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Costs of an Outdated Pedagogy? Study on Gender at Harvard Law School

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COSTS OF AN OUTDATED PEDAGOGY? STUDY ON GENDER AT HARVARD LAW SCHOOL

ADAM NEUFELD*

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INTRODUCTION

One of the most persistent and alarming trends in legal education has been the increasingly well-established fact that student experiences show a large gender difference in a wide range of areas—from grades and classroom participation to confidence and clerkships.¹ What is less clear is why. A number of colleagues and I performed a large empirical study on female and male students’ experiences in order to examine this result.

Harvard Law School (“HLS”) provides the ideal location to study trends in legal education, for reasons both historical and institutional. First, traditional legal pedagogy originated at HLS.² The hallmarks of legal education—the case method, Socratic dialogue, issue-spotter examination,

1. See, e.g., Allison L. Bowers, *Women at the University of Texas School of Law: A Call for Action*, 9 TEX. J. WOMEN & L. 117, 124 (2000) (finding numerous differences between genders in many facets of the law student experience at the University of Texas); Claire G. Schwab, *A Shifting Gender Divide: The Impact of Gender on Education at Columbia Law School in the New Millennium*, 36 COLUM. J.L. & SOC. PROBS. 299 (2003) (summarizing studies regarding gender differences in student experiences conducted at several law schools); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1300-1303 (1988) (investigating the experience of twenty women at Yale Law School).

2. See ARTHUR E. SUTHERLAND, *THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN, 1817-1967* 162 (1967) (describing how, between 1870 and 1910, Deans Christopher Langdell and James Ames developed the modern Harvard Law School).

detachment from practical lawyering—were all instituted in the late 1800s by HLS Dean Christopher Columbus Langdell.³ As a result, a gender study at HLS sheds light on the predominant mode of teaching in law schools generally.

Second, given the large size of the student body and the structure of the first year curriculum,⁴ HLS offers a number of important research possibilities that provide an opportunity to compare gender patterns in courses teaching the same subject matter.

Third, because so many HLS graduates go into legal academia,⁵ the student experience at HLS may strongly influence both the composition and pedagogies of future law professors.

Finally, in light of 2003 being the fiftieth anniversary of women graduating from HLS, this article provides a timely account of the experiences of female and male students at HLS.⁶ The relatively late entry of women into the student body thus allows for potential lessons about not only gender and legal education but also how institutions react to the admittance of a previously excluded group.

Section I reviews the literature on gender studies in legal education and places the current study in context by describing the origins of the predominant legal pedagogy.⁷ Section II then describes the different facets of the study at HLS.⁸ The group conducted three online student surveys, monitored student participation in 32 courses, analyzed first-year (“1L”) course grades, held student focus groups, and compiled data on extracurricular involvement, mental health visits, post-graduate employment, and clerkships.⁹

Section III reports the findings of how female and male experiences at

3. *See id.*

4. *See* Harvard Law School, *Welcome to Harvard Law School* [hereinafter *Welcome to Harvard*] (noting that in 2005, Harvard Law School has approximately 1,850 students and 100 faculty members), available at <http://www.law.harvard.edu/about/tour> (last visited July 5, 2005); *see also* Harvard Law School, *First-Year and Degree Requirements for the J.D. Program* [hereinafter *First-Year and Degree Requirements*] (explaining that students are divided into seven small sections when taking courses during their first year of law school), available at http://www.law.harvard.edu/admissions/jd/jd_curric.php (last visited July 5, 2005).

5. *See* Robert P. Wasson, Jr., *Introductory Comments by Panelist Robert P. Wasson, Jr. On Split Personalities: Teaching and Scholarship in Non-Stereotypical Areas of the Law*, 19 W. NEW. ENG. L. REV. 102, 110 n.1 (1997) (explaining that during the 1988-89 academic year, 13% of law faculty in the United States had graduated from Harvard).

6. *See* Harvard Law School, *Harvard Law School to Celebrate 50 Years of Women Graduates* (Apr. 18, 2003) (stating that in May of 2003, Harvard Law School celebrated its fiftieth anniversary of women graduates, with over 700 female alumnae), available at http://www.law.harvard.edu/news/2003/04/18_c50.php (last visited July 5, 2005).

7. *See infra* Section I.

8. *See infra* Section II.

9. *See infra* Appendix I-III (providing samples of three student surveys for first, second, and third year law students).

Harvard Law School differ and explores what factors might play a role in these differences.¹⁰ Overall, women were much less likely to speak voluntarily in class, and a small number of 1L students—mostly male—accounted for a disproportionate share of all classroom participation.¹¹ However, different courses showed a wide variation in speaking patterns, suggesting that course-level remedial efforts might be promising and that gender differences in the classroom are by no means unavoidable.¹²

Academic performance also showed gender differences on average, with women somewhat less likely than men to graduate with top honors or receive high grades first year.¹³ Importantly, the grade difference varied based on the subject matter of the 1L course, with no statistically significant difference appearing in Criminal Law and the writing-intensive First-Year Lawyering course.¹⁴ Unlike the variations by subject matter, the gender pattern for 1L course grades generally did not vary by professor's gender or by exam type.¹⁵ Additionally, women on average assessed themselves alarmingly lower than men in skills like legal analysis, quantitative reasoning, and ability to think quickly on one's feet.¹⁶

Relative to their percentage of the student body, women were overrepresented on the editorial boards of academic journals and on Legal Aid Bureau and Board of Student Advisors, two activities requiring a substantial time commitment and having a competitive application process. However, women were severely underrepresented on Law Review, in contrast to other academic journals.

Women and men also differed significantly on average in terms of career priorities, employment, and clerkships.¹⁷ Among survey respondents, women were more likely than men to identify altruism as one of their top priorities in choosing a career.¹⁸ Of great concern, the career goals of students—especially male students—appear to change during the course of

10. See *infra* Section III.

11. See *infra* Figure 1 (finding that the top 10% of first-year participators accounted for 43% of all volunteered comments, and only 20% of the students in this decile were women).

12. See *infra* Section III.

13. See *infra* Figure 3 (finding that male graduates were approximately 70% more likely than female graduates to receive *magna cum laude* honors).

14. See *infra* Section III (finding, for instance, that men received significantly better grades in Torts than the women).

15. See *id.* (finding that the sole gender difference related to exam types was that women were significantly more likely to do better on exams that were in-class with restricted materials).

16. See *infra* Figure 6 (finding, for instance, that 11% of the women and 40% of the men ranked themselves in the top quintile of their class in quantitative reasoning).

17. See *infra* Section III (discussing findings from student surveys as well as data from HLS career-related offices).

18. See *id.* (finding that 41% of female respondents, compared with 22% of male respondents, chose “helping others” as one of the three most important factors for their career).

law school, with second- and third-year men significantly less likely than 1L men to choose “helping others” as a career priority.¹⁹ In terms of employment, women pursued public interest work during summers and after graduation at significantly higher rates than men.²⁰ Finally, while women and men held judicial clerkships at comparable rates, women were less likely to clerk at the U.S. Supreme Court and Circuit Courts of Appeals.²¹

Section IV discusses the findings, explores the implications of these results for legal education generally and suggests possible next steps.²² Taken as a whole, the results suggest that the causes of gender differences in legal education are likely more nuanced than many have suggested, and no quick fix (such as ending the Socratic method or hiring more women faculty) alone will likely eradicate the differences. Additionally, the findings of differences along one important dimension—gender—not only bring additional light to that dimension but also provide a lens on student experiences generally. As a result, gender differences might signal potential broader issues of which gender disparities may be a manifestation. For instance, some gender differences might raise questions about whether particular schools or aspects of legal education are equally hospitable for the learning and career development of all students. Conversely, other gender differences could suggest experiences and career pathways that all students might benefit from considering.

In this sense, investigating gender differences is important not only for what it says about gender in legal education but also in how it can assist schools in reassessing practices to ensure that all students can maximally contribute to and gain from the academic experience. That said, gender differences in legal education have persisted since first being reported, and by some accounts they are widening.²³ In order to ensure that gender differences are documented in a way that provides guidance, I suggest that an important short-term step for law schools to address both gender differences and the underlying pedagogical issues is to improve systematically the collection of data as well as the flow of relevant information among students and faculty and staff.

In the end, any serious effort to address gender differences in law schools will require a critical reevaluation of the missions and methods of

19. *See id.* (finding that 33% of 1L and 22% of 2L/3L male respondents chose “helping others” as one of their top three career values).

20. *See id.* (finding that 10.9% of women and 5.5% of men graduating from 1998 to 2003 entered public interest employment upon graduation or after a clerkship).

21. *See infra* Figure 8 (finding that women made up only 36% of HLS clerks at the U.S. Supreme Court or U.S. Circuit Court of Appeals between 1998 and 2003).

22. *See infra* Section IV (summarizing the findings on gender differences at HLS and suggesting some changes to improve the law school experience for all students).

23. *See, e.g.,* Schwab, *supra* note 1, at 307.

legal education. Efforts must be made to encourage law schools to strengthen their processes for continuing self-assessment and to develop more coherent sets of justifications for what the schools do. This will help schools create a baseline against which their performance and findings of gender differences can be measured. Until that occurs, legal pedagogy—shaped by Langdell over a century ago²⁴—will remain unanchored and, in the process, impose an unnecessary cost on all law students.

I. PAST STUDIES ON GENDER IN LEGAL EDUCATION

Over the past fifteen years, gender issues in legal education have come under increasing examination, with several individual law schools²⁵ as well as a few multi-school studies²⁶ documenting significant gender differences. Investigations of gender in the legal profession have also been conducted recently.²⁷

24. See generally SUTHERLAND, *supra* note 2, at 162 -205 (describing Langdell's influences on Harvard Law School from 1870 to 1895, including the Socratic dialogue and case method).

25. See Bowers, *supra* note 1, at 123-29 (finding gender differences in numerous facets of the law student experience at University of Texas); Weiss & Melling, *supra* note 1, at 1300-03 (investigating the experience of twenty women at Yale Law School); 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, 1219-22 (1988) (examining differing experiences of men and women at Stanford law school); Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1, 2 (1989-90) (describing the negative effect the lack of female professors had upon female law students during law school); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 1-26 (1994) (studying women's experiences at the University of Pennsylvania Law School); Schwab, *supra* note 123, at 315-18 (reviewing studies regarding women in law school conducted at Stanford University and the University of Pennsylvania Law Schools); Marsha Garrison et al., *Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania*, 3 MICH. J. OF GENDER & L. 515, 515-30 (1996) (describing results of a gender-comparative study regarding men's and women's experiences at Brooklyn Law School); Yale Law Women, *Yale Law School Faculty and Students Speak About Gender* (2002) (reporting the results of a study investigating male and female experiences at Yale Law School), at <http://www.yale.edu/ylw/finalreportv4.pdf> (last visited July 5, 2005).

26. See Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311, 321-33 (1994) (finding gender differences in various aspects of the law school experience in a study conducted at nine Ohio law schools); Linda F. Wightman, *Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men*, LAW SCHOOL ADMISSION COUNCIL RESEARCH REPORT SERIES 11-75 (1996) (presenting results of a multi-school study examining male and female experiences during law school); Taunya L. Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 139-46 (1988) [hereinafter Banks I] (reporting on a multi-school survey involving several national regions including schools in the Northeastern, Western and Midwestern United States); Taunya L. Banks, *Gender Bias in the Classroom*, 14 SO. ILL. U. L.J. 527, 528-33 (1990) [hereinafter Banks II] (describing a study conducted at 14 law schools regarding differing male and female experiences); Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1, 37-60 (1998) (describing a study of gender differences in the law school experience at various law schools).

27. See, e.g., Press Release, National Association of Law Placement, *Women and Attorneys of Color Continue to Make Small Gains at Large Law Firms* (Nov. 5, 2004)

Although comparing findings is difficult because of methodological differences among the law school studies, some general conclusions can usefully be extracted. First, most studies have at least reported a trend towards women participating in lower rates than men in classroom discussion.²⁸ Survey questionnaires have similarly found a perception among students that professors engage differently with female and male students' comments.²⁹

Second, women generally report less academic self-confidence than men,³⁰ and self-confidence decreases over the course of law school for both women and men.³¹ Women also appear to be more alienated from their school than men when measured by self-reported rates of psychiatric distress,³² crying or anxiety,³³ or not interacting with professors outside of class.³⁴

Third, most studies find gender differences in career expectations and paths.³⁵ Women are more likely to expect to and in fact go into public interest employment than men.³⁶ However, during the course of law

(finding that women made up 43% of associates in large law firms but only 17% of partners in 2003), available at <http://www.nalp.org/press/details.php?id=53> (last visited July 5, 2005).

28. See, e.g., Yale Law Women, *supra* note 25, at 36 (reporting that the male volunteer rate exceeded that of women in sixteen of the twenty-three monitored courses, although no statistically significant difference existed overall. *Id.*; see also Mertz et al., *supra* note 256, at 45-46 (noting that when volunteering, men tended to speak longer than women).

29. See Krauskopf, *supra* note 26, at 325 (reporting that 30% of male students compared to 15% of female and 20% of minority female students reported participating once a week or more.); see also Yale Law Women, *supra* note 25, at 14 (finding that 64% of survey respondents believed that male students participated more in class than female students).

30. See Guinier et al., *supra* note 25, at 4 (noting that at the University of Pennsylvania, women who succeeded academically reported a higher degree of alienation than their male peers).

31. See Wightman, *supra* note 256, at 58-59 (reporting survey results that found that law school substantially reduced students' academic self-confidence, and operated on women and men equally); see also Krauskopf, *supra* note 256, at 328 (finding that 41% of female students compared with only 16.5% of male students at nine Ohio law schools reported that they thought of themselves as intelligent and articulate before law school but no longer felt that way once in school).

32. See, e.g., Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1379 (1997) (reporting that 17% to 40% of the group studied stated they experienced increased levels of depression).

33. See Guinier et al., *supra* note 25, at 44 (noting that the student survey found that 68% of men, versus 15% of women, responded that they never cried during law school).

34. See *id.* at 72 (asserting that female law students search for friendliness "cues" from faculty before deciding whether to approach them outside of class).

35. See Taber et al., *supra* note 25, at 1241 (finding that female graduates expressed a greater desire to serve society than male graduates).

36. See Guinier et al., *supra* note 25, at 40 (finding that over 25% of female 1Ls but only 8% of males were interested in public interest law); see also Krauskopf, *supra* note 26, at 322 (noting that 32% percent of women compared with 24% of men responded that public service was their primary career goal).

school, the gender difference in career ambitions seems to diminish partially, with fewer women ultimately selecting public service as a career goal.³⁷

Fourth, women appear to receive slightly lower grades than men on average³⁸ as well as to under-perform relative to what would be predicted based on their LSAT and undergraduate grade-point-average.³⁹ Similarly, many law schools show women underrepresented on law review,⁴⁰ while at some others women are near parity⁴¹ or even overrepresented.⁴²

The study at Harvard Law School, the basis for this paper, supplements the past literature in a number of ways. HLS represents the origin of traditional legal pedagogy, so a gender study there can shed light on this educational approach more generally. The subject matter and methods of current legal education can be traced to the developments of Christopher Columbus Langdell, dean of HLS from 1870 to 1895.⁴³ Recasting law as a science, Langdell emphasized logical reasoning rather than practical day-to-day lawyering.⁴⁴ For course materials, he instituted the “case method,” where students learn legal doctrine by reading and analyzing a series of judicial opinions, typically from appellate courts.⁴⁵ In class, Langdell

37. See Guinier et al., *supra* note 25, at 40 (finding that by graduation, the percentage of female respondents interested in a career in public interest dropped to about 10%, while men’s rates dropped to 5%).

38. Compare Wightman, *supra* note 26, at 19 (finding that among students nationwide with the highest undergraduate GPA (3.76-4.0), women earned slightly higher law school grades than men), with Guinier et al., *supra* note 25, at 23 (finding that men were three times as likely as women to be in the top 10% of the class). *But see* Garrison et al., *supra* note 25, at 522 (uncovering no statistically significant difference in grades at Brooklyn Law School).

39. See Guinier et al., *supra* note 25, at 23-26 (finding that at the University of Pennsylvania, men, on average, received higher grades than women during all three years of law school despite comparable LSAT scores and undergraduate GPA). Throughout all years of school, male students at Penn were significantly more likely than women to be in the top 10% of the class and in the top half of the class. *Id.*; see also Bowers, *supra* note 1, at 135 (concluding that despite comparable incoming credentials, women receive lower grades on average than men at University of Texas Law School).

40. See Hugo Torres & Tammy Pettinato, *Internal Law Review Report Leaked*, THE RECORD, Nov. 6, 2003, at 1 (noting the problem of gender disparity on the Harvard Law Review), available at <http://www.hlrecord.org/media/paper609/news/2003/11/06/News/Internal.Law.Review.Report.Leaked-551057.shtml> (last visited July 5, 2005); see also Bowers, *supra* note 1, at 148 (finding women underrepresented on the University of Texas Law Review).

41. See Torres & Pettinato, *supra* note 40, at 2 (reporting that Duke University and Stanford University have near parity on their law reviews).

42. See *id.* (noting that women compose the majority of the staff for the University of Pennsylvania and Boalt Hall’s law reviews).

43. See SUTHERLAND, *supra* note 2, at 180.

44. See generally *id.* at 162-205 (noting Langdell’s incorporation of scientific methods of study into legal study); see also W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1, 22-32, 72-94 (1997) (discussing Langdell’s impact on law school education, including the development of the case method and teaching the law as a science).

45. See SUTHERLAND, *supra* note 2, at 174, 176-77 (describing the belief that students need not only to analyze the cases, but must discuss their thoughts and be questioned in the

initiated what is commonly referred to as “Socratic dialogue,” where the professor asks a particular student a series of questions on a case, from the factual background and the court’s reasoning to whether the student agreed with the reasoning and how it fits with other cases read.⁴⁶ The method was (and is) justified pedagogically by beliefs that it encourages active learning, ensures preparation and attention, and teaches students how to think and articulate on their feet.⁴⁷ To evaluate students, Langdell popularized the issue-spotting examination, where students are asked to analyze and apply legal doctrine and reasoning to a complex factual situation.⁴⁸ Most law school classes today incorporate Langdell’s framing of the goals and methods of legal education—whether by adopting it wholesale, tweaking it, or setting up the class in opposition to his conception.⁴⁹

The traditional legal education and curriculum developed by Langdell has been attacked on many fronts. Many have claimed that certain aspects of the education, especially the Socratic method, often increase confusion in classrooms when done poorly,⁵⁰ ignore insights from learning theory,⁵¹ unnecessarily demean students,⁵² and are ineffective after the first year.⁵³ Legal realists and others have argued that the standard pedagogy exaggerates the determinacy of law.⁵⁴ Others have accused the traditional

classroom setting).

46. See Peggy C. Davis & Elizabeth E. Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249, 261-64 (1977) (noting that Langdell felt that law was a science and that the Socratic method incorporated scientific methods into the study of law).

47. See generally David D. Garner, *Socratic Misogyny? Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 B.Y.U. L. REV. 1597, 1603-05 (2000) (describing how Langdell created the “Socratic dialogue” partly in response to the inadequacies of the textbook and lecture approach).

48. See SUTHERLAND, *supra* note 2, at 171-74 (explaining that succeeding on examinations requires analyzing facts and not just simply reciting laws from memory).

49. See Davis & Steinglass, *supra* note 46, at 264-80 (examining how the Socratic method is used in contemporary law schools).

50. See Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 638 (1973) (noting that some students found that Langdell’s Socratic Method of asking questions to the students resulted in confusion in the classroom and as a result preferred a more structured lecture form of class); see also SUTHERLAND, *supra* note 2, at 179 (noting that the students exposed to the “Socratic dialogue” in Langdell’s Contracts class reported being confused because they were only familiar with the style of a traditional lecture class).

51. See, e.g., Michael H. Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 417 (2001) (arguing that the Socratic Method restricts students’ learning to speak aloud and receive feedback since the professor is focusing only on the small number of students questioned).

52. See Stevens, *supra* note 50, at 638 (noting that fourteen out of fifty respondents found the Socratic Method demeaning).

53. See, e.g., Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1, 17-19 (1951) (concluding that because second and third year law students become bored with aspects of the case method, parts of the methodology tend to be abandoned after the first or second year of law school).

54. See, e.g., Thomas C. Grey, *Langdell’s Orthodoxy*, 45 U. PITT. L. REV. 1, 23-24

education of omitting all values and morality from legal discussion,⁵⁵ or alternatively of helping legitimate and perpetuate existing societal hierarchies.⁵⁶ In addition, an influential American Bar Association report suggested that the traditional pedagogy overemphasizes doctrinal analysis at the expense of teamwork, negotiation, communication and other skills relevant in the profession.⁵⁷

In addition to offering insight into the debate over traditional legal pedagogy, the study at HLS is timely because women entered the student body of HLS approximately a half-century ago.⁵⁸ HLS allowed women into the student body starting only in 1950—just short of 80 years after the school first denied admission to a woman.⁵⁹

Finally, the size of the student body and the structure of the first-year curriculum at HLS allow for new research opportunities.⁶⁰ First, the classroom participation data reported below follows each 1L student's participation not only in a class meeting, but in all the class meetings for two weeks in both of his or her core courses. This allows for insight into the overall distribution of participation in courses as well as whether

(1983) (noting realists' criticism of the Socratic method); Peggy C. Davis, *Contextual Legal Criticism: A Demonstration Exploring Hierarchy and "Feminine" Style*, 66 N.Y.U. L. REV. 1635, 1643-45 (1991); SUTHERLAND, *supra* note 2, at 177 (stating that a person "who studies Langdell's case method in the light of nearly a century of subsequent legal development can wonder whether it suggested too persuasively to the beginners that the legal process was principally adjudication by logical reasoning deriving from immutable general principles"); *see also* Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1313 (1947) (asserting that schools need to facilitate more contact between law students and judges and lawyers, which the Landgell methods repudiate).

55. *See, e.g.*, Paul D. Carrington, *Hail Langdell!*, 20 LAW & SOC. INQUIRY 691, 754-59 (1995) (describing the claim made by some of Langdell's critics that the traditional legal system lacks morality and values).

56. *See, e.g.*, Duncan Kennedy, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM 3, 37-47 (1983) (asserting that societal hierarchies are prevalent throughout the traditional law school education in that the professors have autonomy over the students and those who go to better law schools and receive higher grades tend to obtain jobs at higher ranked law firms).

57. *See, e.g.*, Robert MacCrate, *Legal Education and Professional Development: An Educational Continuum*, 1992 A.B.A. SEC. LEGAL & ADMISSIONS TO THE BAR 332 [hereinafter MacCrate Report] (emphasizing the importance of clinical programs to educate students relating to skills other than legal analysis that will be used on a regular basis as a practicing attorney); *see also* Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 919-20 (1933) (asserting the need to incorporate more clinical experience).

58. *See* SUTHERLAND, *supra* note 2, at 319-20 (stating that prior to admitting women in 1950, Harvard Law School faced increasing pressure to admit women because other elite law schools were admitting women and Harvard had a female faculty member).

59. *See id.* (stating that the school refused admission to Helen M. Sawyer, the first woman to apply to the law school, in 1871 and also denied admission to a female graduate of Bryn Mawr in 1899).

60. *See First-Year and Degree Requirements, supra* note 4 (describing how Harvard Law School divides up the approximately 550 students in a class year into seven different sections that together take the five 1L core courses: Civil Procedure, Contracts, Criminal Law, Property, and Torts). In addition 1Ls take a full-year First Year Lawyering ("FYL") course with their section, which primarily teaches writing skills. *Id.*

students vary in participation between courses. Second, the student survey questionnaires differed from most other studies by making a concerted effort not to taint the respondent pool or responses in a gendered way. The sole mention of gender in the surveys or survey publicity was the demographic question asking the respondent's gender. The surveys also incorporated many additional control variables, such as marital status and extracurricular activities, allowing the effect of gender to be separated from that of other important factors. Additionally, the survey asked students expressly about confidence in a number of abilities identified specifically by the American Bar Association as critical for legal practice.⁶¹ Finally, the study group was able to analyze whether the gender pattern for first-year grades differed based on exam type, course subject, or professor's gender, as some have suggested it might.⁶²

II. METHODOLOGY

The study group chose to focus on aspects of student life that are important for many students, influence future employment options, and lend themselves to quantitative investigation.⁶³ This unfortunately meant not being able to focus on certain facets of student experiences, such as social life, because of the difficulty in framing survey questions and collecting reliable data.

A. Classroom Participation

In the Spring 2003 semester, the group monitored student participation in thirty-two courses—all first-year (1L) core courses and a range of large and consistently offered upper-level courses taught by tenured faculty. Each course was monitored for between four and seven class meetings, totaling 190 class meetings. The monitoring took place in March and April, approximately one month after students received grades for the previous semester.

Two students, one woman and one man, monitored classes simultaneously, and their results were averaged. Male and female monitors showed no statistically significant difference in their recording of participation data. All monitors were students enrolled in the courses they monitored in order to respect the classroom space and minimize the potential for distortion. All monitors were trained and filled out a paper

61. See MacCrate Report, *supra* note 57.

62. See, e.g., Guinier et al., *supra* note 25, at 45 (suggesting that gender difference in grades may be due to greater alienation of women students due to the small number of female faculty).

63. See Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEG. ED. 313 (2000) (suggesting the importance of having quantitative information on gender patterns in legal education).

form or an Excel spreadsheet for each class meeting. Students monitored participation in a range of classes so that the group could assess whether participation was influenced by the student's gender as well as other factors such as class size, professor's gender, gender composition of students in the class, and professor's teaching style. However, very small classes and seminars were not monitored because of concern about skewing the results.

Advance notice of monitoring was given to professors at the beginning of the Spring 2003 semester. The group emailed all professors telling them that a sample of courses would be monitored at some point during the semester. The email was sent one week into the semester, approximately a month and a half before monitoring began. The email did not indicate when monitoring would occur or which courses would be monitored.⁶⁴

In addition to recording the gender of the student who made the comment, monitors recorded whether the student volunteered the comment or the comment came as a response to the professor calling on the student. Monitors gave unique identifiers to each student who spoke, allowing for analysis of how many students spoke, how many times each student spoke, and whether the professor asked the student additional follow-up questions. These unique student identifiers also permitted us to keep track of multiple comments by students. First-years are divided up into seven sections of students that take all required 1L courses together.⁶⁵ Second-semester 1Ls take two required core courses, and monitors used the same student identifier across both courses and all class meetings. However, because students are generally less familiar with one another in second and third-year courses, monitors in upper-level courses could only maintain student identifiers within a given class meeting. Monitors also recorded the number and gender of students actually present in each class. Finally, monitors independently recorded the gender of the professor for each class and calculated from registration lists the number and gender composition of students enrolled in each 1L section.⁶⁶

64. Given that the study aimed to be constructive, informing professors justified the small potential distortion that could result from professor's awareness of the monitoring. Students did not monitor two courses as a result of professors' requests in response to the notice.

65. See *First-Year and Degree Requirements*, *supra* note 4 (explaining that these seven "law colleges" are meant to facilitate advising and provide an opportunity for discussion about the law and the legal profession outside of the classroom).

66. The group considered collecting additional, more nuanced information about participation but chose not to because of concerns about reliability, demand on monitors, and resource limitations. For instance, depending on the context, "Was Justice White in the majority of the previous case?" could be characterized either as a common information-seeking question or as a question reflecting an appreciation of the importance of the political and internal dynamics of the Supreme Court. In contrast, some other studies have attempted to take a more contextual approach to participation monitoring. See, e.g., Mertz et al., *supra* note 26, at 37-60 (describing the methodology used to explore gender differences in classroom behavior at various law schools).

During analysis of the monitoring data, only clear clerical mistakes were corrected. Whenever there was ambiguity in how to correct such a mistake, the analysis was done in the way that favored the most even distribution of participation in a class. For instance, in the few instances that a 1L student identifier was recorded incorrectly and did not match the initials or name of any student, it was treated as a unique student, meaning that the reported percentages of the class who spoke at least once in a course likely overstate the actual values. Further, in the few situations where the gender recorded was ambiguous, it was set for female in classes where men were talking disproportionately, meaning that the reported gender disparities likely understate the actual difference in participation rates.

The analysis included calculating gender differences in participation at the levels of individual class meeting, course, section (for 1Ls only) and overall. Comments volunteered by the student were distinguished from those offered in response to being called on by the professor. The analysis also examined other measures of participation in addition to individual comments, including non-consecutive participation by students (“exchanges”). This category of participation ignores if and how a professor immediately followed up with the student, so a prolonged back-and-forth between a professor and a student counts the same as a stand-alone comment by a student. The analysis also calculated the composition of students who spoke at least once during a class meeting. Finally, gender patterns among students who had three or more exchanges in a given class meeting (“dominant participants”) were also investigated. Appendix I summarizes the overall monitoring sample.

*B. Student Surveys*⁶⁷

Two rounds of student surveys were conducted in order to explore students’ career goals, extracurricular activities, confidence and satisfaction, among other areas. The group used the surveys primarily to explore issues that could not be examined by direct observation. The only survey questions that addressed directly-observable areas (e.g., journal participation) did so in order to investigate possible relationships among certain variables or to control for certain variables.

The group conducted two surveys in April 2003, one for 1Ls⁶⁸ and one for 2Ls and 3Ls.⁶⁹ First-years were also surveyed in December 2002.⁷⁰ Each survey was advertised as a “Student Experiences Survey,” and neither

67. See *infra* Appendix II; Appendix III; Appendix IV.

68. See *infra* Appendix II.

69. See *infra* Appendix III.

70. See *infra* Appendix IV.

the survey nor the publicity mentioned its gender focus. All surveys were available online, thanks to the help of HLS Information Technology Services (“ITS”). To access the survey, students entered their HLS user name and password. This identifying student information was used only to award prizes for taking the survey and to protect against students taking the survey multiple times. ITS’ technology ensured that student responses were anonymous. The Committee on the Use of Human Subjects approved the survey protocol.⁷¹

In order to attract as large and as representative a respondent pool as possible, the group heavily publicized the survey and awarded prizes of \$50 each to nine participants selected at random. The Dean of Students Office funded the awards and some of the publicity costs. The survey was advertised through mailbox fliers, posters, emails from a wide range of student organizations, and through professors.

1. Survey Questions

The survey explored a number of issues related to academics, career plans, extracurricular involvement and self-esteem. In designing the surveys, the group tried to avoid questions that could distort individual responses or the respondent pool. For instance, the survey did not ask any questions specifically on gender issues, such as students’ perception of whether male and female students participate differently in class. Additionally, the question asking students to identify their race was optional in order to avoid the potential for students’ being concerned that answering the questions about race, gender, and 1L section might identify them. Additionally, the survey was as short as possible, taking only five minutes to complete, in order to attract more respondents and more faithful responses, even though it came at the risk of slightly greater ambiguity caused by asking fewer questions than desired.

The survey questions can be divided roughly into issue areas:

a) Career: All surveys asked students to select the sector in which they thought they would most likely be working in ten years. Second and third-year respondents were also asked what type of job they had/will have their 2L summer and after graduating (excluding clerkships). The survey also inquired whether 2L/3L respondents applied/will apply for clerkships and, if so, at what level, as well as an analogous question about whether 3Ls will clerk after graduation. Additionally, the survey asked students about course preparation and faculty interaction. Finally, in order to investigate the effect of students’ initial law school grades and how students predict

71. See generally Harvard University, *The Intelligent Scholar’s Guide to the Use of Human Subjects in Research* (describing the policies and procedures for research involving human subjects), available at <http://www.fas.harvard.edu/~research/ISG.pdf> (last visited July 7, 2005).

their grades, the group included questions about students' 1L first semester grades as well as their grade predictions for their current courses.⁷²

b) Self-Assessment: The survey asked students to assess their abilities, relative to the rest of their class, in a variety of skills relevant to legal education and practice. The questions were based largely on the list of twelve skills identified in the American Bar Association's MacCrate Report as important for lawyers.⁷³ The survey asked about technical skills (legal reasoning, legal research, brief writing, oral argument, thinking well on one's feet and quantitative problem solving) and interpersonal skills (persuading others, recognizing and resolving ethical dilemmas and building consensus among people with different viewpoints).

c) Extracurricular Activities: The survey asked students about current activities, and asked whether they planned to apply for certain competitive activities as well as how likely they thought their selection would be.

d) Demographics: Students were also asked about their parental education level, race/ethnicity,⁷⁴ marriage or relationship status, college

72. The group chose not to ask directly about 1L students' grades because of a concern that they might find the question too prying or respond untruthfully. Instead, the survey asked a pair of questions on grades for each course: (a) what students felt they deserved based on their understanding of the course's subject matter; and (b) how satisfied they were with their grade relative to what they felt they deserved. This served two purposes. First, the questions narrowed down the possible range for a student's grade. In this sense, how a student interpreted the first question is unimportant because they more or less indicate their grade by merely selecting a specific grade and answering whether that grade is greater than, less than or equal to what they received. Second, the pair of questions allowed some insight into the degree to which students internalized their grade. See *infra* Appendix II, Appendix IV. The 2L/3L survey asked students for their highest and lowest 1L first semester grades. After talking with a cross-section of students, the group believed that 2L/3L students would be less hesitant than 1Ls about answering these grade questions directly. Asking about high and low grades separately allowed us to investigate how students react when they receive grades that are quite different. References in this report to "average" 1L first semester grades for 2L/3Ls mean the average of the high and low grades. The group decided to ask only two grade questions because it thought this was a sufficient approximation and that the added costs outweighed the marginal benefit of additional questions. See *infra* Appendix III.

73. See MacCrate Report, *supra* note 57, at 138-140 (providing an overview of the ten skills identified: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute-resolution procedures, organization and management of legal work, and recognizing an resolving ethical dilemmas).

74. This approach was chosen because the group expected that the small sample size would force certain race/ethnicity groups to be collapsed and because of the questionable descriptive value of treating Latino status and race as separate. But see U.S. CENSUS BUREAU, CENSUS 2000 BRIEF: OVERVIEW OF RACE AND HISPANIC ORIGIN (2001) (stating that the federal government treats race and Hispanic origin as separate and distinct from one another, and that the Census asks two separate questions, one about Hispanic origin and one about the race or races with which the respondent associates himself), available at <http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf> (last visited July 7, 2005). Second, as discussed above, the answer to this question was optional because the group did not want to risk discouraging completion of the survey for those concerned about self-identification or the appropriateness of the question. For purposes of analysis, respondents who did not check off any boxes to the question on race/ethnicity were treated as a separate category. The survey answers on race/ethnicity were collapsed into two different variables. The first

graduation year, undergraduate major and gender.

Multivariate and logit regression analyses were performed with Stata 8.0 in order to identify the differential effects of gender and other variables on a number of measures based on the survey responses.⁷⁵ The survey sample includes only students pursuing a J.D. degree, including joint-degree candidates. Although L.L.M. and S.J.D. students could take the survey, the analysis excludes them because of the small number of responses. However, further study of their experiences is important as they may have a unique perspective on academic institutions and student experiences.

The sample includes over 1,000 survey responses. Among 1Ls, 289 (52% of the class) and 278 (50%) students took the fall and spring surveys, respectively. Two hundred and twenty-seven 2Ls (40%) and 184 3Ls (33%) took the spring survey. Appendix V describes the survey sample demographics. One area worth noting in particular is the gender composition of the response pool. As discussed above, the group went to great lengths to ensure that men and women did not know the surveys' gender focus. Although women are slightly overrepresented in the survey sample, the gender composition of the samples is comparable to that of the general student population, which is untrue of some other attempts to investigate gender issues in legal education.⁷⁶ What difference there was may have been a product of imperfect containment of the study's purpose or a greater willingness by female students to respond to surveys generally.⁷⁷

variable had seven values: White; African-American or African; Latino/a; Asian-American or Asian; Other Race/Ethnicity; Multiracial (respondents who selected more than one race/ethnicity box); and Left Question Blank. The second variable had three values: White; Not White; and Left Question Blank. Because of the small number of respondents in certain groups, most regressions used the second variable.

75. For analyzing survey results where each respondent provided information on multiple courses (e.g., expected grade for 1L courses), the group used the cluster function in Stata for all regressions in order to correct for the fact that a student's responses for his or her courses are not strictly independent of one another.

76. See, e.g., Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOF. L. REV. 955, 976 (2005) (questioning the survey results of Guinier et al., *supra* note 25, because of the skewed population of respondents).

77. As such, extrapolating the findings from the survey samples to the general student body admittedly is not without problems and requires certain assumptions. As a result, all references to survey findings in this report are meant to refer only to the survey sample. Readers can decide for themselves to what extent to extrapolate the results, but at a minimum, the surveys provide insight into a substantial portion of the student body due to the large number of responses. See Boise State University SUB, Assessment Overview (discussing the results of a student activities survey, and noting that, in general, women are more likely than men to respond to surveys), at http://sub.boisestate.edu/about/assessments/2001/assessment_overview.html (last visited July 7, 2005); see also Nancy Levit, *Keeping Feminism in its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775, 790 (2001) (questioning whether women are generally more inclined to respond to surveys that "promote the scholarship of others").

C. Extracurricular Activities

The group examined the gender composition of mastheads and leadership positions (e.g., President, Editor-in-Chief) of HLS-recognized student journals for the past six years.⁷⁸ After considering the alternatives, the group chose to use each journal's own definition of masthead positions, which generally corresponded to the "Executive Board," and calculated the gender composition for the first issue of each academic year. For most students listed, gender was determined from their first names. When the name was inconclusive, the group looked at yearbook pictures or, if necessary, conducted internet searches to identify the gender of the few remaining students. The group also calculated the gender composition of the Legal Aid Bureau, the student practice group, and Board of Student Advisors (BSA), the student teaching organization, because of the substantial time commitment for both activities.⁷⁹

D. Mental Health Care

The director of Mental Health Services of Harvard University Health Services provided data on the total number of law student visits to Harvard Mental Health Services for the 2001 and 2002 calendar years. This number includes mental health visits to both Law School Health Services (on the law school campus) and the main health center for university students, Holyoke Center. Visits include those for therapy, medication and individual, group or couple counseling.

Although this information provides some insight into student life, the findings should be interpreted cautiously in light of the lack of information on the prevalence of preexisting conditions, Harvard health insurance coverage or the purpose for or type of visit.

E. Graduation Honors

The group examined the Latin honors lists for the past six years and calculated the gender composition of each honors category (summa cum

78. See Harvard Law School, *Harvard Law School Publications* [hereinafter *Harvard Law School Publications*] (listing the twelve HLS law journals, excluding the Harvard Law Record, the student-run weekly newspaper), at <http://www.law.harvard.edu/about/publications.php> (last updated Mar. 31, 2005); see also Michael L. Clozen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 44 (1996) (describing the hierarchical organization system in place on most student-run law journals, generally headed by an editor-in-chief along with an executive board of other editors but not including any faculty other than in advisory roles).

79. See Harvard Law School, *Harvard Legal Aid Bureau* [hereinafter *Harvard Legal Aid Bureau*] (describing the organization's practice areas, clients, and members), at <http://www.law.harvard.edu/students/orgs/hlab/> (last updated Feb. 24, 2005); *Board of Advisors Turns Ninety*, HARVARD LAW BULLETIN, Spring 2001 (explaining that BSA members teach the first-year writing course and also run moot court and contracts competitions), available at http://www.law.harvard.edu/alumni/bulletin/2001/spring/sn_02_board.html (last visited July 7, 2005).

laude, magna cum laude, cum laude, non-honors). Prior to 1999, HLS awarded honors based on absolute grade point average (GPA) levels. Since 1999, magna cum laude and cum laude are awarded to the top 10% and subsequent 30% of the graduating class with the highest GPAs, respectively. Summa cum laude is still tied to an absolute GPA level, 7.20.⁸⁰ The gender composition of the Latin honors lists was calculated using the method described above for journal board members.

F. Course Grades

The Registrar's Office provided data on grades for the five required 1L courses for three of the five years between 1996 and 2000, resulting in a sample of 8,248 course grades. The group used the Registrar's scale for assigning values to each grade letter,⁸¹ and performed regression analyses with Stata 8.0 and treated grades as ordinal scale.

The Registrar's Office provided three sets of grade data for each year separately with information on course subject matter, professor's gender, and type of exam.⁸²

In addition, the First Year Lawyering program provided data on grades for full year legal writing courses (which included ungraded moot court exercises during the second semester) from each semester from 2001 to 2004. Students are graded on a high-pass/pass/fail scale each semester.

G. Career and Employment

The Low-Income Protection Plan ("LIPP") office, Office of Public Interest Advising ("OPIA"), and Office of Career Services ("OCS") provided information on summer and post-graduate employment.⁸³ OPIA

80. See HARVARD LAW SCHOOL, HARVARD LAW SCHOOL CATALOG 2003-2004 [hereinafter HLS CATALOG] 209 (2003-2004) (describing Harvard Law School's grading system, where the Registrar's Office assigns the following values to each grade: A+ = 8, A = 7, A- = 6, B+ = 5, B = 4, B- = 3, C = 2, D = 1, and F = 0). The school averages the three separate annual averages into the total Grade Point Average to determine if a student graduates with Honors. *Id.*

81. See *id.* 209 (using the grade values assigned by Harvard Law School's Registrar's Office to calculate GPA for the purposes of graduation honors). The sample excludes grades of withdraw, pass, credit, and incomplete. *Id.*

82. The five categories consisted of 2,442 in-class (approximately three hours) open-materials exams; 742 in-class restricted-materials exams; 2,037 eight-hour take-home open-materials exams; 2,173 eight-hour take-home restricted-materials exams; and 437 exams of other types.

83. See Harvard Law School, *Financial Aid: Low Income Protection Plan* [hereinafter *Financial Aid*] (explaining that the program's purpose is to help lessen the burden of educational loans for graduates working in government, non-profit, or academic roles, and setting forth its requirements for qualification), at <http://www.law.harvard.edu/students/finaid/lipp/index.php> (last updated May 3, 2005); Harvard Law School, *Office of Public Interest Advising* [hereinafter *Office of Public Interest Advising*] (offering students lists of job opportunities in the public interest sector, which is the practice area pursued by 9-12% of students after graduating or completing a clerkship), at <http://www.law.harvard.edu/students/opia/details.php?id=home> (last visited July 7,

supplied data on summer funding during students' 1L and 2L summers from 1998 to 2002. OCS provided initial post-graduate employment data for the past six graduating classes, and LIPP supplied information on graduates who were enrolled in LIPP over the past six years.

H. Focus Groups

In order to help design survey questions and to supplement and provide context to quantitative results, the group conducted eight single-sex focus groups, where male and female participants could discuss their experiences at Harvard Law School. Students' age, race and extracurricular involvement were considered in order to ensure a diverse group. One facilitator and one note-taker were present for each focus group. Questions strived to be general and neutral, focusing on people's personal experiences rather than soliciting their perceptions about "common" experiences at HLS. The Committee on the Use of Human Subjects approved the protocol, and all focus group participants signed a consent form.

III. RESULTS

Women now make up 45% of the J.D. student body at Harvard Law School,⁸⁴ a far cry from the initial graduating class of thirteen women in 1953.⁸⁵ However, over the past decade this percentage has been as low as almost 40%, and it has never reached 50%.⁸⁶ Further, HLS' composition is still below the percentage of women at law school overall⁸⁷ and at competitor schools.⁸⁸

2005); Harvard Law School, *Office of Career Services* [hereinafter *Office of Career Services*] (providing employment information for students and posting employment surveys for 1Ls, 2Ls, and graduating students), at <http://www.law.harvard.edu/ocs/> (last modified June 13, 2005).

84. See Harvard Law school, *First Year Class Profile* [hereinafter *First Year Class Profile*] (Aug. 2004) (presenting statistics that demonstrate the diversity of school's student body, including the percent of students who are women, who are foreign citizens, and who have advanced degrees), available at http://www.law.harvard.edu/Admissions/JD_Admissions/body.html (last visited July 7, 2005).

85. See, e.g., Sam Dillon, *First Woman is Appointed as Dean of Harvard Law*, N.Y. TIMES, Apr. 4, 2003, at A18 (reminding readers that, while the school is at the forefront of legal education institutions, women were first admitted a mere fifty years ago); Alexandra N. Atiya, *Women Grads Mark 50 Years At Law School*, THE HARVARD CRIMSON, May 5, 2003, available at <http://www.thecrimson.com/article.aspx?ref=348014> (last visited July 7, 2005).

86. See Adina Levine, *Faculty Responds to Study on Gender Disparity at HLS*, THE RECORD, Feb. 26, 2004 (describing how the percentage of female students in the class has leveled off around 44%).

87. See American Bar Association, *First Year Enrollment in ABA Approved Law Schools 1947-2002 (Percentage of Women)* (reporting that women made up approximately 49% of the students in approved law schools nationwide during 2002), available at <http://www.abanet.org/legaled/statistics/femstats.html> (last visited July 7, 2005).

88. See, e.g., National Association for Law Placement, *National Directory of Law Schools* (2002-2003) (stating that 51% of the students at Columbia University Law School

A. Classroom

Given the centrality of the classroom to formal legal education and the law school experience, the study group collected data on student experiences in class and with faculty members by both monitoring classroom participation and asking questions on student surveys.

1. Student Participation⁸⁹

Women and men differed significantly in their participation in the classes monitored. On average, women spoke less often than men overall, and a small number of students—mostly male—contributed a disproportionate share of all participation. Of the 7,831 comments monitored in 190 class meetings during the Spring 2003 semester, 39% percent of the 7,831 comments monitored were made by women, although they made up 45% of the students in attendance in the sample.⁹⁰ The results seem largely—but not entirely—due to differences in voluntary participation. Women made only 34% of student-initiated comments and exchanges. On average, a male student was 50% more likely than a female to talk voluntarily during a class meeting.

Some trends in overall classroom participation also appeared. A small number of students accounted for much of the classroom participation, and these top talkers were overwhelmingly male. Men were 63% more likely to speak three or more times in a class meeting and 142% more likely to volunteer three or more times in a class meeting. Eighteen percent of 1L students made 50% of all comments in the 1L classes monitored.

The distribution of student-volunteered comments was even more skewed, with a mere 10% of students accounting for 43% of all volunteered comments spoken in the 1L monitoring sample.⁹¹ Women made up only 20% of this top decile of volunteers.⁹² On the other hand, 43% of women did not volunteer in any of the approximately twelve class meetings monitored for each 1L section, compared with 29% of men. During the

are female and 50% of the students at New York University Law School are female); Stanford Law School, *Celebrating a Century of Women at Stanford Law School* (reporting that, in 2001, 52.8% of the first-year students were female), available at <http://www.law.stanford.edu/events/wal> (last visited July 7, 2005); Yale Law School, *J.D. Admissions* (reporting that 46% of the students at Yale Law School are female), available at <http://www.law.yale.edu/outside/html/Admissions/admis-jdstudlife.htm> (last visited July 7, 2005).

89. See *infra* Appendix VI (summarizing the participation monitoring of all courses); see also *infra* Appendix I (describing the overall sample of the participation monitoring); Appendix VII (summarizing the participation monitoring of all first-year courses and using more refined data).

90. See *infra* Figure 1 (presenting the overall results of participation monitoring).

91. See *infra* Figure 2 (providing the cumulative distribution of participation in first-year courses).

92. See *infra* Table 1 (presenting the cumulative distribution of voluntary participation in first-year courses).

monitoring period for each section, 85% of 1L students spoke at least once, with 65% of students speaking voluntarily at least once during this time period. However, there was significant variation between 1L courses, ranging from only 28% to as many as 65% of students participating voluntarily at least once during the monitoring period.

Professors generally followed up with male and female students at similar rates, and, by some measures, were more likely to follow up on comments made by women. Professors followed up with a student after she or he spoke 23% of the time, but followed up less frequently (12%) with students who volunteered a comment. Overall, professors were 17% less likely to follow up with comments made by male students than female students. However, this difference was largely due to professors' lower follow-up rates with volunteered comments, of which women provided fewer than men.

The results suggest that, for the most part, professors treat women and men students roughly the same in terms of calling on them and following up with them. However, because men seem more willing to talk voluntarily in class, the end result is a significant gender difference in overall participation.⁹³ Other studies have found that women participated less often than men in many courses.⁹⁴ Additionally, surveys at other law schools have found a perception among students that professors engage differently with male and female students' comments.⁹⁵

The overall gender difference masks a decent degree of variation among the thirty-two courses monitored. For instance, women were overrepresented in terms of overall comments and volunteered comments in seven and six courses, respectively. In three courses, female students were more likely than males to speak at least once as well as to volunteer at least once. Finally, in ten of thirty-two courses, women were more likely than men to participate in response to a professor calling on them.

The variation in gender patterns between courses suggests that further

93. Although, the overall gender disparity largely reflected disparities in volunteering rates, a number of courses showed large gender disparities in professor-initiated participation as well. For instance, in eight of the thirty-two courses monitored, a male student was 40% more likely than a female student to have at least one professor-initiated comment during a class meeting.

94. See, e.g., Mertz et al., *supra* note 26, at 60-61 (reporting that women's level of participation depended in the type of class and women participated more in smaller, less formal classes); Yale Law Women, *supra* note 25, at 96 (reporting that men's rate of volunteering exceeded women in 16 of the 23 monitored courses).

95. See, e.g., Guinier et al., *supra* note 25, at 63-65 (explaining that there is a widespread perception that professors do not give female students who participate in the classroom the same positive feedback that they give to male students who participate in the classroom); Yale Law Women, *supra* note 25, at 31 (stating that 43% of students surveyed reported that faculty members were less likely to "press, challenge, or 'fight' with female students"); see also Taber et al., *supra* note 25, at 1220 (suggesting that women may participate less in class because professors call on them less).

research should be done to determine possible course-specific factors that may influence the pattern of participation. Participation patterns did not show any clear trend concerning gender between different teaching methods (e.g., Socratic vs. non-Socratic courses).⁹⁶ The group could not sufficiently investigate differences based on the professor's gender, given that women made up only 17% of full-time faculty at HLS, a smaller percentage than at competitor schools.⁹⁷ However, some interesting trends are worth exploring further. Although only five of the thirty-two courses monitored were taught by women, men participated (by all measures) even more disproportionately in courses with female professors than with male professors. For instance, a male student was 40% more likely than a female to volunteer during a class meeting with a male professor, compared with 106% more likely in courses taught by women. The greater gender disparity in these courses may be partly explained by the somewhat higher overall participation in courses taught by female professors on average.⁹⁸

96. This was partly due to the small sample size and that the thirty-two courses monitored showed a wide variety of teaching methods that differed more in degree than kind, making it difficult to create a meaningful categorical variable for analysis.

97. See, e.g., Columbia Law School, *Full-time Faculty List* (2004) (indicating that at the time this study was conducted, women made up 34% of the Columbia faculty, which included seventeen female professors, including three associate professors, and fifty male professors, including one associate, full-time professor), current faculty list available at http://www1.law.columbia.edu/faculty/full_time_fac; New York University Law School, *Fulltime Faculty* (showing that women comprised 29% of the 2004 NYU faculty, which included twenty-six female professors, including one new appointment, and sixty-five male professors, including two newly appointed, full-time professors), <http://www.law.nyu.edu/faculty/profiles/fulltime/index.html> (last visited July 15, 2005); Stanford Law School, *Faculty Overview* (2004) (showing that women made up 24% of the 2004 Stanford faculty, which included ten female professors, including one associate professor, and thirty-one male professors, including three associate, full-time professors), current faculty list available at <http://www.law.stanford.edu/faculty/> (last visited August 4, 2005); Yale Law School, *Yale Law School Faculty* (2004) (reporting that 24% of the professors at Yale in 2004 were female), current faculty list available at <http://www.law.yale.edu/outside/html/faculty/index.htm> (last visited August 4, 2005). See generally Mary E. Basile, *False Starts: Harvard Law School's Efforts Towards Integrating Women into the Faculty, 1928-1981*, 28 HARV. J. L. & GENDER 143 (2005).

98. Controlling for differences in number of attending students, classes taught by women had 11% more comments on average than classes taught by men.

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2. Student-Faculty Interaction

In addition, we surveyed first-semester 1Ls about how often they

interacted with professors outside of class. Men self-reported more interaction with professors outside of class than did women. However, both male and female students interacted significantly more with female professors. Additionally, on average, men who interacted with professors outside class predicted higher course grades for themselves, while women's predicted grades were not influenced by professor interaction.

3. Discussion

A number of possible explanations exist for the gender difference in talking in class. Silence may reflect lower confidence, and pedagogical methods such as the Socratic Method may amplify the effect of differences in confidence levels. Alternatively, not talking may be intended as an objection to the professor's pedagogical choice, or may reflect alienation or lack of interest in the subject matter (or how the professor chooses to teach the material). Social concerns, such as an anti-intellectual climate in the classroom or a sense of alienation and withdrawal (especially among upper-year students) may silence most students, leaving the few who are indifferent to peer pressure to dominate the airtime.

The importance of these participation findings hinges on what one believes the purposes of participation are. From a pedagogical perspective, participation may matter for a variety of reasons. Participation may: increase engagement with subject matter, which may increase the motivation to learn and retention of information; allow for feedback to professors about what students understand; provide training in how to communicate well to others, how to be persuasive, how to articulate well; and enrich intellectual discussion by allowing for additional voices and insights to supplement the professor's expertise. Student participation can also be viewed as an effort to control the classroom agenda. Participation is one of the chief avenues available to students to influence classroom discussion and to challenge the class' notion of what is relevant and what issues or aspects of the discussion topic are interesting.⁹⁹ Some of these reasons focus only on the individual (engagement with subject; training), while others consider the overall classroom community (feedback to professors; discussion value; agenda control). To the extent that the current pedagogy is justified by the latter concerns, systemic differences in participation likely hurt not only the students who do not speak, but also

99. The extent to which students can influence the classroom agenda via participation likely varies by the format of the class. One possible response to the uneven and gendered distribution then is to prohibit all student participation or at least all voluntary participation. But this means that professors will receive even less feedback about what students are interested in, what material they understand, and what issues they would like to use valuable class time to discuss. More productive methods for professors to consider include explicitly explaining their purposes for having participation or making students' influence over the classroom agenda more democratic. For instance, students could vote ahead on their preferred topic for classroom discussion, even if only among a restricted list of issues.

professors who cannot appropriately tailor their teaching, as well as all students in the class by diminishing the intellectual discussion.

Importantly, what happens within the classroom likely has substantial effects on other areas, given that the classroom houses the bulk of formal legal education. Disengagement in the classroom might decrease motivation to learn the material, lower grades by diminishing confidence, discourage interaction with faculty, or alienate a student from the school generally. Systemic differences in classroom participation also may have social repercussions, as talking in class is one of the ways students can learn about one another. Future studies having greater administrative cooperation should consider conducting a social network analysis as a first step towards answering this question. Do social circles tend to be composed of students with similar levels of classroom participation? Schools, such as HLS, where first-year students take almost all their courses with the same group of students offer particularly interesting research opportunities. For instance, how does the initial content and pedagogy shape social circles? Would different social groups form if the school year began with classes on domestic violence, racial profiling or the history of the founding of the union, or if classes incorporated more small-group learning? To the extent participation may influence social circles, it is even more critical that schools address the skewed and gendered distribution of participation, in light of the importance of relationships with classmates for support and for future career opportunities.

*B. Academic Performance and Choices*¹⁰⁰

The group also investigated academic decisions and success because of a belief that they can influence a student's career options and that many students may view grades as measures of their legal ability and general intelligence. In order to gain some insight into these issues, the group analyzed data on graduation honors and 1L course grades and asked questions about students' course selection in the surveys.

1. Honors and Grades

Men were more likely than women to graduate with Latin honors or earn high 1L course grades. From 1997 to 2003, male graduates were approximately 70% more likely than female graduates to receive magna cum laude honors. During the same time period, 55.1% of women graduated without Latin honors, compared with 46.6% of men. Further, the gender pattern in honors seems to be moving in the wrong direction—with

100. See *infra* Figure 3 (showing the gender composition of students graduating with Latin honors); Figure 4 (graphing differences between male and female grades in first-year core classes); Figure 5 (presenting gender composition of students receiving "high-pass" grades in the First Year Lawyering course).

greater disparities the past two years.

Additionally, in the 1L course grade sample, women received somewhat lower 1L grades than men on average, although this pattern varied based on the course subject. Overall, 31% of course grades for men were A- or better, compared with 25% of grades for women.

The gender difference in 1L course grades was only slightly influenced by the gender of the professor teaching the course, with men receiving slightly higher grades than women on average for courses taught by both women and men.¹⁰¹ There was some evidence for an interaction between the student's and professor's gender in course grades. In regression analyses, a female student in a course taught by a female professor was more likely than a student in a course with a male professor to receive a grade of A or A+. More research is needed to determine the robustness of this difference as well as to explore various hypotheses for such an effect.

The gender difference also generally persisted across 1L courses with different exam types, whether an in-class (usually 3 hours) or one-day (8 hours) take-home exam or whether open-book or restricted-materials. The chief exception was that women were significantly more likely to receive high grades in courses with in-class restricted-materials exams. Further research on grade data on 2L/3L courses is desirable in order to examine whether other grading options may influence the gender pattern. The range of exam types seen in 1L courses is rather limited and typically excludes options such as essays, papers on a topic of a student's choice, problem sets or weekly exercises.

In contrast, the subject matter of the course did affect the gender pattern in 1L grades. Criminal Law did not show a statistically significant gender difference in grades. On the other hand, Torts exhibited the most pronounced gender disparity, with women doing significantly worse than men. The disparity was significant but relatively smaller in Contracts, Property and Civil Procedure. Additionally, women and men received high-pass grades in similar rates in the full-year, writing-focused First Year Lawyering course, which teaches legal writing and conducts a moot court exercise. Over the course of the six semesters, women were slightly (but insignificantly) more likely to receive high-passes than men.

In addition, 1L women in the survey samples expected lower grades on average than men, regardless of the professor's gender—even though they did not differ on average in terms of course satisfaction. Even after controlling for students' assessment of their abilities, the gender difference in expected grade was smaller but remained significant in the 1L Spring survey. As the group anticipated, expected course grade also showed a

101. 33.7% men and 30.7% women received an average grade of B+ in courses taught by female professors, and 31.3% men and 34.9% women received an average grade of B+ in courses taught by male professors.

high degree of correlation with course satisfaction. Additionally, satisfaction with current courses showed a significantly greater correlation with grade expectations for women than men. More research needs to be done into this gender pattern as well before assigning any sort of causation between grade expectations and course satisfaction.

Further, 1L women in the Spring survey gave themselves lower grades than men on average when asked for what they felt they deserved based on their understanding of the material and exam preparation for each of their first-semester courses. This gender difference in both grades and expectations is particularly striking given the finding, discussed below, that women reported spending more time preparing for class than did men. Additionally, on average, men who interacted with professors outside class predicted higher course grades for themselves, while women's predicted grades were not influenced by professor interaction.

Other studies have also found small but significant grade differences among men and women.¹⁰² A study at the University of Pennsylvania Law School found that men on average received higher grades than women during all three years, despite comparable LSAT scores and undergraduate GPA.¹⁰³ Throughout all years of school, men were significantly more likely than women to be in the top of the class.¹⁰⁴ The nationwide Law School Admission Council (LSAC) study found women earned slightly lower first-year grades than men on average.¹⁰⁵ However, of particular relevance to the current findings, the study found that among students nationwide with the highest undergraduate GPA, women earned slightly higher law school grades than men.¹⁰⁶

102. *See, e.g.*, Guinier et al., *supra* note 25, at 26-27 (describing how University of Pennsylvania Law School women received relatively lower grades, achieved lower class ranks, and earned fewer honors than men, despite men and women having entered law school with comparable credentials).

103. *See id.* at 22-27 (arguing that women are underrepresented in the school's prestigious positions and extracurricular activities as a result of women earning disproportionately low class ranks).

104. *See id.* at 24-26 (reporting that first- and second-year male students were 1.6 times more likely to rank in the top fiftieth percentile of the class than female classmates, and that third-year male students were 1.5 times more likely to rank in the top fiftieth percentile of the class than female classmates).

105. *See* Wightman, *supra* note 26, at 11 (noting that although the difference in grades between male and female students is statistically significant, it is modest in magnitude).

106. *See id.* at 18-19 (reporting that as undergraduate grade point average decreases, the magnitude of the difference in law school performance between men and women increases); *see also* Garrison, *supra* note 25, at 522 (finding no significant gender difference in grades at Brooklyn Law School).

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2. *Class Preparation and Attendance*¹⁰⁷

On average, 2L and 3L (but not 1L) women in the survey sample reported spending more time preparing for courses than male classmates. Marital status appeared to play an important role in preparation time. Second- and third-year men who had a spouse or significant other who lived locally reported spending significantly more time on average preparing for class than other men. This was not the case for women who had a spouse or significant other who lived locally. Further, this effect was limited to second- and third-year students and to spouses and significant others who lived locally, rather than long-distance.

Additionally, students in the sample spent significantly less time on class preparation after their first year of law school, and 2L/3L students who received higher grades in their first 1L semester reported slightly greater preparation time.

Women and men did not differ in their class attendance rate in the 1L class monitoring sample. Approximately 84% of enrolled 1L students attended class meetings on average. Additionally, attendance rates for women and men in a course were significantly positively correlated—that is, courses that had a higher percentage of enrolled women attending usually had a higher percentage of enrolled men in attendance as well.

3. *Course Selection*

Among survey respondents, women and men differed in their likelihood of planning to take clinical courses and advanced corporate law courses. Among 2L and 3L respondents, 71% of women and 43% of men reported expecting to take a clinical course before graduating. Forty-six percent of men and 29% of women reported expecting to take multiple courses in the area of corporate or commercial law. There was no overall gender difference in likelihood of taking a negotiation class, but students of color were significantly more likely to take such a course.

Gender did not have a significant effect on any of the course choices mentioned when regressions controlled for self-assessment of skills, career expectations, and career priorities, among other variables. However, the interaction of gender with career expectations and career values significantly affected the likelihood of taking multiple courses in corporate or commercial law. Women who expected to work in a firm in ten years were much more likely to take multiple corporate/commercial courses while women who identified helping others as a top priority in their career were much less likely to take such courses. More exploration is needed into why these career values and expectations affect men and women

107. See *infra* Appendix VII.

differently in terms of course selection.

Some evidence also suggests that the more successful a student is in traditional measures of academic achievement (e.g., higher 1L course grades or self-assessed legal reasoning ability), the less likely the student is to take arguably less traditional course offerings, such as clinical and negotiation courses.

4. Discussion

The first-year course grade gender differences must be kept in perspective. These gender differences illustrate a problem, but the practical significance of the disparity should not be exaggerated. Women, like men, receive grades along the entire spectrum, from A+ on down. Gender explains only a small percentage of the overall variation of grades. Other factors, ranging from hard work to luck, must explain most of the variation. Although the practical significance of the differences should not be exaggerated, the persistence of a gender difference in 1L grades deserves attention. That a student's gender explains 1L course grades (which are based on blind-graded exams) at all—and does so to a statistically significant degree—signals that there likely are problems with the current grading system. Reexamination of grading methods may also help deal with the issue of many students' complaints about arbitrary grades.¹⁰⁸ Further, the finding that a student's gender has a statistically significant effect on a variable as difficult to influence as course grades (because of factors such as blind-grading) suggests how pervasive an influence gender might be in many facets of legal education.¹⁰⁹

The variation in gender patterns in grades by course topic is particularly interesting. The proper insight from that result, though, is not that women are somehow "good" at Criminal Law and "bad" at Torts.¹¹⁰ Rather, the finding of no gender difference in grades for Criminal Law and First Year Lawyering raises important questions as to the intersection of subject

108. For instance, a 1L man wrote in the optional survey space, "The seemingly random distribution of grades (people I know who did nothing—really, almost nothing—often did quite well while others who spent hundreds—really, hundreds—of hours didn't) is disturbing and a bit disheartening." A 2L woman commented, "As soon as you start not to have any faith in the equity of grades, it's hard to really take it too seriously."

109. See generally Deborah A. Prentice & Dale T. Miller, *When Small Effects are Impressive*, 112 PSYCHOL. BULL. 160 (1992) (discussing how seemingly small statistical effects may indicate important practical effects).

110. Particularly alarming is the view espoused by many people—almost exclusively, in my experience, female students—that women do worse in Torts because it emphasizes a law and economics approach. This view not only ignores the many women who do well in Torts and the many men who do not; far more dangerously, this view appears to assume that women are not as good as men at the slightly more mathematical approach of law and economics. The reasoning here is fundamentally the same (if not worse, given that the mathematics of law and economics is fairly basic) as comments that have generated far more attention. See, e.g., Michael Dobbs, *Harvard's Chief's Comments on Women Assailed*, WASH. POST (January 19, 2005), at A2.

matter and gender, and suggests the importance of considering course content in examining gender differences and that grade disparities are by no means inevitable.

Finally, the correlation between grades and course selection can be viewed as either positive or negative depending on one's view of the ultimate goals of legal education. To some degree, grades provide feedback as to students' talent and help students evaluate career options. On the other hand, such a correlation may mean that students who enter law school less confident in certain areas are discouraged from challenging themselves to develop important skills.

C. Student Life

*1. Confidence and Self-Assessment*¹¹¹

The survey questionnaires asked respondents to evaluate themselves relative to the rest of their class in a range of abilities thought to be important to legal practice, largely based on the skills identified in the ABA's MacCrate Report.¹¹²

Female students assessed themselves significantly lower than men did in most skills, even after controlling for demographics, undergraduate major, and career goals. Thirty-three percent of male respondents reported themselves in the top quintile of their class in terms of legal reasoning ability, compared with 15% of women. Women self-assessed their legal reasoning skills lower than men in the samples, even after controlling for 1L first semester grades. All students seem to link their grades with their self-assessed legal analysis skills.

Another area of note is students' self-assessment of their quantitative problem-solving skills, such as those used in finance and economics. Women in the sample self-assessed their quantitative skills far lower than men, even after controlling for variables such as undergraduate major. Forty percent of men ranked themselves in the top quintile in quantitative skills, compared with only 11% of women. Second- and third-year women were more likely to self-assess their quantitative skills lower than men, whether the pool was limited to those who majored in financial or quantitative studies (e.g., economics, math) or those who did not.

Female respondents also self-assessed significantly lower than men in their ability to think quickly on their feet, argue orally, write briefs and persuade others. These findings raise serious questions about the cumulative effect on students of curriculum, pedagogy and culture at law

111. See *infra* Figure 6.

112. See MacCrate Report, *supra* note 57, at 138-40 (identifying and describing the basic skills used by lawyers).

school. Lagging confidence is a source of great concern, given its likely significant effects on class participation, faculty interaction, exam performance, career decisions, and engagement with the law school for students and alumni.

The results comport with other studies finding that female law students generally rate themselves lower than men in terms of academic ability.¹¹³ Although the group was not able to survey students prior to starting at HLS, the LSAC study found that among incoming law students, men rated themselves higher than women in ability.¹¹⁴ The LSAC longitudinal survey also found that law school substantially reduced students' academic self-confidence, and operated on women and men equally.¹¹⁵ Studies at other law schools have found that women seem to suffer more than men from feelings of alienation and lack of confidence.¹¹⁶ At a survey in nine Ohio law schools, 41% of female students compared with only 16.5% of males reported that they thought of themselves as intelligent and articulate before law school but no longer felt that way once in school.¹¹⁷ At the University of Pennsylvania, even women who succeeded academically reported a higher degree of alienation than their male peers.¹¹⁸

The gender difference in self-assessment of legal abilities is problematic, although deciding which group is better off may be somewhat harder to answer. Gender difference in confidence (whether or not justified) may cause self-selection in terms of courses, classroom participation, extracurricular involvement, faculty interaction and career efforts. Alternatively, overconfidence may set students up for rude awakenings in the future. However, at the least, law schools should work to improve feedback signals to students in order to encourage less-confident students and even develop courses designed to empower students by focusing on the improvement of basic lawyering skills.

113. See, e.g., Wightman, *supra* note 26, at 54; Krauskopf, *supra* note 26, at 314; Guinier et al., *supra* note 25, at 4.

114. See Wightman, *supra* note 26, at 56-57.

115. See *id.* at 58-59.

116. See Krauskopf, *supra* note 26, at 314 (suggesting that both female students and faculty feel less self-confident than do their male counterparts).

117. See *id.* at 328.

118. See Guinier et al., *supra* note 25, at 4.

2. *Help-Seeking and Support Groups*

Female law students were substantially more likely than male law students to have visited Mental Health Services.¹¹⁹ During calendar years 2001 and 2002, women made up 64% of all law student patients who visited Harvard University Mental Health Services. Women and men averaged similar numbers of visits per patient.¹²⁰

These findings should be interpreted cautiously. In addition to not having information on the prevalence of preexisting conditions, Harvard health insurance coverage, or the purpose for or type of visit, general population studies suggest that more women than men receive mental health treatment.¹²¹ Furthermore, if a gender difference among law students persists after accounting for other factors, one should hesitate before deciding that it is women, rather than men, who are worse off. Especially if most of the visits are for therapy, it is possible that women are better off for taking greater advantage of a beneficial service.

Overall, approximately 17% of Harvard law students visited Mental Health Services at least once annually during 2001 and 2002, not including mental health care outside University Health Services or services such as those offered by the Office of Student Life Counseling. Studies have frequently found a higher rate of depression and substance abuse among law students and lawyers than the general population.¹²² One key question is whether some aspect of legal education is contributing to the higher incidence of psychiatric distress, or if the rates primarily reflect higher rates of preexisting conditions or greater predisposition.¹²³ Further, some of these studies have found that female law students showed greater rates of psychiatric distress than male students.¹²⁴ Student surveys at other law schools have found that female respondents reported crying more often,

119. Based on data provided by the director of Mental Health Services of Harvard University Health Services, 248 law students made 1,397 visits in 2001, and 277 students made 1,495 visits in 2002. Visits include therapy, medication, individual, group and couple visits.

120. Women averaged 5.42 visits per patient while men averaged 5.66 visits per patient.

121. Peggy R. Barker et al., *Patterns of Mental Health Service Utilization and Substance Use Among Adults, 2000 and 2001*, Figure 2.2 (Substance Abuse and Mental Health Services Administration, Office of Applied Studies 2004) (finding that, in 2000 and 2001, 13.2% of women, compared with 7.6% of men, received treatment for a mental or emotional problem in the prior year), available at <http://oas.samhsa.gov/mhtx/toc.htm> (last visited August 2, 2005).

122. See, e.g., Daicoff, *supra* note 32, at 1347 (stating that 19% of lawyers are depressed compared to 3-9% of the general population, and 15-18% of lawyers engage in substance abuse as compared to 10-13% of the general population).

123. See, e.g., *id.* at 1378 (summarizing research concluding that legal education may be partly responsible for an increase in symptoms of psychiatric distress during the first year of law school and thereafter).

124. See, e.g., *id.* at 1375-81 (noting the greater degree of anxiety expressed by women in law school than men).

having more sleeping difficulties and experiencing more anxiety than men.¹²⁵ Similarly, in the focus groups, many women, as well as men, expressed feelings of alienation and decreased self-esteem in law school and a desire to discuss these issues more openly.

3. *Academic Satisfaction*

Among all survey respondents, there was no gender difference in students' responses to whether they would choose HLS again over their second choice.¹²⁶ However, 2L and 3L men were more likely than women to respond that they would not go to law school at all again. In terms of their satisfaction with law school, women seem to be more affected by grades than men. Average 1L first semester grades showed a strong correlation with likelihood of choosing to attend law school again for 2L and 3L women, while these grades had no significant effect on 2L and 3L men's responses.

Satisfaction with current courses had a significantly stronger correlation with expected grades for 1L women than men. This suggests that perhaps women assign greater weight to their grades as measures of their interest or ability in a legal area, or at least when they receive lower grades. Much more research is needed to determine possible causal relationships between satisfaction with law school and expected academic success.

The influence of faculty interaction on overall academic satisfaction is also unclear. Student surveys at other law schools suggest that male students may be more comfortable seeking a professor's time outside of class¹²⁷ and more likely to ask professors questions outside of class,¹²⁸ both of which could affect overall academic satisfaction.

D. *Extracurricular Activities*

The group calculated the gender composition of students involved in

125. See, e.g., Taber et al., *supra* note 25, at 1251 (stating that female students reported having nightmares and experienced insomnia to a greater extent than men during law school); see also Guinier et al., *supra* note 25, at 44 (stating that 68% of male respondents, versus only 15% of female correspondents, said they never cried during law school,); Garrison et al., *supra* note 25, at 530 (finding that 28.9% of women and 6% of men report crying monthly); Homer & Schwartz, *supra* note 25, at 33 (reporting that a Boalt survey found that 43% of women of color and 36% of white women felt a loss of confidence in law school compared to 30% of men of color and 19% of white men).

126. For example, a 3L male wrote in the optional survey space, "I think most people would choose Harvard again because of the opportunities it opens up, but that doesn't mean they are enjoying law school at all."

127. See Yale Law Women, *supra* note 25, at 9 (reporting that more women than men said that they never visited a professor after class); see also Guinier et al., *supra* note 25, at 72, 74 (suggesting that women feel more uncomfortable approaching faculty outside of class than men, and that male students feel more comfortable approaching male faculty).

128. See Guinier et al., *supra* note 25, at 25 (reporting that female students often do not seek out faculty).

academic journals and certain other extracurricular activities as well as surveyed students about their involvement and decisions to apply for competitive extracurricular activities.¹²⁹

1. *Academic Journals*¹³⁰

Women held higher-up positions of journals at greater rates than men over the past six years. Women comprised 49% of masthead positions (usually corresponding with the executive board) and 56% of the top leadership (e.g., president or editor-in-chief) of HLS-recognized journals. Most journals have had 50% female mastheads at some point in the past six years. Excluding the Women's Law Journal from the analysis results in a decrease in the overall percentage of women on the masthead to 44%, but only reduces the percentage of women in the top leadership positions to 52%.

A notable exception to the overall trend is Law Review, with a membership that was only 36% female over the time period. Although some other law schools also have women underrepresented on law review,¹³¹ other schools show near parity¹³² if not overrepresentation by women in some years.¹³³ The student surveys investigated gender differences in applying for Law Review as well as the effect of first semester 1L grades on the decision. Gender was not a significant factor in deciding whether to apply for Law Review in the survey sample. Second- and third-year students in the sample who had higher grades first semester 1L year were more likely to have applied for Law Review, but men's decision to apply showed a significantly stronger correlation with first-semester grades than women's decision. Women in the sample with sizable first-semester grade variations¹³⁴ were more likely than men with such variations to apply for Law Review.

2. *Other Extracurricular Activities*

The group also investigated the gender composition of the Legal Aid Bureau and Board of Student Advisors ("BSA"), two activities with a substantial time commitment and a competitive application process.

Women were overrepresented on the Legal Aid Bureau and BSA relative

129. See *infra* Appendix III (listing questions asked by the survey regarding student involvement in extracurricular activity).

130. See *infra* Figure 7.

131. See Torres & Pettinato, *supra* note 40, at 2 (noting that the University of Chicago and Columbia law reviews also suffered from gender disparity favoring men).

132. See *id.* (stating that Duke University Law School was close to achieving gender parity).

133. See *id.* (noting that Stanford had a majority female staff).

134. This was defined as a difference of at least two grades (e.g., A- to B) in their first-semester 1L grades.

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to their proportion of the student body. From 1998 to 2003, 57% of Legal Aid and 59% of BSA members were women. Women and men in the survey sample were equally likely to expect to apply for Legal Aid Bureau or BSA after controlling for demographics, self-assessment of skills, career plans and grades. However, 2L and 3L men who ranked themselves highly in terms of analytical skills were less likely to apply for BSA, while no similar effect occurred among women.

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3. Discussion

Extracurricular activities are important for a number of reasons—employment credentials, education, and social life. Involvement in extracurriculars also may signal what students find to be missing in formal legal education, or that those who are dissatisfied are finding other places to excel.¹³⁵ Further research would be helpful in understanding how these decisions shape the overall legal education of women and men. However, the fact that students may be finding what they need in extracurriculars does not mean the formal education should not be adjusted. Rather, the assignment of an activity as extracurricular or curricular sends certain messages about what is considered essential and valuable by the law school and legal establishment.

E. Employment and Career Priorities

1. Career Values and Priorities

Female and male survey respondents differed significantly in the factors they selected as most important to them in their careers, even after controlling for demographic variables. Forty-one percent of women chose “helping others” as one of the three most important factors for their career, compared with 22% of men.¹³⁶ Additionally, women were significantly more likely than men to choose “advancing ideological goals” and less likely to choose “high salary.”¹³⁷

Law school also may be influencing students’—especially men’s—career priorities, shifting them away from public service careers. For instance, 2L and 3L men were less likely to choose “helping others” than were 1L men (22% vs. 34%). Further research in this area, especially longitudinal studies beginning during first-year orientation, would be helpful.

Differences in career values seem to result in a gender difference in long-term career expectations, but not in immediate job plans. Women in the 2L and 3L survey were significantly less likely than men to expect to be at a firm or in-house in 10 years, when controlling for demographics. However, controlling for choice of career priorities eliminated the gender difference in 10-year career expectations.

135. See Steven C. Bennett, *Making Law School Relevant*, NEW YORK LAWYER, Sept. 6, 2002 (describing the importance of participating in extracurricular activities such as internships and clinics during law school), available at <http://www.nylawyer.com/news/02/09/090602d.html> (on file with author).

136. See also Taber et al., *supra* note 25, at 1219 (stating that women valued service commitments more than men when choosing to attend law school).

137. See *id.* (stating that over 50% of the women in a 1970’s survey cited “altruistic” motives for going to law school).

Surveys of incoming students at other law schools have similarly found that women were more likely than men on average to identify altruistic factors for attending law school¹³⁸ and to plan to pursue public interest work after graduation.¹³⁹ However, during the course of law school, the gender difference in career ambitions seemed to diminish, although not entirely. For instance, surveys at the University of Pennsylvania found that over 25% of women and 8% of men entering law school wanted to pursue public interest law; by graduation, the percentage of female respondents interested in a career in public interest dropped to about 10%, while men's rates stayed the same.¹⁴⁰

2. *Employment*

Women were more likely than men to do public interest work during their summers and after graduation, which comports with nationwide studies that generally find women choosing public interest work initially in higher rates than men. According to information received from the Office of Public Interest Advising, 33% of women and 25% of men worked in public interest jobs¹⁴¹ during their 1L summer. This difference persisted for the 2L summer, when between 7-15% of women and 3-8% of men worked in the public interest field.

In terms of post-graduate employment, although only a small percentage of the student body is initially employed in a public interest job, this group includes approximately twice as many women as men. For the classes graduating from 1998 to 2003, 10.9% of women and 5.5% of men took public interest employment upon graduation or after a clerkship. Similarly, women were enrolled in the Low-Income Protection Plan at higher rates than men, with women making up 55% of enrollees from 1998-2003.

Despite more public interest post-graduate employment among women, women and men went into law firms in percentages similar to their composition in the graduating class over the past six years. Overall, 64% of women and men graduating between 1998 and 2002 initially worked in a law firm.¹⁴² In addition, more men than women did not enter the legal

138. See Krauskopf, *supra* note 26, at 322 (highlighting that 26% of females compared to 19% of men from Ohio's nine law schools stated that they went to law school out of a desire to service society); see also Taber et al., *supra* note 25, at 1219 (stating that women apply to law school to contribute to the greater good); Diacoff, *supra* note 32, at 1360 (noting that women are more likely than men to mention altruistic reasons for attending law school).

139. See Guinier et al., *supra* note 25, at 40 (emphasizing that many more women than men expected to practice in public interest law).

140. See *id.* (inferring that over the course of law school the female students seem to develop similar attitudes as the males, especially as it relates to career goals).

141. Public interest was defined to include government, non-profit and legal services work.

142. The group was unable to investigate fully whether gender differences exist in the

profession, instead choosing to pursue business directly.

3. *Judicial Clerkships*¹⁴³

Overall, women clerked in rates similar to their percentage in the student body, but there were differences in where men and women clerked. Approximately 24% of all HLS graduates from 1998 to 2003 initially clerked, according to Office of Career Services data. Forty-three percent of the students who clerked were women, but women were only 36% of HLS clerks at the U.S. Supreme Court and Circuit Courts of Appeals. In contrast, women clerked at higher rates than men in federal district and state courts.¹⁴⁴

compensation or subject matter of the work for students whose initial jobs were at private firms. In terms of salary, the information provided by the Office of Career Services suggests no overall gender difference for initial postgraduate employment. A related question that could not be explored is whether women and men are treated differently by law firms and other employers. A study at UCLA Law School found a gender difference in the number of call-back interviews that students received. See David Eaves et al., *Gender, Ethnicity and Grades: Empirical Evidence of Discrimination in Law-Firm Interviews*, 7 LAW & INEQ. 189, 204 (1989). After controlling for GPA and law review membership, the study found that interviewers were more likely to offer call-backs to second-year women than men. Further study is needed to investigate whether these results are representative and whether the gender differential reflects women's applying for less prestigious employers than men, disparate treatment by employers or other factors.

143. See *infra* Figure 8.

144. See National Association of Law Placement, *Courting Clerkships: The NALP Judicial Clerkship Study* (Oct. 2002) [hereinafter *Courting Clerkships*] (suggesting a similar trend in nationwide data from 1994 to 1998, in which women made up a slight majority of the clerkship population but were underrepresented in federal clerkships), available at <http://www.nalp.org/content/index.php?pid=135> (last visited August 5, 2005).

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4. Discussion

The gender differences in career priorities found here as well as in other studies¹⁴⁵ raise the question of how well students are matched with employers. This question is of critical importance for both individuals and employers because of the personal and economic costs of job dissatisfaction and changing employment. Women may be being matched with employers worse than men, as some research of legal professionals has found higher dissatisfaction and expectations of leaving employers earlier for women than men.¹⁴⁶ Although students are responsible for their career choices, law schools can play an important role in assisting students' decision-making processes—such as by helping make options available to students, assisting with information gathering and being a bargaining agent on behalf of students where collective action costs are great. Law schools should also consider if and how the school itself may be influencing students' career values, especially in light of the changes in men's priorities during law school.

More information is needed to understand the gender difference in clerkship levels. Just as women seem to be participating in clinical courses at higher rates than men, women may be actively choosing state and federal district courts because they offer different types of experiences. Women may also be more limited by factors including personal commitments (e.g., geographical constraints). Alternatively, women may be self-selecting out of applying for federal appellate courts because of fewer faculty contacts, lower self-esteem, less academic success or scarcity of role models,¹⁴⁷ or women and men may be receiving differential treatment in the selection process.¹⁴⁸

IV. DISCUSSION

The study results show systemic differences between female and male students' experiences at Harvard Law School in areas ranging from classroom participation and self-confidence to grades and employment. Studies of other law schools and of legal employers have also found gender

145. See, e.g., Krauskopf, *supra* note 26, at 322.

146. See Taber et al., *supra* note 25, at 1244 (finding from a survey of law graduates that on average female respondents intended to remain with their first job after graduation for fewer years than men).

147. See Krauskopf, *supra* note 26, at 313 (noting that in a student survey, 45% of women overall and 64% of minority women students reported feeling deprived of role models by the scarcity of women professors).

148. See, e.g., *Courting Clerkships*, *supra* note 144 (finding in their surveys—responded to by only 11% of the sample pool targeted—that 66% of women who applied for clerkships received an offer, compared with 74% of men); cf. Eaves et al., *supra* note 142, at 204 (finding a gender difference at UCLA Law School in call-back rates for second-year students after controlling for GPA and law review membership).

differences, although comparisons among studies are hindered by methodological differences.¹⁴⁹

The findings of this study shed light on a number of theories or issues raised by other commentators. First, the results suggest the inadequacy of theories tying gender differences to an insufficient number of women professors. First-year females performed slightly worse than men in course grades regardless of the professor's gender. And men tended to dominate classroom discussion even more with female faculty. On the other hand, both women and men reported interacting with female faculty more than male faculty. At the least, this suggests that breaking down the academic glass ceiling for a few women does not automatically result in broader gender equality. This should not be surprising, though, given that the tenure process ensures that new faculty members must impress the existing faculty. That said, one area calling out for quantitative investigation is whether women and men are treated differently in the tenure process.¹⁵⁰

Second, the results also suggest that the "combative" nature of the Socratic method and classroom pedagogy do not alone cause the gender differences. The gender difference in classroom participation did not systematically vary based on whether the class was taught using Socratic method, panel system, or relied solely on volunteered comments. At the least, to whatever extent the teaching method influences gender differences, it is in a more nuanced way than previously suggested.

Third, the varying gender patterns in course grades for different course subjects suggest that gender equality in law schools likely requires serious curricular attention. Stylistic changes may help, but the content of the courses should be addressed too.

Overall, the results suggest that some, but not all, potential answers for improving legal education may already be present in some capacity at law schools. In some courses, women talk at the same rates as men. And in some subjects, women receive high grades at the same rates as men. The course-by-course variation provides the opportunity for a good deal of empirical testing and research. On the other hand, law schools must also look outside current pedagogical practices to find needed solutions. For instance, the consistency of the gender difference in course grades across the different exam types in part suggests that a wider range of evaluation techniques must be considered.

149. For instance, many studies relied on survey respondents' self-reported counts of their class participation. See, e.g., Taber et al., *supra* note 25, at 1220 (surveying the number of times that men and women law students spoke in class during a two year span).

150. See, e.g., Committee on Women Faculty in the School of Science, *A Study on the Status of Women Faculty in Science at MIT* (1999) (reporting results of a study on faculty hiring at MIT), available at <http://web.mit.edu/fnl/women/women.pdf> (last visited July 9, 2005).

A. *The Significance of Differences*

The findings of gender differences beg the question of why they exist. Scholars and researchers have proposed a number of theories for explaining gender differences in legal education, including: women may be more put off than men by the format of the academic environment (such as class size or participation method) rather than any substantive aspects;¹⁵¹ women and men may differ to some degree in their moral reasoning, linguistic tendencies, or types of intelligence;¹⁵² women may have lower self-confidence;¹⁵³ or law school may be less satisfactory to students aiming for a career in public interest law, of which women are the majority.¹⁵⁴ However, this has been discussed extensively elsewhere.¹⁵⁵

Rather than weigh in on this debate, I suggest that *why* these gender differences exist is secondary and may unnecessarily sidetrack important efforts to help all students. Law schools should focus on an important related (and often overlooked) question of whether a particular difference matters at all, that is, deserves any significant attention. A normative judgment is needed before one can decide that a difference is meaningful in such a way that it might be a problem needing to be addressed. In other words, gender differences, such as those reported above, are not “alarming” or “concerning” in a vacuum. For law school communities to decide whether a particular gender difference is meaningful, they must reference the purpose and significance of the underlying activity. For example, only by having some idea of the purposes of student classroom participation, can one decide whether the gender disparity and skewed distribution of participation matter. If student participation is supposed to be only a way for the professor to move the discussion forward and get through the time, then the findings above may be interesting but unimportant. Without the prior step of defining the purposes and roles, the results on participation,

151. See, e.g., Banks II, *supra* note 26, at 534 (discussing how the law school environment may discourage learning for many students).

152. See, e.g., Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 194, 218 (1991) (arguing that law school education favors the method by which men think and that law school influences how women think).

153. See, e.g., Polly A. Fassinger, *Understanding Classroom Interaction: Students' and Professors' Contributions to Students' Silence*, 66 J. HIGHER EDUC. 82, 94 (1995) (discussing survey results showing that classroom participation was more dependent on self-confidence for female than male undergraduates).

154. See e.g., Robert Granfield, *Contextualizing the Different Voice: Women, Occupational Goals, and Legal Education*, 16 LAW & POL'Y 1, 18 (1994) (suggesting that women's reactions to legal education are greatly influenced by occupational goals). Women entering law school with “social justice” aspirations reported more silencing in the classroom and were less likely to believe that law school made them more competent, compared with women who chose law school because of goals such as job security and high potential income. *Id.* at 14-18.

155. See, e.g., Sarah Berger et al., *Hey! There's Ladies Here!!*, 73 N.Y.U. L. REV. 1022 (reviewing several studies and hypotheses concerning gender differences in legal education).

grades, confidence, and employment are arguably of no more concern than a finding of gender differences in, say, use of napkins in the cafeteria.

I suggest that the current problem is not that law schools are following the “wrong” mission and pedagogy, but rather that many law schools and faculty are not following any coherent mission or pedagogy at all. Inertia should not be confused with rational choice. The changes since Langdell developed his pedagogy include incredible extension of government, explosion in agencies, and vast technological change. Even in 1967, in his history of Harvard Law School, Arthur Sutherland questioned whether Langdell’s approach to law—from the case method to the detached academic approach—was outdated:

Perhaps under modern conditions the system devised... ninety-odd years ago may not be the ultimate for today’s university graduate who studies law.... The familiar is not the necessary. What has been habitual in the law and in education for it may be deadening if it fails to accord with new demands of society.¹⁵⁶

The lack of emphasis placed on critically thinking about and reevaluating what law schools do may partly explain why gender differences have persisted for so long after the first studies. If law schools and faculty have not defined the purposes of their activities and practices (such as teaching and grading) in a coherent way, those concerned about findings of serious gender differences must argue for change against not only a psychological bias favoring the status quo but also a vague and unclear baseline, making the task that much harder.¹⁵⁷

A sense of the purposes of the practices of law school is necessary in order to gauge how a law school is doing currently and what it should consider doing in addition or instead. The lack of such consideration and coherence can frustrate gender studies even before the thornier questions of “why” are reached. Therefore, gender studies may be most useful and ultimately productive by provoking thought about what law schools should be doing, rather than when they focus attention on whether women and men learn differently, have different intelligences, and so on.¹⁵⁸

156. SUTHERLAND, *supra* note 2, at 365, 369.

157. See Taber et al., *supra* note 25, at 1212-22 (acknowledging that reasonable people will disagree about what the goals of legal education should be).

158. See, e.g., Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLINICAL L. REV. 1, 33 n.116 (1999) (indicating that law schools might choose to tie their education to preparation for legal practice); Kristen K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 1, 1-3 (2003) (suggesting that intellectual discussion and the reinforcement of student confidence is another set of viable goals for law schools, and indicating that schools should encourage different types of discussion, such as peer review, to ensure students are thinking critically).

B. Statistics and the Miner's Canary

The results discussed above do not apply to *all* women or *all* men at Harvard Law School. This and other studies deal only with averages and groupings.¹⁵⁹ Women—like men—participate in classes, receive grades, choose careers, and are confident along the entire possible spectrum.¹⁶⁰ Further, just as the findings do not represent all women's experiences, neither do they represent all men's. Students' experiences are mediated by a large number of important factors other than gender.¹⁶¹

The gender differences reported above do not tell us much about women as a group or men as a group, but rather are statistical hints that something is off in legal education if such systematic differences exist. The gender differences here are “miner's canaries” that likely signal that something is not right more fundamentally, that there are deeper problems in the academic environment that affect many students—regardless of gender.¹⁶² If it is a problem that 43% of 1L women never volunteered a comment during 12 class meetings, then it is also a problem that 29% of men did not.¹⁶³ On the other hand, some differences, such as areas where women are “overrepresented” such as in public interest employment, could indicate experiences and career pathways that all students might benefit from more seriously considering. As a result, the emphasis shifts from thinking about how women are failing or are different than men to thinking about what might be wrong with the environment. Thinking in these broader terms will more often help identify the root cause of the differences and lead ultimately to more desired outcomes.

C. An Information-Based Approach

The two approaches above lead to complementary conclusions. Because the question of whether a difference is meaningful necessarily invokes

159. See Taber et al., *supra* note 25, at 1232 (emphasizing that the study considers only the general effects of gender differences in the context of a sample of graduate and law students at Stanford University).

160. See *id.* at 1254-59 (indicating that the study results were confined to generalities within a single sample group, and that individuals within that group may demonstrate varying degrees of aptitude while studying law at Stanford and pursuing their careers).

161. The group was particularly disappointed that it was not able to consider the effect of students' race, especially in light of other studies' reporting the effect of the intersection of race and gender on student experiences. See, e.g., Krauskopf, *supra* note 26, at 325 (noting that 31% of women of color respondents reported being dissatisfied or very dissatisfied with their law school experience, compared with 18% of women and 12% of men overall).

162. See LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 11-12 (2002) (suggesting that certain social groups that are marginalized and discrimination against can be analogized to miner's canaries, as they may signal problems that are affecting all groups).

163. See *id.* at 108-109 (arguing that gender-based behavior is likely in both males and females, and indicating that these behavioral differences could be signs of more complex societal pressures affecting the behavior of both sexes).

pedagogical mission, successful efforts to address gender differences *must* make schools deal with underlying pedagogical issues. And the statistical nature of the differences as well as the insight of the miner's canary metaphor means that efforts to address gender differences *should* deal with underlying pedagogical issues if they are to succeed ultimately.

As a result, one of the lessons of gender studies is that efforts must be made to encourage law schools to clarify their missions, to strengthen their processes of continuing self-assessment and to develop more coherent sets of justifications for what the schools do. This will help schools create a baseline against which their performance and findings of gender differences can subsequently be measured.

To push law schools in this direction, I suggest an information-based approach for law schools to take in the short-term. Past empirical studies often called for future investigation or for repeating a study in a few years.¹⁶⁴ This is useful, but it implicitly limits the role of information collection and analysis to sporadic check-ups rather than continuous evaluation embedded in a law school's operation. More information is needed—not for law review articles but for the functioning of law schools. Some of this information will go to law school administrators for analysis; other information will flow among other members of the law school communities.

Although not explicitly focusing on gender, an information-based approach still would address the underlying reasons for gender differences. Addressing gender differences requires first recognizing them, a step that frequently is obstructed because of inadequate information. Only by having refined information will gender (among other) differences not be lost in averages. And the more such differences that are brought to the attention of decision-makers, the greater the likelihood that serious conversation about practices and policies will be provoked.

Further, a systematic approach to information collection is needed for law school communities to have sufficient data to guide decisions—rather than just show that the current situation is bad. Unfortunately, inquiries about which practices to adopt are typically answered by anecdote or theory because collecting a relevant dataset of sufficient size can take years.

In addition, an information-based approach recognizes that many of the disturbing findings above may arise from inaccurate information or insufficient flow of relevant information. These information gaps are instead filled by stereotypes, baseless assumptions, self-interest, or

164. See, e.g., *id.* at 289, 301-02 (stating that a significant part of the solution to social inequity is to have more individuals watch for miner's canaries in the future and build on the knowledge of social inequity derived from previous analytical efforts).

convenience.¹⁶⁵ Consequently, it is likely that, for example, different assumptions about the average skills of peers may cause the gender differences in self-confidence in legal abilities, which may in turn cause women to self-select out of opportunities at higher rates than men.

As a result, law schools should consider developing structures and incentives to increase the flow of relevant information between numerous players, including: (a) from students to faculty/staff; (b) from faculty/staff to students; (c) among students; and (d) among faculty/staff.¹⁶⁶ Such an approach will help gender differences directly as well as indirectly by facilitating discussion on the reasons for a law school's missions and methods.

1. Student to Faculty/Staff

One connection that should be improved is that from students to relevant decision-makers, usually professors and/or administrators. Many decisions by law schools are supposedly based in part on information from or about students—their preferred way of learning; the amount of time they can prepare; how clear they found the readings; their background knowledge on law; and so on.¹⁶⁷ To be most useful, the information must allow for the decision-maker to know whether certain subgroups of students are having different experiences—as one of the central points of the gender studies in legal education is that average student responses can hide important systematic differences. However, when the current flow of information is insufficient, faculty and staff must fill that gap, and will generally do so through anecdotal information or assumptions about students (or, more cynically, through self-interest and convenience).

Improving the information flow from students would help faculty and staff make better decisions concerning pedagogy, assigned materials, career

165. See Marc C. Poirier, *Gender Stereotypes at Work*, 65 BROOK. L. REV. 1073, 1089 (1999) (arguing that gender stereotypes are part of the categorization technique that individuals use to understand their surroundings). See generally Taber et al., *supra* note 25, at 1210, 1253 (suggesting that insufficient or biased communication by faculty to students on the purposes of classroom discussion may partly cause the skewed and gendered pattern of participation). Complaints about lack of even minimal accommodation consistently voiced by pregnant students and mothers may reflect an administrative structure based not on what students actually need but rather on an outdated model of the law student as a single male with no care-giving responsibilities. Similarly, this insufficient information flow likely underlies in part the sizable differences in perceptions between female and male law students reported by other studies.

166. Relevant information does not just flow naturally from the holders to the appropriate recipients, but rather depends on structures, among other factors. The creation of these structures requires thoughtful design, since information flow may sometimes require ensuring anonymity or carefully worded questions.

167. See Taber et al., *supra* note 25, at 1256 (recognizing that although student preferences should not always dictate decisions, understanding students' wishes and experiences is often critical for developing policies and systems that most effectively achieve the desired goals of the decision-maker).

services, student orientation, and support services, among other areas. Some ways to improve the student-to-faculty information flow are student surveys, regular focus groups, and other forms of data collection and analysis. A more systematic and contextual approach to student feedback to professors could help significantly in allowing professors to understand what is working or why certain methods are not. For instance, student course evaluations could help guide professors' pedagogical choices if they provide timely and relevant information.¹⁶⁸ Teaching or research assistants could also monitor student classroom participation so professors could find out more about participation and how it changes over the course of the semester, as well as provide valuable information on the effect of pedagogical experimentation on participation patterns. Technology offers the potential for greater student feedback in a timely and useful manner—such as instant computerized pop quizzes during class to gauge students' grasp of the material.¹⁶⁹ Additionally, surveying incoming 1L students would help provide a baseline for examining what effects legal education might be having on students, in terms of career values, self-esteem or interests. Knowing the baseline could provide particular insight into the issue of lagging confidence, which is especially important given its possible effects on class participation, intellectual risk-taking, and engagement with the subject matter.

Even without collecting new information, faculty and staff could learn a lot about students by analyzing existing information. Most law schools have students' grades available in electronic form,¹⁷⁰ and it would be relatively easy to test whether certain types of exams or combinations of types result in different patterns.

In addition to collecting and analyzing information that has been or is currently being generated, law schools should consider taking steps to elicit new information by creating small-scale experiments. For instance, intentionally increasing the variety of examination and evaluation formats would create a valuable opportunity to explore how the grading format might be influencing grade disparities.

168. If student surveys were conducted electronically, analysis and dissemination of the results could be done in an automated way. For example, a professor could receive an automatically generated report for each class that lists the average student responses as well as highlights any statistically significant disparities in responses of students by certain demographics.

169. See Katie Hafner, *In Class, the Audience Weighs in*, N.Y. TIMES, Apr. 29, 2004, at G1 (describing some such technological uses that are already in operation in law school classrooms). See generally Paul Garon & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551 (2004) (arguing that technological advances offer the potential to make law schools far more effective institutions).

170. See, e.g., William R. Slomanson, *Electronic Lawyering and the Academy*, 48 J. LEGAL EDUC. 216, 224-25 (1998) (discussing generally electronic grading occurring at law schools).

2. Faculty/Staff to Student

Second, law schools should take steps so that students receive more information from faculty and staff because transparency might help to address some of the gender differences. For example, the more students are aware of their professors' reasons for having student participation, using certain grading methods, assigning certain readings and sticking around after class, the more students can understand the purposes of pedagogical choices, act in light of these considerations,¹⁷¹ and provide feedback as to how different choices are succeeding in reaching their goals.

Requiring additional feedback by professors to students on exams, such as model answers, might also help students learn more from the exam experience as well as prepare more effectively. Greater information from professors to students also might help counter the informational advantages of more-connected students who know upper-year students who took the same course. Finally, providing greater information on testing to students may help alleviate "stereotype threat," a psychological phenomena in which students in certain groups may underperform due to their test-taking anxiety that they will perform poorly and thus conform to negative stereotypes about their group.¹⁷² Research has shown that stereotype threat can be reduced or even eliminated by explicitly conveying the (gender-neutral) grading criteria and purposes of the examination.¹⁷³

An additional potential benefit from faculty and staff's providing more information to students is that more students may feel meaningfully part of the law school community. Transparency in pedagogical choices, tenure process, and student services would help make students feel more invested in the school and consequently more willing to work to improve the school.

3. Among Students

Third, law schools should consider improving the flow of relevant

171. Erroneous assumptions about why professors hold office hours or challenge students in class may be leading to many students' self-selecting out of casual faculty interactions due to factors such as lower self-confidence, which may then hinder further, more important interactions such as asking for a recommendation or career advice. See Taber et al., *supra* note 25, at 1220-21 (arguing that male and female students often have different levels of self-confidence that might result in less-confident but equally "deserving" students self-selecting out of faculty interactions). This tendency may partly explain the gender difference in clerkship levels, in which case increased feedback signals from professors to students (in the form of mid-semester evaluations, exam feedback, and so on) might counter this trend.

172. See generally Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52(6) AM. PSYCHOLOGIST 613, 614 (1997) (describing how racial and gender driven stereotypes often have the effect of intimidating students before they are able to compete fairly, and thus artificially degrading their performance).

173. See, e.g., *id.* (discussing how women underperformed relative to men on mathematics examinations when told that men did better on the particular examination but not when told that there was no gender difference).

information among students in order to correct students' inaccurate perceptions, which commonly show gender differences. Sometimes, the social network of law students achieves a beneficial result (such as providing advice and emotional support);¹⁷⁴ other times, peer interaction produces harmful results for many students (such as decreasing self-esteem, increasing competitiveness, or excessively silencing students).¹⁷⁵

Law schools should similarly consider taking efforts to encourage the flow of desirable information among students.¹⁷⁶ In some cases (such as where students are harmfully misestimating information), schools might only need to publicize information the school already has—such as that the rate of students' getting jobs is higher than students appear to assume, or that more students receive lower grades than commonly believed. Similarly, the school could, for example, institute regular dinners where facilitators lead small discussions on students' experiences or establish course evaluation databases so students can learn from others' academic experiences.¹⁷⁷ The importance of student social networks also illustrates that one of the key benefits of studies such as this one is that they provide more information to students about their peers, some of which (such as grades or feelings of alienation) is difficult to access in a one-on-one conversation because of privacy concerns or incentives to fabricate.

4. *Among Faculty/Staff*

Finally, law schools should consider developing structures and incentives to increase the flow of information among faculty and staff. Information flow among faculty is especially important because it increases the potential for coordination, which is critical given that the overall

174. See Baker, *supra* note 158, at 33 n.116 (indicating that peer interactions help reinforce the lessons learned in a clinical setting by allowing for open discussion of these principles and their application in the context of different students' experiences); see also Davis, *supra* note 158, at 1 n.1-2 (suggesting that the advice and support of other students in a legal research class is an essential component in absorbing and retaining information, and fostering a sense of connectivity between the students).

175. See Davis, *supra* note 158, at 1 n.2 (suggesting that although students' insulting of another's comments in class might alienate some students from the course and class material, students might also be reassured by their peers that others find similar difficulties in understanding the subject matter).

176. See Taber et al., *supra* note 25, at 1224 (suggesting that structures should be created particularly for information that needs to be exchanged over time, since, once students graduate and enter the working world, their knowledge is generally inaccessible to current students).

177. Extensive filtering must be possible in order to allow students to extract more individualized information from their peers. Rather than only knowing what the average student felt about a course, one should be able to browse and search for courses recommended by particular subsets of students, such as those planning a career in corporate law or liking a particular professor. See generally STEVEN JOHNSON, EMERGENCE: THE CONNECTED LIVES OF ANTS, BRAINS, CITIES, AND SOFTWARE (2001) (describing the potential of collaborative filtering to allow individuals to learn and benefit from experiences of and information possessed by community members).

product of a law school is a legal education—not a number of distinct courses. Only with sufficient faculty coordination will schools be able to impart the desired skills and training over the course of the entire education.

Most importantly, instituting additional points at which professors exchange information with one another could help a school or individual professor in developing a coherent mission and justification for their pedagogical choices. As discussed above, only by having some idea of the purposes of classroom participation can one decide whether a particular result or gender difference matters and how it should be addressed. Greater discussion by faculty about their reasons for their pedagogical choices could prove a helpful first step. The school could, for example, create regular teaching workshops on best-practices or online discussion boards for sharing course materials, ideas, or techniques. Meetings by certain members of the faculty (such as among all professors teaching a particular 1L student section) could also allow for discussion of which students are participating, when they are talking, and what different pedagogical methods seem to be working. Even a study of faculty members could provide a good start, with questions focusing on faculty's teaching goals, strategies for achieving these goals, purposes of classroom participation, and desired skill sets, among others.

CONCLUSION

Significant gender differences exist in a wide range of areas at Harvard Law School. Although the findings here show that there are substantial problems with traditional legal education, they also caution against hoping for simple solutions. Getting rid of the Socratic method or hiring more female faculty will not alone end gender differences or address likely underlying causes. Rather, the problems with the current legal education that cause gender differences are likely far more nuanced—part curricular, part pedagogical, part cultural, and part social—and their effect on gender is only one of many harmful manifestations.

As a result, any serious effort to address gender differences must search for and address underlying causes rather than focus only on the symptoms of gender disparities. This search for underlying causes will require that the law school community discuss and grapple with the missions and methods of legal education more generally. Such a sustained commitment by law schools to continuous, critical evaluation of legal education is necessary if problems such as those documented here are to be meaningfully addressed. As a 1L woman wrote in her survey response, all members of the law school community should be involved in this discussion:

As individual students and as a community, we have to talk about why

we do the things we do, and understand for ourselves what we are committed to, and why those projects are the best for us.... It is as much a personal challenge as it is a challenge for the administration and institution of the law school.

Improving information flow between different members of the law school community is offered here as a first, immediate step that law schools can take towards this goal of greater reexamination. Much can be learned and improved upon by increasing efforts to collect and analyze information, which will help ensure that differences by gender and other attributes are detected and factored into pedagogical decisions. For example, the sizable variation in gender patterns in participation between courses provides hope that greater attention to this area can lead to promising course-level efforts. Importantly, by providing relevant information and strengthening a broad range of communication channels, this information-based approach will help build a foundation for the necessary longer-term reassessment.

By encouraging all members of the law school community to continually reevaluate and improve their practices, schools will hopefully better ensure that their pedagogical goals are still relevant and that they are indeed achieving those goals. Until that happens, legal pedagogy will largely remain unanchored to any justifiable ground and will continue to impose an unnecessary cost on all those who do not fit the confining and outdated norm of a law student.

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