

Legal Education Review

Morgan, Jenny --- "The Socratic Method: Silencing Cooperation" [1989] LegEdRev 13; (1989) 1(2) Legal Education Review 151

THE SOCRATIC METHOD: SILENCING COOPERATION

JENNY MORGAN*

Feminist law teachers in North America, as in Australia, have been grappling with the issue of the silencing of women students,¹ and have added their voices to the growing chorus of criticism of the Socratic method.² This paper tentatively explores the relationship between teaching styles and the silencing of women students in classrooms. The paper arises out of the experience of becoming a law student after being a law teacher for some eighteen months, and my subsequent return to the front of the classroom. In other words, as with much feminist work, this paper is grounded in my own experience, the experiences of my student colleagues that I observed and shared and in empirical work in and outside law classrooms.

I aim to explore various teaching styles and pose tentative views on the effect they may have on student behaviour, particularly student cooperation, both in the classroom and outside it. The other related aim of the paper is to raise specific questions about women's participation in law school classrooms. In order to do this, I set up various ideal types, which may not necessarily reflect actual classroom practices in either North America or Australia, but are used as a shorthand way of exploring the effect of teaching styles.

The first style I discuss is the Socratic method. By this I understand a form of teacher-student interaction in which the teacher vigorously cross-questions a student on her or his understanding of a particular case or legal principle. The vast majority of the interaction occurs between teacher and student (rather than student and student) and is teacher-initiated. The second teaching style is the lecture. In this form of teaching, the teacher does most of the talking. Traditionally, student contribution is not encouraged and, where student contribution occurs, it is likely to take the form of clarificatory questions. The third teaching style is the seminar or tutorial, where, ideally, the majority of contributions come from students, and students engage in a dialogue with each other, as well as with the teacher.

In some senses this article is, in the Australian context, a cautionary tale. It has been suggested that Australian law teachers do not often use the Socratic style of teaching. This may be true, though I would suggest that it is used, perhaps not identified under the particular Socratic rubric. What concerns me is the possibility of its increased use in Australian classrooms. Whilst I accept that the Socratic method is more commonly used in North America than in Australia, and certainly more extolled there, it is often seen here as a cure for non-participatory students. As we encourage the lecturer in a large lecture class to allow more student contribution,³ I am cautioning against using the Socratic style as our favoured means of encouraging that contribution. The dyadic teacher-student Socratic style models more than crucial analytical skills.⁴

CRITICS AND DEFENDERS OF THE SOCRATIC METHOD

Critics of the Socratic method have commented on its ability to subordinate students, regardless of their gender;⁵ the patterning of hierarchical relationships that occurs — “manipulating vulnerable people is an acceptable form of professional behaviour”⁶ — a pattern which may carry over into the professional practice in which students will ultimately engage;⁷ and the alienation of students which the Socratic method induces.⁸

Kennedy has noted that the American first year law class invades the “sense of autonomy one has in a lecture”; and while his characterisation of the lecture does not make it sound very engaging — “you must let the teacher drone on without interruption” — he points to the payoff — “the teacher can’t do anything to you.”⁹ The payoff for the law professor in utilizing the Socratic style has been described in this way: “Any half-way decent academic could walk into a Socratic class with 10 minutes preparation and a few off-the-wall questions for students, whereas preparing lectures was very time consuming.”¹⁰ This implies that the Socratic style need not be any more engaging, for either teacher or student, than the oft-repeated lecture.¹¹

Stone, in an early response to Kennedy’s polemic, identifies what he sees as a number of virtues in the Socratic method. It aims to,

develop crucial analytic skills, to accustom the student to the lawyer’s adversary style of exchange, and to provide a forum in which the student speaks in public. Also prized in and of itself is the intense electric quality of Socratic classrooms as contrasted with the atmosphere supposedly characteristic of the British school ... where the lecture has been the predominant classroom instrument.¹²

It seems obvious that lectures and seminars can and do teach crucial analytical skills — after all, much British, Australian and even American legal education takes this form.¹³ Others have questioned the need for a concentration on the adversary method. For example, Carrie Menkel-Meadow¹⁴ has noted that there are many more skills involved in being a lawyer than adversarial interchange and much legal work, even that involved in preparation for litigation, is cooperative rather than adversarial. As to the provision of a public forum, the Socratic method provides a forum that may be particularly congenial for men students and uncongenial for at least some women and creates an environment in later year seminars which continues this difference.

I want to focus on the effect on students of teaching styles. Kennedy has graphically described the degradation and infantilization of students. My own experience as a recipient of the Socratic style (not in Paper Chase form, I hasten to add), has alerted me to a particular aspect of the pseudo-participation¹⁵ of the style: the way it appears to work to discourage student-student interaction. This is the aspect on which I shall concentrate.

While I may be accused of extolling the virtues of the best lecture or seminar and presenting a picture of the worst-case Socratic class — after all, many professors do prepare quite thoroughly for Socratic classes — surely Stone has taken the Kennedy image of the lecturer droning on to its extreme and neglected the quite electric atmosphere that can be generated in seminars and even lectures — an electricity that does not need to damage those who participate. Stone comments on, “the effect [that] the Socratic method has upon interpersonal relationship. Indeed perhaps the most impressive aspect of the law school milieu is the unpleasant quality of interpersonal relationships among students.”¹⁶ Rather than celebrating this atmosphere, it is necessary to address the effect that this atmosphere has on students’ learning and, in particular, the effect on women students’ participation in the classroom, especially in later year seminars.

The Teacher as Centre of Attention

While the focus on the teacher in any class may be unavoidable,¹⁷ the focus in a Socratic class is particularly stark. Perhaps the focus is even more obvious in a traditional lecture where the lecturer is the only one speaking but in a lecture there is often little pretence of student participation. Student questions may be allowed but not necessarily

encouraged and student comments are almost non-existent. Once it is assumed that others are supposed to participate, the nature of that interaction becomes particularly important.

It may be more accurate to describe the focus of a Socratic class as the professor-student pair. Typically, the professor calls on a student, asks a question and follows with a series of related questions. The interaction is dyadic. Another student will be called on, not usually to respond to the first student's points, but to answer further professorial questions. Occasionally, a student will be asked to oppose another student in a mini mock moot. While this latter process symbolically gives some validity to the students' contributions, it is not so much a model for student cooperation as a model of the adversarial process; by definition, it is oppositional.

In my ideal-type seminar, student questions and comments are not only allowed but encouraged, and ideally dialogue occurs not just between professor and students, but between student and student. Student and teacher are engaged in a shared learning exercise.¹⁸ As a student once again, albeit in an American law school and avowedly non-Socratic seminars, I was struck that students rarely if ever addressed each other. My suggestion is that this reflects the greater emphasis in American legal education on the use of the Socratic method in first year law classes. In one American later year seminar, a student commented that I was the only person who, after five weeks of class, had addressed a comment directly to another student, rather than to, or, at best, via the professor.¹⁹ Although I am sure women spoke less frequently in seminars during my Australian legal education than their numbers in the class would warrant, I did not have a sense that we as students were unable to talk to each other, but only to or through the teacher.

Student Cooperation Occurs Elsewhere?

Some may argue that student cooperation occurs outside the classroom rather than inside. Students see themselves as engaged in a joint battle against the professor and form study groups to prepare themselves for the professorial onslaught. Dillon draws attention to this in his description of Paper Chase, and outlines a limited form of cooperation depicted there which is withdrawn at exam-time and not in evidence in the classroom.²⁰ I doubt that such cooperation is deliberately withdrawn at exam time, but I would suggest that the depiction of lack of support in the classroom is accurate. I do not believe that many students consciously relish a colleague being placed on the spot, but I observed little effort at supporting the student in a typical Socratic cross-questioning.²¹ Even if cooperative student behaviour does occur outside the classroom, I suggest it does not transfer to later year classroom interaction.

From the teacher's viewpoint, it is not adequate that student cooperation occurs outside the classroom. The professor has to take responsibility for what occurs in the classroom and cannot rely on student activity outside to remedy the classroom experience. A classroom can provide powerful models for behaviour and the public nature of the class makes it even more important that appropriate behaviour is modelled.

Student Competition and the Inarticulate Student

I suggested above that there is little effort to support the cross-questioned student against the teacher in normal classroom interaction. In America, if anything, there appears to be competition for the professor's attention. An oft-repeated complaint is, "the professor never calls on me." This competition is antithetical to cooperation. One reason for the competition is that in the Socratic style the vast majority of the questions come from the professor rather than the students.

In seminars, questions are much more likely to come from students. Dillon suggests that student questions are likely to lead to a more effective transfer of legal knowledge than professorial questions. While this may be true, it is the effect on student-to-student behaviour that concerns me here. Where students are asking the questions, there is less incentive to divine the right answer for the professor, for the answer the student offers is at least in part for the other student. Of course, at times the process is short-circuited and the teacher responds directly to the question without attempting to involve other students. Even so, the teacher is less likely to give out verbal rewards for good

questions than good answers, so if student participation occurs in the form of genuine questions as well as answers, a less competitive environment is likely to be created. In the traditional lecture, if there is any student participation, it is most likely to be student initiated and come in the form of questions rather than answers and once again the rewards and the competition are lessened.

My particular concern here is with the thoughtful inarticulate student who may require time to formulate a response. The Socratic style appears to do nothing to encourage those students. Neither, of course, does the lecture but it, at least, does not actively discourage the hesitant response. A properly run seminar does allow for the hesitant student;²² I am not sure that the Socratic style ever can. This is, in part, because of the dyadic nature of the Socratic interaction: the interrogator, the law teacher, is almost always articulate. In a seminar, if students are both questioning and responding, there is more likelihood of a shared sense of uncertainty and a shared development of confidence as opposed to the individualised demonstration of verbal skill or degradation.

WOMEN, MEN AND THE LAW CLASSROOM

Cooperation among students may not, of course, be the aim of any of the teaching methods I have described. By the same token, none have as their aim discouraging cooperation; it is, I have suggested, an unintended side-effect of the Socratic style of teaching. Even without embracing the much broader tenets of a humanistic education in law, this unintended byproduct must interfere with efforts "to produce lawyers who are creative, sensitive, and open to new ideas."²³ And the focus on competition rather than cooperation may particularly exclude and silence women. Women at Yale Law School have documented the disproportionate frequency with which men speak in classes.²⁴ I observed a particular pattern. When contributions are controlled by the teacher, and students are expected to bid for attention by raising their hands, women almost invariably lower their hands when someone else is speaking while men are much more likely to keep their hands raised — to press their bids for attention. In practical terms, this also means the teacher is more likely to call on those persistently attempting to participate instead of the one who ceased to interrupt while another was talking. Pauline Treichler and Cheris Kramarae, summarising Maltz and Borker's work suggest that boys learn, "to be assertive when others have the floor," and my anecdotal observation certainly supports the thesis.²⁵

The silencing of women appears to occur in classrooms at university, college²⁶ and school level²⁷ suggesting that a link with a Socratic style of teaching may be misguided. I am not aware of any studies which attempt to compare women's level of participation in law school classrooms with that in other disciplines but I suspect that the Socratic style has its own peculiar contribution to make.²⁸ Nor would I wish to discount the complex interaction of various factors which may more fully account for differential participation. At the most obvious level, the gender of the professor can affect the interaction of women.²⁹ Frug³⁰ and other³¹ have documented how the construction of casebooks and courses disenfranchise women by, among other things, excluding issues of particular concern to women, and this exclusion is likely detrimentally to affect women's willingness to participate.³² But this more complex analysis is beyond the scope of this paper. I merely suggest that not only does the Socratic style discourage students from utilising cooperation rather than competition, but in doing that, it may also exclude women's voices. For as boys are trained assertively to take the floor and have, "an apparent ability to sustain a monologue in the absence of overt support, [girls have a] preference for shared story telling,"³³ — a preference which means that as women they are particularly alienated from the monologue that is expected from them as participants in the Socratic process.

Carole Edelsky³⁴ describes the results of a detailed linguistic analysis of a series of informal university committee meetings. She found that while men dominated what she described as F1's, that is a singly developed floor, women participated much more in developing F2's, defined as a collaborative venture where several people seemed to be either operating on the same wavelength or engaging in a free-for-all.³⁵ Indeed, not only did men participate less in F2's than F1's, they also often participated less than women.³⁶ She suggests that

F1's, characterized by monologues, single-party control and hierarchical interaction where turn takers stand out from non-turn takers and floors are won or lost, share features with other contexts in which women have learned they had best not assert themselves. F2's, however, are inherently more informal, cooperative ventures that provide both a cover of "anonymity" for assertive language use and a comfortable backdrop against which women can display a fuller range of language ability.³⁷

In other words, it would appear that the use of the Socratic style, which I have suggested models competition rather than cooperation, may work differentially to silence women in the classroom. Implicit in much of the previous discussion has been an awareness of Gilligan's work on women's different voice.³⁸ Gilligan criticises the limited nature of much of the theoretical and empirical work on moral development because it is focussed only on a concept of justice, with its emphasis on a hierarchy of rights and developed through empirical work on male children only. She suggests that moral reasoning can, and does, especially for women, also focus on relationships between people and between people and their social context; and rather than seeing self and other as separate, it emphasises, "a view of self and other as interdependent and of relationships as networks sustained by care-giving and response."³⁹ In the classroom this conception of morality is likely to be expressed in a model of cooperative rather than competitive behaviour.

Catharine MacKinnon⁴⁰ takes Gilligan to task for failing to identify a causal mechanism for the expression of a web of connection rather than a hierarchy of rights that she, or at least those following her⁴¹ identify as a woman's voice. MacKinnon argues that voice arises out of the oppression of women and she suggests a marked ambivalence about celebrating this difference.⁴² If we celebrate this difference, we are playing into the hands of a male defined feminine stereotype which is likely to do women more harm than good. I agree with MacKinnon that we need to be very wary of the political costs of privileging difference: are there not shadows of *Bradwell v Illinois*⁴³ in the descriptions of women's lack of participation in the classroom? By the same token, identifying the structural causes of that lack of participation, and the over-participation of men in classrooms, and re-emphasising the value of cooperation, may challenge in a small way the hierarchy of oppression. As MacKinnon says, "that does not mean I throw out those values. Those are nice values; everyone should have them."⁴⁴

Clearly the relatively narrow concerns raised in this paper play into a much larger debate about whether the law can receive a different voice, a debate which cannot be properly addressed here. Some will argue that the Socratic style models perfectly appropriate behaviour for traditional legal interaction: the descriptions of a Socratic classroom are reminiscent of a court — the judge speaks directly to the prosecution and defence lawyers, not they to each other. And Edelsky's description of F1's could be a description of a court.⁴⁵ Apart from the fact that there is obviously a lot more even to traditional legal work than court interaction, it is nevertheless a matter for concern that courtrooms have been seen as arenas of battle where the male norm of conflict prevails and where women are seen as inappropriate or ineffective participants. We should look at the causes that make some forms of lawyering more effective than others. The assumption that the Socratic style is the, or even a, best way of teaching law, a fundamentally different exercise to practicing it, also needs rethinking.

IMPLEMENTING COOPERATION AND PARTICIPATION

Despite my creation of ideal types, it is obvious that the mere classification of teaching styles into Socratic-method, lecture and seminar does not tell us how to move to a situation where students are engaged with their own learning and assisting others to learn. Although I have clearly extolled the virtue of the seminar as the teaching method most likely to lead to both cooperative behaviour between students and increased positive participation by women in law school classrooms, the suggestion clearly has some flaws. At the most obvious level, not all law schools are funded in such a way as to allow for this form of teaching. It is also clear that one could use a Socratic style in a seminar. It is thus necessary to focus more closely on teaching techniques and climates for learning.⁴⁶

One obvious teaching technique which can both model cooperative behaviour and encourage women to speak is the

use of smaller groups within a group or buzz groups. Students can be broken up into smaller groups of two or more, depending on the size of the class and the physical arrangement of the classroom, to discuss a particular issue, case or theory. One member of the group is asked to report back to the whole group.⁴⁷ This method comes close to ensuring that all students have a chance to participate at least within their small group. Because the focus of attention is away from the teacher,⁴⁸ students have to talk to each other and given the less formal atmosphere, the quality of discussion within the small group is more likely to approach the shared floor-taking described above. Another technique is to nominate a small number of students especially to prepare the reading for the coming week and be ready to lead class discussion on that topic. Whilst both these techniques appear most suitable for seminar-size classes, they can be used in much larger groups.

Both of these techniques create a learning climate which is less hierarchical and authoritarian than either the traditional lecture class or the typical Socratic style and should encourage an environment where all students feel inclined to participate.

While the Socratic method is clearly not the sole explanation for men's disproportionate participation in law school classrooms, it is certainly a powerful model of a male-preferred style of interaction. And I believe, even if the voice of cooperation stems from oppression, all students are missing out if we reinforce competition through the use of a Socratic style, so that students appear incapable of talking with each other in a classroom.

* Law Faculty, Melbourne University. I would like to thank the many people who discussed the issues raised here with me or read various versions of the paper. These include Kathleen Daly, Lucinda Finley, Beth Gaze, Reg Graycar, Peter Hanks, Judith Miller, Mary Jane Mossman, Janet Richards, Susan Russell, Barb Safriet, Joe Sommer and Jamie Studley.

© (1989). [1 Legal Educ Rev 151](#).

1 This statement is based on numerous discussions I have had with teachers and students in Australia, Canada and the USA, as well as published and unpublished material. I am not aware of any detailed empirical research on the comparative participation of women and men in law school classrooms in Australia, but such work has been done in North America. See the submission to faculty from women students at Yale Law School on women's silence in the classroom discussed in C Weiss & L Melling, *The Legal Education of Twenty Women* (1988) [40 Stan L Rev 1299](#). Harvard Women's Law Association has demonstrated a similar concern. Informal discussion and observation convince me that the situation is likely to be little different in Australian law schools. See also J Taber et al, *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates* (1988) [40 Stan L Rev 1209](#); CL Hill, *Sexual Bias in the Law School Classroom: One Student's Perspective* (1988) [38 J Legal Educ 603](#); S Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation* (1988) [38 J Legal Educ 147](#); TL Banks, *Gender Bias in the Classroom* (1988) [38 J Legal Educ 137](#).

2 See, for example, D Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System* (Cambridge, Massachusetts: AFAR, 1983) [hereinafter cited as *Reproduction of Hierarchy*]; D Kennedy, *Legal Education as Training for Hierarchy*, in David Kairys ed, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982) at 40; K Klare, *The Law School Curriculum in the 1980's: What's Left*, (1982) [32 J Legal Educ 336](#); J Rifkin, *Teaching Mediation: A Feminist Perspective on the Study of Law*, in M Culley & C Portuges, eds, *Gendered Subjects: The Dynamics of Feminist Teaching* (Boston: Routledge & Kegan Paul, 1985) at 96.

3 This certainly appears to be the approach adopted by the Australasian Law Teaching Workshop. At the most recent workshop held in Warburton Victoria, July 1989, despite the scepticism of at least some participants, it was constantly suggested that techniques having obvious applicability to small group teaching such as brainstorming or buzz groups could be used successfully in large lecture classes. See B Boer, *Australasian Law Teaching Clinic* [1989] [LegEdRev 12](#); (1989) [1 Legal Educ Rev 145](#).

4 Indeed, part of my interest in going to an American law school was to see the Socratic method in action. Naively perhaps, I had assumed that a Socratic teaching style would force the teacher to engage more closely and intensely with students, would place the teacher on the spot as I am placed in small group teaching, and would engage the students more directly with the material they were required to absorb. My own, albeit brief, experience with the Socratic method encouraged me to rethink my enthusiasm for the method.

5 *Reproduction of Hierarchy, supra note 2.*

6 Klare, *supra note 2*, at 341.

7 *Id.* See also C Menkel-Meadow, Portia in a Different Voice: Speculations on a Woman's Lawyering Process (1985) 1 *Berkeley Women's LJ* 39.

8 S Dallimore, The Socratic Method — More Harm Than Good (1977) 3 *J Contemp L* 177.

9 *Reproduction of Hierarchy, supra note 2*, at 3.

10 This particular description comes from a statement made by a law professor in an Issues in Legal Education class at Yale Law School in the fall semester 1986.

11 This is not to suggest that there is no such thing as a well-prepared Socratic class.

12 A Stone, Legal Education on the Couch (1971) 85 *Harv L Rev* 392, at 409.

13 Accepting for a moment that performance on examinations is the test of success of a method of teaching law, and/or of crucial analytic skills, it would seem that students performance appears to be much the same whatever conventional group method of teaching is used. PF Teich, Research On American Law Teaching: Is There A Case Against The Case System (1 986) 36 *J Legal Educ* 167.

14 Menkel-Meadow, *supra note 7*.

15 *Reproduction of Hierarchy, supra note 2*, at 3.

16 Stone, *supra note 12*, at 415.

17 See, in particular, T Pickard, Experience as Teacher: Discovering the Politics of Law Teaching (1983) 33 *U Toronto LJ* 279. Pickard discusses the very real difficulties, both for professor and students, when a law professor attempts to hand control of a course over to students and to de-emphasise the role of the professor.

18 While this by no means occurs in every classroom, it is, at least, usually aimed for and sometimes achieved.

19 In fairness, I should note that the professor concerned had observed the interactional problems and suggested, some seven weeks into the course, that we all make an effort to create some dialogue between students.

20 JT Dillon, Paper Chase and the Socratic Method of Teaching Law (1980) 30 *J Legal Educ* 529.

21 See Weiss & Melling, *supra note 1*, at 1338 n 110.

22 Helene Keyssar suggests, "in a seminar ... part of the teacher's task is to discern the slightest indication that a usually silent student member wants to speak." H Keyssar, Staging the Feminist Classroom: A Theatrical Model, in M Culley & C Portuges, eds, *Gendered Subjects: The Dynamics of Feminist Teaching* (Boston: Routledge & Kegan Paul, 1985) 108, at 113.

23 Yale University, *Bulletin of Yale Law School 1986–1987* (New Haven: Yale University, 1986) at 13.

24 See Weiss & Melling, *supra* note 1.

25 PA Treichler & C Kramarae, Women's Talk in the Ivory Tower (1983) 31 *Comm Q* 118, at 119.

26 For documentation of women's experiences at college and university, see RM Hall & BR Sadler, *The Classroom Climate: A Chilly One for Women* (Washington: Project on the Status and Education of Women, 1982).

27 See, for example, PS Sears & DH Feldman, Teacher Interactions with Boys and with Girls, in J Stacey, S Bereaud & J Daniels eds, *And Jill Came Tumbling After: Sexism in American Education* (New York: Dell Publishing, 1974); D Spender, *Invisible Women: The Schooling Scandal* (London: Writers and Readers Publishing Cooperative Society, 1982); D Spender, Talking in Class, in D Spender & E Sarah eds, *Learning to Lose: Sexism and Education* (London: Women's Press, 1980); E Sarah, Teachers and Students in the Classroom: An Examination of Classroom Interaction, in D Spender & E Sarah eds, *Learning to Lose: Sexism and Education* (London: Women's Press, 1980).

28 Although, for example, many of the interviewees in the Weiss and Melling article were quite persistent participators in their college class rooms but found themselves unable or unwilling to contribute in law classrooms. See Weiss & Melling, *supra* note 1, at 1333.

29 For example, Karp and Yoels found in their study of college classrooms that,

in male taught classes men account for 75.4% of the interactions, three times the percentage for women — 24.6%. In female taught classes, men still account for more of the interactions than women — 57.8% to 42.2% — but the percentage of female participation increases almost 75% [where the percentage of men and women students was almost equal]. DA Karp & WC Yoels, *The College Classroom: Some Observations on the Meanings of Student Participation* (1976) 60 *Sociology & Soc Res* 421, at 425. The Socratic style, delivered by a male professor, may particularly inhibit women. I suggested above that one disadvantage of the Socratic method was that the response to students, given that it came from a professor rather than other students, was almost always artfully expressed. Belenky et al state, "when a male professor presents only the impeccable products of his thinking it is especially difficult for a woman student to believe that she can produce such a thought." MF Belenky et al, *Women's Ways of Knowing* (New York: Basic Books, 1986) at 217.

30 MJ Frug, Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook (1985) 34 *Am UL Rev* 1065.

31 See for example, C Boyle, Book Review (1985) 63 *Can B Rev* 427.

32 I am grateful to Joe Sommer for pointing out to me a particular pattern of interaction in a course on feminism at Yale Law School. When the discussion was of feminist theory, a topic women are likely to both know more and care more about than men, women offered about 80% of contributions in the class leaving aside the turns of the male professor. When the discussion turned to more black-letter issues of constitutional analysis, men spoke at least half the time. Men formed 20% of the class.

33 See Treichler & Kramarae, *supra* note 25, at 119.

34 C Edelsky, Who's Got the Floor (1981) 10 *Language in Soc'y* 383.

35 *Id.*

36 *Id* at 415.

37 *Id* at 416.

38 C Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Massachusetts: Harvard UP, 1983).

39 C Gilligan, Remapping Development: The Power of Divergent Data, in L Cirillo & S Wapner, eds, *Value Presuppositions in Theories of Human Development* (Hillsdale, New Jersey: L Erlbaum & Associates, 1986) at 40.

40 C MacKinnon, Feminist Discourse, Moral Values and the Law — A Conversation [\(1985\) 34 Buffalo L Rev 11](#) [hereinafter cited as *Conversation*].

41 Interpreters may disagree about the extent to which Gilligan identifies the different voice as being gendered. She states in the Introduction to *In a Different Voice*, "... this association is not absolute, and the contrasts between male and female voices are presented here to highlight a distinction between two modes of thought and to focus a problem of interpretation rather than to represent a generalization about either sex." Gilligan, *supra* note 38, at 2. In a later response to critics, summarizing her own and others' work, she says,

boys and men who resemble those most studied by developmental psychologists and to define and resolve moral problems within the justice framework, although they introduce considerations of care; and the focus on care in moral reasoning although not characteristic of all women, is characteristically a female phenomenon in the advantaged populations that have been studied.

C Gilligan, On *In a Different Voice: An Interdisciplinary Forum* (1986) 11 *Signs* 304, at 330.

42 *Conversation*, *supra* note 40, at 73–74. Edelsky's description quoted above referring to the need to find a cover of anonymity for an assertive voice, suggests very strongly a response to oppression.

43 [\[1872\] USSC 16](#); [\(1872\) 83 US 130](#), at 141. In the now infamous words of Justice Bradley, when excluding Myra Bradwell from admission to the legal profession, "... the civil law as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."

44 *Conversations*, *supra* note 40, at 74.

45 I am grateful to Jamie Studley and Judith Miller for making these analogies explicit; see also Weiss & Melling, *supra* note 1, at 1339.

46 See N Gold, *Climates for Learning*, reproduced in Australasian Law Teaching Workshop, *Materials* (unpublished, 1989).

47 One version of this technique is described in Wildman, *supra* note 1. In this article she also describes a variety of other teaching techniques for breaking classroom silence.

48 At least most of the time — although I usually try to talk with each group while they are discussing the problem.
