 529 (1973). Pearson "'adopted the methods of Socrates, Plato and Aristotle'; students read their books, then came to his office twice a week, where he 'would examine them upon what they read by asking them questions.' . . . At least one student thought he was 'the greatest teacher that ever lived on the earth.'" *Id.* (quoting Albert Coates, *The Story of the Law School at the University of North Carolina*, 47 N.C. L. REV. 1, 9-10 (1968)).

10. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1119 (1986).

11. Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN. L. REV. 1571, 1573 (1993).

12. Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37, 43 (1997).

student fails to answer correctly, personal humiliation follows in various forms.<sup>13</sup>

The varying definitions of the Socratic method have led at least one commentator to argue that “[t]here appears to be no fixed definition of the Socratic Method. Each teacher conceptualizes it in her own way.”<sup>14</sup> Nevertheless, it seems safe to say that, at a bare minimum, “[a]ny definition of the Socratic Method includes a dialogue between teacher and student—an ‘education by interrogation.’”<sup>15</sup>

### 3. “Idyllic” glimpses of the Socratic method in action

In actual application, the Socratic method has often been described in terms of “Socratic kung fu.” Advocates of the method (yes, these are the advocates!) tout the Socratic method as a form of “ritualized combat,”<sup>16</sup> a “civilized battle,”<sup>17</sup> a “boot camp”<sup>18</sup> of sorts, in which professors utterly “destroy”<sup>19</sup> students by making “friendly assault[s]”<sup>20</sup> on their answers. Such advocates imbue the Socratic method with an uncanny sado-masochistic quality, as illustrated by the following personal anecdote of a pro-Socratic method author:

Law school posed a new form of terror for me; it clearly had caught my full attention. It was only November—three months into the first year—and I recall I was thinking about how we had already lost 15 percent of the class. Just then Father Vachon [the professor] bellowed out, “Mr. Rabkin [the author], please stand and explain the facts and result in *Palsgraf v. Long Island Railroad Company*.” Oh, no! I was terribly shy. This would not be fun. What seemed like hours, numerous questions and many bouts of humiliating laughter later, the law professor told me dryly and without a smile, “You may be seated.” The New Inquisition had ended.

13. *Id.* at 41–42 (footnotes omitted).

14. *Id.* at 40.

15. *Id.*

16. ABA COMMISSION ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION 3 (1996) (quoting Renee H. Neary, *The Gender Rap*, ABA J., Aug. 1995, at 10, 10).

17. Burnele V. Powell, *A Defense of the Socratic Method: An Interview with Martin B. Louis (1934-94)*, 73 N.C. L. REV. 957, 961 (1995).

18. Alan Rabkin, *Technology vs. The Socratic Method*, NEV. LAW., Feb. 1998, at 6.

19. Powell, *supra* note 17, at 961.

20. *Id.*

There was no praise for right answers, as they were expected. There was a liberal dose of criticism. . . . I hated it. I loved it.<sup>21</sup>

Likewise, another staunch advocate of the Socratic method, in recalling his own experiences as a student under this method, related the following:

I frankly found [it] appealing—trying to deal with [Professor] Chayes's flashing assaults on your answers, or [Professor] Jaffee's much more cerebral destruction of your answers. Either way, it was enjoyable to do battle with them.

. . .

I remember incidents in which each of them destroyed me utterly. My reaction was, I hope you'll never do that to me again, but I came back for more the next day.<sup>22</sup>

Such descriptions of the Socratic method have led many to wonder how such combative sado-masochism became the centerpiece of legal pedagogy.

### *B. Historical Underpinnings of the Socratic Method*

Prior to 1870, law students gained their education by an apprenticeship, by self-study, or by attending one of the ever increasing number of college-associated law schools.<sup>23</sup> The rise of college law schools in the latter part of the nineteenth century demarcated the beginning of formal methodological approaches to legal education.<sup>24</sup>

---

21. Rabkin, *supra* note 18, at 6.

22. Powell, *supra* note 17, at 960.

23. See FRIEDMAN, *supra* note 9, at 525–26 (chronicling in numbers the rise of college-based law schools as the apprenticeship system began to die out).

24. Actually, prior to the rise of college-based law schools, some practitioners who had proved themselves to be proficient teachers had expanded their apprenticeships into more or less private law schools and had developed a teaching methodology based on lectures. See *id.* at 279. The most famous of these, the so-called “Litchfield school,” was presided over by Judge Tapping Reeve, who instructed his students over a fourteen month period by means of a series of 139 lectures, under ten headings, based on Blackstone’s *Commentaries*. See *id.*; see also ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 131 (1921). This methodology was described as follows: “[T]he complete course comprised a daily lecture, lasting from an hour and a quarter to an hour and a half . . . . Students were required to write up their notes carefully, to do collateral reading, and to stand a strict examination every Saturday upon the work of the week.” *Id.* The students’ copious notes of the lectures provided them “with a set of elementary handbooks to carry with [them] into practice.” JAMES

In the college setting, the primary method of legal education was the textbook/lecture method. Under this method, students read and more or less memorized the textbook selections assigned for each recitation period.<sup>25</sup> In class, the teacher spent part of the hour explaining the material to the students, while the remainder of the time was occupied with the “mechanical testing” or “quizzing” of the material students had memorized.<sup>26</sup> In 1870, however, with the appointment of Langdell as Dane Professor of Law and Dean of Harvard Law School, the traditional lecture/textbook method was about to meet its match. With Langdell’s help, the face of legal education was about to undergo a monumental makeover.

Like his namesake, whose discoveries changed the world’s conception of the earth as it was then known, Christopher Columbus Langdell sought to effect similarly significant changes in the arena of legal education. Among the reforms for which Langdell has been credited are (1) the requirement of a law school admission test,<sup>27</sup> (2) the institution of a three-year law degree program,<sup>28</sup> (3) the conception of a graded curriculum, divided into “courses” of so many hour-units apiece,<sup>29</sup> (4) the establishment of final examinations,<sup>30</sup> and (5) the creation of full-time professorships.<sup>31</sup> However, these reforms all pale in comparison to Langdell’s most significant and far-reaching reform—the introduction of the case method of instruction.<sup>32</sup>

---

WILLARD HURST, *THE GROWTH OF AMERICAN LAW* 259 (1950). The lectures were “supplemented by moot courts over which the schoolmaster or his assistant presided.” *Id.*

25. See REDLICH, *supra* note 7, at 7–8.

26. See *id.* at 8.

27. See FRIEDMAN, *supra* note 9, at 530–31. The test imposed by Langdell was, however, only applicable to students who did not have a college degree. See *id.* at 530. The test itself consisted of the following: “The prospective student had to show his knowledge of Latin, translating from Virgil, or Cicero, or from Caesar; he was also tested on Blackstone’s *Commentaries*. Skill in French was acceptable as a substitute for Latin.” *Id.* at 531.

28. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 36–37 (1983).

29. See *id.* at 36; see also FRIEDMAN, *supra* note 9, at 531.

30. See HURST, *supra* note 24, at 263.

31. See FRIEDMAN, *supra* note 9, at 528. Perhaps even more interesting was Langdell’s appointment of full-time professors who had little or no practical legal experience. See *id.* at 533–34. According to Langdell, “[w]hat qualifies a person . . . to teach law, [sic] is not experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law.” STEVENS, *supra* note 28, at 38.

32. See FRIEDMAN, *supra* note 9, at 531. The practice of teaching law through cases, however, was actually not an original creation of Langdell’s. See KERMIT L. HALL, *THE MAGIC*



The case method “cast out the textbooks, and [in their place] used . . . cases, carefully selected and arranged to illustrate the meaning and development of principles of law.”<sup>33</sup> This fundamental alteration of the basic materials of legal study brought with it an even more fundamental change in the teaching style of law professors. No longer was the professor a lecturing revelator of dogmatic principles; rather, he became “a Socratic guide, leading the student to an understanding of concepts and principles hidden as essences among the cases.”<sup>34</sup> Thus, the birth of the Socratic method was intimately intertwined with the replacement of textbooks by cases as the sole source of instruction material.

Within fifty years of its introduction, the case method and the accompanying Socratic method were firmly entrenched as the backbone of legal education.<sup>35</sup> “By the 1920s, anybody who was anybody in the law school ‘industry’ used the case method,”<sup>36</sup> presumably in tandem with the Socratic dialogue.

One would assume that such a complete paradigmatic shift over a relatively short period of time could only be accomplished if the rationale underlying the adoption of the new method were fundamentally sound. Part II.C discusses the validity of this assumption.

### *C. Rationales for Employing the Socratic Method*

Many rationales have been proffered to justify the adoption of the case and Socratic methods since their conception within the walls of Harvard Law School 130 years ago. Some rationales attempt to capture the true pedagogical value of the method; others, however, suggest that the widespread adoption and use of the Socratic method reflect various ulterior motives.

---

MIRROR: LAW IN AMERICAN HISTORY 220 (1989) (noting that the first case books had been prepared as early as 1810). John Norton Pomeroy had employed the case method at New York University Law School in the 1860s, but Pomeroy did not “shape the whole program of a leading school to a new technique.” See HURST, *supra* note 24, at 261. Such a systematic application of the method was only achieved later through Langdell.

33. FRIEDMAN, *supra* note 9, at 531.

34. *Id.*

35. See STEVENS, *supra* note 28, at 123.

36. *Id.*

*1. Pedagogical rationales*

*a. Improves upon the textbook/lecture method.* As mentioned above, the case and Socratic methods arrived on the heels of the textbook/lecture method and, at least in part, were a reaction to the inadequacies of textbook/lecture instruction. As Charles Eliot, president at Harvard during Langdell's tenure, described it: "the lecturer pumps laboriously into sieves. The water may be wholesome but it runs through."<sup>37</sup> Likewise, James Barr Ames, Langdell's prodigy, decried the textbook/lecture system as not "a virile system. It treats the student not as a man, but as a school boy reciting his lines."<sup>38</sup> Put more pragmatically by one student under this system:

Every one of us dutifully took notes from the beautifully prepared lectures and a week before the exam we pulled them out for the first time and gave some thought to the course. We learned enough to get by, and within two weeks forgot everything we'd ever learned. . . . I found the lecture method, particularly for me, to be a total failure.<sup>39</sup>

Thus, the Socratic method was seen, at least in part, as an effort to rescue students from the endless droning of lecturing professors by requiring students to participate in their own learning.

*b. Promotes active learning.* Second, in contrast to the passivity of the textbook/lecture method, the Socratic method purports to provide a more "active" learning environment. The Socratic method "stimulates [the student's] legal imagination and makes him resourceful in seeking remedies for every difficulty. It makes him question the validity and applicability of every generalization. It develops toughness and resilience of mind and the capacity and willingness to form and act upon his considered judgment in important situations."<sup>40</sup>

*c. Teaches students to be self-educators.* Third, the Socratic method is "an empowering method because it shifts some of the responsibility for learning directly onto the student."<sup>41</sup> In other words, it puts

---

37. *Id.* at 54 (quoting AMERICAN HIGHER EDUCATION: A DOCUMENTARY HISTORY 617 (Richard Hofstadter & Wilson Smith eds., 1961)).

38. STEVENS, *supra* note 28, at 54 (quoting JAMES BARR AMES, LECTURES ON LEGAL HISTORY AND MISCELLANEOUS ESSAYS 362 (1913)).

39. Powell, *supra* note 17, at 963-64.

40. Edmund M. Morgan, *The Case Method*, 4 J. LEGAL EDUC. 379, 387 (1952).

41. Rosato, *supra* note 12, at 44.

students in the driver's seat of their legal education by teaching them how to teach themselves:

Just as a professor who immediately answers her students' questions loses an opportunity to help them discover the answers on their own, the professor who dispenses legal principles in classroom soliloquies will reduce students' opportunities to engage in independent critical thinking that could lead them to a deeper understanding of the material.<sup>42</sup>

*d. Teaches skill of thinking on your feet.* In addition, the Socratic method has been praised for helping students develop analytical skills and thinking on their feet.<sup>43</sup> "Socratic discourse requires participants to articulate, develop and defend positions that may at first be imperfectly defined intuitions."<sup>44</sup>

*e. Highlights the complexity of the law.* Finally, the Socratic method has been praised for its ability to instill in students a sense of the complexity of the law—that in many cases there simply is no "one right answer" that applies across the board. "[T]he Socratic [m]ethod places in high relief the absence of easy answers to legal problems."<sup>45</sup> "[T]he Socratic method helps to induce that kind of cautious skepticism, that kind of lack of egotistic belief that one understands fully the nature of a difficult situation."<sup>46</sup>

## 2. *Ulterior motives*

Unfortunately, not all rationales underpinning the adoption of the Socratic method are based on the goal of effective pedagogy. In fact, a number of ulterior motives have been ascribed to the adoption and continued use of Socratic teaching in legal education.

*a. Snobbism.* The first rationale (and quite possibly the most dubious from a pedagogical standpoint) was the desire to gain respectability for the law as a subject worthy of academic scholarship.<sup>47</sup> In

---

42. Elizabeth Garrett, *Becoming Lawyers: The Role of the Socratic Method in Modern Law Schools*, 1 GREEN BAG 2D 199, 201 (1998) (reviewing LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997)).

43. Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, BYU EDUC. & L.J., Spring 1998, at 1, 5.

44. Garrett, *supra* note 42, at 201.

45. *Id.* at 202. "[T]o provide certainty where there is none or to give a neat framework where the law is messy is to teach dishonestly." *Id.* at 202-03.

46. Powell, *supra* note 17, at 969.

47. See FRIEDMAN, *supra* note 9, at 536.

the 1870s, the study of law had just wedged the tip of its boot in the door of college-level study. “Professionalizing” law became a high priority. Langdell’s adoption of the case and Socratic methods made great strides in this direction. For Langdell, the case and Socratic methods were an outgrowth of his belief “that law was a ‘science’ consisting of a cohesive body of clearly discernible ‘principles or doctrines’ . . . .”<sup>48</sup> This conception of law as a science had the effect of “exalt[ing] the prestige of law and legal learning; . . . it affirmed that legal science stood apart as . . . a branch of learning that genuinely demanded rigorous formal training.”<sup>49</sup> Moreover, once the “elite” law schools adopted the method, “those aspiring to be considered elite rapidly followed.”<sup>50</sup> Thus, after its initial adoption at Harvard and other elite schools, the Socratic method perpetuated itself by means of snobbism. Interestingly, the conception of law as a science has been thoroughly repudiated since Langdell’s time.<sup>51</sup>

*b. Economic efficiency.* A second, and similarly dubious, rationale for the adoption of the case and Socratic methods was the notion that the Socratic method provided financial benefits to the collegiate institutions in which it was implemented. In other words, by offering an “educational program or innovation that allowed one man to teach even more students,”<sup>52</sup> the Socratic method held the financial “trump card.”<sup>53</sup> Moreover, the use of the Socratic method purported to be pedagogically effective in the large-class environment since

[a] teaching strategy which includes calling on students without giving them prior notice is one of the best ways to foster critical thinking for all members of such a large group. . . . [T]he element of surprise provides a powerful incentive for them to . . . prepare for class, which will enable them to learn more from the Socratic dialogue that takes place.”<sup>54</sup>

48. Stone, *supra* note 5, at 406 (quoting CHRISTOPHER C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS viii (2d ed. 1879)).

49. FRIEDMAN, *supra* note 9, at 536.

50. STEVENS, *supra* note 28, at 63.

51. *See id.* at 156 (noting that “[t]he major contribution of the Realist movement was to kill the Langdellian notion of law as an exact science . . .”).

52. STEVENS, *supra* note 28, at 63.

53. *Id.*

54. Garrett, *supra* note 42, at 201–02. Vicarious learning is an important part of the Socratic method:

*c. Inertia.* A third, nonpedagogical rationale for adopting the case method explains, in part, its firm entrenchment in the current world of legal education. Now that Socratic teaching has been the established mode of legal education for decades, new law professors gravitate to the Socratic method because most of them experienced it as students, and, in the absence of any formal training in teaching methods or theory, “it is natural for them to use it when they begin to teach.”<sup>55</sup> Moreover, since virtually all faculty members (who, almost without exception, had outstanding law school grades) prospered under the Socratic method, their natural affinity for the method is understandable.<sup>56</sup>

*d. Professorial convenience.* A fourth inauspicious motive is that the Socratic method is convenient for professors.

If [the professor] encounters some horrible rat’s nest of the law involving the application of the Rule against Perpetuities to a compound trust, he is not compelled to stay up struggling with it for four consecutive nights with a wet towel around his head, as is his brother in practice [or his students]. He can just let it alone, in the serene confidence that [some other professor] will some day work it all out and put it in a book.<sup>57</sup>

Thus, since Socratic teaching effectively shifts the original burden of organizing and synthesizing material to the student, professors are

---

[S]tudents [who are not directly involved in the dialogue at any given moment] are participating silently in the discussion by following the dialogue, and are thinking about which questions they could ask and answer themselves. It is as if all are players in an exciting game with their hands on the buzzers, ready to respond at a moment’s notice.

Rosato, *supra* note 12, at 44.

55. Weaver, *supra* note 4, at 544.

56. The dubiousness of this rationale is exposed by the following comment: Sometimes it seems that law teachers use the Socratic Method because it is the teaching method they are most comfortable with or—worse yet—because it is the only method that they know. As with any teaching method, this one should be used to accomplish educational objectives carefully developed by the teacher. . . . If the teacher cannot articulate why the Socratic Method is being used, it may not be the appropriate pedagogy or the teacher’s educational objectives may not be sufficiently defined.

Rosato, *supra* note 12, at 61 (footnotes omitted).

57. Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1549 (1993) (quoting William L. Prosser, *Lighthouse No Good*, 1 J. LEGAL EDUC. 257, 260–61 (1948) (second alternation in original)).

relieved, at least in part, from the pressure to explain the fine points in complex areas of law.

### III. GENERAL CRITICISMS OF THE SOCRATIC METHOD

Despite the rationales favoring the Socratic method, it has never been in short supply of detractors. This section explores the general criticisms leveled against the Socratic method as a prelude to the more recent concerns arising from feminist critiques of Socratic teaching.

#### *A. Leads to Boredom*

First, even some advocates of the Socratic method “concede[] [the] fact that the Socratic method has lost its hold on law students by the second year.”<sup>58</sup> “It is true that for most students the first year is exciting. The fresh incisiveness of approach, the active classroom, the impatience with fuzzy college ways are a great experience. But after the first year the excitement fades . . . . All too often law school ends with students merely marking time.”<sup>59</sup> In other words, over time, students simply become bored with the method.<sup>60</sup> While the overuse of any method can eventually bore students, the boredom brought on by Socratic overload seems particularly disturbing because, as discussed below,<sup>61</sup> the material laboriously elicited from students in Socratic dialogues could be communicated much more efficiently by less time-consuming means.

#### *B. Vicarious Learning Is a Hoax*

A second general criticism leveled at the Socratic method is that its reliance on vicarious learning is a hoax.<sup>62</sup> “For many students the Socratic method must consist of listening to others answer questions

---

58. Frank R. Strong, *The Pedagogic Training of a Law Faculty*, 25 J. LEGAL EDUC. 226, 236 (1973).

59. Charles A. Reich, *Toward the Humanistic Study of Law*, 74 YALE L.J. 1402, 1402 (1965).

60. See Weaver, *supra* note 4, at 561–64 (noting that most of the skills developed through the Socratic method can be learned in less than three years); see also Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1, 18 (1951) (noting that “once the routine analysis is learned, many students become bored with the formal statement of cases”).

61. See *infra* Part III.C.

62. See Strong, *supra* note 58, at 235.

99 percent of the time and answering them themselves only 1 percent of the time.”<sup>63</sup> Thus, since a Socratic dialogue generally consists of a conversation between the professor and one student,

much of the student “doing” must be vicarious [and] [d]espite indulgence of an assumption that when the method is properly explained each and every other student will learn when a classmate and the instructor are in dialogue, there is reason to be highly dubious of the effectiveness of vicarious classroom practice.<sup>64</sup>

Proponents of the Socratic method, however, have justified its one-on-one dialogue in large class settings because, when professors call on students at random, “[t]he risk of being questioned induces . . . vicarious participation.”<sup>65</sup>

### *C. Inefficient to Convey Large Amounts of Information*

A third complaint against the Socratic method is that it is an inefficient way to convey large amounts of information.<sup>66</sup> Indeed, the time necessary to develop a point of law through Socratic dialogue creates “the temptation on the teacher’s part to revert to lecture in order to achieve ‘coverage,’ thus falling back on the poorest form of learning pattern.”<sup>67</sup> In reality, compensating for the law student’s de-

63. James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389, 401 (1996–97) (quoting Peter B. Maggs & Thomas D. Morgan, *Computer-Based Legal Education at the University of Illinois: A Report of Two Year’s Experience*, 27 J. LEGAL EDUC. 138, 140 (1975)).

64. Strong, *supra* note 58, at 235. Nevertheless, some maintain that other students will pay attention since “the moment the student has any trouble or I [the professor] want a more in-depth answer, they know I’ll be looking around the rest of the room. So I would say the room can’t go to sleep because I will be asking the room to help out.” Powell, *supra* note 17, at 982.

65. Phillip E. Areeda, *The Socratic Method (SM) (Lecture at Puget Sound, 1/31/90)*, 109 HARV. L. REV. 911, 916 (1996).

66. See Weaver, *supra* note 4, at 519; see also Patterson, *supra* note 60, at 19, 22. More cynical critics have suggested that the stuffy academics somehow see the idea of teaching legal rules as something akin to a trade school. See Rhode, *supra* note 57, at 1555. Thus, the more ethereal aspects of Socratic teaching somehow make the practice of law more like a profession and less like a trade.

67. Strong, *supra* note 58, at 235. Advocates of the method, however, have offered the following rebuttal to this charge:

Faculty were willing to trade off course coverage for Socratic discussion. This trade-off [sic] is inherent in the case method, an extremely time consuming and inefficient way to impart information. Legal rules can be stated much more quickly by the

iciency in substantive training is left to the legal employers, who (in the absence of any viable alternative) are “willing (though sometimes grudgingly) to supply the practical training that law school neglects.”<sup>68</sup> Unfortunately, “[a]ttorneys who work for less affluent clients and organizations find such assistance harder to come by.”<sup>69</sup>

*D. “Hide the Ball”*

Finally, students often condemn the method as “a scholarly version of the childhood game,”<sup>70</sup> “hide the ball,”<sup>71</sup> in which professors attempt to “hide the legal issue and keep students confused” by refusing to answer student questions and resolve debates on the issues.<sup>72</sup> Poking fun at this point of criticism, one commentator stated:

The key to the Socratic method is that the professor never reveals what the answer is. He keeps insisting that THERE IS NO ANSWER. . . . To get the answers, you have to buy commercial outlines, which cost \$16.95 apiece and are published by the same people who publish Cliffs Notes and Key Comics.<sup>73</sup>

“The result [of Socratic teaching] is a climate in which ‘never is heard an encouraging word and the thoughts remain cloudy all day.’ For many students, the clouds never really lift until after graduation, when a commercial bar review cram course fills in what professional educators missed or mystified.”<sup>74</sup>

Other criticisms (some of which will be revisited below) include the perception by students that the Socratic method (1) has a “tendency to demean and degrade the student,” (2) “neglect[s] the substance of the law,” and (3) “foster[s] monopolization by a vocal few.”<sup>75</sup> Thus, when feminist legal scholars turned their attention to

---

lecture method. But, faculty accept this drawback for the advantage of having students undertake their own analysis.

Weaver, *supra* note 4, at 547.

68. Rhode, *supra* note 57, at 1559.

69. *Id.*

70. Eagar, *supra* note 63, at 402 (quoting Weaver, *supra* note 4, at 519).

71. Weaver, *supra* note 4, at 519.

72. *Id.* at 519 n.5.

73. Gordon, *supra* note 1, at 1685.

74. Rhode, *supra* note 57, at 1555 (quoting Grant Gilmore, *What Is a Law School?*, 15 CONN. L. REV. 1, 1 (1982)).

75. Stevens, *supra* note 3, at 638.



the Socratic method, they found an ample springboard from which to launch their critiques.

#### IV. FEMINIST CRITICISMS OF THE SOCRATIC METHOD

Despite the criticisms of the Socratic method that have abounded from its inception, the entrance of women into legal education portended a distinct set of criticisms against the method. Part IV.A briefly highlights the entrance of women into the legal profession and into law schools, in particular. Part IV.B summarizes the results of significant studies relating to the experiences of women law students with respect to classroom dynamics. The results of each study are arranged in chronological order in order to facilitate tracking the legal scholarship in this area. The study results are followed by a summary section, Part IV.C, which attempts to provide a holistic integration of the study results. Finally, Part IV.D interprets these findings in light of current feminist theories.

##### *A. Women Enter the Arena of Legal Education and the Practice of Law*

The first woman allowed to join the bar in modern times was Arabella Mansfield, who was admitted in Iowa in 1869, one year prior to Langdell's appointment at Harvard.<sup>76</sup> Indeed, the University of Iowa was the first American law school to open its doors to women.<sup>77</sup> Iowa was followed shortly by the University of Michigan, and, in 1872, Boston University admitted women as well.<sup>78</sup> Nevertheless, the general feeling about women in the profession was more accurately expressed by the now dubious comment of Supreme Court Justice Joseph Bradley: "[T]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother."<sup>79</sup>

The elite law schools tended more towards Justice Bradley's sentiment. In 1872, one alumnus of Yale Law School commented: "In theory I am in favor of [women] studying law and practicing law,

---

76. See STEVENS, *supra* note 28, at 82.

77. See *id.*

78. See *id.*

79. *Id.* (quoting Justice Bradley in *Bradwell v. Illinois*, 83 U.S. 130, 131 (1873)).

provided they are ugly.”<sup>80</sup> At what was to become George Washington University, the sentiment was that “the admission of women into the Law School was not required by any public want.”<sup>81</sup> Similarly, at Harvard, the prevailing view was expressed by Professor Thayer, whose opinion was that “he should regret the presence of a woman in his classes, because he feared it might affect the excellence of the work of the men . . . .”<sup>82</sup> Langdell himself also opposed admitting women, and, apparently, his influence was strong since Harvard did not admit its first female law student until 1950.<sup>83</sup> “Washington & Lee still barred women as late as 1972.”<sup>84</sup> Even as late as 1970, “only 6.35% of degree candidates at law school were women.”<sup>85</sup>

Undoubtedly, gaining admission to law school was progress; however, access to the legal edifice not only opened the door of opportunity but also marked the threshold of new, internal forms of discrimination. For example, until the late 1960s, women at Harvard Law School were required to explain to the entire faculty why they were attending law school.<sup>86</sup> At Brooklyn law school, women and men were physically segregated in the classroom.<sup>87</sup> In other law classrooms, professors engaged in discriminatory teaching styles, “rarely call[ing] on women to answer questions in class, or call[ing] on them only to answer questions on selected topics, such as rape. A few professors even designated a ‘Ladies Day,’ when they called exclusively on female students.”<sup>88</sup> As one commentator aptly put it, “Until

80. STEVENS, *supra* note 28, at 83 (quoting FREDERICK C. HICKS, *YALE LAW SCHOOL: 1869-1894*, at 72-76 (1937)).

81. *Id.* (quoting ELMER LOUIS KAYSER, *BRICKS WITHOUT STRAW* 166 (1970)).

82. STEVENS, *supra* note 28, at 83.

83. *See id.* at 83-84.

In commenting on women’s admission to Harvard Law School in 1950, then Dean Griswold reassured anxious alumni that this development was not very important or very significant. Most of us have seen women from time to time in our lives and have managed to survive the shock. I think we can take it, and I doubt that it will change the character of the School or even its atmosphere to any detectable extent. Rhode, *supra* note 57, at 1547 (quoting Erwin Griswold, *Developments at the Law School*, 1950 HARV. L. SCH. Y.B. 10).

84. Taunya Lovell Banks, *Gender Bias in the Classroom*, 14 S. ILL. U. L.J. 527, 527 n.1 (1990) [hereinafter Banks II].

85. STEVENS, *supra* note 28, at 234.

86. *See* Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1210 (1988).

87. *See id.*

88. *Id.*

the 1980s women were merely tokens in law school and the legal profession.”<sup>89</sup> In effect, the steady rise in the admission of women to law school seemed to be accompanied by the implicit caveat that “[w]omen were . . . expected to [simply] join the academic procession, not to question its direction.”<sup>90</sup>

Despite these obstacles, women persevered in pursuing legal education. In 1990, fifty-two percent of those admitted to the bar were women.<sup>91</sup> As the number of women entering law school and the legal profession has continued to rise, and women’s voices on legal issues, including legal education, began to fall on open ears, some of the more blatant forms of discrimination against women have dissipated. However, some argue that more subtle forms of discrimination continue to exist in areas such as the differential impact of the Socratic method on women. Indeed, the relatively recent addition of feminist criticisms of the Socratic method has added new fuel to the fire kindled by long-standing opponents of the Socratic method.

*B. Results of Studies Regarding the Experiences of Female Law Students*

*“Today’s women may have equal access to legal education, but they do not necessarily receive an equal legal education.”<sup>92</sup>*

Over the past twelve years, feminist legal scholars have begun to explore the differences in the way men and women law students experience law school. Such feminist critiques of legal education have included both experiential and empirical studies covering a wide variety of issues relating to women’s law school experiences, from reasons for going to law school, to grades, to self-esteem, and so on. A few of these studies have drawn conclusions specifically relating to the use of the Socratic method. Others have collected data that relate to classroom dynamics and thus may provide indirect insight into

---

89. Robert Granfield, *Contextualizing the Different Voice: Women, Occupational Goals, and Legal Education*, 16 LAW & POL’Y 1, 12 (1994).

90. Rhode, *supra* note 57, at 1547 (quoting VIRGINIA WOOLF, *THREE GUINEAS* 62-63 (1938)).

91. ABA COMMISSION ON WOMEN IN THE PROFESSION, *supra* note 16, at 6 n.14 (quoting ABA COMMISSION ON WOMEN IN THE PROFESSION, *WOMEN IN THE LAW: A LOOK AT THE NUMBERS* (1995)).

92. Banks II, *supra* note 84, at 528.

the experiences of women with the Socratic method and the questions concerning the continuing value of Socratic teaching.

*1. The Yale study: 1988*

The first significant study to address the implications of Socratic teaching with respect to women law students was the Yale study.<sup>93</sup> The Yale study was an experiential study that consisted of a narrative compilation of interviews with twenty women, who belonged to a student women's group, in the Yale Law School class of 1987.

*a. Classroom participation.* The Yale study reported, among other things, widespread "alienation" of women in the law school classroom.<sup>94</sup> The study suggested (1) that women fail to participate in class out of fear<sup>95</sup> or out of a general unwillingness to engage in the "showmanship" called for in the Socratic classroom,<sup>96</sup> (2) that some who begin to participate stop because they feel uncomfortable or unwelcome,<sup>97</sup> and (3) that some who are determined to participate and do participate, nevertheless, feel the pressure of speaking for all women.<sup>98</sup>

*b. Professors' role in alienation.* The anecdotes suggested that the alienation resulting in women's "silence in the classroom"<sup>99</sup> was caused by professors who (1) "ignored or trivialized" points made by women, and later gave credence to the same ideas when expressed by men,<sup>100</sup> (2) "used male pronouns exclusively,"<sup>101</sup> (3) featured only men in hypothetical questions,<sup>102</sup> (4) presumed everyone "under-

---

93. Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988). Other studies of women's experience in legal education were performed earlier, but these earlier studies did not directly implicate the Socratic method. See, e.g., Alice D. Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEGAL EDUC. 462 (1972) (discussing issues of role stereotyping as it affects women pursuing a legal education).

94. In addition to looking at alienation in the classroom, the Yale study also studied three other "faces of alienation: from ourselves, from the law school community, . . . and from the content of legal education." Weiss & Melling, *supra* note 93, at 1299.

95. See Weiss & Melling, *supra* note 93, at 1333.

96. See *id.* at 1335.

97. See *id.* at 1333.

98. See *id.* at 1334.

99. *Id.* at 1327.

100. *Id.* at 1336.

101. *Id.* at 1337.

102. See *id.*

stands a sports analogy,”<sup>103</sup> and (5) made sexist jokes,<sup>104</sup> to name a few. In short, the study concluded that, in the law school environment, “women don’t exist and aren’t worth noticing if they try to exist.”<sup>105</sup>

*c. Implications for Socratic method.* From these data, the Yale study concluded that the removal of Socratic teaching as the primary method of legal pedagogy was warranted:

I would criticize the starting point—why the Socratic method? It sets some people back unnecessarily and bolsters others harmfully. I don’t think we’re even producing good litigators, and I don’t think we’re training for any other skills. Litigators, even, don’t always fight with each other. There’s no need to argue as if you’re going in for the kill. It just feeds into stereotypes of what a lawyer is. A different beginning message might change the stereotypes. I would keep repeating messages of courtesy and listening as long as law school lasted.<sup>106</sup>

Despite its fervor, the Yale study recognized that its small, nonrandom sample concentrated entirely at one school and its failure to interview male law students severely limited the general applicability of its findings.<sup>107</sup>

## 2. *The Stanford study: 1988*

The Stanford study picked up where the Yale study left off in that it attempted to provide some empirical support regarding suspicions of a fundamental disparity between female and male experiences in law school. The Stanford study surveyed the entire student body at Stanford Law School (516 total: 45.9 percent female, 54.1 percent male) and 1528 graduates of the law school (50 percent female—including all living female graduates—and 50 percent male, a random sample of the total).<sup>108</sup>

*a. Classroom participation.* Somewhat surprisingly, the Stanford study “found few statistically significant differences between the re-

---

103. *Id.*

104. *See id.* at 1336.

105. *Id.* at 1337.

106. *Id.* at 1358.

107. *See id.* at 1302.

108. *See* Taber, et al., *supra* note 86, at 1232. The Stanford study also collected data regarding the experiences of women in the legal profession after law school.

sponses of female and male students, or between the responses of female and male graduates” with respect to their law school experiences.<sup>109</sup> Nevertheless, the Stanford study *did* provide empirical support for the notion that male students were more likely than female students to ask questions and to volunteer in class, thus “confirm[ing] scholars’ claims that professors are more likely to call on male students and that male students tend to dominate classroom discussions.”<sup>110</sup> The study proffered two suggestions to explain the participation discrepancy. First, the study suggested that “women speak less frequently than do men because they feel less comfortable talking in class or because professors call on women less often than they do on men.” Alternatively, the study suggested that, while women may feel “perfectly comfortable” speaking in class, they may choose to do so less often because they are “less interested in dominating classroom discussion and more concerned with furthering collegial cooperation.”<sup>111</sup>

*b. Characteristics admired in professors.* Although somewhat less directly related to the Socratic method, the Stanford study showed no difference between men and women with respect to the qualities they most admired in their professors. Among the graduates, however, a greater number of females than males admired professors who demonstrated an openness to questions outside of class, while a greater number of males than females favored professors adept at Socratic dialogues.<sup>112</sup> The study concluded that “[t]he discrepancy between the findings of the graduate and student data suggests that gender differences on these variables may have lessened over time. It may be that women are feeling more comfortable in law school and therefore do not look to professors to put them at ease.”<sup>113</sup>

---

109. *Id.* at 1238. The areas of legal educational experience examined by the Stanford study were (1) satisfaction with performance in law school, (2) qualities admired most in professors, (3) participation in class, (4) feelings toward Stanford Law School, and (5) performance in law school. *See id.* at 1241–43.

110. *Id.* at 1242.

111. *Id.* The study notes, however, that “our data do not provide sufficient information either to support or to refute such hypotheses.” *Id.*

112. *See id.* at 1238–39.

113. *Id.* at 1242.

### 3. *The Berkeley study: 1989–90*

The Berkeley study surveyed 667 first-, second-, and third-year Boalt students in 1988 with respect to areas such as academic experience at Boalt, psychological and emotional reactions to the academic experience, and academic performance.<sup>114</sup> Like the Stanford study, the Berkeley study sought empirical support for gender differences that were generally confirmed by nonempirical literature such as the Yale study.<sup>115</sup> The Berkeley study discounted the findings of the Stanford study, contending that the findings of the Stanford study were “flawed in a number of ways.”<sup>116</sup>

*a. Classroom participation.* The Berkeley study found that, “[i]n general, women at Boalt were much less likely than men to participate in class.”<sup>117</sup> In explaining this finding, the Boalt study rejected the assumption that “faint-hearted female students . . . ‘know the answer’ as well as men but for various reasons are afraid to ‘speak out.’”<sup>118</sup> Rather, the study suggested that failure to participate was a “counter-code of classroom ethics,”<sup>119</sup> involving “a positive decision by outsider students not to compromise the integrity of their beliefs by submitting them to the narrow analytical perspective of the law school classroom.”<sup>120</sup> The study indicated that the counter-code was more intense in the Socratic classroom and cited a characteristic student response in explanation:

While the Socratic method may originally have been meant to create a way for students and professors to exchange ideas, I found most (almost all) of my professors using it as a way to ensure student participation through forced participation. I am not a child

---

114. Suzanne Homer & Lois Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN’S L.J. 1, 24–25 (1989–90). The study also collected data regarding career plans and goals and demographic information. *Id.* at 24.

115. *See id.* at 23.

116. *Id.* at 13. Three flaws were mentioned: (1) the Stanford study did not include sufficient demographic information to allow for investigation of “background characteristics for underlying explanations”; (2) the survey design, by its numerous choices, may have had a “neutralizing” effect on the results; and (3) the survey failed to adequately distinguish between “*what women do* in law school and *how they feel about it*.” *Id.* at 14–15.

117. *Id.* at 29.

118. *Id.* at 37.

119. *Id.*

120. *Id.* The study further noted that “[s]ilence appears to have evolved into a deliberate expression of resistance by many students to an educational system unresponsive to the free expression of nonconforming ideas.” *Id.* at 38.

nor am I lazy—I prepare and participate out of interest and *resent* being made to do so out of fear of humiliation.<sup>121</sup>

*b. Comfort level with same sex professor.* The Berkeley study also surveyed students regarding their professors. Fifty-seven percent of women said they felt “more comfortable with a woman professor’s approach to legal thinking,” and forty-six percent “said they were more likely to speak in a class taught by a woman professor.”<sup>122</sup> A large majority of the men, on the other hand, indicated that “there was no difference in level of comfort or participation level with female professors.”<sup>123</sup>

#### 4. *The first Banks study (“Banks I”): 1988*

In the late 1980s, Taunya Lovell Banks conducted the first of two studies regarding women’s experiences in legal education.<sup>124</sup> In the first study, 765 students (forty-one percent women, fifty-nine percent men) from five law schools participated.<sup>125</sup>

*a. Classroom participation.* Consistent with previous studies, Banks I found a significant disparity in the overall amount of class participation between women and men.<sup>126</sup> One unique finding of the Banks I study in this respect was that both male and female “reports of never volunteering . . . increase[d] with each year of law school.”<sup>127</sup> In addition, the Banks I study probed the underlying reasons for nonparticipation in situations where students wanted to participate. More women than men did not volunteer because they felt

121. *Id.* at 37–38.

122. *Id.* at 35.

123. *Id.* (61 percent and 72 percent, respectively).

124. Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988) [hereinafter Banks I]; Banks II, *supra* note 84.

125. *See* Banks I, *supra* note 124, at 140. Banks does not provide the names of the schools involved but gives the following demographic description:

Five schools participated in the survey: (1) a western school, (2) a southwestern school, (3) a midwestern school, (4) and (5) two northeastern schools. The schools included two public institutions, one quasi-public, one private sectarian, and one private nonsectarian. Three schools have evening or part-time divisions. Two have small enrollments, one is average in size, and two are large.

*Id.*

126. *See id.* at 141 (noting that “17.6% of the women and only 9.6% of the men report never volunteering in class; however 44.3% of the men and only 32.1% of the women report voluntary participation on a weekly basis. Infrequent participation was reported by 50.3% of female and 46.1% of male respondents”).

127. *Id.* at 142.



insecure or because they were uncertain about the merits of their question or comment.<sup>128</sup> However, more men than women did not volunteer because they were not prepared for class or disagreed with the professor.<sup>129</sup>

*b. Attitude of professor and classroom participation.* Banks I also concluded that while most men and women believed that professors neither encourage nor discourage questions or comments, significantly more men than women believed professors respect other students' opinions.<sup>130</sup> Nevertheless, over half of both men and women believed that professors belittle or embarrass students, and, while more women than men said that the professor's sex makes a difference in the belittlement of students, a majority of both sexes believed that sex "makes no difference in this area."<sup>131</sup>

*c. Sex of professor and classroom participation.* Banks I also found that "[a]most twice as many women (12.9%) as men (7.2%) believed that the sex of the professor makes a difference in the frequency with which they are called on in class."<sup>132</sup> Moreover, "significantly more women (11.0%) than men (5.8%) believed the sex of the professor affects their voluntary class participation."<sup>133</sup>

*d. Offensive humor and comments by professors.* Finally, Banks I found that "forty-seven percent of those surveyed reported that one or more of their professors used offensive humor," most of which was sexist in nature.<sup>134</sup>

##### 5. *The second Banks study ("Banks II"): 1990*

The second Banks study was published two years after Banks I and consisted of 1930 responses from first- through third-year students (sixty percent male, forty percent female) attending fourteen different law schools all across the country.<sup>135</sup>

---

128. *See id.*

129. *See id.*

130. *See id.* at 142-43.

131. *Id.* at 143.

132. *Id.*

133. *Id.*

134. *Id.* at 144. Banks did not define "sexist" but did note that while most students did not feel that "the sex of the professor [made a] difference in the frequency of use of offensive humor[,] [s]ignificantly more women (31.5%) than men (15.1%) said that the sex of the professor does make a difference in the use of offensive humor." *Id.* at 145.

135. *See* Banks II, *supra* note 84, at 528.

*a. Classroom participation.* Banks II reaffirmed the findings in Banks I that women report less voluntary participation than men and that women's "level of voluntary class participation decreases over time."<sup>136</sup> Even more interesting, "[t]he women who report voluntary participation most in the first year are the ones who speak least by the third year."<sup>137</sup> Banks provided at least some support for the notion that nonparticipation is an affirmative choice by women who subscribe to the counter-code theory expressed in the Berkeley study: "Repeatedly the women we interviewed last spring said: 'The classroom environment is not supportive. It is very competitive. I find it alienating. I refuse to participate in this cannibalistic kind of process.'"<sup>138</sup>

*b. Discouraging behavior by professors.* Banks II also confirmed the finding in Banks I that some professors continue to make offensive comments in the classroom, the overwhelming majority of which are sexist comments.<sup>139</sup>

#### 6. *The Ohio study: 1994*

The Ohio study, commissioned by the Joint Task Force (of the Ohio Supreme Court and the Ohio State Bar Association) on Gender Fairness in the Profession in 1991, surveyed 1896 students (800 male, 800 female, 296 females with minority backgrounds)<sup>140</sup> and 169 teachers (39 women and 130 men)<sup>141</sup> who attended or taught at one of Ohio's law schools.

*a. Classroom participation.* With respect to classroom participation, the Ohio study found that "[f]ewer women than men report they participate in class, and fewer women than men believe that the Socratic method allows a free discussion of ideas (by 15 percentage points in both instances)."<sup>142</sup> The study itself "did not attempt to

136. *Id.* at 530.

137. *Id.* at 531.

138. *Id.* at 534.

139. *See id.* at 531.

140. *See* Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311, 321-222 (1994).

141. *See id.* at 328-29.

142. *Id.* at 314. For purposes of the survey, the Socratic method was defined as an "interactive teaching style where the professor repeatedly asks questions and students answer." *Id.* at 326.

draw cause-and-effect conclusions based on its findings;<sup>143</sup> however, the study's author suggested that the cause of the differential class participation

may be that more women than men are aware that the Socratic teaching method is designed to lead students to the teacher's view rather than to their own conclusions. This growing awareness could be a benign explanation why participation rates for both men and women decline during law school, or nonparticipation could be resistance to perceived narrow-mindedness [citing to the Berkeley study]. Acknowledgment of why the technique is used, or changes in the manner of using question-and-answer teaching, may increase meaningful student-faculty interchange in class.<sup>144</sup>

*b. Professors' biases.* The Ohio study also collected data regarding perceived professor sexual bias. The results of this data indicated that "[e]ighteen percent of females and of minority females—but only 2 percent of males—feel that teachers value their ideas less because of their gender."<sup>145</sup> Forty-one percent of females—compared to only 16.5 percent of males—felt less intelligent and articulate after entering law school than they had prior to entering law school.<sup>146</sup>

*7. The University of Pennsylvania study ("Penn study"): 1994*

The results of the Penn study were published in the same year as the Ohio study. The database for the Penn study is described as follows: "Our database draws from students enrolled at the [University of Pennsylvania] Law School between 1987 and 1992, and includes academic performance data from 981 students, self-reported survey data from 366 students, written narratives from 104 students, and group-level interview data of approximately eighty female and male students."<sup>147</sup> The Penn study purported to make four distinct findings, one of which was that "many women are alienated by the way the Socratic method is used in large classroom instruction . . ."<sup>148</sup>

---

143. *Id.* at 331.

144. *Id.* at 334–35.

145. *Id.* at 326.

146. *See id.* at 328.

147. Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 2 (1994).

148. *Id.* at 3. The other findings were (1) "strong academic differences [exist] between graduating men and women," (2) "strong attitudinal differences [exist] between women and men in year one, and yet a striking homogenization by year three," and (3) "substantial mate-

*a. Classroom participation.* The Penn study did not ask how much students participated in class; rather, it asked “Are you comfortable with your level of voluntary participation in class?” Of first-year respondents, the answer was that only twenty-eight percent of the female respondents answered yes, versus sixty-eight percent of the male respondents.<sup>149</sup> By the third year, however, the numbers were much closer, with sixty-four percent of women responding yes, as compared to seventy-two percent of men.<sup>150</sup>

*b. Results of Socratic teaching.* In summarizing the narrative data received in the survey regarding the Socratic method, the Penn study indicated that when the Socratic method is used to “intimidate or to establish a hierarchy within large classes,” many women reported feeling that speaking required a “performance.”<sup>151</sup> Such performances included an added measure of pressure for female students, who sometimes felt they were expected to be a spokesperson for their gender group.<sup>152</sup> Rather than participating under such pressure, the study reported that many simply “responded with silence.”<sup>153</sup>

The study also documented that “[s]everal women who described Socratic-style questioning as intimidating stated matter-of-factly that they could not learn in an intimidating environment. . . . A few men also reported discomfort with the Socratic style, although they seemed less permanently disabled by it.”<sup>154</sup> In addition, the study indicated that those students who resist the competitive, adversarial law student stereotype “experience much dissonance.”<sup>155</sup>

In its analysis of the findings regarding the Socratic method, the Penn study stated:

[M]any women claim that neither their initiative nor their problem-solving ability is engaged in an intimidating learning environment. The performance aspect of a large Socratic classroom disables some women from performing up to their potential. Socratic teaching, if designed to intimidate, adds more women to this category.

---

rial consequences [await] women who exit the Law School after sustaining what they describe as a crisis of identity.” *Id.* at 3, 5.

149. *Id.* at 36.

150. *See id.*

151. *Id.* at 46.

152. *See id.*

153. *Id.*

154. *Id.* at 46–47.

155. *Id.* at 47.

If no comparably significant formal learning experiences, other than large classroom Socratic teaching, are provided, first-year women in particular are most likely to be affected. These phenomena also adversely affect some men.<sup>156</sup>

In sum, “some women are disengaged from law school because they find its adversarial nature, its focus on argumentation, and its emphasis on abstract as opposed to contextual reasoning to be unappealing and disengaging.”<sup>157</sup>

Despite its findings and analysis, however, the Penn study did not call for the abolition of the Socratic method.<sup>158</sup> Rather, the study recommended “an effort to promote a genuine diversity of constructive teaching styles, including, of course, rigorous Socratic teaching.”<sup>159</sup> The study posited that the implementation, for example, of group projects (a “less hierarchical alternative” to the Socratic method) might “minimize the alienation . . . [and] encourage broad-based participation from those who feel disinclined to ‘perform’ when they speak but nevertheless have something to contribute . . . .”<sup>160</sup>

#### 8. *The LSAC study: 1996*

The most recent study on women’s experiences in legal education is the 1996 study commissioned by the Law School Admissions Council (“LSAC”). The LSAC study is a great addition to the body of research on gender issues in legal education because, unlike its predecessors, whose “studies have had limited impact as a consequence of their small sample sizes, the sample bias that often results from self-selection of the sample, or their reliance on anecdotal evidence,”<sup>161</sup> the LSAC study included a base sample of approximately 29,000 students from 163 law schools who entered a law school J.D. program in fall 1991.<sup>162</sup>

---

156. *Id.* at 63.

157. *Id.* at 65.

158. *See id.* at 93.

159. *Id.*

160. *Id.* at 94.

161. LINDA F. WIGHTMAN, WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN I (1996).

162. *See id.* at 5.

*a. Caveat.* Despite its large study sample, the results of the LSAC study are subject to a significant limitation. As a general caveat to its findings, the LSAC study noted that “[a]n important qualification here is that these ratings are not absolute, but relative to expectations. In other words, these data do not suggest that women found the law school environment as supportive as men found it, but rather that each group found it as supportive as they expected it to be.”<sup>163</sup> Nevertheless, information regarding students’ expectations is valuable in studying the effectiveness of law school pedagogy.

*b. Quality of instruction.* In response to questions regarding the quality of instruction in law school, “[w]hite women rated the quality of instruction in first-year law school classes significantly lower than expected” compared to the quality of instruction expected by their male counterparts.<sup>164</sup> However, on a related question, the study did not find any significant gender differences among respondents with respect to their “evaluation[s] of the law school environment relative to their expectations.”<sup>165</sup> Moreover, “[b]oth women and men reported that the faculty were slightly more accessible than they had expected and that the environment was about as supportive as expected.”<sup>166</sup>

*c. Characteristics of professors.* Study respondents were also asked to estimate the number of their first-year instructors who possessed a variety of characteristics including the following: (1) friendly to students, (2) available to students outside of class, (3) open-minded, (4) clear on what they expect from students, (5) generally supportive, and (6) concerned about the problems of minorities and disadvantaged students.<sup>167</sup>

Women identified significantly fewer professors who were concerned about the problems of minorities and disadvantaged students than did men.<sup>168</sup> In addition, the survey results “showed a practically significant difference between women and men [in] the number of

---

163. *Id.* at 72.

164. *Id.* at 40. The study did not provide statistics on this issue for women in general but broke it down more discreetly into a race-gender analysis.

165. *Id.*

166. *Id.*

167. *See id.* at 49–50. Other characteristics included: (1) interested in teaching; (2) knowledgeable about the subjects they teach; (3) concerned with issues of justice; (4) concerned with issues of professional ethics; (5) cynical about the quality of practicing lawyers; and (6) cynical about the quality of the judiciary. *See id.*

168. *See id.* at 51.

first-year instructors who were ‘generally supportive.’”<sup>169</sup> The data also did not “contradict findings reported in the literature that women law students tend to find few if any faculty who[m] they consider to be open-minded, clear in their expectations, or generally supportive.”<sup>170</sup> Nevertheless, the data revealed that men also identified relatively few first-year professors with such characteristics.<sup>171</sup>

*d. Competitiveness, public speaking ability, confidence.* The LSAC study also queried whether a gender differential existed with respect to self-concept in law students after completing the first year.<sup>172</sup> In this area, “students were asked to compare themselves with their classmates on . . . traits such as academic ability, competitiveness, public speaking ability, and self-confidence in academic situations . . . .”<sup>173</sup> In these areas, “overall men rated themselves significantly higher than women in all areas . . . .”<sup>174</sup> The study also indicated that the same differential ratings existed prior to entering law school—even “when women’s academic performance records substantially exceeded the records of their male peers.”<sup>175</sup> Along these lines, the study also reported that both men and women “reduced their self-ratings in every category following their first year . . . . [Thus,] [t]hese data suggest that the negative impact on self-confidence attributed to law school operates equally on women and men . . . .”<sup>176</sup>

*e. Effectiveness of Socratic method.* The LSAC also attempted to determine the validity of the suggestion in “previous research . . . that the Socratic method of teaching is more problematic for women than for men.”<sup>177</sup> The study hypothesized, based on this assumption, that “women who did worse” than predicted in law school “had a larger percentage of their classes taught using the Socratic

---

169. *Id.*

170. *Id.*

171. *See id.*

172. *See id.* at 53.

173. *Id.*

174. *Id.*

175. *Id.* at 55.

176. *Id.* at 58.

177. *Id.* at 99.

method.”<sup>178</sup> The results, however, failed to support this hypothesis.<sup>179</sup> On the other hand, “Women who performed worse than expected had a substantially more negative impression of the attributes of their law school instructors than did women who performed better.”<sup>180</sup>

### *C. Summary of Study Results*

#### *1. Classroom participation*

If nothing else is clear from the studies, it is virtually undeniable that there is in fact a gender-based discrepancy in the amount of classroom participation between men and women law students. Every study addressing the issue has confirmed this result, regardless of the demographic makeup of the sample.

The more interesting point has to do with the reasons proffered for the discrepancy. At least four theories have emerged. First, as the Yale and Stanford studies suggest, fear may be the primary reason for women’s nonparticipation. The Berkeley study takes issue with this characterization and rejects the “faint-hearted female” rationale. Nevertheless, the data from the Banks I study provides support for the fear rationale in that it documented that more women than men fail to participate because they feel insecure or are uncertain about the merits of their comment or question.

A second possible reason for women’s failure to participate is the simple suggestion of professor bias—i.e., the professor, consciously or not, calls on male students more often than on female students. The Stanford study tends to support this characterization.

A third possible reason for women’s silence in the classroom is, as suggested in the Stanford study, women, although perfectly comfortable speaking in class, simply have little interest in dominating the classroom discussion. One commentator, who seemed to espouse this rationale, noted that

[i]nstructors should not assume too quickly . . . that silence necessarily leads to educational deprivation. When queried to address the question of differential participation patterns among male and fe-

---

178. *Id.*

179. *See id.*

180. *Id.*



male students in law school courses in general, one woman . . . responded to the following effect: “Don’t worry about us. We’re listening. We dominate law review, class ranking, and advocacy competition awards. It won’t necessarily help us to be talking all the time.” This student recognized both the value of developing her ability to listen and the false progress represented by glib students, mostly male, who were inclined to interrupt the statements of others without first absorbing their messages.<sup>181</sup>

A fourth explanation for women’s nonparticipation is the position taken by the Berkeley study that women’s silence indicates a counter-code of classroom ethics—i.e., a form of individual protest against the narrow analytical perspectives valued in the law school classroom. However, the finding in the Penn study that less than one-third of the female respondents participated as much as they wanted to in their first year may indicate that their silence was not a positive act of rebellion against the system. On the other hand, the fact that the women in the Penn study seemed to become more satisfied as they progressed through law school, combined with the data from Banks I and II that women participate less and less in their second and third years, may indicate that women simply adopt the counter-code at a later stage of their legal education.

## 2. *Professor conduct*

A second characteristic of the research regarding gender differentials in law school classrooms has to do with the professors themselves—or more precisely, student perceptions of professors. Four particular areas of professor conduct were considered.

First, the Berkeley and the LSAC studies considered student perceptions of the traits professors possess. The Berkeley study found no gender differences in terms of what characteristics students admire most in their professors; it did, however, find a discrepancy among the graduates surveyed. The discrepancy indicated that more male graduates admired professors adept at Socratic teaching, while female graduates admired professors who were open to questions after class. The LSAC study, on the other hand, indicated that women found professors more often to be lacking the quality of being “generally supportive.”

---

181. Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140, 159 (1995).

Second, Banks I and the Ohio study considered the gender-impact differential relating to the attitude of professors. Banks I showed that women were significantly less likely to believe that professors have respect for other students' opinions. Moreover, the Ohio study indicated that a significantly larger proportion of women than men felt that professors valued their ideas less because of their gender.

Third, the Banks I and II studies considered the language of professors a source of the differential experience of law students along gender lines. Both studies indicated that a surprisingly large number of law professors use offensive humor in their classrooms. Moreover, most of the foul humor is sexist in nature. It would not be difficult to imagine how such an environment would silence and disadvantage women in particular.

Fourth, both the Berkeley and the Banks I studies gathered data relating to the relevance of a professor's gender. In Berkeley, while men found no difference between male and female professors from the standpoint of classroom comfort and participation, women expressed an emphatic comfort preference in favor of female professors, and almost half said they would be more likely to speak in a class taught by a woman professor. The results in the Berkeley study were mirrored in the Banks I study, which also found that female students considered the sex of the professor important in determining how often they were called on and how often they volunteered.

### *3. Limiting factors*

For purposes of the present analysis, one of the central problems with the existing studies is establishing a cause-effect relationship between the study results and the Socratic method. Only four of the studies (Yale, Berkeley, Ohio, and Penn) drew specific links to the Socratic method. Of those four, only the Penn study devoted significant analysis to the study's implications for Socratic teaching. Moreover, the negative implications described in the Penn study were largely limited to those situations in which the Socratic method is specifically employed to "intimidate" students.

Despite the absence of a clear cause and effect relationship in the studies between women's silence, professors' conduct, and the Socratic method, it seems reasonable to assume that such key elements of classroom dynamics would be a reflection of the dominant teaching methodology employed in those classrooms. On the other hand,

while this may be true, not all of the studies distinguished between classrooms in which the Socratic method was employed and classrooms in which other methodologies were employed. Such “loop-holes” provide fertile soil for further study. Thus, while a conclusive cause-effect relationship remains somewhat elusive, the anecdotal evidence and available statistical data support an inference that the traditional Socratic method of legal pedagogy is at least partially responsible for negative experiences of women in legal education. This inference provides the basis for the further analysis set forth in the sections that follow.

#### *D. Feminist Theories*

Assuming that causation can be established between levels of classroom participation, professor conduct, and Socratic teaching, the differential experiences of women in the Socratic classroom can be interpreted through the lenses of various feminist theories.

##### *1. Difference theory*

Feminist critiques of law school and the Socratic method are based upon the assumption that women experience law school differently than men and that the different voices women bring are something that should be valued as a viable source of reform in legal education.<sup>182</sup> As this is the fundamental tenet of difference theory, it is not surprising that many of the studies discuss the work of Carol Gilligan, the most prolific advocate of difference theory, and the fundamental values of difference theory as a framework within which to criticize the current system of legal education.<sup>183</sup>

The Ohio study succinctly describes the argument against the Socratic method from a difference theory standpoint:

The relationship-oriented person values the preservation of social relationships, is agreeable and nonassertive in manner, is inclined toward nurturing and caring, and is sensitive to context and to the emotions of others. Contrary qualities characterize the rights-oriented person, who acts assertive, argumentative, confrontational, controlling, and impersonal; this person is unemotional, logical,

---

182. See, e.g., Weiss & Melling, *supra* note 93, at 1300–01.

183. See *id.* at 1302–10; see also Guinier et al., *supra* note 147, at 15–18; Homer & Schwartz, *supra* note 114, at 18–19; Krauskopf, *supra* note 140, at 317; Taber et al., *supra* note 86, at 1212–18.

and abstract in reasoning, and values the application of rules to establish and protect “rights.” The literature points out that these are the characteristics of the traditional Socratic method and of the legal system itself.<sup>184</sup>

I take issue with this characterization, at least as a matter of methodological constraint. Certainly, the Socratic method is capable of being (and “traditionally” may actually have been) employed in a way that emphasizes a rights-oriented bent, but the method itself does not require such an orientation. Moreover, the extent to which the Socratic method is rights-oriented suggests the need for reform. Thus, the difference theory critique is directed more at the application of the Socratic method than at the method itself. Such criticisms are valid, but they can be dealt with by adjusting the application of the Socratic method rather than abandoning it outright. At least one feminist scholar has suggested a number of ways in which an ethic of care can be infused into the Socratic method.<sup>185</sup> I agree with this suggestion and explore it in depth in Parts V.C–D.

## 2. *Dominance theory*

In addition to considering the implications of difference theory, many of the studies counterbalanced Gilligan’s basic difference premises with the dominance theory advocated by Catharine MacKinnon.<sup>186</sup> The aim of dominance theory is

neither to reconstruct and celebrate the voices of women, nor to teach women to think, talk, and act more like men, but to expose and combat the worst forms of violence against women . . . [—]to free women to define and control themselves and their world: ‘[t]he question is not so much how to make rules fit reality, but rather how to change reality.’<sup>187</sup>

184. Krauskopf, *supra* note 140, at 316 (footnotes omitted).

185. Rosato, *supra* note 12, at 59–62 (discussing specific ways in which professors can foster an ethic of care in a Socratic classroom).

186. See Weiss & Melling, *supra* note 93, at 1302–10; Guinier et al., *supra* note 147, at 15–18; Homer & Schwartz, *supra* note 114, at 18–19; Krauskopf, *supra* note 140, at 317; Taber et al., *supra* note 86, at 1212–18.

187. Weiss & Melling, *supra* note 93, at 1308–09 (quoting Catharine MacKinnon, *Feminist Discourse, Moral Values, and the Law: A Conversation*, 34 BUFF. L. REV. 11, 25 (1985)).

As such, dominance theorists would counsel the abandonment of the Socratic method—a method created and perpetuated by a male-dominated legal hierarchy.

In discussing various responses to MacKinnon's dominance theory, one commentator has said, "Some people have a flash of recognition when reading MacKinnon, others feel she is describing a world that does not exist."<sup>188</sup> At least with respect to Socratic teaching in law school, I fall into the latter category. As I see it, the problem with dominance theory is that its vehemence is a means without an end, or rather an end in itself. In other words, after all its criticisms, one is left wondering what should be done. In the law school environment, (barring segregated law schools)<sup>189</sup> men and women have to work together. This being so, a purely "feminist" methodology or a purely "masculine" methodology cannot be viable—some "splicing" of the two must take place. Thus, I reject the extremism of dominance theory as failing to proffer a viable solution to the practical necessities of legal education in the real world.

### 3. *Formal equality*

Although not discussed by name in feminist critiques of the Socratic method, the principles of formal equality also have a bearing on the validity of the Socratic method. Those who subscribe to formal equality notions would not necessarily call for the abandonment of the Socratic method but would rather demand that it treat women and men equally. With respect to the study results explored above, this would mean that gender-based discrimination in the application of the method should be eliminated. Thus, women should have the opportunity to be called on as often as men; their comments should not be ignored or devalued (as for example when they are recognized only when a man makes the same point) and; professors should not "throw them softballs" or have "ladies' day"<sup>190</sup> or call on women only when issues such as rape or domestic violence are being discussed. In addition, sexist language and behavior should be abolished in the classroom, whether its source be professors or students.

---

188. EVA H. HANKS ET AL., *ELEMENTS OF LAW* 637 (1994).

189. Of course, even if effective in law school, this would only delay the general problem.

190. James R. Elkins, *On the Significance of Women in Legal Education*, 7 AM. LEGAL STUD. A.F. 291, 302 (1983).

In essence, the formal equality advocate demands that the procedural barriers erected upon gender-based discrimination be eliminated so that women are treated no better or worse than men. In response, I believe that the tenets of formal equality factor strongly into the revised Socratic method, which I propose below. The “procedural accommodations” in Part V.C are intended in large part to address the concerns of formal equality theory.

#### 4. *Substantive equality*

Substantive equality is likewise absent (in name) in the studies and literature regarding the Socratic method. Yet, again, its presence can be detected in the reforms suggested by feminist commentators. The Ohio study states the substantive equality argument: “[B]ecause women have been socialized to become homemakers and not professionals, they actually require more encouragement than men in a male-dominated profession in order to receive an equal education; if neither male nor female students are encouraged, women effectively suffer discrimination.”<sup>191</sup>

Based on the findings of the Banks I and Berkeley studies that women considered the sex of the professor important in determining how often they were called on and how often they volunteered, substantive equality would call for the hiring of more female professors. Indeed, such suggestions have been and continue to be made.<sup>192</sup> Other substantive equality reforms might include actually calling on more women than men in class to compensate for the traditional absence of women’s voices in law school classrooms. In addition, law schools might institute support programs targeted at helping female law students succeed.

The suggestions emanating from substantive equality theory for improving the Socratic classroom are also valid and deserve serious consideration. Despite this, many worry that implementing substantive equality reforms may end up reinforcing the very stereotypes women wish to dispel.<sup>193</sup> Moreover, as discussed below, I believe

---

191. Krauskopf, *supra* note 140, at 317.

192. See ABA COMMISSION ON WOMEN IN THE PROFESSION, *supra* note 16, at 44. This call for hiring a more diverse faculty has been strenuously endorsed even though “a commitment to diversity cannot be satisfied simply by hiring women and minorities in numbers proportionate to their availability in the market . . .” *Id.*

193. See *infra* Part V.A.3.

that most, if not all, of the substantive equality criticisms can be accommodated without abandoning the Socratic method.

V. KEEP THE BABY; TOSS THE BATHWATER: AN IMPROVED  
SOCRATIC METHOD THAT HUMANIZES LEGAL EDUCATION FOR  
BOTH MEN AND WOMEN

*“Though we can abbreviate the Socratic Method SM, it should not be sadistic for instructors or masochistic for students.”*<sup>194</sup>

The fundamental question arising from the feminist research with respect to the Socratic method is whether the method is compatible with the educational needs of female law students. Some of the studies discussed above have answered the question with an emphatic no. Others have argued that it is women, not legal education, that must change. The most viable alternative, however, lies between these two extremes.

In this section, I argue that, despite feminist criticisms leveled against it, the Socratic method deserves a continued place in legal pedagogy. Nevertheless, many of the criticisms are valid, and, thus, certain accommodations, as well as fundamental changes, should be implemented to counteract the negative effects traditionally attributed to Socratic teaching. Such an approach attempts “to relieve the oppressive atmosphere of the Socratic method . . . without compromising the intensity of the intellectual inquiry which, after all is said and done, is the legitimate justification of Socratic teaching.”<sup>195</sup> Moreover, the modifications suggested are not intended to “lower the bar” for women who otherwise could not “make it.” Rather, the modifications are aimed at “humanizing” the Socratic method for the benefit of both men and women. This is more than a token gesture since the studies reveal that, as currently practiced, the Socratic method has had a negative impact on men as well as on women.<sup>196</sup>

---

194. Areeda, *supra* note 65, at 918.

195. Stone, *supra* note 5, at 418.

196. See Banks I, *supra* note 124, at 141 (“[T]he classroom environment may be hostile to most law students, although more so for women than men.”); Banks II, *supra* note 84, at 530 (“I talk to a lot of men from working class backgrounds who feel just as alienated by this androcentric, upper-middle class environment as women. . . .”); Guinier et al., *supra* note 147, at 63 (“These phenomena also adversely affect[ed] some men.”); Krauskopf, *supra* note 140, at 317 (“[L]aw school teaching techniques and classroom environment may contribute to silencing both men and women.”).

Part V.A discusses some of the practical reasons for keeping the Socratic method as a valuable tool of legal pedagogy. Part V.B introduces a two-part framework for effectuating humanizing reforms in Socratic teaching. Part V.C explores part one of the framework, describing some important “procedural changes”—i.e., changes in the manner in which the Socratic method is employed—which should be implemented in order to humanize the Socratic method. Part V.D discusses part two of the framework, outlining important “substantive changes”—i.e., changes to the fundamental conception of the Socratic method as it is now largely practiced—that will bring the Socratic method into conformity with the method employed by its namesake (Socrates) and, in the process, implement humanizing principles derived from feminist theory. Finally, Part V.E recognizes both the pedagogical limitations of Socratic teaching and the value of employing diverse teaching methodologies.

*A. Justifications for Keeping the Socratic Method Despite Feminist Criticisms*

Three categories of justifications support the continued use of the Socratic method in legal education: (1) basic skills training, (2) institutional limitations, and (3) avoidance of stereotyped roles.

*1. Basic skills training*

Most critics of the Socratic method—even many feminist critics—are willing to concede that “Socratic exchange can cultivate skills that are valuable in certain professional contexts . . . .”<sup>197</sup> Indeed,

[s]peaking in public, whether it be in the courtroom, before a group of clients or opposing counsel, or in a meeting of lawmakers working to draft a statute, is part of every lawyer’s job, so developing the ability to present ideas forcefully and effectively in such contexts is integral to becoming a lawyer.<sup>198</sup>

---

197. Rhode, *supra* note 57, at 1557; *see also supra* notes 156–57 and accompanying text.

198. Garrett, *supra* note 42, at 202. A similar sentiment was expressed by another female law professor:

Part of the methodology of law school education, particularly in the first year where many professors call on students who do not volunteer, is to emphasize and give practice in speaking. This is justified on the grounds that so much of the legal profession involves speaking. We need to be very concerned about the fact that if we, as



Moreover, even if students do not intend to litigate, they will be called upon to “present ideas to groups, defend those ideas, and propose solutions to legal problems.”<sup>199</sup> The opportunity to develop such skills through Socratic dialogue in the “relatively safe” environment of the classroom is invaluable.<sup>200</sup> Thus, at a bare minimum, the Socratic method “‘drills’ a method of inquiry that forms the foundation [for] more sophisticated legal thinking.”<sup>201</sup> Furthermore, due to the “relatively safe” environment of the law school,

[t]he training provided by the Socratic Method may . . . be most important for students who experience the most discomfort when they are asked to engage in this form of legal discourse. In an atmosphere of relatively low stakes, these students have the chance to develop their analytical and oral advocacy skills.<sup>202</sup>

## 2. *Institutional concerns*

The second justification for maintaining the Socratic method—i.e., institutional concerns—covers two basic issues: economic concerns and timing concerns.

First, one of the valuable characteristics of the Socratic method is the ability of professors to use it in large classes, thus encouraging economic efficiency. Unfortunately, many of the alternative feminist methodologies, which are intended to encourage more cooperative learning, would require substantial reductions in student-teacher ratios—a proposition that would have “economic ramifications.”<sup>203</sup> Thus, the practical exigencies at most law schools favor maintaining the Socratic method. Though this is certainly not the most noble reason for keeping the Socratic method, it will remain persuasive as long as money talks and law schools listen.

Second, “the primary obligation that [law professors] have to [their] students is to prepare them with the skills and values necessary to enter the practice of law in the 1990s [i.e., the current time

---

women, speak less, then we are also failing to take advantage of the opportunity to train ourselves in the skills of our profession.

Banks II, *supra* note 84, at 538 (Jill E. Adams responding to Banks’ study results).

199. Garrett, *supra* note 42, at 204.

200. *See id.*

201. Rosato, *supra* note 12, at 45.

202. Garrett, *supra* note 42, at 204.

203. *Id.* at 208.

period].”<sup>204</sup> Thus, although the long term goal may be to seek a “less male-dominated, less adversarial system of justice,” legal educators “must assist [students] in understanding the adversarial system and in playing the role of lawyers within that system.”<sup>205</sup> This entails learning the fundamental skills of legal analysis—skills that the Socratic method is ostensibly designed to develop.<sup>206</sup>

### 3. *Avoidance of stereotypes*

A third concern favoring retention of the Socratic method involves gender stereotyping. Many women have expressed fears that the abandonment of the Socratic method would only give credence to stereotypes, suggesting that “women law students cannot withstand the rigors of the Socratic Method and thus do not belong in the law school classroom, the courtroom or the boardroom.”<sup>207</sup> The import of this common rebuttal to substantive equality and difference theory arguments is poignantly expressed in the following justification for maintaining the Socratic method:

If you were lucky enough to be a dominant group and wanted to dominate society, . . . how would you construct a perfect subordinate group? Well, I think that you would make them cooperative, empathetic, nurturing of others, self-sacrificing, noncompetitive, and nonaggressive.<sup>208</sup>

---

204. Rosato, *supra* note 12, at 51.

205. *Id.*

206. Moreover, “[i]f we abandon the Socratic Method, it probably will have little impact on the adversarial system as a whole, but will result in students being ill-prepared to work within it because they will not have gained the foundational knowledge they need.” *Id.* at 52.

207. *Id.* at 39; *see also id.* at 58 (“[T]he Socratic Method should not be circumscribed simply to accommodate women. To do so only patronizes women law students and reinforces the view still held by some that women do not belong in law school or the legal profession—or at least not at the highest levels of achievement.” (footnotes omitted)). Others have been more forceful in making this point:

I would like to know when these bellyachers [feminist critics of the Socratic method] will throw off the cloak of victimization and concentrate on good lawyering. True, the Socratic method is often adversarial and intimidating. Like it or not, “ritualized combat” is excellent preparation for the real world. . . . [Studies calling for the abandonment of the Socratic method] do women attorneys a great disservice by encouraging them to blame others for their lack of success.

Neary, *supra* note 16, at 10 (letter to the editor in response to the University of Pennsylvania study).

208. Margaret Jane Radin, *Reply: Please Be Careful with Cultural Feminism*, 45 STAN. L. REV. 1567, 1568 (1993).

Thus, abandoning the Socratic method in favor of these methods, which supposedly cater more to women's values, may end up reinforcing the exact stereotypes feminist critics are attempting to dispel.

This justification for maintaining the Socratic method may simply be the choice of the lesser of two evils. On the other hand, commentators advocating this rationale do not view this as an abandonment of women's traditional values. Rather, the suggestion is that women law students can become "multilingual" through the Socratic method—i.e., women can learn the additional language of "standard legal discourse" through Socratic methods while maintaining fluency in the "language of the oppressed."<sup>209</sup>

*B. A Socratic Method with "New Hands" and a "New Heart"*

*"It would be ironic and wonderful if the Socratic method, a tool that has been used for so long to shore up an edifice of privilege and oppression, could also be used, in new hands and with a new heart, to build a better future."<sup>210</sup>*

Having concluded that the Socratic method should be salvaged, I now shift attention to what changes should be made in order to accommodate negative criticisms of the Socratic method and, in effect, give Socratic teaching "new hands" and a "new heart." The challenge in reconstructing such an "improved" Socratic method is to avoid doing so in a manner that effectively calls for an "add women and stir" approach.<sup>211</sup> Clearly, a Socratic method that satisfies women's concerns would "focus on transforming social institutions, not just assimilating women within them."<sup>212</sup> Nevertheless, I do not believe that transformation and assimilation are mutually exclusive remedies. Rather, as the "hands" and "heart" metaphor suggests, an effective solution to the criticisms of the Socratic method requires efforts in both assimilation and transformation. Thus, Part V.C (entitled "procedural accommodations") addresses assimilation issues,

---

209. Rosato, *supra* note 12, at 55–59 ("[T]he realities of the existing male-oriented legal discourse need to be recognized. Many lawyers and judges speak the primary language [i.e. standard legal discourse] almost exclusively and may not value or understand multiple languages.").

210. Williams, *supra* note 11, at 1576.

211. Rhode, *supra* note 57, at 1564.

212. *Id.* at 1551.

while Part V.D (entitled “substantive changes”) addresses transformation issues.

*C. Procedural Accommodations: “New Hands”*

This section explores two ways the assimilation aspect of Socratic reform can be addressed: (1) by recognizing the role of the teacher and (2) by providing institutional support for teachers and students. I label these “procedural accommodations” since they do not reflect any inherent change to the substance of the Socratic method but rather emphasize various aspects of the application of the Socratic method.

*1. The vital role of the teacher*

The studies discussed above suggest that law professors can do much to eliminate, or at least mitigate, the differential classroom dynamics among men and women law students.<sup>213</sup> The professor’s role in this arena is to remove obstacles that tend to inhibit student involvement. These obstacles seem to come in three basic forms: (1) withdrawal caused by teacher abuse, (2) withdrawal caused by peer abuse, and (3) withdrawal caused by student self-doubt or other factors.

*a. Withdrawal caused by teacher abuse—distinguishing problems with the teacher from problems with the Socratic method.* It is axiomatic that any pedagogical style will only be as effective as the teacher who employs it. Neither the Socratic method nor any other method will be successful without the conscientious application on the part of the professor. Thus, law professors wield enormous power in determining the extent to which the Socratic dialogue is effective or not.

Even advocates of the Socratic method recognize that law professors can and sometimes do abuse the Socratic method by making sexist comments, ignoring comments of women students, disparaging student answers, or being mean or rude in any number of other ways.<sup>214</sup> Such conduct, however, is not an inherent attribute of So-

---

213. As Banks noted, “A teacher’s behavior in the classroom can alienate students and impair learning.” Banks II, *supra* note 84, at 532. Conversely, I believe that a teacher’s behavior can also do much to empower students and encourage learning.

214. See Garrett, *supra* note 42, at 203; see also Rosato, *supra* note 12, at 49–51. A number of the studies discussed above add credence to the existence of this problem.

ocratic teaching.<sup>215</sup> Rather, it is the abusive professor—not the Socratic method—that creates the hostility and sense of alienation regarding which female (and male) law students complain. Moreover, “[a] teacher with a penchant for disparaging students would do so regardless of the pedagogy used.”<sup>216</sup> Therefore, abandoning the Socratic method would likely not address the more fundamental problem.<sup>217</sup> Assuming a professor is not inherently abusive, she can—and indeed must—do many things to control the classroom environment in a way that promotes the effective use of Socratic teaching. Such things are discussed below.

*b. Withdrawal caused by peer abuse.* Law professors must not tolerate student-on-student abuse. As many of the studies discussed above point out, a “common problem in the Socratic classroom is disrespectful treatment of students by their peers.”<sup>218</sup> “[P]rofessors should require students to refrain from the rhetorical equivalent of street fighting and to articulate their views in the civil, intellectual terms that would be appropriate in a courtroom, legislative hearing, or public meeting.”<sup>219</sup> Professors “should emphasize the difference between cruel and destructive behavior and genuine debate and disagreement both by their example when they treat students with re-

---

215. See Rosato, *supra* note 12, at 50.

Humiliation and harassment are not inherent to the Socratic Method. The true Socratic teacher encourages students to think critically and does not disparage them if they fail to fulfill the teacher’s expectations. The true Socratic teacher also assures the students, in one way or another, that they are not expected to ‘win’ the ‘contest’ because it is stacked against them.

*Id.*

216. *Id.*; see also Garrett, *supra* note 42, at 203.

Professors who are intolerant of opposing perspectives, who are mean or rude to students, who abuse their power in order to intimidate students are bad teachers—whether they engage students in a Socratic dialogue or use a lecture format. Perhaps the Socratic Method provides more opportunities for such abusive behavior because it demands constant interaction between professor and students. But a bad teacher who does not use the Socratic Method can be offensive during a lecture or dismissively rude to students when they ask questions.

*Id.*

217. The question of how to deal with such abusive professors is a complicated matter. See Rosato, *supra* note 12, at 50. Inasmuch as it is a problem distinct from the Socratic method, discussion of its solution is beyond the scope of this Comment. Nevertheless, one commentator suggested that regular student and peer evaluations of such professors may be a step in the right direction. See Garrett, *supra* note 42, at 203.

218. Garrett, *supra* note 42, at 203 (referencing the Penn study).

219. Calleros, *supra* note 181, at 161.

spect and by their strong reaction to any unprofessional behavior exhibited by students.”<sup>220</sup> Moreover, such “childish behavior” should also be the subject of public condemnation by the institutional administration.<sup>221</sup>

*c. Withdrawal caused by student self-doubt or other factors.* Law professors can do a number of things to offset the classroom participation differential referred to in the studies between women and men law students.<sup>222</sup> For example, to compensate for the documented fact that women tend to volunteer less readily than men, professors could rely less on volunteers and more on students upon whom they call.<sup>223</sup> Moreover, teachers who employ the Socratic dialogue should make it a practice to alternate calling on male and female law students. In addition, teachers should talk about issues in detail with both men and women students to avoid the perception that women are being thrown “softballs” or are asked fewer questions.<sup>224</sup>

In addition to evening out the participation playing field, law professors can do much to lessen the “performance” anxiety associated with Socratic dialogues by infusing an ethic of care in their Socratic dialogues. This can be accomplished by giving positive reinforcement to students whenever possible.<sup>225</sup> “Tell[ing] students they have good answers and questions (when they actually do) and refer[ring] to their insightful answers and questions in later discussions” fosters an ethic of care in the classroom that would probably have particular appeal to women law students.<sup>226</sup> Such positive reinforcement is enhanced when the teacher refers to the student by name when giving it.<sup>227</sup> Teachers can also lessen participation anxiety

---

220. Garrett, *supra* note 42, at 203.

221. *See id.* (noting that “[d]uring the University of Chicago’s orientation panel on the Socratic Method, faculty members discuss the role of civility and tolerance in the law school classroom—a discussion that might be warranted regardless of the prevalent teaching method”).

222. The vital importance of encouraging students to participate was poignantly described by one commentator, who stated, “We must find ways to encourage students to participate in class, even if they are wrong. To me the worst thing is for a student not to know that she or he is on the wrong track until she or he gets the grade for the course.” Banks II, *supra* note 84, at 532–33.

223. *See* Garrett, *supra* note 42, at 204–05.

224. *Id.* at 205.

225. *See* Rosato, *supra* note 12, at 60.

226. *Id.*

227. *See id.*

by asking students to assist each other as “colleagues or co-counsel”—just as they might do in the “real world.”<sup>228</sup> In addition, teachers should try to remember to “come back to” students who were initially less than responsive to questions (thus, allowing them time to regain composure and focus on the issues at hand). Finally, in some circumstances, it might even be appropriate for the student to “be called into the teacher’s office so that the teacher can discuss her approach to class participation and can encourage the student to become more involved in class discussion.”<sup>229</sup> This ethic-of-care approach to Socratic teaching would not only appeal to women law students but to any student who feels anxiety in the law school classroom.

Other suggestions for encouraging participation from students (particularly women and minorities) include: (1) “refer[ring] to diverse populations in our course materials, lectures, hypothetical questions, and written problems”<sup>230</sup> so that a diverse student body can identify with the material at least some of the time; (2) refraining from interrupting students or allowing one’s “eyes to glaze over” when students comment; and (3) “debriefing” students after a dialogue by “discuss[ing] the objectives of the questioning . . . and how the objectives were (or were not) achieved . . . [by,] [f]or example, tell[ing] students what types of answers you sought and why.”<sup>231</sup>

*d. Summary.* The discussion above makes clear that the effectiveness of the Socratic method will, in large part, stand or fall based on the professor employing it.

---

228. *Id.*

229. *Id.*

230. Calleros, *supra* note 181, at 150 (noting also that “[a] simple thing like including feminine pronouns and ethnic names in problems can begin to help students from diverse backgrounds feel represented and remind all students of the diversity of the society that is served”).

231. Rosato, *supra* note 12, at 62. Rosato here attempts to dispel the notion that “[a]s law teachers, we seem to think that debriefing would expose us as impostors, like the Wizard of Oz!” *Id.* Furthermore, the communication fostered between teacher and student engaged in such debriefing not only does much to “reduc[e] anxiety and isolation” but “help[s] students learn to understand that the Socratic Method does not exist simply to humiliate them unnecessarily. Eventually, students may understand that there is a method to the teacher’s madness.” *Id.* See also Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147 (1988), for other ideas on encouraging classroom participation from reluctant students. These ideas include convening a court in class, dividing up the large section and meeting with smaller groups on occasion, and using some creative role playing scenarios. *See id.* at 152–54.

Much, if not everything, depended and still depends upon the instructor and his [or her] capacity to arouse in the student an enthusiasm for the subject and a strong determination to get to the vitals of each problem, . . . . [N]o teaching is good which does not rouse and “dephlegmatize” the students, . . .—which does not engage as its allies, their awakened, sympathetic, and co-operating faculties.<sup>232</sup>

Thus, the effectiveness of the Socratic method for all law students, but more particularly the disenfranchised ones, requires teachers who care enough about the education of their students and who are sensitive enough to diversity and alienation issues that they will devote the extra effort necessary to make the Socratic classroom a hospitable learning environment for all.

## *2. Institutional support for teachers and students*

Although caring, sensitive, and devoted teachers are the primary component of a feminist-friendly Socratic method, law schools as institutions can and should do more to alleviate the differential impact of Socratic teaching on women law students.

First, the law school should make pedagogical potential (rather than strictly academic credentials) a higher priority in the process of selecting professors. Traditionally,

the process for selection of law faculties discloses little if any attention to teaching’s unique requisite. Great care is taken to test for legal acumen by examination of the paper trail, by letters of recommendation, and by personal interview. Judgments made on other qualities, even general personality traits, are superficial.<sup>233</sup>

The result of this ivory tower mentality in choosing professors is often “that by and large law faculty members come to their academic positions outstandingly able in their own legal capacities but quite lacking in their conception, let alone understanding, of the teaching-learning process.”<sup>234</sup>

Second, law schools should provide support for both internal and external pedagogical training of law professors. Within the law school, pedagogical skills training should be provided by faculty mentors, providing newer faculty members with constructive feed-

---

232. Morgan, *supra* note 40, at 381–82.

233. Strong, *supra* note 58, at 226.

234. *Id.* at 227.



back and suggestions on improving their skills in Socratic dialogues. In addition, law schools should encourage faculty participation in teaching conferences that are offered by organizations such as American Association of Law Schools (“AALS”), Society of American Law Teachers (“SALT”), and Institute for Law School Teaching (“ILST”), which provide both new and old teachers a valuable source of ideas, approaches, and teaching techniques.<sup>235</sup> Additionally, law schools should provide incentives for good teaching as well as good scholarship.<sup>236</sup>

Third, law schools should foster an open dialogue with students regarding the rationale behind the employment of the Socratic method. For example, the University of Chicago Law School includes, as part of the orientation for first-year students, a panel discussion of the Socratic Method.<sup>237</sup> In part, the objective of this discussion is to explain why many of the professors use the method and to discuss students’ fears about class participation and classroom dynamics.<sup>238</sup> The implementation of such procedural or assimilatory reforms will do much to provide Socratic teaching with the new hands necessary to mold not only women law students but all who seek legal training.

*D. Substantive Changes: A “New Heart”—Reviving the True Socratic Dialogue*

While the “procedural accommodations” suggested above are an important step in the right direction, more fundamental changes in the substance of Socratic teaching are necessary to tap the full potential of this teaching method and to humanize its use in law school classrooms. In short, Socratic teaching also needs a “new heart.”

“Beyond requiring some kind of dialogue [between teacher and student] . . . , there is not much in common between the Socratic Method employed by Socrates and the methods currently employed

---

235. See ABA COMMISSION ON WOMEN IN THE PROFESSION, *supra* note 16, at 43; see also INSTITUTE FOR LAW SCHOOL TEACHING, *TEACH TO THE WHOLE CLASS: EFFECTIVE TEACHING METHODS FOR A DIVERSE STUDENT BODY* (1997).

236. At some law schools, the only external incentive for honing one’s pedagogical skill is the possibility of receiving a best teacher award by vote of the students. Such an incentive, though helpful, does not tend to encourage professors the same way that the incentives for legal scholarship do.

237. See Garrett, *supra* note 42, at 202.

238. See *id.*

by law professors.”<sup>239</sup> Others have said it more forcefully: “The term ‘Socratic’ often is used misleadingly to identify a style of classroom teaching in which a professor interrogates students. As actually practiced in the classroom, however, this method is not Socratic at all . . . .”<sup>240</sup> In fact, what passes for Socratic dialogue in most law school contexts actually resembles more closely the teaching style of Socrates’ rival, Protagoras:

The Protagorean effect was not to help the student gain self-knowledge (which was Socrates’ goal), but to teach what the Greeks considered the skills of rhetoric. Protagoras taught students how to develop equally plausible arguments both for and against a given proposition by proving and then refuting each conceivable position, all in order to be able, as advocates, to “make the weaker cause the . . . stronger.” Socrates scorned all of this as the teaching of manipulation, rather than analysis and self-knowledge.<sup>241</sup>

As discussed below, the legal institution’s adoption of this “mutant” Socratic method—or more accurately, the Protagorean method—is lamentable, inasmuch as the true Socratic dialogue is more in line with what feminist critics have called for in a teaching methodology.

The Socratic Method should not be a destructive tournament where gladiators of unequal power and experience vie to the death. Rather, the effort is [or should be] a cooperative one in which the teacher and students work to understand an issue more completely. The goal is to learn how to analyze legal problems, to reason by analogy, to think critically about one’s own arguments and those put forth by others, and to understand the effect of the law on those subject to it.<sup>242</sup>

This section defines the characteristics of the true Socratic method and outlines areas in which the “mutant” law school version of the Socratic method fails to measure up.

---

239. Rosato, *supra* note 12, at 40–41.

240. Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 728 (1989).

241. *Id.* at 729 (quoting William C. Heffernan, *Not Socrates, But Protagoras: The Sophistic Basis of Legal Education*, 29 BUFF. L. REV. 399, 415 (1980) (footnotes omitted)).

242. Garrett, *supra* note 42, at 201.

*1. Characteristics of the true Socratic method*

A true Socratic dialogue has two distinct parts: the *elenchus* and the *psychagogia*.<sup>243</sup> In the *elenchus*, the teacher uses questions to lead the student to a knowledge of his or her own ignorance.<sup>244</sup> The *elenchus* is complete when the student realizes his or her ignorance, a state known as *aporia*.<sup>245</sup> Finally, in the *psychagogia*, “(literally, the leading of a soul), the questions help the student construct the knowledge that the *elenchus* showed was lacking.”<sup>246</sup>

Socrates described his role in the pedagogical “process as that of mental midwife, the student being the true parent of his or her own knowledge.”<sup>247</sup> When speaking with a student, Socrates “treat[ed] the student with encouragement, if not affection during the *elenchus*; he congratulate[d] the student at the *aporia* because he consider[ed] the recognition of ignorance to be an achievement; and the student usually emerge[d] from the *psychagogia* with a sense of accomplishment.”<sup>248</sup> The positive reinforcement and the sense of encouragement present in a true Socratic dialogue embrace many aspects of feminist theory, particularly the ethic of care, which has traditionally been lacking in the average Socratic law school classroom.

Another component of the true Socratic dialogue is the notion of “triage.”<sup>249</sup> As in the medical context, triage in the Socratic context requires the teacher to determine when a full-blown dialogue is necessary. Thus, “[a] dialogue should not even be attempted unless the point to be made is a significant one. A misconception is worth an *elenchus* only if it is symptomatic of ineffectual thinking or if the student needs to be persuaded of his or her own ignorance.”<sup>250</sup> Moreover, when the teacher wants to elicit something that requires only minimal thought, he or she can simply state it or elicit it with a leading question. Otherwise, “a teacher not only wastes time but appears to be playing a guessing game . . . .”<sup>251</sup>

---

243. See Neumann, *supra* note 240, at 730.

244. See *id.*

245. See *id.*

246. *Id.*

247. *Id.* at 732.

248. *Id.* at 733.

249. *Id.* at 736.

250. *Id.*

251. *Id.*

## 2. Deficiencies of the “mutant” law school Socratic method

The stereotypical law school dialogue is “*elenchus*-intense and *psychagogia*-deficient”<sup>252</sup> since most law professors have “overdeveloped *elenchus* skills and underdeveloped *psychagogia* skills.”<sup>253</sup> “In poorly done [law school] dialogues, a brutal *elenchus* is the dominating feature; the teacher treats the *aporia* as a defeat for the student; and the *psychagogia* is a brief afterthought or happens not at all.”<sup>254</sup> Thus, the “battle” aspect of (so-called) Socratic method, which seemed to be a cherished feature among its sado-masochistic advocates, is actually a sign of ineffective Socratic teaching—a result that should be shunned rather than exalted. Other deficiencies in the law school dialogue include:

[1] failing to identify the student’s misunderstanding (and to design the *elenchus* to expose that misunderstanding to the student); [2] breaking off the *elenchus* before an *aporia* is reached; [3] failing to develop a goal for the *psychagogia*; [4] asking the ultimate question before other questions have caused the student to develop the ideas needed to answer the ultimate question; [5] asking similar questions repetitiously until both teacher and student are frustrated (rather than asking questions that start with what the student knows and then building cumulatively toward the teacher’s goal); [6] asking open-ended questions to elicit information that both teacher and student know the student already knows; and [7] poor use of triage (using a dialogue for matters too simple to merit one, for example, or explaining matters that need the deeper treatment of a dialogue).<sup>255</sup>

Recognizing these errors and learning to overcome them is an essential element of constructing a humanist-friendly Socratic method. As mentioned above, the success of the transformation from the traditional law school Socratic dialogue to a true Socratic dialogue rests primarily on the skill of the professor. As this section suggests, conducting a true Socratic dialogue requires the development of specialized skill and painstaking effort on the part of the teacher. Law schools should recognize this and provide encouragement for teachers to equip themselves, first, with the knowledge of the objec-

---

252. *Id.* at 739.

253. *Id.* at 732–33.

254. *Id.* at 732.

255. *Id.* at 738.

tives and form of a true Socratic dialogue, and second, with the skills necessary to effectively implement such Socratic dialogues in their classrooms.

*E. Recognition of the Limits of the Socratic Method*

Through adoption of a more “pure” strain of Socratic teaching, the Socratic method can become a more student friendly method of pedagogy—especially for women and others who have traditionally been disenfranchised by the method. Nevertheless, it is important to recognize that the utility of the Socratic method has limits. Even those who staunchly advocate the Socratic method also recognize the value of employing diverse methodologies.<sup>256</sup> This is particularly true for classes in the second and third years where either because of the subject matter or because of waning student interest, other methods may be more appropriate.<sup>257</sup> Thus, by confining Socratic teaching to those courses (or sections of courses) in which its style is compatible with the objectives of the course, Socratic teaching can continue to be an effective teaching tool without unnecessarily smothering other valid teaching techniques.

VI. CONCLUSION

Most critics of the Socratic method—even feminist critics—are willing to concede that “Socratic exchange can cultivate skills that are valuable in certain professional contexts.”<sup>258</sup> As such, the Socratic method deserves a continued place in legal pedagogy. Nevertheless, critics in general and feminist critics in particular have raised valid objections to the use of Socratic teaching that need to be addressed. Thus, although the Socratic method is not, of necessity, misogynous, its law school iteration has historically disfavored female law students. The solution, however, is not to scrap the method entirely, but rather to transform it to reflect the changing nature of what it

---

256. See Rosato, *supra* note 12, at 61 (“I have made the case for the continued use of the Socratic Method, but I do not advocate its exclusive use. . . . The teacher . . . should consider using other teaching methods such as lecture, problems, role plays, games, or a less structured discussion.”); see also Garrett, *supra* note 42, at 200 (“My discussion of the Socratic Method should not be understood as an argument that it is the only legitimate teaching method in law school; on the contrary, I believe professors should adjust their teaching techniques to fit their abilities, the nature of the material, time constraints, and other factors.”).

257. See Rosato, *supra* note 12, at 61; Garrett, *supra* note 42, at 207.

258. Rhode, *supra* note 57, at 1557.

1597]

*Socratic Misogyny?*

---

means to be a lawyer. With appropriate reforms, the Socratic method can continue to be a valuable technique in the pedagogical training of lawyers of both genders.

*David D. Garner*

