

ESSAYS

LOVE AND THE SOCRATIC METHOD

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Early in the *Nichomachean Ethics* Aristotle offers a critical bit of advice:

Our discussion will be adequate if it has as much clarity as the subject matter admits; for precision is not to be sought for alike in all discussions, any more than in all the products of the crafts.¹

It may seem odd to begin a reflection on the Socratic method and its use in the classroom with a quote from Aristotle, arguably Plato's most renowned critic, but I think Aristotle's admonition is very apt as an introductory word of caution for all those who think about and discuss issues of pedagogy.

This essay is about a certain tool of pedagogy, a certain method of teaching, identified, for better or worse, as the "Socratic Method." Specifically, I'd like to offer some thoughts on the Socratic Method as I understand it from the dialogues of Plato, and as I have applied it as a teacher. These thoughts are entirely directed, however, to a practical effect: improving our understanding of the Socratic method so as to improve the experience of communication between those of us who are in the position of teacher and those we call our students.

The argument of the essay is an elaboration on the title I have chosen—*Love and the Socratic Method*—and has three major parts.

First, I will make the argument that for the purposes of

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1. ARISTOTLE, *NICHOMACHEAN ETHICS* I:3 (1094b) (Jonathan Barnes trans., 1985) [hereinafter *NICHOMACHEAN ETHICS*].

contemporary teachers of law, the locus classicus of the Socratic Method—Plato’s dialogue *Meno*²—is singularly unhelpful, indeed, almost guarantees pedagogical failure.

Instead, I will argue that teachers interested in the Socratic Method should redirect their attention to what is, in my mind, the Platonic dialogue that offers the most direct and unsettling challenge to those who teach and study law: the *Gorgias*. In making that argument, I’ll use the *Gorgias* to make explicit what I believe are the most important elements of the Socratic Method and how those elements might be applied in the contemporary law school classroom.³ The distinguishing mark those elements share, I will argue, is an understanding of community, of a learning context of genuine affection and concern, what I think can fairly be called “friendship” or a kind of “civic love” among the interlocutors. In deriving those elements from the *Gorgias*, I’ll also try to deal with obvious objections to the guidelines I’ve discerned, not the least of which is the pervasive irony with which Socrates often seems to treat his interlocutors.

Secondly, following upon the lessons of the *Gorgias*, I offer a discussion of what I will term—somewhat idiosyncratically but, as I hope will become apparent, helpfully—the *erotics* of the Socratic Method and whether the eroticism of the method has a place in the contemporary law school classroom.

Thirdly, I will offer some reflections on the concept of *elenchus*, the method of interrogation and refutation that is at the heart of the Socratic method. In developing this point, I will revisit one of the most ancient controversies in Platonic studies: whether the *elenchus*

2. The dialogues of Plato often take their names from the most prominent (or one of the prominent) interlocutors in the dialogue. Examples of the practice within the Platonic corpus abound: e.g., *Phaedo*, *Phaedrus*, *Theatetus*, *Cratylus*, etc. Hence, the *Meno* is a dialogue about a conversation with a Thesallian citizen named Meno, the *Gorgias* features an encounter between Socrates and the great rhetorician Gorgias of Leontini. In order to distinguish between references to the dialogue itself and references to the characters that bear the dialogue’s name, this essay adopts the convention of italicizing the names of dialogues, while leaving unitalicized the names of characters. Another convention, used irregularly, is to place a definite article before the name of the dialogue, while omitting it before the name of a person. Attic Greek, however, frequently used definite articles before proper names, so that the use of italicization seemed a better and more easily recognized method for distinguishing between names of dialogues and names of characters.

3. While this Essay is addressed to those who teach law, and consistently refers to teaching law students, I am convinced that the Socratic Method as described in this essay has general educational applicability, and can be used to great effect with high school students, college undergraduates, and forms of adult education other than law school. Although I do not reflect on the experience here, among my most successful experiences with the Socratic Method as described in this essay were as a high school teacher of systematic theology, and as the teacher/facilitator of an adult education course in which I guided ten senior citizens through Plato’s *Republic*.

can bring only internal consistency, or can it arrive at truth? I use that controversy to elaborate an alternative vision of the Socratic Method.

The point of the argument is to defend a reconceived version of the Socratic Method as not only an interesting and useful teaching tool, but as perhaps the most appropriate and valuable form of pedagogy for teaching law in a pluralistic democracy.⁴ My reading of what constitutes the Socratic Method will, then, be in many ways sharply different from its historical conception and conventional practice in American law schools. Indeed, there is every chance that my defense of the Socratic Method will sound rather like Chesterton's defense of Christianity: "It is not that [it] has been tried and found wanting. It has been found difficult and not tried."

Given that I teach as a law professor and am directing these remarks to my colleagues in the legal academy, my primary focus is on the contemporary law school classroom in the United States. To be fair, though, to what I am about to relate, and to give a better context for these remarks, I should say that the experimental performances applying the Socratic Method from which these reflections are drawn extend over fifteen years of teaching experience in a wide variety of contexts.

Accordingly, before launching into my argument proper, I think two preliminary sets of remarks are in order: the first a brief autobiographical interlude; the second, harkening back to the words of Aristotle with which I began, a note on method. I beg the reader's indulgence in this I hope not-too-egocentric digression not so as to credential myself, but to provide a better understanding for the experience—admittedly personal and not scientifically representative, but still, I think potentially of broader use and application—from which I write.

PRELUDE: REMARKS ON THE WRITER AND THE APPROACH

In the parochial elementary school I attended in the 1960s, it was a

4. In this article, as in many other aspects of my life and work, the writing of my friend, Martha Nussbaum, has had an enormous effect on me. Throughout these pages, my indebtedness to Martha Nussbaum's work will be evident to anyone familiar with her work on practical rationality in Aristotle, the role of the passions in moral reasoning, and the value of the Socratic Method to contemporary education. The works on which I rely most are *LOVE'S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE* (particularly chapter 2, "The Discernment of Perception: An Aristotelian Conception of Private and Public Rationality") (Oxford Univ. Press 1990); *THE FRAGILITY OF GOODNESS* (Cambridge Univ. Press 1994) [hereinafter *FRAGILITY OF GOODNESS*]; and *CULTIVATING HUMANITY: A CLASSICAL DEFENSE OF REFORM IN LIBERAL EDUCATION* (Harvard Univ. Press 1997).

regular practice to have students read aloud. One day, in October of the 7th grade, when I was twelve years old, Sister Honora called upon me to read from our religion textbook. In the midst of my reading, she was suddenly summoned from the room. Not being told to stop, I continued to read from the text to an uncharacteristically quiet and attentive audience of my peers.

Sister Honora returned to the room about ten minutes later, somewhat surprised to find me still reading and the class still listening quietly. The next day, Sr. Honora called on me, again, to read from the text. After about five minutes reading, a student raised his hand and asked a question about the text. In a completely unthinking, purely instinctive, and, given the practices of the time, rather dangerous reaction, I simply answered the student's question without giving Sr. Honora a chance to speak.

After a look of surprise had passed from her countenance, Sr. Honora smiled and said, "Yes, that's correct." On that day began a process by which I came to teach my 7th grade class religion. Sr. Honora progressed from having me read the entire period each day, to having me answer questions, finally to departing the room entirely and leaving me to teach my peers.

That experience—despite everything we all know about the behavior of junior high school students—was really quite wonderful. My peers were well behaved. I suffered no ostracism or resentment. As incredible as it sounds, it was one of the happier experiences of my time in Catholic school, and began a life-long love affair with teaching.

Since that experience in Sr. Honora's class, not a year has passed without my being involved in some form of teaching: peer tutoring in elementary and secondary school, Sunday school teaching as an adolescent; a return to peer tutoring in college; then, as a Jesuit, a variety of teaching assignments, including being a literacy instructor at a homeless shelter, teaching three and four-year-olds at a Montessori pre-school in inner-city Philadelphia, preparing a group of women incarcerated for prostitution for their GED⁵ in a small Berks County jail, teaching Attic Greek and Systematic Theology at a boy's private prep school in Washington, DC; then, after leaving the Jesuits, teaching undergraduates at a local college, guiding a group of senior citizens through Plato's *Republic*, preparing eighth graders in Harlem for the high school entrance exams of the Roman Catholic

5. "GED" is an abbreviation for "General Equivalency Diploma" or high school equivalency degree.

Archdiocese of New York, then teaching in the program on Lawyering at the New York University School of Law. Finally, my most recent experience with the Socratic Method has been teaching a seminar in Jurisprudence as an assistant professor at American University's Washington College of Law.

That autobiographical excursion was meant to give some sense of the contexts—the rather varied contexts—in which my experiences in teaching are grounded and from which my reflections on the Socratic Method emerge. The autobiography was also meant, however, to illuminate the quotation from Aristotle with which I began.

The point of the quotation from Aristotle on the appropriate degree of precision to expect from a given area of inquiry was to make clear that nothing this essay says has the empirical precision of science or the compellingly deductive power of mathematics. That should be obvious.

Nevertheless, years of experience being a teacher and talking about teaching with other teachers has made me aware that there is a persistent tendency to argue over teaching methods as if one were arguing over the precise, replicable experiments of empirical science, or debating the unchanging verities of geometry, rather than the context-specific, highly personal, inextricably relational, and therefore never perfectly repeatable performances of an art.

Moreover, although I am discussing a method of dialogic teaching identified most closely with Plato's Socrates and, as I noted earlier, in a former life as a Jesuit taught high school boys introductory Attic Greek, I have neither the expertise nor the intention to engage in rigorous exegesis of the relevant Greek texts. Instead, what I intend to do is most closely akin to talking about the practice of one's art—one's own practice and the way in which one's perception of a master's practice has influenced one's art. This is, to employ another metaphor, a kind of pedagogical midrash.

The art in question is teaching and—while it can be argued that all art is relational, an experience between an artist, the artist's creative act, and the people who come into contact with that creative act—teaching, especially as influenced by the form of the Socratic Method I will defend, is arguably the most relational of arts. Its whole success depends upon acknowledging, respecting, calling forth, and then engaging the humanity of the persons involved in the work. In fact, this sort of teaching upsets the simple schematic of the relational nature of art I just offered—artist, creative act, experiencer of artist's act—because, as must be obvious, the creative act of the

artist/teacher cannot happen either chronologically prior to or conceptually distinct from interaction with the experiencer/student. Like all good conversation, while some may know more and some may know less, some may say more and some may say less, there are only *interlocutors*—the dialogue comes into being only through the speaking and listening of more than one person.

Having offered those methodological qualifications, I do not want to convey the impression that I am exempting myself, or asking the reader to exempt me, from reasonable standards of interpretive fidelity and empirical accuracy. My hermeneutics, moral philosophy, pedagogy, and way of being—as will become painfully clear—is thoroughly *unpostmodern*. The sort of interpretation as word play, pun, and free association that is so frustratingly a part of Derridian performance art is not, I fear, part of my repertoire. Instead, I proceed from the premise that while there is ambiguity and indeterminacy in every text, as in all other aspects of human life, that ambiguity and indeterminacy occur within often very well defined limits. The empirical realities of human beings and the material world, of history and science, the intentions of speakers to the degree those intentions can be discerned and reconstructed, the logical limits imposed by the grammar and vocabulary of a given text: all those things serve to limit indeterminacy and, thereby, help distinguish plausible, albeit sometimes improbable, interpretations from sheer flights of fancy.

Accordingly, and it may be a measure of my madness that I dare resort to such dichotomies, there is both a public and a personal quality to every assertion made in this essay. What I call the public quality of these remarks refers to those aspects of what I argue and recommend that are accessible to and applicable by almost any person: the texts I use, the logic by which I draw inferences, the empirical assertions I make about contemporary law schools, their students and faculty, and the general guidelines for implementing the form of the Socratic Method I'll propose.

What I call the personal quality of these reflections is not necessarily accessible to or applicable by everyone. Precisely because I believe teaching is an art—a very special kind of performance art—I don't believe that what works for one will work for all, or even many. Again, to turn to Aristotle, in his discussion of humor in the *Nichomachean Ethics*, Aristotle seems to say that there are no definitive and universal rules, no precise definition, of good joke telling “since

different things are hateful or pleasant to different people.”⁶

I’d submit that, like most arts, teaching has much the same quality that Aristotle assigns to joke telling. There are generally applicable observations, broad rules of thumb, but ultimately the activity is so context specific that, as a good joke teller realizes, often, to use a contemporary American expression, “You just had to be there.” Material that would be hilarious in the hands of Eddie Murphy might fall entirely flat when performed by Sandra Bernhart.

A similar observation might be made of the methods of teaching. While every classroom should share certain features—e.g., adequate resources in terms of textbooks and educational materials; respect for students independent of race, creed, gender, age, sexual orientation, ethnicity, disability, etc.—what “works” as effective teaching is highly context dependent. In fact, so dependent is effective teaching on the unique histories and circumstances of the people involved in the enterprise that it is unhelpful to seek highly specific, universal rules to follow in order to be effective teachers or design effective curricula.

None of these preliminary observations on method is meant to foreclose criticism or preempt objections through an easy-going relativism—e.g., ‘Different strokes for different folks.’ These comments on method are, however, intended to head off criticism that is rooted in either or both of the following rarely articulated, but widely acted upon misconceptions: (1) that because one cannot imagine *oneself* using a proposed teaching method, that method must be wrongheaded; or, and the second misconception is closely related to the first, (2) because one cannot envision a teaching method being effectively universalized to every classroom, that method therefore ought not to be used in any classroom.

With those preliminary remarks on perspective and method, let me turn to the substantive argument at hand.

I. RECONCEIVING THE SOCRATIC METHOD: THE LOCUS CLASSICUS AND ITS ALTERNATIVES

The textual place—often the only place—to which every discussion of the Socratic Method in legal pedagogy seems to turn is the Platonic dialogue *Meno*, in which Socrates demonstrates the method

6. NICHOMACHEAN ETHICS (1128a 25ff). I am indebted to Martha Nussbaum for this illustration. See MARTHA C. NUSSBAUM, LOVE’S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE 71 (1990) (discussing Aristotle’s concept of practical rationality).

by questioning a slave boy.⁷ The most recent example of this turn to the *Meno* of which I am aware is an article by Peggy Cooper Davis and Elizabeth Ehrenfest Steinglass in New York University School of Law's *Review of Law & Social Change* in an article entitled "A Dialogue About the Socratic Method."⁸

From the start, let me be clear that I have no intention of using Cooper-Davis and Ehrenfest-Steinglass as a foil. Their article is thoughtful and provocative, reasonable and well-written, a remarkable combination of empirical research and textual analysis, and, if that were not enough, includes a very amusing parody of a Platonic dialogue.

Where I will differ from Cooper-Davis and Ehrenfest-Steinglass is: (1) in my focus on the *Gorgias* rather than on the *Meno* as the most useful source for finding a model of the Socratic Method for law school teaching; and (2) the account of the Socratic Method I will generate based upon the different textual focus I have chosen.

First, however, something should be said about the dialogues—*Meno* and *Gorgias*.

A. *The Platonic Dialogues—Meno & Gorgias*

In the *Prolegomena in Platonis Philosophorum*, an ancient anonymous author explains that:

Plato adopted the dialogue form because it imitates dialectic. For just as dialectic proceeds by question and answer, so the dialogue is composed of characters questioning and answering. In order, then, that, just as dialectic compels the soul to reveal the labors it undergoes (for according to Plato the soul is like a writing tablet with nothing written on it), so also the dialogue may compel the reader to assent to the things being said.⁹

The canon of the Platonic dialogues consists of twenty-seven philosophical works written in dialogue form in the Greek city-state of Athens in the fifth century B.C.E. While a precise chronological ordering of the dialogues is impossible, the dialogues are often

7. See, e.g., Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About the Socratic Method*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997) [hereinafter Davis & Steinglass] (discussed at length *infra*); Thomas D. Eisele, *The Poverty of Socratic Questioning: Asking and Answering in the Meno*, U. CIN. L. REV. 221, 232 (1994) (relying on *Meno* as illustration of Socratic Method of questioning); Richard K. Neumann, Jr., *A Preliminary Inquiry Into the Art of Critique*, 40 HASTINGS L.J. 725, 730 (1989) (using *Meno* as paradigmatic Socratic dialogue); John W. Cooley, *A Classical Approach to Mediation: Part II: The Socratic Method and Conflict Refraining in Mediation*, 19 U. DAYTON L. REV. 589, 596 (1994) (using *Meno* to illustrate Socratic Method as inducing recollection).

8. Davis & Steinglass, *supra* note 7.

9. Quoted in Terence Irwin, *PLATO'S ETHICS* 7 (Oxford Univ. Press 1995).

grouped into three chronological periods—early, middle, late—which have attendant philosophical pre-occupations.¹⁰ Generally, both *Meno* and *Gorgias* are placed among the early or early-middle dialogues. The significance of the chronological grouping to which a dialogue belongs is manifold: as Plato progressed in his writing of dialogues, a number of changes occurred. For the purposes of this discussion, the two most important of those changes are: (1) the depiction of the character of Socrates in the Platonic dialogues seems to stray further and further from what are believed to have been the philosophical views of the historical Socrates; and (2) the dramatic form of Plato's dialogues loses some of its vitality, e.g., the dialogue form becomes more purely formalistic, with most interlocutors serving as no more than “yes” men, and Socrates as a dramatic character is eventually eclipsed by the Athenian stranger, such that in Plato's later dialogues, the *Sophist*, *Statesman*, and *Timaeus*, Socrates is present but plays no significant part in the dialogue, and is entirely absent from what is almost universally regarded as Plato's last dialogue, *Laws*.¹¹

Both the *Meno* and the *Gorgias*, being relatively early dialogues, feature Socrates prominently as a dramatic character and make a more than purely formalistic use of the dialogue format. The *Meno* follows the *Gorgias* chronologically, and shows signs of the development of Plato's thought away from the singular moral preoccupations associated with the historical Socrates. Specifically, the *Meno* is concerned with epistemological and related metaphysical issues in a way that the *Gorgias* is not. Following Gregory Vlastos, I treat the *Meno* as not being an elenctic dialogue, while the *Gorgias* clearly is.¹² By that, I mean that *Meno* does not seriously employ the

10. For examples of such grouping by two prominent Platonists, one from the preceding generation, the other from the ranks of contemporary Platonic philosophers, see, e.g., Gregory Vlastos, “Socrates ‘contra’ Socrates in Plato,” in *SOCRATES: IRONIST AND MORAL PHILOSOPHER* 46-47 (1991); Terence Irwin, *PLATO'S ETHICS* 11 (1995). Vlastos and Irwin have different purposes in their discussion of the ordering of the dialogues in the works cited above. The point, however, is to illustrate the widespread agreement on the general groupings of the dialogues as “early,” “middle,” and “late.”

11. See EDITH HAMILTON & HUNTINGTON CAIRNS, *THE COLLECTED DIALOGUES OF PLATO* 1225 (1971).

12. See Vlastos, *supra* note 10, at 46-49. While I do not track the ten differences Vlastos discerns between Plato's early elenctic dialogues and non-elenctic dialogues of the middle period, a number of the differences Vlastos identifies help illuminate the argument of those essays. Among those differences are: (1) Socrates in the elenctic dialogues (Socrates^E) is exclusively a moral philosopher while the Socrates of the middle, non-elenctic dialogues (Socrates^M) is concerned with a whole range of philosophical issues; (2) Socrates^E does not hold to a theory of separately existing universals (forms), while Socrates^M does propound such a theory; (3) Socrates^E has an egalitarian and populist view of philosophy, Socrates^M has an elitist view;

method of questioning known as the *elenchus* that seems to have been a hallmark of the philosophical method of the historical Socrates. The dialogue of the *Gorgias*, as will be further elaborated, is, by contrast, an extended exhibition of the elenctic method.

Beyond those differences, for the purpose of this essay, the most important difference between the dialogues is the method of dialogue that Socrates pursues. Before identifying that difference, however, a brief summary of each dialogue seems in order.

The setting of the *Meno* is a conversation between the Athenian, Socrates, and a citizen of Thessaly named Meno. The dialogue opens with Meno posing the question, "Can you tell me, Socrates, is virtue something that can be taught?" (70b)¹³ From which Socrates turns to the more fundamental, and quintessentially Socratic, question: "What is virtue itself?" (71b-d). Meno, however, is justifiably perplexed by how Socrates can answer that question if he disclaims any knowledge of what virtue is. (80d). It is in response to Meno's question that Socrates conducts his famous examination of the slave boy. (82b-85b).

The details of that examination need not pre-occupy this discussion. In their article, Cooper-Davis and Ehrenfest-Steinglass provide an excellent summary.¹⁴ Suffice it to say that merely by asking questions, Socrates guides the slave boy to a correct understanding of a rudimentary problem in geometry. For the purposes of this discussion, the points to emphasize about the *Meno* are four.

First, the primary purpose of the exhibition of the method is not to arrive at some substantive point—e.g., a better understanding of some virtue or virtue itself—but to illustrate an important aspect of Platonic epistemology, i.e., the theory of *anamnesis* or remembering, a theory which implies a particular metaphysics. In its most summary form, that theory postulates that prior to our present lives, each of us existed as a disembodied soul.¹⁵ During that period of

(4) Socrates^E has no elaborate theory and, while critical of democracy, is not openly hostile to it, while Socrates^M possesses an elaborated political theory expressly hostile to democracy; (5) homoerotic desire and attachments, while playing a role for both Socrates^E and Socrates^M, are evacuated of physical desire in Socrates^M and provided an intellectual, metaphysical basis; and (6) Socrates^E uses a method that relies almost entirely on refuting the views of his interlocutors, Socrates^M has a positive doctrine that he teaches to his listeners.

13. Throughout, I refer to textual numbers used in all scholarly editions of Plato, independent of translation. For the reader's convenience, I have departed from standard law review citation and placed textual references to Platonic dialogues in parentheses after the sentence or sentences requiring citation.

14. See Davis & Steinglass, *supra* note 7, at 255-59.

15. This account of the theory of anamnesis can be garnered from the dialogues. For a brief general description of the theory see FRANCIS M. CORNFORD, BEFORE AND

disembodiment, we experienced directly a world of independently existing universals known as the *eidoi* or the forms. Matter, for Plato, being something of an errant cause, incarnation therefore brings with it a loss of our prior knowledge—that clear vision of the forms—and requires a process by which we “remember” that which we forgot. In the example of the *Meno*, Socrates’ questioning of the slave boy causes the boy to “remember” what he already knew: i.e., the universal and necessary truths of mathematics, in this case, Euclidean geometry.

Second, there is a radical power imbalance between the immediate subject of Socrates’ demonstration of the method of *anemnesis* or remembering—the slave boy—and the person demonstrating the method—Socrates.¹⁶

Third, the slave boy is purely instrumental to Socrates’ demonstration of a larger point. There is, then, no sense of the importance of the dialogue to the lives of the interlocutors, nor of the importance of the interlocutors to one another. The unnamed slave boy—at arguably the lowest rung of the Athenian social ladder—is a mere means by which Socrates makes a point to Meno, and the subject matter of the interrogation is irrelevant to the moral investigation that Socrates is conducting with Meno.¹⁷

Fourth, the slave boy is a purely passive agent—he is “acted upon” and suffers or undergoes the method without questioning Socrates or engaging actively in dialogue himself.

The dramatic and philosophical pre-occupations of the *Gorgias* are significantly different. More than any other Platonic dialogue, the *Gorgias* is relevant to those who teach and practice law.

The dramatic setting of the *Gorgias* has Socrates visiting a house where one of the greatest rhetoricians of the ancient world, Gorgias of Leontini, is holding forth. It is important to recognize that, in effect, Socrates is visiting the equivalent of a law school of his day.

The Athenians were notoriously litigious, as the conservative satirist Aristophanes made hilariously clear in comedies such as *The Clouds*.¹⁸ There were, however, no formal professions of lawyer or judge. Accordingly, citizens argued their cases themselves, with juries

AFTER SOCRATES 70-75 (1932). Cornford uses the term “reminiscence” to describe Plato’s theory of remembering.

16. See DAVID M. HALPERIN, *ONE HUNDRED YEARS OF GREEK HOMOSEXUALITY: AND OTHER ESSAYS ON GREEK LOVE* (1989).

17. Subject matter of investigation is not an issue of mutual concern—justice or virtue.

18. See ARISTOPHANES, *CLOUDS* (Alan H. Sommerstein ed., Humanities Press 1982).

of varying sizes being chosen by lot. Nor were the roles of plaintiff and defendant, prosecutor and defense attorney well defined. Generally, if a party lost a verdict, as Socrates does in his trial in the *Apology*, the losing party would propose some punishment and have an opportunity to persuade the jury to impose that punishment. The party prevailing in the verdict, however, would also have the opportunity to persuade the jury to impose the penalty of his choice.

Given such a situation, the ability to persuade your fellow citizens was enormously important and potentially lucrative. Thus sprung up schools of rhetoric, headed by men known as Sophists, who could, according to Gorgias, answer any question on any subject (447c) and persuade people to do whatever the rhetorician wanted, even better than the advice of a genuine expert could persuade. (456b). Thus Gorgias boasts that he has succeeded in persuading patients to take a treatment when the entreaties and arguments of a genuine medical expert—a doctor—had failed. (456c).

Such skill was enormously important to Athenians, and wealthy families paid large fees to have their sons trained in such skill. To appreciate fully the importance of such skill, one has to understand the nature of Athenian democracy.

The vast majority of human beings in Athens—women, slaves, resident aliens—were completely disenfranchised. Yet for a select few—the free, adult, male citizens—there existed an extraordinary degree of democratic self-determination. The chief institution of decision making was “a mass-meeting of all the native male residents”¹⁹ called the Assembly. Every adult male citizen was part of the Assembly. As one renowned classicist described it: “Any citizen could speak—if he could get the Assembly to listen; anybody could propose anything, within certain strict constitutional safeguards.”²⁰

The practical needs of carrying out decisions for the Assembly dictated the creation of smaller political bodies, essentially committees of the Assembly. The *Boule* or Council of the Five Hundred was one such body, chosen by lot, fifty men from each of the ten tribes or *demes* of Athens. The composition of the Council, however, was not consistent, being essentially chosen at random. The Council, in turn, had an executive committee or *prytany* composed of fifty men, five from each *deme*. The *prytany* remained in session for one-tenth of each year, with a chairman chosen by lot each day.

19. H.D.F. KITTO, *THE GREEKS* 126 (1951). The discussion of Athenian democracy contained in this article relies on Kitto's treatment of the subject.

20. *Id.*

Socrates, himself, once held the chairmanship of the *prytany*.²¹

The democratic quality of political life for free male citizens in Athens was further heightened by the lack of professionalism in the making of legislation and the administration of justice. Even the office of *strategos* or general/admiral was an annually elected one. It was, therefore, “no unusual thing for an Athenian to be a general in one campaign and a private soldier in the next.”²² As the classicist H.D.F. Kitto summarizes the implicit theory undergirding Athenian democracy:

Beneath this general aversion to the professional there was a more or less conscious theory of the polis: namely, that the duty of taking part, at the appropriate season of life, in all the affairs of the polis was one that the individual owed both to the polis and to himself. It was part of that full life which only the polis could provide: the savage, living for himself alone, could not have it, nor the civilized “barbarian” living in a vast empire ruled by a King and his personal servants. To the Athenian at least, self-rule by discussion, self-discipline, personal responsibility, direct participation in the life of the polis at all points—these things were the breath of life.²³

As a final observation, Kitto’s comment about the “appropriate season of life” should not be ignored. While I have not mentioned them here, the other critically important group in Athenian democracy was the citizens in training, i.e., the free male boys and adolescents who would one day take their place in the Assembly and whose education was, therefore, so critically important. It is no accident that Plato takes the education of the young as a central concern of his ideal polis in the *Republic* or that, in the *Apology*, neither Socrates nor his accusers questions the validity of treating the corruption of the young as a capital offense.

In many ways—and not entirely for the purpose of sarcastic analogy—Athenian democracy resembled the governance of a contemporary law school: i.e., most people (staff, adjuncts, students) are pretty much completely disenfranchised from real governance of the community; a relatively small number of people (the tenured faculty) having an extraordinary degree of democratic self-rule in guiding, or at least having the opportunity to guide, the community; and a smaller group of people (the untenured, but tenure-track faculty) are valued, but also continually evaluated, as future members of the governing class.

21. *Id.* at 126-27.

22. *Id.* at 127.

23. *Id.* at 128.

The relevance of the nature of Athenian democracy will become clearer in our subsequent discussion of the Socratic Method. For now, the point to take from all of this is that Socrates is not walking in, in the *Gorgias*, on just any group of tradesmen. The schools of rhetoric had a profound effect on the formation of the “best and the brightest” young people in Athenian society. Moreover, if their promises to teach the persuasive arts held even a modicum of truth, the schools of rhetoric offered a power that could have a profound and potentially disastrous effect on Athenian society.

Thus when Socrates confronts the rhetoricians, it is no mere argumentative game. He is in it, quite literally, for his life, the lives of his fellow citizens, and the life of the city.

In the *Gorgias*, Socrates poses an explicit and an implicit challenge. The explicit challenge to the rhetoricians is to provide a definition of the art of rhetoric: i.e., is rhetoric an art and, if so, what is its subject matter? (449d). The implicit challenge of Socrates, the challenge that speaks most directly to those who teach and study law, is whether the teacher of rhetoric imparts a skill or power to the student without regard for how that student might use that skill or power. (455d). As Socrates puts it to Gorgias: “What will attending your courses hold for us? What will we be able to advise Athens on?” (455d).

The response of Gorgias—despite his profession and for all his faults, a basically decent person—is that while rhetoric has the power to persuade people to do just about anything, “[j]ust like any other competitive skill, rhetoric should be used when morally appropriate.” (457b). But Gorgias adds,

If a person becomes good at rhetoric and then uses the power this expertise brings to do wrong, surely people shouldn't bear a grudge against the teacher and ban him from their communities. The teacher passed his expertise on for moral usage, and it's this pupil of his who's using it for the opposite reasons.

(457b).

To his credit, the moral sensibilities of Gorgias, however, turn out to be too sensitive for Socrates' examination, and Gorgias quickly concedes that a rhetorician will never deliberately do wrong. (460c). This, however, is too much for two of Gorgias' disciples, and soon Socrates must face, respectively, Polus and Callicles.

Polus may be seen as a second generation rhetorician, lacking both Gorgias's talent and the internal constraints that come with Gorgias's basic decency. Nevertheless, Polus is sufficiently committed (or wants to appear committed) to virtue that Socrates soon has him granting that no one does evil voluntarily (468d) and that to suffer an injustice

is better than to commit an injustice against another. (475d).

This last admission proves the breaking point for Callicles, the youngest and most aggressive of Socrates' interlocutors in the *Gorgias*, and the person with whom Socrates will converse at greatest length.

Callicles is someone whom most of us have met either on the faculty or among our classmates in law school: a child of privilege, possessed by a feeling of entitlement, having cleverness and eloquence without wisdom or compassion, a 5th century B.C.E. Nietzschean who defends the idea that justice is nothing other than the rule of the strong, and morality is just the rules of the weak. (483b-d). In so many ways, Socrates' encounter with Callicles foreshadows Socrates' argument with Thrasymachus in the first book of the *Republic*.²⁴

It is not my purpose to engage the substance of Socrates' extended argument with Callicles here. Rather, I want to draw out, in express contrast to the *Meno*, the rules of dialogue that Socrates both makes explicit and demonstrates implicitly through the dialogue.

First, in order to carry on dialectical conversation effectively, one must have three qualities: knowledge, affection, and candor. As Socrates explains to Callicles:

I come across a lot of people, you see, who can't test me because they don't have your knowledge, and then there's another lot who are knowledgeable enough, but refuse to tell me the truth because they don't care for me as you do. Then there are our two visitors here, Gorgias and Polus, who have the knowledge and are fond of me, but are too easily embarrassed to speak their minds. (487a-b).

Second, related to the first, we do not take positions we do not sincerely hold. In other words, we say what we mean and mean what we say. (481b). Chaerephon notes that Socrates is "entirely serious" about what he is saying (495a); and, at one point in the dialogue, Socrates chastises Callicles for breaking his promise of candor (495a).

Third, the interlocutor is treated as an end-in-himself. Gaining the interlocutor's assent is the central goal, not demonstrating one's knowledge, much less displaying intellectual superiority. (515b-c, in which Socrates recognizes the importance of Callicles, that someday Callicles may be a statesman).

Fourth, the interlocutors must commit themselves to a certain kind of humility, i.e., a willingness to have their views examined and to surrender a position when that position has been shown to lead to conclusions that their proponent finds humanly unacceptable. This

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principle embodies an idea expressed in the *Republic*, “wherever the argument, like a wind, tends, thither we must go” (394d), but also includes a commitment of mutual respect and a firm choice against both insult and ad hominem:

What happens when two people are arguing about something is that one person tells the other he’s wrong or has expressed himself obscurely, and then they get angry and each thinks that his own point of view is being maliciously misinterpreted by the other person, and they start trying to win the argument, rather than look into the issue they set out to discuss. (457d)

Accordingly, I infer a fifth principle: the purpose of dialectical argument is to try to arrive at truth or knowledge, or at least the knowledge that we do not know (*aporia*), not to display our superior oratorical or intellectual ability, or to establish dominance in any way.

Sixth, there are no persons, ideas, or institutions so sacred that they cannot be subjected to critical scrutiny. Everything must be examined critically, even our most cherished beliefs, our most respected institutions, our most revered heroes. The manner in which Socrates treats some of the most eminent statesman of Athenian history—Pericles, Cimon, Themistocles, Miltiades (515c-517a)—is an apt illustration of this point. For Socrates to conclude, in his review of Athenian political history with Calicles, that “as far as we can tell, there’s never been a single good statesman in Athens” would strike his contemporary listeners as no less disrespectful and outrageous than a law professor who announced that, after careful examination of that group of white, bourgeois, frequently slave-owning men we call the founding fathers, “There wasn’t a single true statesman among them.”

Seventh, while all views are subjected to the critical scrutiny of reason, precisely because of the importance of our conversation and the fact that we mean what we say, it is appropriate to speak with passion. Interestingly, Socrates, who is notorious for the derogation of the passions, at least in the early dialogues,²⁵ makes no denial or objection when Calicles notes that Socrates has spoken “with all that passion” (482c), after Socrates pleads with Calicles to take their conversation seriously, and answer the questions Socrates puts to him.

Eighth, the participants in the Socratic Method are just that—participants. While Socrates does most of the questioning, he is open to being questioned himself and, at least in principle, that role

25. See, e.g., FRAGILITY OF GOODNESS, *supra* note 4 (chapters on Symposium and Phaedrus).

reversal may happen at any time. Moreover, the person being questioned gives permission to be questioned, i.e., the subject of questioning in the Socratic Method gives his (or her) free consent to be questioned.

Ninth and lastly, the focus of the conversation ultimately turns on matters of justice—it is pre-occupied with the questions: In what does the best human life consist and how do we go about living such a life?

B. An Objection, An Application, and More Objections

The first objection to the characterization of the Socratic Method I have gleaned from the *Gorgias* is that some or even most of what I have garnered is offered by Socrates in jest or, at a minimum, with a strong dose of irony. “Irony” here is not used in the technical sense in Platonic studies, i.e., referring to Socrates’ presumably insincere profession of ignorance, but in its contemporary, idiomatic sense. Aren’t many of Socrates’ seemingly most humane protestations in the *Gorgias*, e.g., his insistence on sincerely wanting to convince Calicles, his call for affection and candor, his renunciation of ad hominem and profession of respect for his interlocutors, just a form of mild teasing, a species of disrespect, however gently expressed?

Those questions are more appropriate to a journal of classical studies. Suffice it to say that they cannot be answered adequately here. Nevertheless, I would invite a careful inspection of the *Gorgias* itself. I am convinced that what I have taken to be the explicit and implicit rules of argument are a fair representation of what the character of Socrates in the *Gorgias* actually holds. Indeed, without taking seriously the rules I have garnered, the dramatic flow of the dialogue, particularly the moving and impassioned mythic plea that Socrates makes at the end of the dialogue, would make no sense.

Of more concern to me here is the application of the rules I have garnered. Let me illustrate how those rules might be applied in a law school classroom, partly by way of contrast with what I take to be the historical practice of the Socratic Method.

As I understand it, from personal experience, from anecdote, and from pedagogical literature, the Socratic Method as traditionally applied in American law school classrooms more resembles the method of interrogation in the *Meno* than the argument in the *Gorgias*.

OUTLINE OF REMAINDER

1. Explain how the method outlined from Gorgias can be applied in the contemporary law school classroom. Note contrast with traditional (*Meno*) form of method.
 2. Consider Objections:
 - a. Irremediable nature of power imbalance (GRADING!)
 - b. Problem of “Insincere” Questions
 - c. Cultural Alienation & the Difficulty of Creating Community
 - d. Intrusiveness, Invasion of Privacy—what if someone doesn’t want to be part of inquiring community?
 - e. Requirement of Knowledge—accommodating didactic elements into method (psychogogia)
 - f. Focus on Justice—what about technical matter (the method may be OK for Jurisprudence or Constitutional Law, but how do I apply this to my tax class?)
 - g. Self-Esteem and Classroom Terror—dealing with contemporary students whose anxiety at the use of the Method may impair their ability to engage in the Method.
 - II. The Erotics of the Method
 - A. Foucault and Halperin: the (homo)erotics of the Socratic dialogues
 - B. Penetrating and Being Penetrated—Who Examines (Questions) and Who Gets Examined (Questioned)
 - C. The Athenian Analogy—mentoring, gaining approval
 - III. Elenchus—the Method of Refutation
 - A. Explaining the Elenchus
 - B. Elenchus and Psychogogia
 - C. Whether the Elenchus can bring us to Truth (Knowledge)?
 - D. Myths of Judgment and the Affirmative Doctrine of Socrates
- Conclusion