The Decline of the Socratic Method at Harvard

Orin S. Kerr
George Washington University Law School, okerr@law.gwu.edu

Follow this and additional works at: https://digitalcommons.unl.edu/nlr

Recommended Citation
Available at: https://digitalcommons.unl.edu/nlr/vol78/iss1/6
The Decline of the Socratic Method at Harvard

TABLE OF CONTENTS

I. Introduction ........................................... 113
II. The Debate Over the Socratic Method ................... 116
   A. The Socratic Method at Its Best .................... 116
   B. The Socratic Method at Its Worst .................. 118
III. First Year Law Teaching at Harvard Today .......... 122
   A. Traditionalists ..................................... 122
   B. Quasi-Traditionalists ............................... 123
   C. Counter-Traditionalists ............................. 124
IV. Explaining Differing Approaches to the Socratic Method: Why Professors Teach the Way They Do .... 126
   A. Traditionalists ..................................... 126
   B. Quasi-Traditionalists ............................... 128
   C. Counter-Traditionalists ............................. 129
V. Rethinking the Decline of the Socratic Method ....... 131

I. INTRODUCTION

The Socratic method has long been considered a defining element of American legal education. Among both lawyers and laypersons, Socratic questioning is perceived as a rite of passage that all law students endure in their first year of law school.1 Fictional characters

© Copyright held by the NEBRASKA LAW REVIEW.


I would like to thank Professor Daniel Coquillette for his generous support and enthusiasm, and the twelve Harvard Law School professors who graciously agreed to be interviewed for their time and patience. The views expressed in this article in no way reflect the position of the Department of Justice. This article is dedicated to the memory of Benedict I. Lubell, Kent Scholar, Columbia University Law School Class of 1932.

1. See SCOTT TURROW, ONE L 294 (1977) ("For nearly a century now, American lawyers have been bound together by the knowledge that they have all survived a similar initiation; it is something of a grand tradition."); John Yemna, Lawyers' Adversarial Schooling Undergoes Cross-Examination, BOSTON GLOBE, May 3,
such as Professor Kingsfield of *The Paper Chase* and Professor Perini of *One-L* have helped foster an image of the archetypal law school professor who challenges, probes, and even humiliates students in a repeated exchange of questions and attempted answers.²

Despite this perception, the traditional Socratic method is today more myth than reality. In the last thirty years, legal pedagogy has changed dramatically: the Socratic method as it was known in the 1950s and 1960s is nearly extinct.³ Although student participation in the law school classroom remains the norm, the experiences of today's students are very different from those of students a generation ago. In the place of the traditional approach is an eclectic mixture of newer approaches, including toned-down Socratic questioning, student panels, group discussions, and lectures.⁴

The purpose of this paper is to explore this revolution in legal pedagogy by examining the teaching styles, attitudes, and classroom influences of the faculty at one leading law school. Because Harvard

---

1. See, e.g., Yemma, supra note 1, at A1 (describing the continuing prevalence in American law schools of “the pain-inducing Socratic method of grilling students to the point of humiliation in front of their classmates”).

2. See, e.g., Yemma, supra note 1, at A1 (describing the continuing prevalence in American law schools of “the pain-inducing Socratic method of grilling students to the point of humiliation in front of their classmates”).


For the purpose of this article, I consider the “traditional” Socratic method to be a teaching style in which the professor selects a single student without warning and questions the student about a particular judicial opinion that has been assigned for class. Often the professor begins by asking the student to state the facts of the case and then asks the student to explain how the court reasoned to an answer. The professor might then test the student's understanding of the case by posing a series of hypotheticals and asking the student to apply the reasoning of the case to the new fact patterns. The purpose of this questioning is to explore the strengths and weaknesses of various legal arguments that might be marshaled to support or attack a given rule of decision. To that end, the professor's inquiries are often designed to expose the weaknesses in the student's responses. See Karl N. Llewellyn, *The Current Crisis in Legal Education*, 1 J. Legal Educ. 211, 212-13 (1948); Turow, supra note 1, at 41.

4. See Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 Seattle U. L. Rev. 1, 27-31 (1996). Friedland found that only 30% of the first-year professors surveyed claimed to use the Socratic method most of the time. See id. at 28. In upper level classes, 94% of the professors lectured for at least some of the time. See id. at 29. Friedland concluded that “a restlessness with the Socratic method is taking root,” id. at 32, especially among younger and female professors. See id. at 39-40.
Law School has often been considered the citadel of the Socratic method, I chose to focus on Harvard and conducted interviews with twelve members of the faculty in the spring of 1997. The interviews focused not only on how today's Harvard professors teach, but also why they teach as they do in light of their experiences as law students and young law teachers. Because Socratic teaching is known to be concentrated in first-year classes, I focused on professors who regularly teach first-year classes. From their collective experiences I hope to develop an understanding of the current state of legal pedagogy, as well as an understanding of the forces that have shaped the law school classroom experience of today as compared to that of a generation ago.

To create a full picture of the pedagogical range experienced by first-year students at Harvard, I interviewed as diverse a group of professors as possible. Of the twelve professors interviewed, two are African-American, and three are female. Their ideologies span the spectrum from traditionalism to critical legal studies, and range from the most junior faculty to the most senior. They also teach a broad cross-section of first-year classes. Of the twelve faculty members interviewed, three teach property, three contacts, two criminal law, two torts, and two civil procedure. Together, these professors represent approximately half of the faculty members who regularly teach first-year students at Harvard.

By interviewing a broad cross-section of faculty members, I hope to add a much-needed empirical perspective to the vigorous academic debate over the Socratic method. Within this debate, the Socratic method is often treated less as a classroom technique than as a potent symbol of traditional legal education. Accordingly, some present the Socratic method as a weapon used to oppress students and eradicate independent thinking, while others celebrate it as a talismanic key to knowledge, truth, and morality. The views of the Harvard faculty that emerge from this article suggest that the Socratic method in practice bears only a casual resemblance to these descriptions. Rather, the view emerges that the Socratic method is simply one teaching technique among many that has both positive and negative aspects de-

5. See generally LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 612-17 (1973) (describing the development of the case system and the Socratic method at Harvard Law School); JOEL SELIGMAN, THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL 11-12 (1978) (explaining the origins of the Socratic method); ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980S 51-72 (1983) (describing how the case system and the Socratic method were introduced at Harvard by Christopher Columbus Langdell in the 1870s, and quickly spread to other schools); ARTHUR E. SUTHERLAND, THE LAW AT HARVARD 196-205 (1967) (same).

6. Coincidentally, I was a third year law student at Harvard at the time I conducted these interviews.

7. See discussion infra Part II.
pending on the skill, personality, and purposes of the professor who chooses to use it.

This article is divided into four sections. Section II summarizes the debate over the Socratic method that has appeared in both academic journals and popular culture. The discussion explores the strengths and weaknesses of the method and provides a context for understanding the various approaches to its use. Section III presents the results of interviews I conducted and explores how today's Harvard professors teach law. There, I group each of the twelve professors into one of three categories: traditionalists, who derive their style from the traditional Socratic method; quasi-traditionalists, who combine significant elements of the Socratic dialectic with substantial innovations; and counter-traditionalists, who expressly reject the Socratic paradigm. Section IV profiles the professors in each of the three categories, focusing on how they reacted to the Socratic method as students, and how their teaching styles have changed since they began teaching. Section V concludes the article by offering an explanation for the decline of the Socratic method at Harvard, and by suggesting how the results of this Article might lead to a rethinking of the contemporary debate over the Socratic method.

II. THE DEBATE OVER THE SOCRATIC METHOD

Although criticism of the Socratic method in American legal education is as old as the method itself,8 the late 1960s ushered in a period of sustained attacks against it that continues today.9 During that time, a substantial body of literature critiquing the method has developed, and has been matched by literature defending the method. To understand the role of the Socratic method in legal education today, an understanding of the debate over the merits of the method is essential.

A. The Socratic Method at Its Best

Proponents of the Socratic method extol its capacity to teach sophisticated legal reasoning effectively to a large class of students. According to the late Professor Philip Areeda, the strength of the method is that the risk of being questioned induces all students in a large classroom to participate vicariously in an exploration of the strengths

and limits of legal arguments. Students learn legal analysis by doing it, either in their own minds or in an oral exchange with the professor. By posing questions to students that force them to confront the weaknesses of each position, the Socratic professor ultimately trains students to assess the strength of legal arguments on their own:

The student sees that he could have asked himself those questions before class; that the kinds of questions the instructor asked can be self-posed after class. The internalization of that questioning process is not an illusion. It is the essence of legal reasoning and the prize of the [Socratic method].

With the Socratic reasoning process internalized, students become experts at critiquing their own prejudgments, leading to open-minded, bifocal, and sophisticated understandings of law. According to the Socratic method's proponents, the collateral benefits of this dynamic and interactive classroom technique are considerable. Class discussions become lively and stimulating, encouraging students to prepare for class and engage in exciting and illuminating debates. At the same time, students speak frequently, helping them develop and hone rhetorical skills that are critical to effective advocacy. Finally, some have argued that the way that the method

10. See Areeda, supra note 3, at 916; see also Llewellyn, supra note 3, at 211 (stating that the method allows "something in the nature of a real discussion class which can enlist active participation from many, and also silent participation of a whole group ranging up to two hundred or more"); Edwin W. Patterson, The Case Method in American Legal Education: Its Origins and Objectives, 4 J. LEGAL EDUC. 1, 5 (1951) (maintaining that students learn better when they participate in teaching process through problem solving than when they are merely passive recipients of the teacher's solutions).

11. See Areeda, supra note 3, at 921-22; see also Powell, supra note 3, at 963-65 (maintaining that the challenge of the Socratic method teaches students to differentiate between "what is good analysis and what is bad").

12. Areeda, supra note 3, at 922; see also Anthony D'Amato, The Decline and Fall of Law Teaching in the Age of Student Consumerism, 37 J. LEGAL EDUC. 461, 473 (1987) ("[The method] teach[es] students to teach themselves how to define and attack a problem.").


14. See Robert C. Clark, In Memoriam: Philip E. Areeda, 109 HARV. L. REV. 897, 899 (1996) (describing Professor Areeda's Socratic style as one "[w]orth getting up for at 8 a.m."); Lon L. Fuller, On Teaching Law, 3 STAN. L. REV. 35, 40 (1950) ("The whole discussion is lively and stimulating; everyone is put on his mettle and seeks to show his best capabilities."); Powell, supra note 3, at 966 ("[Lecture is boring as hell, and I didn't come to law school to stand around and bore myself talking for a straight hour."); Stone supra note 9, at 409 (noting "the intense electric quality of Socratic classrooms").

15. See Paul D. Carrington, Hail! Langdell!, 20 L. & Soc. INQUIRY 691, 747 (1995) ("In being required to engage in public dialogue with a teacher, students are eased into the role of advocacy in a public forum before a genuine authority figure."); Stone, supra note 9, at 409 (claiming that one purpose of the Socratic Method is "to provide a forum in which the student speaks in public").
forces students to construct their own view of law (rather than discover a preexisting body) aids in the development of moral imagination. According to this view, students who learn the law via Socratic dialogue are likely to appreciate the social construction of law, and thus feel a strong moral responsibility for making sure that the law is used wisely.

B. The Socratic Method at its Worst

Critics of the Socratic method levy a diverse set of attacks against it. These attacks criticize the method for three perceived faults: first, the psychologically harmful effect it has on students; second, the method's inability to teach the range of skills that lawyers need; and third, the political and ideological agenda that the method's use tends to advance.

The most common complaint against the Socratic method is that it is cruel and psychologically abusive. Socratic professors are quick to criticize imperfect student answers, subjecting students to public degradation, humiliation, ridicule, and dehumanization. This torture often scars students for life. Even among students who do not speak in class, the possibility that they will be called on can be incapacitating. Non-traditional students such as women and minorities are particularly vulnerable, both because they are likely to be used as 'spokespersons' for their race or gender, and because many have al-

16. See Kronman, supra note 13, at 113 (claiming that the method "functions as an instrument for the development of moral imagination").
17. See id. at 110-118; Cole, supra note 13, at 869, 873-75.
20. See Dallimore, supra note 19, at 184.
21. See Phyllis W. Beck & David Burns, Anxiety and Depression in Law Students: Cognitive Intervention, 30 J. Legal Educ. 270, 285 (1979) (arguing that the stress of the Socratic classroom is one of the factors that cause psychological problems among some law students).
ready internalized stereotypes of inadequacy in the combative and mostly white and male atmosphere of traditional law schools.\textsuperscript{22}

Beyond the anxiety caused by classroom performance, the method's natural tendency to deconstruct preconceived beliefs leaves students feeling vulnerable and disoriented.\textsuperscript{23} Students who came to law school with firmly held moral or political beliefs are likely to feel as if their belief systems are under "ideological assault."\textsuperscript{24} Even students who simply want to 'learn the law' become anxious because they soon discover that no set body of rules exists for them to memorize.\textsuperscript{25}

The second school of critique of the Socratic method focuses on what the method does \textit{not} teach, namely, everything except for the abstract and particular skill of case-based legal reasoning. The earliest attacks in this vein were delivered by Jerome Frank, who lambasted the Socratic classroom as an overly academic and library-focused product of Langdellian legal science.\textsuperscript{26} According to Frank, the true work of a lawyer consists of solving the real problems of real clients. It does not pivot around the abstract legal rules, principles, and theories explored in Socratic dialogue.\textsuperscript{27} To train better lawyers,

\textsuperscript{22} See Deborah L. Rhode, \textit{Missing Questions: Feminist Perspectives on Legal Education}, 45 \textit{Stan. L. Rev.} 1547, 1557 (1993) ("Groups that have internalized stereotypes of inadequacy... are particularly likely to drop out of [class] discussion."); see also Lani Guinier et al., \textit{Becoming Gentlemen: Women's Experiences at One Ivy League Law School}, 143 U. Pa. L. Rev. 1, 46, 94 (1994) (noting that women and minority students often feel pressured to speak for their race or gender); Rita Sethi, \textit{Speaking Up! Speaking Out! The Power of Student Speech in Law School Classrooms}, 16 \textit{Women's Rts. L. Rep.} 61, 64 (1994) ("I am suffocated by the ignorance and racism of the room; I must suffer it alone, alienated.").

\textsuperscript{23} See Lawrence Silver, \textit{Anxiety and the First Semester of Law School}, 1968 \textit{Wis. L. Rev.} 1201, 1202-05 (describing how first year law students feel anxious because they cannot tell which student answers are right and which are wrong; see also James D. Gordon III, \textit{How Not to Succeed in Law School}, 100 \textit{Yale L.J.} 1679, 1686-87 (1991) (parodying the method as "mystery/philosophy/sociology/nihilistic/relativism/astrology/voodoo/sado-masochistic Socratic kung fu").

\textsuperscript{24} See Stone, supra note 9, at 415; see also Duncan Kennedy, \textit{Legal Education as Training for Hierarchy, in The Politics of Law: A Progressive Critique} 38, 51 (David Kairys ed., rev. ed. 1990) ("Left students sometimes begin law school with an apparently unshakable confidence in their own competence and with a related confidence in their own left analysis. But even these apparently self-assured students quickly find that adverse judgments... count and hurt.").

\textsuperscript{25} See Duncan Kennedy, \textit{Legal Education and the Reproduction of Hierarchy: A Polemic Against the System 3} (1983) (describing a Socratic classroom as resembling a "Kafka-like riddle state."); Paul T. Wangerin, \textit{Objective, Multifacistic, and Relative Truth in Developmental Psychology and Legal Education}, 62 \textit{Tul. L. Rev.} 1237, 1245-69 (1988) (arguing that the study of law is relativistic and therefore disturbing to students who are strongly "interested in personal values and commitments").

\textsuperscript{26} See Jerome Frank, \textit{Why Not a Clinical Lawyer-School?}, 81 U. Pa. L. Rev. 907, 907-908 (1933).

\textsuperscript{27} See id. at 913 ("[T]he law schools should once more get in intimate contact with what clients need and with what courts and lawyers actually do. . . .").
Frank recommended the creation of clinical lawyer-schools that would teach students to counsel clients, draft documents, draft legislation, and understand the law in a social context.\footnote{28}

Since Frank's era, other commentators have picked up on this theme and criticized the Socratic method for failing to teach cooperation, working with and representing a client, and citizenship.\footnote{29} These commentators argue that students trained by the Socratic method lack the skills needed to be effective lawyers.\footnote{30} This is particularly problematic because the method's question and answer format is also a terribly inefficient means to teach doctrinal rules.\footnote{31} Students in Socratic classes often know no more about the legal rules than they did at the beginning.\footnote{32} Because use of the method cannot effectively teach either legal rules or practical lawyering skills, its frequent use is "irrelevant[,] . . . archaic and useless."\footnote{33}

\begin{itemize}
\item \footnote{28}See Jerome Frank, \textit{Both Ends Against the Middle}, 100 U. Pa. L. Rev. 20, 24-25 (1951) (advocating the need for clinical schools to teach the legislative process, counseling, and government administration); Frank, supra note 26, at 913-921 (urging the creation of clinical schools so that "[t]he law student [is] taught to see the inter-actions of the conduct of society and the work of the courts and lawyers").
\item \footnote{29}See Rhode, supra note 22, at 1554-56 (suggesting that the individualistic ethos of the Socratic method is in conflict with the demands of legal practice, where cooperation is valued).
\item \footnote{30}See Jennifer Howard, \textit{Learning to “Think Like A Lawyer” Through Experience}, 2 CLINICAL L. REV. 167, 172-74 (1995) (arguing that the method teaches an abstract analysis that fails to mirror the client-based attitude that lawyers must adopt in practice); Gail A. Jaquish & James Ware, \textit{Adopting an Educator Habit of Mind: Modifying What it Means to “Think Like a Lawyer”}, 45 STAN L. REV. 1713, 1715 (1993) (arguing that lawyers need to communicate better with their clients to serve their clients' needs).
\item \footnote{31}See Llewellyn, supra note 3, at 219.
\item \footnote{33}See Llewellyn, supra note 3, at 215. According to Llewellyn:
\begin{quote}
[It] is obvious that man could hardly devise a more wasteful method of imparting information about subject matter than the case-class. Certainly man never has. We face a crisis when we find the curriculum being drowned in an unthinking effort to use such a method as the sole means, or the main means, for accomplishing an end so vital.
\end{quote}
\begin{flushright}
Id.
\end{flushright}
\item \footnote{34}See Stevens, supra note 19, at 639 ("[O]ne wonders if you've learned anything at all at the end of a Socratic class,").
\item \footnote{35}Dallimore, supra note 19, at 180.
\end{itemize}
The third set of critiques of the traditional Socratic method addresses the ideological and political agenda that its use is alleged to advance. According to Duncan Kennedy, the most prominent proponent of this theory, the Socratic classroom is a training ground for hierarchy. The Socratic professor appears nearly omnipotent, able to invade any student’s personal space at any time. Despite being subjected to ad hominem assault in class, most students adopt a passive, overly deferential attitude towards their professors. The acceptance of subjugation in class trains students to accept passively the hierarchical status quo of the bar and society. From this perspective, the Socratic method is less a learning tool than a means of ideological indoctrination.

Feminist legal scholars have developed a related critique of the method based on its adverse impact on female law students. Influenced strongly by the works of Carol Gilligan, they argue that Socratic classrooms are male-oriented, competitive environments that ‘stack the deck’ against women and their more cooperative and communal styles of learning. Because women feel threatened and alienated in patriarchal and hierarchical Socratic classrooms, women often feel they have nothing to contribute and their voices are excluded from the debate. This fosters a sense of inadequacy among women stu-
III. FIRST YEAR LAW TEACHING AT HARVARD TODAY

I examined the use of the Socratic method in contemporary first-year law school classrooms by interviewing twelve professors at Harvard Law School in the spring of 1997. Although the interviews revealed that Harvard professors use a wide range of teaching styles in the first-year classroom, I discerned three rough categories of approaches. One group of professors, which I have labeled traditionalists, derive their pedagogy from the traditional Socratic model. Members of a second group, here labeled quasi-traditionalists, have developed a mixed approach that includes a significant component of Socratic teaching as well as substantial elements of alternative teaching methods. The third set of professors, which I call the counter-traditionalists, expressly reject the traditional Socratic model in favor of alternative methods. In this section, I discuss how each set of professors approach the teaching of law in their first-year classes. I will begin with the traditionalists, turn next to the quasi-traditionalists, and conclude with the counter-traditionalists.

A. Traditionalists

Of the twelve professors interviewed for this article, five are best described as traditionalists. This group of professors teaches almost exclusively by the case method, calling on students without prior warning to have them discuss assigned cases in a one-on-one dialogue with the professor. The professors in this group either use a seating chart to select students, or else come to class with a list of randomly chosen students to be called on that day. After calling on a particular student for a series of questions, the professor gradually turns the dialogue into an open class discussion in which any student may participate. All professors in this group acknowledge lecturing at least occasionally, but most try to limit this to a small portion of class time. In addition, all the professors stated that they eventually affirm student questions, although most first try to explore the question with the students before offering a direct answer.

Within this broad framework, there are many individual styles that remain loyal to the traditional Socratic model to varying degrees. One senior professor has adopted a style that matches, if not exceeds, the intensity of the traditional Socratic professor. This professor uses what he terms a "pressing, demanding technique," lectures only rarely, and does not permit students who are unprepared to pass un-

42. See Guinier, supra note 22, at 67-69.
less they have notified his secretary of their unpreparedness two hours before class. Two other senior professors also call on students from a seating chart, but are less demanding than the traditional Socratic model would suggest. For example, one of these professors allows those students who don’t want to speak in class to pass, and will also summarize doctrinal material for students. The other prohibits passing in the beginning of the semester, but then allows it freely as students become adjusted to the Socratic style.

The two younger professors in the traditionalist category modified the traditional Socratic scheme somewhat further. Each begins class with a brief lecture which either presents a summary of the previous class, or reviews the doctrinal context of the day’s subject matter. The majority of the class is then dominated by Socratic dialogue, interspersed with non-Socratic interludes. For example, one professor occasionally pauses class to have students discuss hypotheticals in small groups. She finds this to be a “very effective way to vary the pace” and keep all students engaged. Another occasionally hands out a fact pattern before class, and then assigns different students the role of plaintiff or defendant before having them argue their position to the class.

B. Quasi-Traditionalists

Three professors fit into the category of quasi-traditionalists. These professors mix elements of the Socratic dialogue with alternative teaching methods. Unlike the traditionalists, there are few similarities in the overall style of the quasi-traditionalists. Instead of adopting pre-existing approaches, the quasi-traditionalist professors fashioned their own styles, mixing elements of Socratic teaching with other techniques to create an optimal methodology.

One quasi-traditionalist professor developed a variation on the Socratic classroom designed to reduce what he sees as the “authoritarian” nature of traditional legal education. His classroom retains a Socratic flavor, in that he calls on students without prior warning to discuss cases with him. However, he has also introduced a series of reforms to the traditional method designed to eliminate classroom hierarchy. For example, he allows a “no hassle” pass, and does not allow students to raise their hands when another student is talking. This professor often calls on students by proceeding seat by seat down a single classroom row, which gives students prior warning of being called on and reduces student isolation. He also emphasizes the importance of “aggressive intervention against student scapegoating.” He feels strongly that professors should monitor the classroom dynamic and make sure that students are not subject to peer ridicule or other adverse consequences for expressing unpopular views or speaking frequently in class. Finally, this professor frequently divides the class into groups and assigns each group the role of plaintiff, defend-
A second professor also developed an innovative style that embraces aspects of the traditional Socratic method but diverges from it in substantial ways. This professor believes that effective teachers “should not have one method, [because] different people will learn differently with different styles.” Accordingly, he divides each class into “activity chunks,” focusing each “chunk” on a different skill, method, or activity. For example, he might spend the first half of a one-hour class conducting a Socratic dialogue, which he allows to evolve into a student discussion in which his role is merely that of moderator. Then he will ask students to form groups of three of four and analyze a hypothetical situation for ten minutes while he roams among the groups answering questions and monitoring student progress. After ten minutes, he will choose representatives of several groups to present their ideas to the class. Finally, the class might end with a lecture, in which he delivers commentary about the area of law or discusses the history of doctrinal evolution in the field.

C. Counter-Traditionalists

Four professors have consciously rejected the traditional Socratic style. Although student participation is a significant element of each professor’s approach, these counter-traditionalist professors expressly reject the old-school Socratic dynamic. In its place these professors substitute a variety of methods such as panel systems, lectures, and group problems, to create a classroom atmosphere designed to be less intimidating, less pressured, and more informative than the traditional Socratic classroom.

Unlike traditional Socratic teachers, the counter-traditionalist professors tend to envision their roles as being transmitters of information. Each counter-traditionalist professor seeks to communicate to students a body of information, such as an analytical method or doctrinal framework. If the case method proves to be a poor means of achieving this goal, it is de-emphasized. The corollary of this transformation is that the student role tends to be less active (and more predictable) than in a traditional Socratic classroom. For example, students are rarely if ever called on without prior warning.

As in each of the groups, each counter-traditionalist professor employs a distinct style. One professor uses what she describes as an “eclectic” set of different methods to communicate to her students a combination of skills. In her first year classes, she spends the first few classes lecturing about the philosophical underpinnings of the field of law. With a foundation laid, she focuses the next few weeks on case
law, teaching students how to read and analyze cases. Her demeanor during this period is designed to be friendly and nonconfrontational—she never plays "hide the ball," and always answers students' questions directly. As the semester progresses, she spends an increasing portion of class time teaching practical skills and law in social context, either by lecture or by group problems. This may involve focusing class attention on how to counsel clients or draft legislative solutions to legal problems. She also shows films and assigns readings that dramatize the social context of the law, to emphasize her belief that legal doctrine is best understood as a response to particular social needs.

Another professor has replaced the traditional Socratic method in her first year class with a panel system. On the first day of the semester she explains to the class that each student will be "on panel" for one day during the semester, and that each will be told ahead of time when that day will come. Throughout the semester she calls on those students who are on panel for that day and leads them through a discussion of the case or issue assigned for class. Afterwards, she opens up the discussion to the entire class.

Notably, some professors reject the Socratic model because Socratic dialogue fails to communicate their jurisprudential viewpoints effectively. For example, one young professor with a law-and-economics orientation rejects the Socratic method in favor of a lecture. In order to teach the thought processes of law and economics he focuses his efforts on delivering "an organized, clear presentation" of its theoretical construct. His classes often include a substantial portion of lecture, followed by group problems applying the principles discussed in the lecture, and then a group discussion of its strengths and limitations.

A professor associated with the critical legal studies movement offers a somewhat similar approach. This professor teaches his students that law evolves from a series of "rule-choices" that judges make in a deliberate effort to provide society with socially beneficial laws. To emphasize his view that judges generally choose what rules they will follow, he spends a portion of class time presenting the various approaches to a doctrine that different courts have taken. Next, he introduces a fact pattern to the class and splits the class into three groups: plaintiffs, defendants, and judges. He then spends most of class having students argue in favor of the particular rule that he has assigned them to defend. The professor stresses two benefits of his approach over the traditional Socratic dialogue. First, the approach makes learning more of a "team effort," and less an individual enterprise. Second, it better replicates the actual demands of legal practice. "I understand that 99.9% of [my students] are not going to be law
IV. EXPLAINING DIFFERING APPROACHES TO THE
SOCRATIC METHOD: WHY PROFESSORS TEACH
THE WAY THEY DO

The focus of this paper will now turn from how Harvard Law
School professors teach, to the more difficult question of why, at least
according to their own perceptions, they teach as they do. To answer
this question I devoted the second half of the interviews to probing the
professors' own experiences with and attitudes towards different
teaching styles and critiques of traditional legal education. In particu-
lar, I focused on two issues. First, I asked the professors to discuss
how they responded to traditional Socratic classes when they were law
students, and also how and why their teaching styles had evolved
since they first began law teaching. Second, I summarized the various
arguments both for and against the Socratic method and asked for
their opinion on the merit of each of the arguments. Through the an-
swers to these questions I hope to construct an understanding of the
factors that have influenced the teaching styles of the professors I
interviewed.

A. Traditionalists

The traditionalist professors fall into two fairly distinct categories.
The first group consists of senior professors in the "traditional" mold;
white, male, Harvard Law graduates who began teaching law in the
early to mid 1960s. Those in the second group are quite different.
Both are young professors: one is female, and the other African-
American.

Professors in the 'traditional' group tell a similar story of how they
came to teach based on the Socratic method. All three attended
Harvard Law during the 1950s and 1960s, when professors such as
Ben Kaplan, Clark Byse, and Robert Keeton taught first year classes.
As students, the traditionalist professors were generally impressed
with Socratic classes, which proved "far more challenging" and "adren-
aline producing" than others. When they started teaching in the early
to mid 1960s, this trio of professors naturally adopted the teaching
styles of their former professors. One professor tried to emulate his
favorite teacher from law school, Abe Chayes, who was "relentlessly
Socratic." Another professor adopted a controlling and demanding
technique because his first teaching assignment was opposite a legen-
dary scholar in the field. Being only a few years out of law school him-
self, he felt like "small beans" and believed that a strong classroom
presence would encourage his students to take his portion of the class
seriously. “Of course,” he stresses, the Socratic style “was normative at the [Harvard] law school I attended.”

All three professors agreed that they bring to today’s classroom a toned-down version of their 1960s pedagogy. When asked why they have relaxed the more intense standards of their early teaching years, all three professors pointed to the change in attitude among students during and immediately following the student unrest at Harvard during the late 1960s and early 1970s. As one professor explained,

[The] period of student unrest [in 1969-1970] was a watershed period. All of us who were teaching in those years suddenly became unsure of what we were doing. We were all puzzled and bruised; suddenly, we were demonized. I think that affected us profoundly.

In the period following the 1969-1970 unrest, he continued, the traditional hierarchy between faculty and students at the law school began to crumble. As professors began responding to the pressure to be less oracular and more human, the harsh Socratic standards were gradually relaxed.

A second professor confirmed this dynamic. “Modern sensibilities,” he said, “make it much harder for classes to accept the pressure. Students won’t tolerate it; a resentment develops. You feel it might lead to outright revolution.” As a result, he added, “There are no pure Socratic professors on the faculty [any more].” An emeritus professor who has taught at Harvard since the 1950s echoed this conclusion. “Society has become kinder and gentler,” he told me, “there is a sense [today] of a greater role for individuals.” Accordingly, pressuring students through tough Socratic questioning, a practice once respected for its rigor, is now disfavored.

The student experiences of the younger professors who have adopted the Socratic style were somewhat different from those of their more senior colleagues. The younger professors attended law school in the 1980s, and as students were exposed to a diverse set of classroom styles similar to those found in law schools today. As law students, both younger faculty members found their more Socratic professors to be both invigorating and effective. Classes taught by Socratic masters such as Clark Byse, Abe Chayes, and Morton Horwitz were “incredibly intellectually exciting,” recalls one. When they began teaching in the 1990s, both professors adopted the Socratic style that they had enjoyed as students.

As might be expected, the five professors I have grouped into the traditionalist category had strong reactions to complaints that the method is cruel and psychologically abusive. “No one has ever died because of the Socratic method,” proclaimed one professor. Another

44. See supra notes 19-25 and accompanying text.
added that pressure "is an important part of the profession; get used to it." Responding to the argument that the method oppresses students, a third professor argued to the contrary: "[T]he Socratic method is about student empowerment. [Students] come away with more confidence than before. They may not have enjoyed it, but they know they can do it."

The professors also rejected the feminist critique of the method.45 Instead, they agreed that the Socratic method is an effective tool to counter societal pressures placed on women to be less aggressive and outspoken than men. "It is very important to treat women the same way as men," one female professor argued, "the more timid a student seems, the more important it is not to let them off the hook. The message is that 'you're smart enough to do this.'" She emphasized that calling on students is an effective way to prevent a few (mostly male) students from dominating class discussions. Women's voices are not excluded if professors use the traditional Socratic method to call on an equal number of women and men in class.46

B. Quasi-Traditionalists

I found substantial similarities among the experiences of the three quasi-traditionalist professors. All three graduated from law school during or soon after the student unrest of the late 1960s and early 1970s. As law students, they viewed the use of the Socratic method with ambivalence. Each saw inherent strengths in the method, as well as weaknesses in the way it was used. Further, their current classroom styles reflect their reactions to differing classroom styles when they were students.

Recalling his student days, one professor noted that Socratic classes could be engaging and adrenaline producing, but also hierarchical and infantilizing. His variations on the traditional method reflect a conscious effort to weed out the ill effects he encountered as a student. A second professor had a similar reaction: he found the dynamic of Socratic classes intriguing, but he sometimes felt uncomfortable and intimidated. His classroom reflects his experiences by featuring student input, and de-emphasizing his own role. The third professor in this group was similarly ambivalent about the method when he was a student. During his first year, he found his contracts class with a Socratic professor to be equally interesting and educational as his property class, taught by a professor who primarily lectured. Today, this professor's style, which employs a diversity of

45. See supra notes 39-42 and accompanying text.
46. This view is echoed in Elizabeth Garrett, Becoming Lawyers: The Role of the Socratic Method in Modern Law Schools, 1 Green Bag 2d 199, 204-05 (1998) (reviewing Guinier ET AL., BECOMING GENTLEMEN (1997)).
techniques to reach students who learn in different ways, is consistent with his student experience.

As might be expected, the quasi-traditionalists offer mixed reactions to the traditional arguments in favor of the Socratic method. Although they generally agreed that the Socratic method could teach students to reason through legal problems independently,\(^47\) they doubted that its collateral benefits could be substantial. For example, two professors doubted that Socratic classes develop public speaking skills particularly well.\(^48\) They both noted that students are called on to speak so rarely that it is unlikely that Socratic classes provide much speaking experience. Further, all rejected the idea that the Socratic method develops moral imagination.\(^49\)

The quasi-traditionalists gave more credence to the critiques of the traditional method than did the traditionalist professors. All three professors agreed that the Socratic method could be used in a cruel fashion. One added that a professor's need to direct and control a class of 150 students made it particularly conducive to abuse at the hands of an unskilled teacher. Similarly, all three professors agreed that students need practical skills in the legal profession that Socratic classes do not teach.\(^50\) One professor pointed out that this need prompted the law school to add a first-year elective class called "Lawyering," designed to "introduce students to the non-litigation lawyering skills utilized by attorneys in everyday practice."\(^51\) The topics covered in this class include interviewing and advising clients, negotiating agreements for clients, drafting contracts, and arranging settlement offers.\(^52\)

Responses to the critique of the Socratic method as training for hierarchy were mixed.\(^53\) One professor agreed with this critique while another rejected it. A third professor agreed that legal education itself was hierarchical, but asked whether hierarchy in the law school classroom was necessarily undesirable. "Teachers know more than students," he noted, "that's why we're here."

C. Counter-Traditionalists

The most striking similarity among the counter-traditionalist professors is that they developed a strong distaste for the Socratic method when they were law students. As one professor who graduated from law school in the 1960s recalled, "I knew [the Socratic

\(^{47}\) See supra notes 10-13 and accompanying text.

\(^{48}\) See sources cited supra note 15 and accompanying text.

\(^{49}\) See sources cited supra note 17 and accompanying text.

\(^{50}\) See supra notes 26-35 and accompanying text.


\(^{52}\) See id.

\(^{53}\) See, e.g., KENNEDY, supra note 25.
method] wasn't a good way of teaching." She found aggressive Socratic teaching counterproductive because it seemed to be based on the dubious proposition that terror was an effective learning tool. Instead, she found that "stress and humiliation are not a good way to learn."

Although the three remaining counter-traditionalist professors graduated from law school significantly later, they also found Socratic classes to be uncomfortable and counterproductive. One learned a great deal and studied hard in Socratic classes at Harvard but found the experience "intimidating and infantilizing." Another thought that the traditional method was both "infantilizing" and "incredibly confusing." A third recalls that "of all the styles [of classroom interaction], I least liked the Socratic method."

When these professors started teaching, they rejected the traditional Socratic method. One professor began with a Socratic style but quickly moved to the panel technique. "I really liked how [the panel system] worked," the professor explained. "Students felt respected, and it raised the level of discussion in class." The panel method also proved to be a more comfortable way to teach, because unlike the Socratic method, it rarely put the professor in the unhappy position of embarrassing unprepared students.

One female professor recalled how her rejection of the strict Socratic style resulted from her first teaching experience. At that time, she was the first woman on the faculty and only a handful of the students in her large class were women. She sensed that students wouldn't take her seriously if she tried to replicate the imposing and controlling Socratic style. Drawing on the best of her pre-law school teachers, she patched together a mixture of teaching styles similar to what she uses today. Unlike most professors of the day, she adds, "I made clear I was on the students' side."

Unsurprisingly, several of the counter-traditionalist professors challenged the accuracy of the vision of the Socratic method set forth by its proponents. Although two agreed that the traditional method induces vicarious participation and learning, others were less convinced. One professor described Professor Areeda's description of Socratic learning as "the nice version," which may or may not hold for individual students. Another professor went further, noting that some people are so scared in Socratic classes that they are too frightened to learn if they are called on and too relieved to pay attention if they are not.

These professors also recognized the gender dynamic in law school classrooms, but were unsure of the cause or the solution. One profes-

54. See, e.g., Areeda, supra note 3, at 921-22 (extolling student internalization of the Socratic Method).
sor claimed to be "agnostic" on the feminist critique of the Socratic method. "Does the teaching method silence women," the professor asked, "or is the disinclination among some women to participate in class better explained by the history of male-dominated law schools?" Two professors agreed that women are less inclined to speak in class than men, but saw no obvious way to change that unfortunate dynamic.

The fourth professor took the feminist critique of legal education very seriously. "I am deeply concerned by this," he admitted, "there is some truth to it." He responds to the feminist critique in two ways. First, he discusses feminist perspectives on law with his first year students. Second, he asks his students to be aware of dynamics of race, gender, and hierarchy in the law school classroom. "Think about what this place is doing to you," he warns his students.

V. RETHINKING THE DECLINE OF THE SOCRATIC METHOD

As this article has shown, the Socratic method coexists with various other pedagogies in contemporary law school classrooms. Even in first-year classes, where Socratic teaching is focused, students encounter a variety of classroom styles ranging from a toned-down Socratic method to lectures and panel systems. The best explanation for this change is that yesterday's students have become today's professors, and have carried with them perspectives and attitudes toward legal education from their student days. Those who enjoyed the Socratic methodology as students have largely embraced it as professors. Those who did not have rejected its precepts altogether. In addition, the turbulence of the late 1960s and early 1970s led to a dramatic restructuring of classroom dynamics. This era of unrest forced elements of traditional law school hierarchy to crumble, forcing out the harsher forms of classroom pedagogy. Established teachers felt constrained to rein in their more strict policies while new teachers felt liberated to experiment. Over time, this experimentation has led to the diverse set of teaching styles found today.

Because these findings conflict in important ways with the contemporary understanding of the Socratic method, they suggest the need for a rethinking of aspects of the contemporary debate concerning its use. In this section, I conclude by considering how the interviews I conducted raise questions about the present debate over the Socratic method.

The first such understanding I would like to address is the view that important dynamics in legal education today can be attributed to the effects of traditional Socratic teaching. For example, Professor Lani Guinier, Michelle Fine, and Jane Balin have argued in a much-publicized article that the Socratic method is partially responsible for
the relative underperformance of women law students. Professor Guinier and her colleagues found that men consistently outperform women at the University of Pennsylvania Law School, especially in first year classes. Believing that the Socratic method "is almost universally used in first year classes," they place part of the blame for the underperformance of female students on the confrontational and intimidating Socratic method. To alleviate the damage caused by the "almost universally used" Socratic method, they recommend that law schools engage in "an effort to promote a genuine diversity of constructive teaching styles" in which all students can be comfortable.

This recommendation appears to be based on an outdated understanding of the prevalence of the Socratic method. As this study has shown, the "genuine diversity of constructive teaching styles" that Professor Guinier would like to see is already the norm. The traditional Socratic method of The Paper Chase and One-L may still captivate students' imagination, but it is no longer common at Harvard—and, assuming Harvard is typical, at most American law schools. Given that most students may experience very little (if any) traditional Socratic teaching, it is hard to see how the pervasive underperformance of women law students can be attributed to the Socratic method.

Importantly, I do not challenge Professor Guinier's belief that legal education continues to reward students for aggressiveness, competitiveness, and analytic detachment, traits that some consider 'male' attributes. Professor Guinier and her colleagues have accumulated compelling evidence showing that women law students feel more alienated than men in law school classrooms, and it is reasonable to conclude that this alienation translates into less engagement with the law and therefore lower performance on law school exams. What I do question is whether the Socratic method could have caused this alienation. The "genuine diversity of constructive teaching styles" that Professor Guinier would like to see is already here, and yet the troubling problem of underperformance by female law students persists. If women are underperforming in law school due to their reactions to

55. See, e.g., Guinier et al., supra note 22. This article was recently published as a book. See Lani Guinier et al., Becoming Gentlemen: Women, Law School, and Institutional Change (1997).
56. See Guinier et al., supra note 22, at 22-27.
57. Id. at 45-46.
58. Id. at 93.
59. Interestingly, Professor Guinier may agree. After joining the Harvard faculty in 1998, she reported to a law school alumni publication that she found many of her colleagues on the Harvard Law faculty to be "very open to different teaching styles." Nancy Waring, Lani Guinier: Present and Visible, 50 Harv. L. Bull. 36 (Spring 1999).
60. See id. at 46 n.116; see also Gilligan, supra note 39, at 31-38.
61. See Guinier, supra note 22, at 42-59.
legal pedagogy, it seems unlikely that it is the Socratic method that they are reacting against.\textsuperscript{62}

The second understanding I would like to address is that Socratic teaching correlates with the race, gender, or ideology of the professors who choose whether to use it.\textsuperscript{63} Here, the difficulty of identifying concrete patterns in a study of only a dozen professors counsels caution: my conclusions must necessarily be tentative. With that caveat made, I think it is worth noting that race, gender, and ideology appear to be fairly poor indicators of whether and how professors use the Socratic method.

For example, among the professors who were most critical of and least influenced by the Socratic method, one is often identified as a “conservative” or a “traditionalist,” and the other teaches his class from the perspective (typically regarded as conservative) of the law and economics movement. Conversely, one professor who has been an outspoken critic of traditional legal education has nonetheless incorporated substantial elements of the Socratic dialectic into his classroom presentation. As one professor and self-described “liberal” who embraces the Socratic method remarked, “the common wisdom, that the right does the Socratic method [and that] the left doesn’t, . . . is not true.”

Similarly, minority and female professors do not appear to be less likely to use the Socratic method than their white male peers. This is particularly clear when we look within a single generation at the younger professors, who themselves represent a more diverse cross-section than more senior partners.\textsuperscript{64} Of those teachers who began teaching after 1980, the two white male professors reject the Socratic method almost entirely. In contrast, the majority of the African-American and female professors interviewed embraced the method.

\textsuperscript{62} See Jennifer L. Rosato, The Socratic Method and Women Law Students: Humanize, Don’t Feminize, 7 S. CAL. REV. L. & WOMEN’S STUD. 37, 39 (1997) (arguing that “the negative experiences of women law students probably are attributable to factors other than the teaching methodology employed during the first year of law school”). Professor Rosato’s article explores several reasons other than the Socratic method that could explain the negative experience of many women law students. The reasons offered by Professor Rosato include sexism among professors and students, the adversarial nature of the judicial system, and the lack of institutional support for women students. See id. at 49-53.

\textsuperscript{63} See, e.g., Joyce Hughes, Different Strokes: The Challenges Facing Black Women Law Professors in Selecting Teaching Methods, 16 NAT’L BLACK L.J. 27, 27 (1999) (“[D]ifferences in law professors’ backgrounds . . . can mean variances among their teaching styles.”).

\textsuperscript{64} The problem with looking for racial and gender trends across generations is that the diversification of legal pedagogy has occurred at the same time that law school faculties have become more diverse. Thus, although senior faculty members who tend to be white males are more likely to be Socratic than more junior faculty, their tendency to use the Socratic method could be a reflection of the era in which they began teaching, rather than a reflection of their race and gender.
Thus, the stereotype that white male professors generally use the Socratic method and that female and minority professors generally do not is unsupported by the study.

A corollary of this finding is that the vigorous debate over legal education would be strengthened by a broad recognition that the Socratic method serves as a proxy for all that is right or wrong with traditional legal education. The view emerging from the interviews I conducted is that the Socratic method is simply one teaching technique among many, and that it has both positive and negative aspects depending on the skill, personality, and purposes of the professor who chooses to use it. Although the Socratic method provides a convenient punching bag for some and beacon for others, attempts to use the Socratic method as a chip in larger struggles probably tend to confuse the method itself with the historical context in which it thrived.