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Legal Education, Art Before Science:
Surrendering the Socratic Method Jeopardizes the Political Future

Ryan W. Peterson

“Education is the kindling of a flame, not the filling of a vessel.”
— Socrates

INTRODUCTION

As the outcry for social change breaks from the throats of American cities, the partisan nature of public discourse and political tension raises one of the most important questions of our time: what role does the law play in uniting or dividing a nation? While this question sits at the forefront, the answer remains imperceptible without a firm grasp on what the law is, how it develops, and upon what foundation it depends. Or put another way, the answer begins by asking more questions.

This paper cannot hope to supply the answers; it merely seeks to identify the importance of legal institutions in the success or failure of public discourse and politics in the United States. In order to understand the way in which the law’s effectiveness has decayed in recent decades, this paper looks to the changes in legal pedagogy with particular focus on the movement away from the Socratic Method in favor of more fact-based, lecture-based approaches. This shift is
pivotal as it serves to undermine not only the education received by those who embark upon the profession of law but also reframes the law from an art form, emerging through student-centric inquiry and advocacy to a brute science, the only requirement of which is to know what the student has been told. This is to say, by removing the critical-thinking focus of legal reasoning and replacing it with fact-based, memorization methods of teaching, the law itself evolves from a pursuit of understanding to a pursuit of the correct answer as dictated. In the case of political discourse, this moves the narrative from one of active engagement to one of irreconcilable differences, in which one party is right, one party is wrong, and neither party is understood.

In order to rebuild the foundations of legal education that so valuably support our political institutions, it is critical to rethink the motivations for and the replacement methods invoked with regard to the near-total abolishment of the Socratic Method in law-school courses. While this paper acknowledges the drawbacks of the Socratic approach, the desire is to identify these weaknesses as well as the potential benefits of adaptation above abolition. The scope of this paper will extend to address the primary critiques of the Socratic Method by proposing three adaptations to the Method itself. This will be done by laying out an argument in favor of: 1) expanding the Socratic Method to include broader engagement by the class, rather than wholly dependent on questions designed to simply reach a professor’s knowledge; 2) using the Socratic Method to give voice to underrepresented populations and experiences in order to expand empathy and moral imagination in the legal community; 3) mitigating the potentially detrimental impact of the Socratic Method by increasing professorial understanding of cultural and personal backgrounds which shape student engagement, requiring deeper empathy not only on the part of students but on the part of those entrusted to guide their way.
Pedagogy as an inherently political process

Legal education is inherently a political process with political consequences. The connection between education and politics was the focal point of Raymond Williams’ research and writing. Williams imagined education as a process of learning, conducive to the expansion of community and democracy. According to Williams, education is the means through which people immerse themselves in a common culture in order to refine their beliefs against the individual experiences of others. Williams argued that education is not only the transference of information, it is also a means of deconstructing social hierarchies and rebuilding political communities. Individuals in institutions of higher education are in a position to process information and develop skills by interacting with others with whom they would not normally engage. This process is a working model for democratic societies and advances politically desirable inspiration for democratic institutions.

Part of Williams’ argument is the idea that the educational process moves in both directions; it is in the classroom setting where instructors and students can meet as equals and share in a democratic learning experience. Williams is not suggesting pure equality in the classroom. Rather, the student and the instructor are equals in their capacity to learn and their observations of the world. While the instructor possesses expertise by virtue of age and practice, each student possesses a unique compilation of experiences which may contribute to the discourse.

In the right setting—and practiced in the right form—education teaches students that they can challenge authority and change perspectives. In this way, Williams’ suggestion is similar to Aristotle’s perspective on learning virtue, as eloquently illuminated by Myles Burnyeat.
According to Burnyeat’s interpretation, students must learn “what is noble and just not by experience of or induction from a series of instances, nor by intuition, but by learning to do noble and just things, by being habituated to noble and just conduct.” Educational challenges posed by the professor in guided scenarios train the students to rise up and answer the call to become an expert. Such an education is an ideal exercise for what students will experience in public life. Through this approach of learning virtue through guided experience, students gain confidence that their beliefs matter through their engagement in civil society. These interactions between the students themselves, as well as interactions between students and the professor, sharpen the skills of all parties involved. Each party has the privilege to learn from the others, and to offer their best characteristics from which others in turn may learn.

Paulo Freire built off of Williams’ work and developed his own insights into the significance of pedagogy. In Freire’s 1968 work, “Pedagogy of the Oppressed”, he links pedagogical structures to political mindsets and outcomes. According to Freire, a “liberating education consists in acts of cognition, not mere transfers of information. It is a learning situation in which the cognizable object intermediates the cognitive actors-teacher on the one hand and students on the other.” Freire argued for a form of education which proceeded through dialogue and transformed the teacher-of-the-student into the student-of-the-teacher. The education of the oppressed follows the transfer of information, but it fails to teach critical thought and objectifies the learner. Compared to Aristotle’s prescription of education, the oppressive education consists of professors telling students what virtue is without providing students an opportunity to practice virtue for themselves. In this way, information is held over

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the student. Individuals are taught to receive but they are not given the skills to question information or authority from which it stems. Instead of an oppressive system, Freire sought a system in which students “become jointly responsible for a process in which all grow.”

Scholars such as Kevin Vinson utilized Freire’s work to develop modern pedagogical structures for what he called a democratic education. Vinson advocates for educational approaches which build on problem-posing as a way for teachers and students to strive toward a consciousness that is grounded in a humane and liberating dialogue. In this approach, the professor remains a critical component in the education; it is presumed impossible for students to learn virtue without a guide. Unguided pedagogies without the professor’s influence leave students vulnerable to misguidance. In this way, Socratic Method provides a structure consistent with Vinson’s ideal model for the pedagogy of freedom. Vinson’s form of freedom allows for oppressive conditions to be understood and overthrown. This requires a problem-posing education which works to deconstruct the individual perspective of reality. It dismantles arbitrary perspectives and reliance upon external sources. Once deconstructed, such a pedagogy rebuilds a consciousness geared toward the critical intervention in reality. According to Vinson, it is an education through action that the culture of domination can be confronted. Educators work with their students for synthesis and awareness that allows students to explore their common condition and work to transform political and social conditions.

The cognition of pedagogy and its relationship to political circumstances extends beyond Freire to influence feminist theories, critical theorists, and cultural critics. Cultural critics such as Henry Giroux study how the political bias can become a pedagogical method itself. This is

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particularly true, according to Giroux, in terms of how private issues are connected to larger social conditions and collective forces; *i.e.* how the very process of learning constitutes the political mechanisms through which identities are shaped, desires are mobilized, and experiences take on form and meaning. Giroux’s primary concern is that neo-liberalism had become an ideological method in higher institutions. However, Giroux’s concern with neo-liberal pedagogy is strikingly similar to Freire’s pedagogy of the oppressed. It focuses on the exchange of information as a commodity for purchase. Such a pedagogy maintains hierarchies, whether those hierarchies be male dominated over female oppression, financially dominated by the wealthy over the poor, or politically dominated by the powerful over the superfluous.

Scholars such as Jay Feinman and Marc Feldman apply the concerns of Giroux and Freire to legal education specifically. Feinman and Feldman argue that legal education is dominated by a conservative consciousness that affects what law students learn and ultimately how they practice law. The style of education presented in the classroom, how students are encouraged to interrelate and debate, and the curriculum of legal education all reflect a view of the world. The Feinman and Feldman theory of legal education presents the classroom as a microcosm for governance. However students learn to practice politics within a classroom becomes the form of politics they will understand in civil society. According to Feinman and Feldman, legal education itself is a form of politics. To them, it is a form with an inherently conservative bias which recreates itself in the legal and political institutions where indoctrinated law students practice their trade.

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Pedagogy, particularly in the legal profession, is a moral practice and necessarily a political practice. Refusing to acknowledge the political role of instruction divorces individual experience from lessons. It also fails to honor the insights of students and disconnects any individual meaning or application to the lessons of the classroom. According to Henry Giroux, the political distancing that pedagogy is so eager to affect means, that education becomes “performative in that it is not merely about deconstructing texts [instead, education should] also [be] about situation politics itself within a border set of relations.” Such relations “address what it might mean to create modes of individual and social agency which enable rather than shut down democratic values, practices, and social relations.”

Pedagogy should empower students. Intellectually, it should provide individuals with the tools to question authority, particularly in turbulent political times with accusations of “fake news” and media bias. Individuals are reeling to determine what is “true” and upon what informational sources they can rely.

A politically conscious pedagogy helps students learn to parse “fake news” from reliable sources. It instills students with the ability to question authority and determine their own conclusions. Just as significantly, it teaches students that it is worth speaking and professing her truths to the world. Giroux notes that “as a political practice, pedagogy illuminates the relationship between power, knowledge, and ideology, while self-consciously, if not self-critically, recognizing the role it plays in a deliberate attempt to influence how and what knowledge and identities are produced within particular sets of social relations.” Such a pedagogy is not simply about the transfer of information, it is about the shaping of moral beliefs and encouragement of civic engagement. This is particularly true for legal education where


students will continue to craft social standards of justice, write policy, and ascend into a public forum to negotiate the terms of civic interactions and exchanges.

**Among pedagogical methods, the Socratic Method is the most political and the best for teaching democratic virtues**

The Socratic Method provides the most political form of education and is necessary for law schools. However, modifications to the traditional form of the Socratic approach (also referred to throughout this paper as “the Method”) in legal education should be made in order to foster inclusion and empathy in the legal community. These changes must be implemented by professors utilizing the Method. Professors must change their sources to include material outside the traditional legal text books. Biographies, novels, and current events can serve as a powerful tool alongside traditional case law. Professors must also focus on intentionally broadening their questions to include the new sources. Questions must not focus on what the law “is” to the exclusion of how the law is developed and what impact law is having upon society. Finally, the most aggressive transformation must occur in the administration of legal institutions. Law schools must make a political education a high priority and focus on the inclusion of minority groups through smaller class sizes and a conscientious requiting policy for students and faculty.

Historically, the first-year curriculum in law school was taught predominantly through the Socratic Method. In comparing the Socratic Method to other pedagogies and their political reliance, it is first necessary to define “The Socratic Method.” Scholars define the Socratic Method differently and there are various components that you can incorporate into the definition. Scholars such as Robert Johnson argue that the Socratic Method is really a sophist construction and should be applied in modern education to instill cultural and communal values into
students.\textsuperscript{11} Such a definition is valuable as it relates the Socratic Method to the political structure of the ancient Greeks. The emphasis on debate and the individual perspectives of events is a focal point for both Vinson and Freire in how they define a political education. Connecting the Socratic Method to ancient Greek education also helps develop the connection between education and cultural values. As numerous scholars have discussed, the legal education is not only an education in reasoning and the law, it is the instillation of morality and civic responsibility into the students.

The emphasis of the Socratic Method and cultural or political values also opens the Method to weaknesses from feminist and critical scholars. Feminist scholars and critical theorists have argued that the Socratic Method exists to reinforce preexisting social hierarchies. If the roots of a culture are sexist, if the political institutions of society are biased, and if legal education exists to teach and enforce cultural and political values, then it is natural that legal education would perpetuate discrimination. Some feminist scholars argue that discrimination is inherent in the Method itself, while others argue that the discrimination is an avoidable result. Whether discrimination is inherent in the Method depends upon whether the method is inherently aggressive and whether such direct pedagogies necessarily discriminate against women. In other words, it depends upon whether direct confrontation and the logical flow of the Method is inherently masculine to the exclusion of women.

Such a position is inherently a problem for all political interactions. If the Method is sexist in form and not simply in consequence, then all political and legal institutions would require reformation. Legal theorists must admit that legal institutions and legal education is inherently prejudiced against women and minorities. However, the inherent inequities of the

Method invoke broader social issues that lay beyond the scope of this paper. By the theory that the Method itself is sexist, so too is any other method utilized by legal institutions – if the underlying issues are not addressed. Perfection is an impossibility, but the Socratic Method offers an opportunity to discuss the issues and can provide a valuable tool for diversity within the classroom.

Admittedly, the focus of this paper will center on the sexist outcomes of the Socratic Method—outcomes which may be attributable to the system utilizing the method, rather than the Method itself. Evidence supports the finding that there are sexist results in the use of the Socratic Method, but they are not inherent to the Method by necessity. Such results of the Method are more similar to the education of oppression and the very notion that Freire argues against. By focusing on the various cultural and political outcomes of the Socratic Method and using those outcomes to filter their definition of the Socratic process itself, scholars opposing the Socratic Method define it as oppressive. In opposing the Socratic Method, such scholars aspire for a liberal education; a political education that better suits the plurality and diversity of the real world. Moving forward, it is important to recognize the shared goal of both positions. Every scholar chooses to incorporate different views on the authority of the professor, the role of the student, and the goals of the Method. This paper will utilize what is generally agreed upon between the scholars to argue for use of the Socratic Method in legal education, albeit with proposed adaptations which will be noted.

The traditional understanding of the Socratic Method is that the method is merely a process of calling upon a single student to answer for a particular case. The role of the professor is to utilize the process of questioning to direct the student through the logical process of legal opinion. By emphasizing the process of legal reasoning, instead of the specific answer or
outcome provided by the student, the goal of the Socratic Method is to help students recognize the limits of their knowledge and provide them with the tools to learn more on their own. At the end of the Socratic process, the student should leave with the ability to abstract the reasoning behind arguments, and apply it to future circumstances. Advocates of the Method, as it is traditionally understood, maintain that the risk of being questioned induces students to participate vigorously in the material, and thus learn more than the passive participation of other approaches. Active participation serves not only as a pedagogical tool for learning, it also instills a virtuous practice for Democratic institutions. The student becomes the driving mechanism in the political space of the classroom and practices the art of politics for application in their profession.

Despite the historic use of the Socratic Method, recent developments in legal education have shown a pedagogical shift away from the Method in favor of alternative forms of education. As early as 1996, Steven Friedland was finding that only 30% of first year professors use the Socratic Method. In upper level courses, Friedland found that 94% of professors are using lectures, instead of the Socratic Method, in the courses. Orin Kerr categorizes the pedagogical criticisms of the Socratic Method into three broad approaches. The first broad category relates to the pedagogical approach stems from the perceived psychological harm that the Method causes to the students. The second set of critiques focus on the allegation that the approach fails to teach students the skills that a lawyer really needs. Kerr’s final category is based on the argument that the Method advances a political and ideological agenda.

Kerr’s three broad categories of criticism against the use of the Socratic Method in legal education and proposed solutions

All three of Kerr’s critiques raise valid concerns regarding the Socratic Method. However, the majority of the concerns are a result of social and political failings in legal education, not attributable to the Socratic Method itself. This paper hopes to recognize the concerns raised by critics and evaluate the Socratic Method as a political pedagogy which educators can apply to resolve the three categorical concerns of Kerr. By recognizing the political failings of the method, professors can utilize the form of the Socratic Method as a tool to help transform the classroom into a more just and democratic space.

Kerr’s three concerns inherently acknowledge a desire for education to take on a more political form. And, imbedded within that critique, is the idea that the Socratic Method is not an ideal tool. By looking at the role of the student in relation to the professor, the forms of knowledge stressed by the Socratic Method, and through awareness of the critiques, the Socratic Method can actually be strengthened by the criticism for the benefit of students. What oppositional scholars see as errors in the Socratic Method are the deeply held political and social bias built into institutions. Professors using the Method must be aware of this bias or risk contributing to the problem of oppositional education.

Another reason for the decline of the Socratic Method is the rising interest in alternative learning methods. Currently, scholars categorize adult learning into six method categories: Introduce, Illustrate, Practice, Evaluate, Reflection, and Mastery.16 Based upon these categories, education experts developed a diverse range of aspirational tools such as lectures, group projects,

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illustrative exercises, and various kinetic exercises to help students learn new material. Modern Educational scholars advocate for the inclusion of multi-perspective methods and critics of the Socratic Method argue that it simply fails to accommodate students who learn with alternative strategies.

However, the Socratic Method itself does not prescribe to a singular form. There is no mandate that questions cannot be answered in a more communal forum were groups of students cooperate together. Similariy, it is assumed that questions must be answered in written or oral tradition. Professors can utilize multidimensional techniques while retaining the focus on questions and answers for the guidance of students. As a political pedagogy, the Socratic Method thrives in a more diverse student body. The process of questions and answers allows the Method to utilize the diversity of student experiences to expose individuals to new perspectives. This both forces the individual to challenge personally held beliefs and ideals, while simultaneously preparing them for a profession deeply imbedded in politics. The Method would fail if it could not incorporate other techniques through the questioning process. Current research shows that the most important component in learning and retaining is the student’s active participation in the education process; this is the strength of the Socratic Method. The Method can be adaptive broaden student engagement and to incorporate the second category of criticism. This may extend to questions which seek the students’ experiences and understanding rather than being designed to reach an answer the professor holds aloft. By integrating this modification, inclusion becomes a dual focus with understanding.

This paper examines all three of Kerr’s broad categories of criticism. It will also discuss the development of alternative methods of legal education and how they can be incorporated into the Socratic approach. Finally, this paper hopes to show that the shift away from the Socratic
Method in law school is an error. Observations from all three categories of criticism are deeply concerned with the political implications of the practice itself. However, by observing the results of social and political bias, such critiques have discarded the benefit of the Socratic Method as a viable ally in resolving such institutional troubles. Focusing on the political process and the critiques of scholars can increase awareness of the professors, as well as strengthen the Socratic Method for the benefit of the student. Furthermore, the Method itself is designed to maximize student participation in the educational process. The flexibility and dynamism of the Socratic Method makes it the ideal tool for legal education, one which should not be abandoned so quickly in light of current criticisms.

Kerr’s first category of criticism: the Method fails to teach the substance of the law. Such a criticism maintains a profound misunderstanding of what the law is and what is the purpose of a legal education.

The political characteristics of the Socratic Method make it the ideal method to help students derive a stronger understanding of law and better skills for legal practice. This is particularly true in the scope of legal scholars such as Amy Kapczynski. Kapczynski argues that the relationship between the law and politics is essentially a matter of specific form requirements. Courts and lawyers must provide legal reasons for essentially political decisions, but the mechanism and focus of persuasion is the same pertinent factor in both law and politics. In this lens, the difference between politics and law is not a difference in topics to be treated nor in the criteria for decisions. The difference is not even a distinction of practical, relevant or institutional forms; the only difference is the language used.17

Even if Kapczynski is wrong, there is a long history of using the Socratic Method in legal and political education. The Method became the primary pedagogy of legal education when Christopher Columbus Langdell implemented the Case System at Harvard University.\(^\text{18}\) The Case System focused students’ attention on reading published legal opinions written by judges. Students attended class where the professor would question students regarding the opinions they read. Questions focused on discerning the critical facts of the case, parsing the logic of the courts, and then applying the same logic to hypothetical situations. The Method, later referred to as the Socratic Method, became such a success that it was adopted by law schools throughout the United States.

Tradition and the survival of the Method alone is no reason to retain the Socratic Method, but it does raise the question of why law schools continued to adopt the Socratic Method and how it remained the dominant pedagogy in legal education. One theory for the Method’s success is the fact that it taught students the critical necessities of the law, the same necessities required in civil society. Considering alternative methods, the lecture method itself is older than the Socratic Method and existed in Europe long before Langdell’s innovation at Harvard. The fact that the Socratic Method has persisted should trigger inquiry from modern educators who advocate for new approaches.

Critics of the Socratic Method argue that the Method does not actually teach students what they need to learn. Such criticism is largely driven by the development of legal positivism. Legal positivism is the belief that the law exists as fact; like an artifact independent of individual thought or perception. The theory of Legal Positivism developed into the primary jurisprudential

theory by 2000.\textsuperscript{19} Legal scholars appreciated the scientific approach to law and utilized legal positivism as the solution against alleged bias and accusations of judicial activism. In other words, it was the goal of legal positivism to separate law and politics. Thus, according to positivist theory, law should be taught independently from any political pedagogy. One effect of legal positivism was that law was understood to be a finite entity, which could be known through examination; similar to the way geology studies rocks and biology studies life, the law had its own objective scope of study, subject to review. With this perspective came the option of teaching the law as an objective science. Legal scholars began teaching what the law is, rather than how the law is processed and contemplated.

This method of instruction has a stark similarity to the pedagogies of oppression studied by Freire. The professor became the controller of information and a dictator in the classroom. Individuals were supposed to mimic and repeat lessons according to the professors’ satisfaction, rather than criticize the logic or attempt any innovative thought of their own. The lecture method is highly applicable to hard sciences and circumstances where a direct transfer of knowledge is necessary. However, the study of law is a political practice, absent any tangible information that the professor needs to pass to students. Because of legal positivism, the study of law became a science rather than an exercise. With the divide between the object of law and the inquiry of law, legal education was itself liberated from social questions, political diversity, and the classical challenges that pervaded law schools and made law such a salient political subject. In the words of John Austin, one of the founders of legal positivism, “the existence of law is one thing; its merit and demerit another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry.”\textsuperscript{20}

\textsuperscript{19} Bix, Brian H. "Legal positivism." Philosophy of Law and Legal Theory (2005).
The split in inquiry between the law and politics made any analysis or reasoning irrelevant to the legal education. As such, there was no reason to engage with it as a question. This split also gave rise to the opportunity for unquestioned bias and cultural discrimination to enter more prevalently into legal education. Undoubtedly, legal education was sexist prior to the invention of Legal Positivism and it remains sexist today. However, the new objective law allowed the discrimination to continue as a political and social question, irrelevant to the law. The same mechanism that made the legal method an education of oppression also precluded examination of beliefs and practices. If qualified immunity for law enforcement results in a disproportionate deaths in minority communities, then that was outside the boundaries of law. Practitioners of law are taught to ignore the impact of the law. Consistent with Freire’s theory of oppressive education, methods under Legal Positivism fail to instruct students to examine their implicit role in injustice and their power to help improve democratic societies. By failing to examine the influence of law in society, legal education implicitly strengthens the existing hierarchies by allowing students to maintain their bias without reflection.

As contemplation of the law divorced itself from political considerations, economic realities, and sociological conditions, the criticism against the law began to rise. The separation of law from politics made the law subject to political criticism for feminist scholars, critical theorists, and advocates for alternative educational methods. Implicit, explicit, and structural bias are inextricable in the courtroom. The internalization of rules and perspectives is inevitable in any field that is as personal as the law and requires as much interpersonal cooperation as litigation. Bias was always present and inescapable in the law, no matter how hard legal positivists tried to ignore the reality. Edward White utilized the revelations of Thomas Kuhn to

argue that critical legal theory was the product of Positivist Legal theory. The presuppositions of each generation are predictably replaced by those of another. For an orthodox legal belief such as legal positivism, it was fated to eventually become obsolete and seed its own replacement.\textsuperscript{22} Critical Theory was the replacement out of Positivism, and as a result, it inevitably sees the political consequences and connections between legal instructions and the practice of politics.

Experienced lawyers, without academic training, have argued against legal positivism and instead focused upon Legal Realism; what actually happens in the process of law. Years of experience in court demonstrates that there is no presumptive truth in the law, not until the presentation of arguments is complete. And even after a judge or jury has determined the relative truth in a case, such a truth only exists so long as it is supported by future courts. Particularly in District Courts, the determination of judges and juries has no precedential value. Because of the lack of precedent, identical facts can be presented for similar cases, and opposite rulings given by two different judges. At best, the ruling of another judge is merely of persuasive value. Critical scholars such as Segal and Harold attribute the differences to the political bias of judges.\textsuperscript{23} Other scholars such as Kim Pauline argue that the different levels of judicial oversight change the interpretation of judges.\textsuperscript{24}

Regardless of the arguments for how or why, what critical theorists show through scholarly work and courtroom demonstrations, and what experienced litigators learn from practice, is that judges rule differently. It is not necessary to disprove that legal positivism is desirable, nor is it necessary to explain how judges rule. What is necessary is to recognize that judges are not applying a single uniform law throughout the courts. In other words, Legal

Positivism fails as a descriptive theory, even if it retains its normative desirability. This is most demonstrable within District Courts, but it is even visible at the level of the Supreme Court. Significantly, the majority of case law studied in law school is derived from the significant cases handed down from the Supreme Court. This bias in favor of the highest court is because legal educators assume that what the highest court states is the law in their written opinions – is the law. One of the best examples of this is *Roe v. Wade*. Law students typically read the abortion case as a statement that states cannot prohibit an abortion. If law students study the matter any further, they read *Planned Parenthood v. Casey*.

*Casey* modifies the *Roe* holding, but still maintains that state governments cannot prohibit abortion. According to most classes on Constitutional Law, this is the extent of discussions on the matter of abortion. Professors will lecture on the maintained legality of abortion and the diversity of District Court restrictions and state legislation will go unexamined. It is unfortunate the inquiry does not go further for what is lost are greater questions of ambiguity. Accepting that abortion cannot be precluded does not help law students discern the morality or ethical concerns involved. Legal questions remain regarding restrictions on abortion, reasonable access to abortion, and what a state can do to encourage or discourage abortion, without strictly prohibiting the matter. The issue is too vast and complicated to cover in a single semester, but the case law can be used to illuminate the questions and challenge student perspectives. Teaching the black letter law as Positive truth—that abortions cannot be prohibited—does little to help law students understand the complexity and practical application of the issue.

The belief that a single judge or court may apply the law in a uniform fashion lends itself to the companion belief that a professor can lecture on the law and apply it with equal
uniformity. The focus of law school is transformed into mimicking a professor so you can repeat the lessons to the judge. Authority becomes a single entity with nondescript characteristics, an abstraction. However, this approach is incorrect in the law, and it is incorrect for legal education. In a study conducted in 1959, scholars found that from the early 1800s until 1959, there had only been 45 cases in which the Supreme Court was unable to muster a clear majority. These opinions, called plurality opinions, exist when a majority of judges agree with an outcome of a case, but they cannot agree on the reasons for the outcome.

More recent studies have shown a growth in the number of plurality opinions. From 1947 until 1959 there were 61 plurality opinions from the Supreme Court. Of an even greater concern, the trend is on the rise as the highest Court is divided within itself and unable to muster a clear ruling on legal issues. Plurality opinions are a concern to scholars and practitioners because they have no precedential value and cannot be used to guide lower courts. Plurality opinions are defined by the lack of agreement regarding the law, where even the highest court cannot tell litigators what the law is or how to apply the law in the future. As such, it appears that the domination of Legal Positivism has not resulted in clarity of the law. Scholars, judges, and practitioners appear less certain regarding what the law is than they were with less formal methods of jurisprudence.

If the highest authority on the law cannot clearly express what the law is, then there is little hope for greater success from professors. Legal positivists may worry that the division of courts and classrooms regarding what the law is, necessarily surrenders the law onto absolute relativism. In this theme, some critiques from the critical theorists maintain that the notion of law is an absurdity. But this conclusion is not a necessity, and it does not inevitably follow from

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observations in the courtroom. There exists a plethora of legal theories—beyond the scope of this paper—that argue that the law is a rational decision-making process. Similar abstract concepts such as morality and ethics are highly controversial, but the controversy defining what is moral does not negate the recognition that morals exist. The fear of absolute relativism is no more founded in the arena of law than it is in politics. Despite political tension and arguments of “fake news”, the political sphere has not been completely torn apart by the impossibility of fact or the absolute unwillingness of participants to negotiate. There is no reason the legal sphere should be any different.

**Virtues of the Socratic Method, independent of Legal Positivism: it is desirable that law students should learn political methods, even if such methods were not bound within the law**

Law schools can engage in the debate over what is the law as a political exercise. Law professors can utilize the Socratic Method to emphasize the debate and challenge students to think critically. General agreements are possible, just as it is still possible for bills to become laws. Additionally, law school and the Socratic Method have justifications that are detached from the specific product of what law students learn regarding substantive law. The memorization of statutes and precedents is not as complicated as requiring three years of expensive education, in addition to a bachelor’s degree in a substantive field. Such a format would be performed best by the lecture method, but it would not serve law students well. Practice in the courtroom shows that the lawyer who memorized the most “law” is not always the best advocate. Advocacy requires an adept understanding of individual emotion. Good lawyers captivate the jury, they draw them into the arguments, and they manage the emotions and expressions of witnesses. Instead of focusing on the memorization of rules and statutes, the
Socratic Method can focus more on the process of reasoning and the development of the individual.

Furthermore, adept trial lawyers require an emotional maturity and understanding that mimics the civic virtue necessary for democratic societies. According to Anthony Kronman, the Socratic Method focuses students to develop a sense of “moral imagination.” Again, such statements are easily confused with moral or legal relativism, but that is not what Kronman suggests. What Kronman focuses on in legal education is a deeper sense of the intricacies involved in process of litigation. The fact that there is no single universal truth that governs the outcome of a case does not suggest that there are no answers. Instead, it means that students must struggle to find the reasoning behind answers and discern which solutions are best to the particular problem. This willingness to struggle with others, and the recognition that your “truth” may not be the absolute, is nothing less than what democratic societies require. The process of litigation is the process of policy development; it involves political discourse, and it is a staple in civil governance.

Among scholars who advocate for the moral maturity of legal education, John Cole conceptualizes this position the best. According to Cole, law students enter law school in a state of dangerous emotional and political immaturity. Cole generalizes law students as believing that there is a single truth, which when found, will resolve the crisis invoked by the question. This question may apply to the First Amendment and the range of Free Speech as much as it can be triggered by moral policy questions such as immigration and minimum national income. Incoming students have a belief that there is a single right answer and that when discovered, the question itself would be conclusively resolved. This belief, according to Cole, lends itself to the

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tendency of punishing others who disagree. It ostracizes dissent as an oppressive pedagogy, more favorable for dictatorship and despotism than democratic governments. The description of law students renders true for most individuals who have attended legal institutions. It also resonates with the stereotypical perspective of law students; analytical, organized, and aggressively driven to problem solving. Indeed, one of the criticisms against the Socratic Method is that it reinforces discriminatory hierarchies based on male perspectives of aggressive assertion. Cole affirms the experience of law students and the social perspective of legal education, while also suggesting an alternative role for legal education. A role designed to disassemble the aggressive tendencies of law students and disabuse individuals of the notion that there is a singular truth. The very method that receives criticism for harming individual egos does so in order to break students of egoism and their sense of privilege. Within the lecture method, the professor holds a position of privilege. Students with the “right answers” also hold a privileged perspective because their perspective is true. This position and the consequences are politically dangerous because they produce individuals with emotional immaturity. The belief in an absolute truth and the inability to negotiate with perspectives resembles religious convictions more than it resembles legal or political practices. This intellectual frigidity is precisely what makes religious arguments futile and dangerous, as there is no room for compromise.

Unlike the lecture, which may foster such an absolute perspective, the Socratic Method reduces the students and the professors to a position of equality. This is incredibly important in a field that persists in promoting straight, white men despite the ever-increasing diversity within classes themselves. That is to say, in a field dominated by white men, the Socratic Method presents the opportunity to hear from those with different perspectives and experiences. Within the Method, the role of a law professor is to facilitate debate and demonstrate a practice of virtue.
The professor questions students and encourages dissent to demonstrate that there is no single resolution. The process of collaborative resolution is what matters.27 Similarly, each student is responsible for their own perspective. Unlike group projects where unanimity rules the collective, the Socratic Method makes each person responsible for their argument. Each student is in a position to share, debate, and argue. This responsibility and the power it bestows on the student builds moral strength. It helps prevent legal and political ossification, but makes collaboration possible and makes the student a more confident advocate for their beliefs, while retaining the ability to comprehend other perspectives.

In contrast, feminists such as Susan H. William argue that the fault with the Socratic Method is that there is no singular basis for knowledge. This represents an inherent defect with the Socratic Method built upon the assumption that the Method profound a singular truth. William argues that “knowledge is a socially constructed collective experience, which cannot be attained via reasoning within one student’s own mind.28” William’s proposition begs the question; that the Socratic Method must be utilized to demonstrate a singular truth. And, that such a truth is limited to the rationalization of logical processes. Indeed, this is the same assumption made by critics of the Socratic Method who argue that the Method does not actually teach students what they need to know as lawyers. Such critics reverse the assumption but argue that the Method does not provide a singular solution. The assumption of both feminist theorists and positive theorists is incorrect. It is because the Socratic Method does not teach a singular truth that it is so well adapted for legal education and can be further adapted to broaden engagement. This admission doesn’t negate the observations of feminist theorists. Sexist results

of the Method still occur if professors are ignorant of social and political power dynamics, if they do not understand the role of legal education as a political process, then they are doomed to silence minority views and perpetuate political bias in the classroom. But again, this returns the foundation of sexism to the system utilizing the Method rather than the Method itself.

According to advocates of the Socratic Method, such as Burnele Powell, the difficulty of the law is not learning the facts or applying facts to a case. An education based on memorization and application of facts is no different than a general undergraduate education. If the law were no more than applying definite and certain rules, there would be no need for lawyers in modern society. Instead, according to Powell, the difficulty in the law is judgment. Judgment is a political virtue, a necessity in civic society. Politically, everyone has access to pertinent information. It is the use of information and how information is judged and processed that matters for policy, elections, and litigation. Students must learn what precedents apply, how an argument should be structured, and where to find weaknesses in their own position. Professors need to hear feminist criticism to use the Method as a means of forcing students to challenge their own privilege, or they risk utilizing their questions and the classroom as an oppressive pedagogy. It would be correct to understand the kind of judgment Powell desires consistently with the moral maturity for which Cole advocates. Such a judgment and maturity would fit into the deconstruction of power dynamics feminist scholars argue against.

Law professors retain the power to embrace the moral role of legal education. Along with requiring students to read classic opinions such as Roe v. Wade, law professors can pair such readings with feminist novels, short stories, and news articles related to the issue. The material for class can be used to enlighten students to broader political and social issues that exist

beyond the mere text of legal opinions. Untraditional sources could serve as an ally to minority students and could help the traditional white men in such a class to understand perspectives beyond their own personal experience. In short, law professors should embrace the political role of legal education to help law students become better advocates.

The skill of an expert attorney is apparent in “parsing arguments and discerning one’s own weakness.” The Method demands an introspection that is difficult for students to develop, but is highly rewarding personally and professionally. As an added benefit, many students engaged in the Socratic Method find the process fun, just as many individuals find an engaging debate to be fun. Law school attracts competitive individuals, and the Socratic Method provides a forum for students to engage in positive competition. Individuals are encouraged to show their skills and leave a successful class with a sense of pride and accomplishment.

In response to the critique, it is apparent that professors need to temper their use of the Socratic Method to guide students. The professor must help individuals discern what proves to be a valid argument, and what constitutes an invalid argument. Professors must be aware of their own bias, and the bias present in the classroom, or they are doomed to replicate oppressive hierarchies. If a professor does nothing more than question students without guidance and assistance, as critics suggest, then it is a failure of the professor and not the Method. Other methods which may appear more democratic, such as open group projects, risk students falling into their own bias traps. The professor guides the morality and virtue of the class and helps students examine their prejudices in a constructive environment. The professor is still an educator who is responsible for the students. They must still teach students the art of the law. This art cannot be taught as an objective fact, as the lecture method would presume. Instead, the

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law is focused on argument and persuasion. Since the Socratic Method does not presume the existence of any privileged truth, it is in the best position to teach students this critical lesson.

**What is described as psychologically abusive is an abuse of the Method. The Socratic Method should induce existential uncertainty, sympathy, and compassion.**

The process of teaching students how to reason, of helping individuals generate a sense of judgment, has an additional political and legal benefit. Through the process of reasoning, students not only learn how to practice law, but they also develop a deeper sense of sympathy for their classmates and their clients. Hannah Arendt places understanding and forgiveness in the forefront of necessary political virtues. In order to engage politically, we must come to understand the role of the other. We must attain the ability to stand in their position and observe the world. From this perspective of understanding, we can sympathize. We can comprehend the actions and struggles of political opponents and we can join in the commonality of the Human Condition. Because the world of politics is chaotic and changing, we need sympathy for forgiveness. According to Arendt, to exist in the political realm is to err. It is only through forgiveness of others that we can hope to amass the courage to enter into politics and voice our opinions in an attempt to persuade the other.\(^{32}\) The political necessity of understanding and forgiveness is representative of the virtues necessary for the practice of law and legal education.

According to Kerr, “the most common complaint against the Socratic Method is that it is cruel and psychologically abusive.”\(^{33}\) As early as 1973 students complained that the method demeaned and degraded them.\(^{34}\) Lawrence Silver described the Socratic Method as nausea

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inducing.\textsuperscript{35} Through the process, students have little indication of what is right, what is wrong, and how to evaluate the performances in class. For individuals seeking approval and desperately trying to rise within the ranks of their peers, such an experience is unbearable. The extreme levels of anxiety among law students, as it relates to the Socratic Method, can be described in two ways. One component is related to grades. The other component has to do with the perception of the law, and the social misconceptions of law students entering the institution.

Starting with the first component, the greatest prevailing myth among law students is that grades completely determine futures.\textsuperscript{36} Daniel Keating notes this myth as one of the greatest of concerns for law students, and also suggests that there is some validity to the myth, with a caveat. The caveat is that grades provide a convenient and constant metric to measure successes. A higher GPA in law school will correlate to better initial positions after law school. However, numerous studies have struggled to predict long-term success after law school. Variables such as pessimistic versus optimistic perspectives, goal orientation, and grit are all influential factors more difficult to measure than pure GPA.\textsuperscript{37} A more accurate measure, which would consider all the variables, is far more difficult to determine. For students, the obsession with grades and the uncertainty of the Socratic Method combine into a terror from the Divine Comedy. Students are never certain of how they are performing, but that is not inherently negative.

The error and neuroses that arise from grades, lies with professors, the educational institution, and the administration—not the Socratic Method. Precisely for the reason Keating identifies, grades are easy identifiers, especially in a positivist legal environment where external

variables are praised for their objective value. However, instead of abandoning the Socratic Method due to the psychological distress it causes, law schools should work harder to relieve students from the pressures of a grade and insist on a holistic focus that incorporates the Socratic Method. Numerous schools such as: Harvard, Standford, Columbia, University of Virginia, University of California, and Berkeley have already abandoned traditional grading scales. Research suggests that abandoning traditional grading not only lowers student anxiety, but as a result, increases knowledge retention of information.38

The cynical interpretation of law schools abandoning the Socratic Method suggests that institutions are trying to recruit more students. If it is true that students feel dread and anxiety approaching the Socratic Method, then law schools might hope to bolster admissions numbers by promising the absence of the Method. In response, if this is the position of law schools, then they have already surrendered their legal and political obligations to students. A response based on admission numbers is completely divorced from what methods are best for teaching law students.

Institutional motivations, such as admission numbers, shirk the responsibility of the school and fail to address the question of what law schools should be doing, or how pedagogy plays a political role. The more pertinent critique of grades and the anxiety of the Socratic Method blends with the previous perspective that the Method actually fails to teach students anything about the law. As discussed, the misconception of the later critique relates to the nature of law, and not the Socratic Method. The Method does teach the operation of law, which is nausea inducing for anyone in the courtroom. Professors must realize the anxiety of their students, and when properly implementing the Socratic Method, they too become sympathetic to the plight of the other. The Method is not a weapon or a threat. It is a tool for the disintegration

of ego in an attempt to help students attain a moral maturity necessary for political and legal engagement. A particular grade in Civil Procedure is not indicative of a lawyer’s success. A law student’s capacity for growth and their willingness to struggle through the opaque uncertainty that is the legal process is far more difficult to measure, but a far greater indication of success. For that process to occur, the Socratic Method and the anxiety it creates presents an opportunity unforeseen in the lecture or group pedagogical methods.

The second element of the nausea has to do with the perceptions of law and the individual personalities drawn to law school. There is no correlation between the academic promise of a first year law student, measured by GPA and LSAT score, and whether the student drops-out of law school. What is statistically relevant is that “Thinking” personalities on the Mayers-Brigs Personality Test have a lower attrition rate than “Feelers.” Evidence suggests that Type-A personalities perform better than Type-B, but are also subject to higher stress levels and greater anxiety. Additionally, due to social perceptions that Type-A personalities are more likely to be lawyers and apply for law school, there is a self-selection affect. It isn’t surprising that the self-selection process of law school would attract more aggressive and thought-driven personalities, or that such personalities would experience anxiety and stress in an intensely competitive and academic environment. It is a mistake to conclude that the Socratic Method is responsible for the anxiety, or that by eliminating the Method, administrations can eliminate anxiety.

The primary driver behind the anxiety is not the Method itself, nor is it exclusively the personalities within the classroom. Anxiety in law school is driven by the administration and incentivized down to the professors. The first speech to incoming students focuses on grades and


futures. Professors stress the possible political power of students, but only for those who rank at the very peak of the class. Schools such as the University of Oregon maintain privileges for the top 10 percent of the class. At an even higher elite, the top 10 students are frequently invited to socialize with federal judges and intermingle at exclusive events. The hyper obsession with grades and external indicators is not alleviated by changing from the Socratic Method to lectures or group projects. Blaming the method itself acts as a convenient excuse for institutions to maintain the pressure between students without addressing any of the real issues. The drive for success stems from the pressure of the administration, social pressure, and finally the debt incurred to attend law school.

Grades become the necessary driver of salaries. Behind unconscionable debt and tuition, law students are forced to compete simply to pay for their attendance. Responsibility for such stress falls on administrations and not the Method. If administrations were serious about reducing stress in law schools, they would implement smaller class sizes and encourage a more cooperative environment within the school. Professors should utilize the Socratic Method as a collaborative exercise whereby students assist and build off each other. Used properly, the Method can build community and reduce the unproductive stress in legal education.

Even if it were possible to eliminate the anxiety of law school, it would not be desirable. What matters is the kind of stress that is provoked and how professors help students to manage and grow through the stress. The Method exists to break down the egos of individual students. Learning fallibility and ignorance is an existentially traumatic experience. According to Malik and Rukhsana, “The [Socratic] [M]ethod of pedagogy must allow for the student’s development of her own unique possibilities, which is why the existentialists would reject a standardized
curriculum and an authoritarian model for teaching.” The persistent questioning and the intimate relationship formed between students arguing against each other and against the professor is invaluable in helping individuals perceive alternative perspectives. The law is not governed or dictated by a single party. It is an amalgamation of arguments and opinions that continues to evolve. Facing uncertainty and engaging with doubt helps students accept this perspective. The critique that the Method is harmful to individual egos, is also a critique against the process of humility. Through the Socratic Method, students are bonded together, they learn how to empathize with their clients, and they develop the emotional maturity necessary for the practice of law.

Lawyers necessarily engage each other in conflict. The entire legal process is defined as adversarial. According to Jay Silver, the adversarial process is an inherent benefit in the American legal system. The Constitution makes the conflict between opposing parties the linchpin in the courtroom, and the sure way to protect individual rights and the rule of law. However, he also notes the decline in professionalism and relates it to the decline in the adversarial process. The tension with the adversarial process is the same as the tension with the Socratic Method. And, according to Silver, “it exposes the dark underside of the modern concept of professionalism: the attempted social control of women and minorities presently entering the bar in increasing numbers, as well as the subversion of the adversarial process and of the criminal defense lawyer's inherent role in the process.” We need conflict in the courtroom. Conflict is an inherent political attribute that ensures better results, but only so long as parties are willing to struggle against each other.

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The Socratic Method allows students to conflict with one another and learn how to conflict respectfully in the classroom. Indeed, conflict is inherently difficult. But it is a precious virtue for the protection of civic society. The professor can utilize conflict to empower minorities and force unexamined privilege into examination. Engagement in principles such as justice, peace, and equality necessarily involve entanglement in conflict. Political theorists have held that from that conflict and the willingness to engage, individuals can find compassion.\textsuperscript{43} Law school provides three years of close proximity with your peers. Those years should be spent building professional relationships and conflicting with others in a safe and compassionate environment. The lecture method does nothing to teach students about each other and does not foster student interaction. It is one thing for a professor to lecture on diversity, it is another for students to engage in diversity directly. The Socratic Method teaches students about the positions of their classmates and begins the process of collaboration before they begin practicing law.

The reality of the law is that there is no absolute legal truth which exists without regard to the parties involved. This truth induces nausea. Struggling to defend your values and positions also induces nausea. Admission that you may be wrong. Accepting that there may be answers outside your understanding and that your ego does not dominate the conversation are all highly existential exercises. Hannah Ardent explains that the superfluous nature of the individual is the root of totalitarianism and tyranny.\textsuperscript{44} The lecture makes the student superfluous. Group projects make the individual anonymous in the crowded, never fully responsible for an opinion or argument. It is the Socratic Method that gives power to the individual to represent their perspective. The fact that this may be difficult makes it all the more necessary. The Socratic Method can ensure that such experiences occur in a constructive and safe environment. When

examined in District Courts, it becomes clear that the perspective of a singular truth is a fantasy. District Courts have discretion to apply numerous precedents that result in divergent outcomes. Additionally, should the absolute truth be possible within the District Courts, it would not be desirable. Each case is different and requires discretion. Discretion is best taught through the Socratic Method.

The Feminist critique of the Socratic Method and how professors can learn to implement the Method more constructively

The more serious of the critiques is the accusation that the Socratic Method reaffirms existing hierarchies and fails to incorporate minority views, or worse, actively discriminates against minority views. In this line of critiques, it is paramount to recognize the feminist arguments against the Socratic Method. Without awareness of gender domination in the classroom, or the discrimination against minority students, the Socratic Method can inadvertently become hostile to class diversity. The desperate impact of the Method can result from either the Method itself or can result from the Method. Arguments against the Method itself assert that the Method is aggressive and the structure of questioning students is inherently discriminatory. This position leaves a great deal to unpack and consider, beyond the scope of this project. It is enough to say that if the method of questioning is discriminatory in fact then the entire political, social, and cultural structure of the West is fundamentally and hopelessly in error.

The more manageable and constructive critique maintains that the Method creates racial and sexist results. This criticism recognizes that implicit bias can render harsh and oppressive judgment against minority students who vocalize opinions. Additionally, different cultural perspectives can make the Socratic Method challenging for students, and if professors continue
utilizing the method unconsciously, it can be hostile to the diversity of the classroom. In this vein, it is the bias and the assumptions of the professors and the students that make the Method discriminatory. However, used by a sympathetic and informed professor, the Method can also be used in recognition of diversity. It can use the diversity to draw a broader range of perspectives into the public space and to inform students of divergent opinions and viewpoints.

Scholars such as Marina Angel note that women are a minority in legal institutions and within legal education. Her assertion is that the Socratic Method, as an aggressive and direct method, is male centric and necessarily discriminates against female students.45 Her criticism is not against the result of the Method, but maintains that sexism and discrimination are necessary components of the Method itself. She classifies more gender friendly approaches as those which include collaboration: group projects, reenactments, and alternative forms of student presentations. Such methods would utilize the cultural strengths through which women are formed. By abandoning the male centric approaches, primarily the Socratic Method, the privilege is removed from males, and women and minority students are placed on an equal platform. Feminist scholars such as Rhode support Angel’s argument. Rhodes writes that the Socratic Method “runs counter to feminism’s most basic insights, which stress learning through empathetic and collaborative exchange.”46 The insights of the feminists suggest that men and women could benefit from a more empathetic and collaborate approach, as it would force male students to recognize alternative methods and strengths of their classmates.

A very similar challenge is raised by scholars such as Lani Guinier. Guinier researches the diversity of law schools and finds that the lack of diversity in legal education, combined with

the Socratic Method, forces women and minority students to feel pressured to speak for their entire race or gender. Guinier’s critique is against the result of the Method, but she does not find that the Method is necessarily repressive. Her argument is incredibly salient and challenges one of the strengths of the Socratic Method. The Method utilizes student diversity to increase empathy and the exchange among students. As a political process, white heterosexual males are forced to interact with students of color, poor students, and single parents. In other words, the Socratic Method can force the exchange of individuals across socio-economic barriers. This exchange helps meld political bodies, creates sympathy for others, and affirms the democratic virtues of civil society. However, this same process can transform a student of color and woman into a minority token. Such a student becomes the unwilling voice for an entire collection of people. The professor and their fellow students expect their voice to stand for an entire class of people.

Richard Neumann studies the statistics of legal education. What Neumann has found is that men still make up approximately 75 percent of full-time faculty positions within law schools. Women have gained about 1 percent representation each year, but the growth in female representation is limited to legal research and writing. According to Neumann, “legal writing is overwhelmingly female, and it holds the lowest status of any field of law school teaching. The possible explanations may be complex, but most of them are not benign.”47 Legal research and writing lacks tenure status and is stereotyped as a pink color job. It requires individualized attention with students, and within law schools, it is understood to be less rigorous and demanding than the critical subjects. This prejudice harms female faculty members. It also pins them into positions where they cannot use the Socratic Method, leaving their male counterparts

to teach black letter law and engage in the political exercise of Socratic questioning in the classroom.

What is perhaps worse is Neumann’s observation that only 11 percent of law school deans are female.\textsuperscript{48} This creates a dominant male culture within law schools. It affects hiring, student recruitment, and the pedagogy of the school itself. When women do attain leadership positions within a law school, they are trapped in an impossible dilemma. To attain promotions, women are expected to behave as their male counterparts. Currently, women leaders must think like men, act like men, and engender male stereotypes to advance their careers.\textsuperscript{49} This reality of gender means that even when women are advanced into higher positions within a law school, they are selected for their masculine personality traits—not for the diversity of experience and understanding which might otherwise be provided.

With this critique and the statistics in hand, Guinier notes that women and minorities are placed within an impossible hierarchy. The majority of law school administration and faculty are male, and feminist scholars argue that the Socratic Method serves to advance and strengthen the hierarchy, such that minority groups remain silent rather than participate.\textsuperscript{50} As a partial explanation, scholars note that the Socratic Method developed at a time when law students and faculty were almost exclusively male. The method was invented for male students by male faculty and it inherently adopted an aggressive style of interaction. This method, arguably, no longer applies when the modern law school is made up of close to fifty percent women. Marina Angel recounts her exchanges with professors and the Socratic Method. Angel states that the


methods of the law school were male dominated and that the pressure and stress of the Socratic Method was said to “make a man out of you.”

Angel’s observations and experiences are problematic for the Method. They force scholars to recognize sexist professors and a male dominated institution, but they do not necessarily target the Socratic Method. Professor Powell argues that the sexist paradigm in law school was a statistical matter. In the beginning, when women started to come to law school in numbers, more of them were reluctant to speak up in class. In Powell’s’ words, few of them were willing “to do battle.” Perhaps Powell did not recognize the irony of his phrase, as battle itself is a highly masculine and aggressive metaphor. The more valid point made by Powell is that the gender of law school presented a cultural problem. The indoctrination of gender between men and women is established before individuals become law students. Changing the method from the Socratic Method to lectures or group projects will have no effect until the administration reevaluates its perspectives. This presents a question of what comes first; can law schools change the political landscape by altering the Socratic Method, or must culture change before any improvements can be made in the law school?

The concern is that by blaming the Socratic Method and failing to change the institution, law schools are escaping responsibility for their gender politics and discriminatory practices. Perhaps law schools cannot completely transform the culture, but as political institutions they can engage in a political pedagogy that starts the conversation. Not all feminist scholars agree that the Socratic Method should be disbanded. This is because not all feminist scholars believe the characteristics of the Method are sexist. Scholar Jennifer Rosato recognizes the feminist

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arguments and argues from a feminist perspective herself. She maintains that the real issue in law school is the “inappropriate conduct of professors and male students and the general lack of support for women in the law school. Therefore, changing the Socratic Method would not address what [she] believe[s] are more fundamental problems with law school and the legal system.53"

The same problem of supported hierarchies are present in lectures, which presume the existence of a truth and attempt to deliver such truth to the students. It is not clear that a professor telling students what is true is any more or less aggressive than the professor questioning students. Similarly, the aggression of male students is bound to occur in group projects if they lack supervision and instruction from the professor. As long as cultured and socialized individuals are involved in legal education, the bias and prejudice of our culture will engrain itself into our pedagogy. If the faculty is dominated by men and a male perspective, then that is the perspective that will pervade lectures. Minority students will be as bound to the majority view under a lecture as they would be under Socratic questioning.

Adopting Adaptations

The Socratic Method must recognize the criticism of feminist scholars and refuse to be utilized as a form of “battle.” Instead, it must be an inclusive discussion among the student body, a process which builds comradery and sympathy in the classroom. This is the political ideal which legal education strives to build. Political society depends upon plurality. Legal education must strive to value the plurality of the classroom and give strength to the other. Rather than a

society of individuals constantly in conflict and fighting, a collaborative effort of individuals sharing their perspectives and engaging in common concerns and public problems. The legal profession is a profession; it requires cooperation among conflicting attorneys. It is up to law schools to hire and promote more female professors who can utilize the Socratic Method to teach in a more feminine philosophy.

According to Powell, the Socratic Method presented a superior learning method for most students. The value of the Method is particularly charged in light of a generation raised on soundbites. The Socratic Method requires focused reading and attention during class. However, if the current generation of law students can only learn the law through soundbites and means of communication more accurately suited to postmodern circumstances, then the idea of law is lost. Not only does the use of law as a tool make the Socratic Method better for learning material, it also empowers the students. This can be a power source for minority students since each student has her own position. Professors must be cautious to avoid making a student a stereotype for an entire classification of individuals. But each individual can be given liberty to speak and express their perspectives. Through the Socratic Method, defending and persuading her peers becomes a matter of empowerment that is lost in the lecture. Empowering the students to use the law to defend their positions adds incentive for the student to learn the law. The empowerment continues from their time as a student and influences their perspective as an advocate. By engaging in public dialogue with the professor, an expert in the subject, the student is eased into the role of an advocate and develops a genuine sense of status as their own authority figure.

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By working to incorporate minority views and involve student participation throughout the classroom, the Socratic Method can help individuals engaged a legal and political system that is not concerned by the abstract notion of law, but the consequences of the law to the parties involved. The Socratic Method is the best tool to help students understand the social, political, and legal implications of the law. The Method forces students to argue and persuade their peers regarding their relative perspectives. Each student has a different perspective and is therefore forced to confront the diversity of opinions and experiences within the classroom. Through the Socratic Method, the individual is forced to interact with the full diversity of the classroom and to learn from that diversity.

CONCLUSION

What role does the law play in uniting or dividing a nation? The answer depends on the questions asked in pursuit of understanding the law itself. Legal education plays a vital role in the foundation and effectiveness of political discourse. Scholars find that the best approach to legal education is one that maximizes experiences and opportunities in the main components of adult learning: planning, application, and deep understanding.56 Furthermore, studies demonstrate that the most effective mechanisms are those that activate the learner to engage in the learning process.57 But the movement away from the Socratic Method in law schools has eroded the dialogue when seeking to illicit constructive engagement. This erosion represents a

catalyst in the divisive nature of modern politics; if understanding is no longer the desire, regurgitation becomes the default.

By acknowledging and adopting the critiques laid against her, the Socratic Method can be used to provide the best form of legal education—and in so doing, rebuild the foundation upon which our political institutions rely. The Socratic Method provides the best approach to legal education by providing student-centric, inquiry driven engagement. This method can be made even more effective by adapting the Method to 1) seek student experiences and worldviews in order to broaden engagement beyond the traditional approach; 2) give voice to underrepresented populations in order to expand empathy and moral imagination in the legal community; 3) establish professorial requirements for understanding cultural and personal backgrounds that may inhibit student engagement. The Socratic Method can be a tremendous tool by which to empower legal minds, but it must require empathy not only on the part of students but on the part of those entrusted to guide their way. It is time to return legal education to the art of law, a profession that depends upon the thoughtful application of brush strokes to evoke empathy and compassion from those who seek to observe and understand its value.