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ARTICLES

Bitter Knowledge: Socrates and Teaching By Disillusionment

by Thomas D. Eisele*

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This essay examines Socratic teaching by investigating one aspect of my own practice in law school today; its companion essay, "The Poverty of Socratic Questioning: Asking and Answering in the *Meno*," examines Socratic teaching by investigating Socrates' practice in the *Meno*. They are meant to complement, and to complicate, one another. They also are meant to extend and to supplement some of the views of Socratic teaching expressed in two earlier essays of mine: *Must Virtue Be Taught?*, 37 J. LEGAL EDUC. 495 (1987); and "Never Mind the Manner of My Speech," 14 LEGAL STUD. F. 253 (1990).

This essay is a revision of a lecture presented at Clemson University's "Conference on Professional Ethics & Social Responsibility," November 21-23, 1991. I thank Professor Daniel Wueste for the invitation to address the conferees, and Professors Jack Sammons and Hamner Hill for helpful comments on the initial version of my lecture. Since then, I have had the generous benefit of critical comments from Professor James Boyd White and Professor Thomas Shaffer. They both are remarkable readers and friends.

It gives me pleasure to dedicate this work to Stanley Cavell, a native of Atlanta, Georgia, in whose life and work the spirit of Socratic philosophical inquiry lives on.

"Disillusion is what fits us for reality, whether in Plato's terms or D. W. Winnicott's. But then we must be assured that this promise is based on a true knowledge of what our illusions are."

—Stanley Cavell¹

We who teach by questioning our students, and then criticizing their answers, teach in emulation of Socrates. Law teachers use a version of the Socratic method (or, perhaps better, several variants of it) as do philosophy professors, English teachers, classics professors, and the like. How does this method work? What kind of teaching is this?

I have taught law since 1984 and have engaged in some form of university teaching since 1978, and yet it occurred to me only recently that much of what we teach in law (and in the humanities) is bitter knowledge, knowledge gained by a process of disillusionment. When I came to see this, it struck me as odd that I had repressed for so long this knowledge of what I was doing in class to my students. Then it struck me as odder still that we law teachers (and teachers in the humanities in general) teach by disillusionment. What kind of way is this to bring along students? What good is it?

I pose the question this way because I want "good" to have both its functional and its ethical force here. I mean to ask, that is, not only what the efficacy or the usefulness of this teaching technique is, but also what the propriety of it is. What does Socratic teaching teach our students to do, and how does it teach them this? And what does such a teaching method do to our students in the process of teaching them whatever it teaches them? I shall say right now, at the beginning, that my understanding of legal education (as I have tried to explain in greater detail elsewhere)² is that we teach our students ethics through the ethics of our teaching. In the present context, this means that teaching by disillusionment is an ethical tool that we law teachers use, as well as an ethical choice that we make. Accordingly, teaching by means of disillusionment is a part of the ethics of legal education. Additionally, if such teaching is a part of the ethos or character of legal education (as I think it is), then I would claim that it also is—and must be—a part of the ethos or character of legal practice and the legal profession.

1. STANLEY CAVELL, *The Politics of Interpretation (Politics as Opposed to What?)*, in THEMES OUT OF SCHOOL: EFFECTS AND CAUSES 27, 54 (1984).

2. See Thomas D. Eisele, *Must Virtue Be Taught?*, 37 J. LEGAL EDUC. 495 (1987) (in which I discuss, among other things, Socrates' teaching in the *Protagoras*).

I am not going to attempt to defend these claims in any general way, nor am I going to try to answer the budget of questions I have posed. Rather, in this essay I hope to suggest the reality and substance of these questions by pausing to examine in detail one aspect of how I teach in law school. I claim to be using the "Socratic method" when I question and criticize my students and when I entertain their own questions and criticisms of me. It is this interplay of questioning and answering, I believe, upon which much of present-day law school teaching is built. In so far as the Socratic method so conceived is an important basis of law school teaching today, I also believe that such teaching is inevitably and intentionally founded upon the aim of teaching by disillusionment. I now would like to see what kind of practice this is, and what meaning can be claimed for it.³

I. HOW I TEACH IN LAW SCHOOL

I use different teaching styles in large and small classes. (By "large," I mean classes of forty or more students. Seminars or classes numbering less than twenty students are "small." The rest are intermediate.) Since many dynamics of teaching change as class size changes, for purposes of this essay I am limiting my remarks to large classes. When I am teaching a class in Property, Estates & Trusts, Land Use Law, or Legal Ethics, typically I prepare for class by doing several things. First, I read intensively the cases, statutes, problems, and other materials assigned for class, thinking about what makes them tick, how they work, and what I wish to point out about them. I also focus upon ambiguities or potential problems in the materials, things that I question or that I expect the students to question or to be bothered or confused by. Third, I think about how we as a class can manage to cover all of these items—how I can say what I want to say and also hear and respond to what the students want to say—in the fifty or seventy-five minutes allotted. Finally, I think about how I should try to structure my thoughts and questions on the materials, and the thoughts and questions that are apt to be expressed by the students, and how to present and coordinate the points I want to bring out and the points that they are apt to make, in a coherent scheme, in a way that makes them comprehensible for the students in the class. Otherwise, while the particular point or question that anyone might raise with respect to these materials

3. It is a further question to ask, "In what ways or to what extent is what we today call 'Socratic method' related to the activity we see defined and performed by Socrates in the dialogues left us by Plato?" I pursue this further question in my companion essay: *The Poverty of Socratic Questioning: Asking and Answering in the Meno*, 63 U. CIN. L. REV. ___ (1994).

may make sense in isolation, I cannot be confident that it will make sense in sequence, as it comes up during the class. Thus, this is another part of what I try to anticipate in organizing these matters. (I am organizing them for my benefit intellectually, so that I understand them, and pedagogically, so that I can teach them, and for the benefit of the students.) It is a challenging project.

In thinking about all of this, I find myself thinking not only about what needs to be said and done, but also about how any of this can be achieved. Of course I realize that some of these matters will in a sense take care of themselves, because any class, as it unfolds or works itself out, will inevitably achieve insights and provoke problems that "just happen." They are not wholly planned and perhaps not even much under my control, nor are they things that I can always anticipate. The insights and problems that we in the class discover from our discussion and its give-and-take are in this respect incalculable, and probably are better for that. But this incalculability is itself a condition of teaching, something that needs to be considered (even if not calculated). To my mind, the only way to honor this condition of teaching is for a teacher to place his or her faith in the unknowable workings of the classroom, to recognize the limits of what one can do as a teacher, and to welcome the gifts that education brings. The ensuing mystery is one not only of teaching and learning and how they happen, but also of the process of inquiry itself: how it proceeds from doubt or question or concern, turning itself into interrogation and investigation, perhaps tentative and often intuitive, and finally reaching insight or revelation (but then also, sometimes, defeat). Much of what goes on in a class—be it good, bad, or mediocre—is serendipitous. Although one may sometimes be able to anticipate that something will happen (given the materials at hand, for example, or the people involved in the class), often one still cannot predict what will happen.

But a teacher cannot just place his or her faith in classroom dynamics; a teacher cannot just wait for the intellectual sparks to fly. "Spontaneous combustion" is a rare occurrence in any context, and doubly so in the classroom; besides, it still requires the right conditions. Thus, a teacher must think about how all of what he or she wants to happen in the class might take place, how conditions favorable to its appearance might be created.⁴ In law school, we create favorable conditions, we investigate

4. Some law teachers—perhaps many of them—may find my description inaccurate for their own preparatory process. In particular, I suspect that some may say that they go into class with a much less rigid or explicit scheme of presentation in mind, and that they are happy just to provoke discussion, which then may take many unexpected yet productive turns.

our assigned materials, and we provoke discussion, by asking questions of our students. This practice is akin to what Socrates did, asking questions of his interlocutors who asked questions of him. His example of education by interrogation, by criticism and argument, has come to seem a paradigm for Western education. So it is that, in thinking about how all of what I want or hope my class to be will happen, I tend to think about how my lesson-plan can be accomplished by means of asking questions of my students.

Asking questions of our students is a technique in law teaching that proceeds not only on the basis of our claim to be using the Socratic method, but also upon the belief that our students have carefully read these materials and thought about them prior to class. This last point is important in a couple of respects. First, it illustrates that the law school teaching context is one in which we claim that all of us are able to participate (as is mostly the case in the Platonic dialogues as well) and that we all are engaged in the materials at hand. These may be fictions of course, but they are convenient, living, operative fictions upon which we take action and teach as though they were the case. The assumption of mutual preparation also illustrates that the questions asked—either those of the teacher or those of the students—make sense only within a given context. Such preparation helps to ensure that the teacher and students share a context in which the questions asked will make sense to all of them. The process of preparing ourselves for class makes us more commensurate and, hence, more communicative, more capable of sharing the process of education.

The preparatory process that I have described typically takes place over a series of days, even weeks, but most intensively for me the night before a class and again in the hour(s) immediately preceding a class. I have come to think of this as a process of priming myself to perform, to go on stage before my students, and to enact an intellectual drama of

I do not deny that this can be done successfully by a teacher using a Socratic method; but I wish to add two thoughts. First, I have learned not to expect to be able to answer every question asked during a class, and I have become relatively resigned to this truth. Still, I find that the process of preparation and organization I have just described helps me to understand student questions better, to make better sense of them, than I otherwise seem able to do (when, for example, I go to class less prepared or organized than I like to be). So, for me, the structure helps (and I think it helps the students too, although of course I cannot be sure and I have no way of testing this intuition). Second, while I do not want to dampen the possibility for innovation or improvisation in what we discover in my law classes, I believe that even innovation and improvisation proceed on the basis of a script; or, they take off from a script or a score. In other words, a structure can itself be a necessary condition for making innovation or improvisation possible. *See* DAVID SUDNOW, *WAYS OF THE HAND: THE ORGANIZATION OF IMPROVISED CONDUCT* (1978).

enthusiastic yet daunting engagement with the materials.⁵ But the enactment is not solely my own, nor is the engagement mine alone. I may be a major player in the class, but I am not the only one on stage, and the students are not there simply as my audience. I am not there to perform a soliloquy; I am there to help the students learn and understand these materials, these texts, concerns, problems, values, and knots of nested human complexity and need that we find and wrestle with in our law and legal system. I can do this best—I can help the students learn and understand these materials—not by lecturing to them, but rather by investigating these materials in tandem with them as we jointly question and analyze, role-play, or otherwise work through the materials together (assuming that the students already have done some of this same work on their own prior to class).

At the end of this preparatory process, I come into class, set my books and notes around me, and at the appropriate time bring the class to order and attention. I am the person directing the show. I may begin with a question, and it may range from a broad question (“What is the importance of possession to property claims?” or “Why do we put so much weight on the fact of possession in Property law?”) to a specific question (“What is the holding in *Pierson v. Post*?”⁶ or “Who won in *Pierson v. Post* and why did he win?”). Or I may simply ask, “Who has *Pierson v. Post* ready?,” which is my lingo for asking who among my students is prepared to state that particular case to the class.

More often than not, however, I do not begin with a question of any kind. Rather, I start by lecturing, sketching the background of the lesson for the day, perhaps reviewing briefly what was said and done the class before this one, perhaps simply starting a new topic or continuing an old one by saying something more about it. What is important to me is that I give the students a sense of the universe of understanding and discourse into which our specific topic for the day fits. If we are beginning a new topic, then I want the students to see the whole of which the new topic is a part; if instead our class consists of continuing our study of an already broached topic, then I want the students to see where we have been and where we are going. I think they need this

5. It is old news to say that teaching is in part a performance or a kind of theater. Here, with regard to legal education, I only wish to note that it should not be surprising to find a significant theatrical element in the teaching of a profession, when that profession itself has important theatrical dimensions. See, e.g., Milner S. Ball, *The Play's the Thing: An Unscientific Reflection on Courts Under the Rubric of Theater*, 28 STAN. L. REV. 81 (1975).

6. 3 Caines 175 (N.Y. Sup. Ct. 1805). This is the famous fox case, with which many Property teachers still begin their classes.

kind of holism or continuity, this frame-setting, if each separate and discrete class session is to make the most sense for them in sequence, and I try to provide a frame for them. This is not to say that I sketch anew the entire universe every time that we begin a new topic. I simply try to say enough to remind them of sketches that we have made in prior classes, or perhaps enough to give them the lay of the land in this particular province of law and language. I think students learn better if the class begins by my setting the context for the day's work. (I know that I learn better if I understand the context of the materials to be discussed and the questions to be raised that day.) In addition, whatever thoughts, developments, and refinements that I have been able to work out for myself—if I think the students are ready for them—I want to share with my students so that we have some common ground on which to approach the day's materials. Consequently, I try to give them some sense of why we are examining the materials we are discussing that day, of where and even how these materials fit into the "big picture" that I have (of Property or Estates & Trusts or Land Use), of how I approach the materials we have at hand. This context-setting is not mine to do alone: it proceeds hand-in-hand with introductory and contextual materials set out in the casebook or the photocopy materials that we are using for the class. I depend upon the book to have done much of this work, and thus depend upon the students to have absorbed enough of this information such that occasional reminders from me, often in the form of analogies, images, metaphors, and outlines, are sufficient to create a world in which the specific cases, problems, and questions for the class make sense.

Having set the context, introduced the topic, or described a bridge that gets us from yesterday's class to the present, I begin asking questions: Who can state the case? What was its holding? What did the court give as the relevant facts? Did the court miss the relevance or implication of any of the facts that it stated in its opinion? Did it over-emphasize or under-emphasize some fact, value, or policy? What was the rule of law that the court gave as its *ratio decidendi*? Was the rule well-stated? Well-applied? Well-understood by the court? Does the student stating the case (or any other student in class) think that the court's arguments or reasons for its analysis and judgment were well-stated or well-founded? Why or why not? What was the crucial aspect of the case (in the court's view, based upon its explanation of why and how it acted; and from the student's point of view)? What were the equities between the parties? Can we, in this class, design a better decision, make better use out of the materials of law at hand? What can we include in the law that the court excludes, or what can we remove from the law that the court finds itself unable to jettison? And what does such inclusion or

exclusion do to the body of law that we are studying? Does it improve it; or does it impoverish it?

All of these are good questions if asked on the right occasion, and occasionally I ask them. But more often than not, I do not even reach them, or proceed very far with them, because the student volunteering to discuss the case has said something wrong. Usually, when one of my students begins to state the case (by describing what happened in the world to initiate this case, or by describing how the courts disposed of this case in one way or another), I find some misstatement of fact or law, or some omission of fact or procedure, that I think is significant. As a result, I stop the student: "Bob, you said that Post was chasing the fox, but you didn't say where this chase took place, or how, or in what manner, Post undertook this chase. Do you remember where the chase took place? How it was done?" Or: "Susan, you say that the majority holds that you don't have to actually possess the fox, but can merely chase and seriously wound it, in order to gain title to it. Is that really what this case holds? Why or why not?" To such questions, I usually get one of two responses.

First, the student may remember, or think that they remember, what I am referring to or getting at in my interjection, and then he or she tries to respond, telling me and the rest of the class what they think I have asked for. Sometimes the student is right, sometimes wrong. If, in what they offer the class in response, the fact or procedure or rule that I am looking for is stated, then my follow-up question often is, "Why do you think I asked that question? What is important or significant about this fact (or procedure or rule)?" This tends to get the student thinking about what he or she missed in the case, what they failed to see or to think about when they prepared the case for class. Oftentimes, the person best-placed to answer my follow-up question is not the student who originally recited the case, but another student in the class who has been listening to our exchange, taking it in, and who suddenly sees what now needs to be said. Usually, that student then raises his or her hand and, being recognized, tells us the importance or significance of the omitted fact, procedure, or rule.

On the other hand, if the fact, procedure, or rule that I am looking for is not stated in what the original student offers me in response to my initial question, then my follow-up question is apt to be, "Can anyone else see what I'm looking for here? Can anyone else help us?" The room is then open for another volunteer. One sometimes comes forward, but at other times the entire roomful of students seems to be baffled by my question.

In response to my original interjection, however, I may get a quite different response. It is not really an answer, but rather is a rejection

of my query: I may get back a blank stare, or a quizzical look, or even a glare. Then the student either does not know what I am looking for—and knows that he or she does not know this—or else does not care what I am looking for. In this situation, the student usually refuses to proceed further—he or she may even refuse to acknowledge my follow-up question—and simply withdraws within himself or herself and refrains from participating further. Then I begin again, seeking another student who can tell me what I want to know.

II. ASKING QUESTIONS, EXPECTING ANSWERS

This is all that I wish to describe of my teaching in law school, although of course it consists of more than merely this, especially as we get toward the end of our class session. At that time, I often move into a different mode and try to bring fragments of the day's class together, perhaps comparing and contrasting things said throughout the class, or else reminding the students of something we had said the day or week or month before and now try to show them its relevance to what we have just this day discussed; and so on. But all that I want for the moment is the slice of teaching just described, where I am questioning (and to some extent antagonizing) my students, and they are responding (or failing to respond, or choosing not to respond). This is the part of my teaching, of legal education, that I wish to call "teaching by disillusionment." How does it work and what might it mean?

Let me begin from the perspective of how I understand my own actions in this context. Begin with my questions, different ones of which are asked at different times for different reasons. Many times, when I ask my questions, I am looking for specific answers or responses.⁷ On the holding of a case, for example, I often have a particular way in which I think the holding should be correctly stated. While I recognize that there is a certain amount of leeway in stating the holding of a case, I do not permit just any statement to stand, either as offered by my students or as suggested to me by the teacher's manual drafted by the editors of the casebook I am using at the time. And if I receive, in response to one

7. Here is one point at which I would like to discuss some of the very interesting thoughts on law school teaching expressed by Paul Hayden in his article on right and wrong answers. See Paul Hayden, *On "Wrong" Answers in the Law School Classroom*, 40 J. LEGAL EDUC. 251 (1990). I take his basic point to be that even purportedly "wrong" answers can be educationally useful. I grant him this. But I would want to continue the dialogue by saying that a part of one's education is the lesson that not just anything can be said or claimed in answer to specific questions in specific areas of the law. While a wrong answer may teach us any number of useful lessons, it still remains to be learned how and why the answer is demonstrably wrong.

of my questions, a holding that by my lights is incorrectly stated, then I try again to elicit it, either from the same student or from another. Eventually, I may offer my own statement of the holding; and, if I do, then I normally go on to parse it, explaining to my students why I have included what I did in the statement of the holding, and why I omitted what they may think is an important aspect or element of the case's holding.

At other times, however, I am not looking for any particular answer to the question I have asked, and in fact I am asking it because I do not know the answer but think that the question is somehow "a good one" (perhaps because it tends to provoke thought, or at least argument; or perhaps because the kinds of answers that it tends to evoke have proven to be useful responses with which to conjure). And oftentimes, in a situation where I ask a question to which I do not know the answer, I ask my question because I really want to learn what my students are thinking about these materials, what they are making out of them (and, indirectly, out of the course as a whole), as well as how my students are developing as lawyers.

In thinking about these two different situations in which I ask questions—where I know the answer or at least where I expect a certain answer to be given, and where I do not know the answer or at least do not expect any particular answer to be given—I think about them as two fundamentally different scenes of instruction.⁸ In one kind of scene of instruction, I am engaging in what I think of as an "exercise," in which we are essentially rehearsing answers that I have heard before, answers that I want and expect to come in front of the class, answers that do not surprise me at all (if, as usually happens, the answer given is the one that I have anticipated will be given). At other times, however, I am seeking to glean information from my students by asking them questions

8. One way of stating the difference between these two scenes of instruction is to focus upon a useful bivalence or ambiguity in the sentence, "I am looking for an answer." In the first scene (where I think I know the answer), I am "looking for" an answer in the sense that I am expecting it; I look to my students to provide it to me in response to my question. In the second scene (where I do not know the answer), I am "looking for" an answer in the sense that I am searching for one; I am looking for it along with my students.

I have been helped to think in terms of "scenes of instruction" by the attention that Stanley Cavell has paid this aspect of teaching and learning in the later writings of Wittgenstein. Here I refer the reader to Cavell's discussion of the opening section of Wittgenstein's *Philosophical Investigations*, which Cavell characterizes as both a "scene of inheritance" and a "scene of instruction" (among other things): STANLEY CAVELL, *THIS NEW YET UNAPPROACHABLE AMERICA: LECTURES AFTER EMERSON AFTER WITTGENSTEIN* 60-61, 64-65 (1989). See also STANLEY CAVELL, *CONDITIONS HANDSOME AND UNHANDSOME: THE CONSTITUTION OF EMERSONIAN PERFECTIONISM* 64-100 (1990) (the second chapter, entitled *The Argument of the Ordinary: Scenes of Instruction in Wittgenstein and in Kripke*).

to which I do not know the answers, in which case I think about the scene of instruction as being a matter of "true inquiry" or "investigation." Please notice however: these are names or characterizations of what we are doing in the classroom from my perspective alone; this is not the way in which I want my students to view the matter.

If students in my class were to see or to think that we were merely "rehearsing" answers during a part of our class, I think they would be contemptuous of the process. "If you, Eisele, know these answers, then why don't you simply tell them to us?!", they might ask. In addition to the implied request that I stop fooling around as their teacher, they might also lose interest in the process. For what is the point of going through an inquiry or an investigation if it is not really an investigation (but instead is what I called it above, an exercise)? It seems to be a charade, and it is not only inefficient to teach in this way, but also duplicitous or even disrespectful. The students are apt to feel as though I were fooling them, playing some sort of trick on them; and if this is what I am doing, they want no part of it.

It is at this point, I believe, where we must think about what we are doing as law teachers and why we do it. As a teacher, I do not want to take the experience of learning by self-discovery away from my students, which might occur if I act or signal that, for me, this is all rote, all a mere "exercise," a matter simply of putting students through their paces. While I may already know the answers to some of the questions I am asking, this does not mean that the students already know them. Simply because I am not surprised by certain answers to certain questions, does not mean that the answers themselves are unsurprising, or that the students are not surprised by these same answers. Good teaching in this regard disguises the fact that a teacher may already know the answer to a question, or at least downplays that fact. We are not there, at the front of the classroom, to display our knowledge as a substitute for our students gaining their own knowledge of these matters and having their own experience of learning them. When we teachers elicit the answer that we expected to elicit by means of the question we just asked, it may be cause for personal or professional gratification, but this pedagogical pleasure is not something that we need (or ought) to share with our students. We are not there to discover what we can do (unless we conceive ourselves to be engaged in a teaching experiment); rather, we are there to help them discover what they can do (for themselves, by themselves, with some initial help or provocation from us).

When I ask my students questions to which (I think) I know the answers, I have no intention of fooling them, and that is not what I am doing. They can see in a sense (or, soon enough, it becomes fairly

obvious to them), by the nature of questions I ask and their sequence or structure, their logic, that often I know the answers to the questions I am asking my students (although, again, I do not emphasize this fact, and in fact try to downplay it). I conceive of myself, in this regard, as still going through an inquiry when I do this, a true inquiry or investigation—only, it is an inquiry that is both the same and slightly different from the one my students are going through. Let me try to describe their inquiry first.

I focus their attention in class on the materials at hand and ask questions about those materials, thereby trying to get them to discover what they (or we) can make out of these materials. We all are engaged in this same process of trying to make something useful or something legally recognizable and effective out of the materials the law gives us, but the responsibility is mainly theirs to do this. As some law teachers are notorious for saying (in my generation, it was Professor Kingsfield of *The Paper Chase* fame), “We law teachers don’t teach you the law, you students do that; we teach you how to think.” In certain contexts this claim is simply fatuous (when, for example, it is an attempt to escape the teacher’s responsibility for teaching what he or she knows about these materials). In other contexts the claim is downright false. We do not teach our students how to think. They already know how to think, and they already have minds of their own. (If they did not, they would not be in law school. More to the point, if they did not already know how to think in general, then we could not teach them anything in law school.) We teach them, rather, ways to use their minds, how they may wish to think (if they choose to do so). We are demonstrating for the edification of our students—and, thus, we are training them in—techniques of thinking, ways of applying (or developing) the thinking skills they already possess.

When properly invoked, then, this claim can serve as a useful reminder that it is primarily the law students’ responsibility to discover what these materials come to mean legally. Our teaching can only partially and incompletely convey what these materials mean (or can be made to mean). The primary lesson is not what we teachers have managed to make out of the law (as a resource or a repository of legal problems and legal problem-solving material), but rather what our students find out they are capable of making out of the law.

At the same time, however, the students are watching both their fellow students and me, their teacher, even as they focus on the materials at hand. I am (or may be) criticizing their attempts at law-making at any time during their performances, their recitations in front of the class, and I am also giving performances of law-making myself, for their edification. So too their fellow students. Thus, the students must

try to watch me and to see what I am doing with these same cases and materials, even while they themselves recite or watch another student recite. (This duality of focus in their inquiry is one reason why it is imperative that the students prepare the assigned materials prior to class; they simply cannot watch me and the other students work on the materials at the same time if they have not already spent sufficient time on their own with the materials.)

The focus of the students' inquiry is bifurcated between the materials on the one hand and, on the other, either themselves or another student or myself as their teacher. My inquiry is similarly fragmented, but it has slightly different objects of its focus. I am looking at the materials and trying to see what becomes of them under the scrutiny of attention and work that we devote to them in class, and I am watching the students as they perform their recitations. I also am watching something else as well. I am watching myself teach them, and them learning, and therefore I am trying to take in or focus on the class-as-a-whole, the class conceived of as a unit of human activity and education, not me-and-them, but us.

This last is an object of my attention because I have goals or objectives for the class and I have particular lessons or themes that I want to cover during the class, and I cannot lose sight of these by losing myself in the discussion. If I do lose track of the over-arching lesson plan, while the imaginative interplay and discussion may be immediate and rewarding, the long-term losses may turn out to be severe.⁹ Thus, I am trying to do three things at once: to see what we are making of the materials at hand; to watch the students perform; and to determine how we are doing as a class. That is one reason why I too had better be well-prepared when I get to class, why I too had better have read and studied the materials prior to class.

I am trying to understand the materials, just as my students are; I am also trying to understand my students, what they are doing, and what they are becoming; and I am taking responsibility for the progress of the class and trying to see that it is productive for all involved. Whether my questions are asked in the context of what I have called an "exercise," or in the context of what I have called a "true inquiry," I am always trying to do these three things at once. From my perspective, then, what distinguishes the two scenes of instruction—"exercises" from "true inquiries"—is not the presence or absence of these three teaching goals,

9. This is another reason why I said (*supra* note 4) that I find that I need an awareness of the structure of the lesson plan for each class, and that even innovation and improvisation begin with a script.

but rather their mix or balance within the particular scene of instruction that at the moment happens to be taking place.

When I ask questions of my students to which I do not know the answers, I am apt to be primarily interested in understanding the materials we are studying at the moment—be they from Property or Estates & Trusts or Land Use—and I am looking for enlightenment on those materials from my students. But their responses can also tell me a lot about what kind of lawyers my students are becoming (or are failing to become), and they also can make me pleased or worried about the progress of the class. In this context especially—asking questions with unknown answers—the risk to the class progress can be great. The danger is that, by following out the implications of a question whose answer I do not know, I myself do not know the parameters of the discussion that I am getting the class into, or that I am allowing it to get into, and thus I do not know the bridges from that discussion to the remainder of my lesson plan. This is more truly an inquiry because I do not know the way out and I do not know beforehand what way out may become available to us (as I normally know when I ask a question to which I have anticipated the answer).

When I ask questions of my students to which I do know the answers, I am apt to be primarily interested in learning what they are making out of themselves as lawyers and only secondarily interested in the materials that we are studying at the moment, or the immediate progress of the class. These matters can change in their primacy, however, depending upon the extent to which the answers I receive to my questions do or do not surprise me, do or do not conflict with my expectations.

My response, then, to my students who might feel contempt for what we are doing in class, were they to see that at least some of the time, my questions are meant to “rehearse” answers that I know already, is the following. “Yes, often I do know the answers to the questions I ask. But you do not; or, at least, I cannot be sure that you do, until I have learned that you know the answers. I cannot learn this by lecturing to you. If I were to lecture to you, if I were to give the answers to you that I have, then that would tell you what I know, but it would not tell me what you know. And this is at least a part of what I, as your teacher, want to know; I want to know what you know. In addition, however, my lecturing to you, my giving you the answers that I have, would not help you in perhaps the way in which you might think it would, because law is not a matter of having answers; it is a matter of gaining answers, of creating answers, out of the materials that the law affords to lawyers. This skill—the ability to gain or to create answers out of legal materials—cannot be tested or ascertained by my lecturing to you, by my

giving you the answers. That would only demonstrate that I have the skill or ability we desire as lawyers, that I can create an answer out of the materials at hand. What I want to know—and what you too should want to know, even if you do not yet want to know it (perhaps because you fear the answer to that question)—is whether you have this skill or ability. And both you and I can learn this about you only by my asking you to perform the skill or to exercise the ability in my sight and hearing, so that I may judge it and help you with it. That is what I am supposed to do as a teacher, to help you become a good lawyer. I cannot do that by giving you answers; rather, I can do this only by asking questions of you, frustrating as this may be, and seeing how you respond.”

Students learn any number of important lessons in this way, and some of them are positive. They learn, for example, that for all of the terrible ambiguity and vagueness in the law, there are on some occasions in some locales of the law some definite answers to some definite questions. This is the case, for instance, in my Property course when we discuss some of the problems that can arise in the area of landlord-tenant law, or those in the area of future interests and the dread Rule Against Perpetuities. It also is the case in my Legal Ethics course when we discuss certain potential conflict-of-interest problems. It is not the case in my Property course, on the other hand, when we discuss much of “Takings” law; or in my Legal Ethics course when we discuss some disclosure-of-client-confidences problems. Some legal materials permit more definite answers than other legal materials (given sufficiently definite questions or problems raised in a sufficiently definite context or factual setting), and this is something about the law that it is worthwhile that students learn.¹⁰

There are other lessons to be learned from such a process of teaching as well, and some of these lessons are harder to swallow. I am thinking in particular of what my students learn from the kind of questioning they receive in class (as I described it earlier). When I hear them say something wrong or misleading in response to one of my questions, I said that I stop them.¹¹ Why do I do this? What do I want my students to learn in this situation?

10. This is one reason why I wish to dissent from some of the remarks made by Paul Hayden about right and wrong answers in law school. *See supra* note 7.

11. On several occasions, I have received comments on student evaluation forms that my continual interruptions of my students are an irritating habit of mine (distracting, and impolite as well). This may be an inevitable cost of what I see as the benefits of such a teaching technique—but I do not want to deny that this reaction means that I have to continually rethink both the efficacy and the ethics of this way of teaching.

I want them to learn, first and foremost, that they do not know something that they think they know. This is a very important lesson to learn. Yet, it is equally important not to take the lesson too far, or not to draw the wrong inference from this lesson. The right inference to draw is, "I thought I knew, but I did not in fact know, when I said that I knew. How could this have happened to me?" This lesson humbles the speaker, at least momentarily, and makes the speaker go back over the grounds or bases for his claim to have known, checking and rechecking his facts or his experience, or both, giving them some more thought. This is all to the good; it may make our students more thoughtful. And it may even make each student more circumspect as to what he or she claims to know. This too is all to the good; we lawyers could use some humility, and some hesitancy, in claiming to know things. But one of the wrong inferences to draw would be this: "Since I don't know here and now what I claimed to know, then I never can know; I never can (or should) claim to know anything." This would be an absurd conclusion to draw from this experience, and yet it is the frame of mind that in philosophy we call "skepticism."

I shall try to say later why I think that skepticism is an incorrect inference to draw from this humbling experience, but for the moment I want to note that there is something else as well that I as a teacher hope to gain from this kind of questioning. I said above that I hope the student will recognize his or her lack of knowledge in a context where he or she has claimed to know something. Secondly, I want a recognition on the part of the student that the way out of this mess, this fix, is through himself or herself, not through me. I realize that I can provide some temporary relief for their befuddlement, and given sufficient need and sufficient cause, I often will step in and offer an argument or a fact or a rule that may settle the dilemma raised by my preceding question. This is only a temporary solution; it affords only temporary relief. Nothing I do or say can save my students from the professional challenges they have before them; those problems and dilemmas are there in the materials and in life and nothing I can do could remove them (I am not certain that I would even if I could, but I suspect that I might try). The way out is through themselves, and not through me.¹² This is the second lesson I hope or expect them to learn from this form of questioning.

12. I have suggested elsewhere that this insight into the student's responsibility for finding a solution to the problems that plague him or her in the law, can be one goal of a course in Jurisprudence. See Thomas D. Eisele, *The Activity of Being a Lawyer: The Imaginative Pursuit of Implications and Possibilities*, 54 TENN. L. REV. 345, 346-49 (1987).

It is the peculiar genius of the early and middle dialogues of Plato, which portray Socrates at his best, that they seem to me to teach these same two lessons (and it is not something taught solely by Plato or Socrates; I find very similar lessons in Wittgenstein's later philosophy). The dual lessons of Socrates' teaching and questioning are these:

1. You don't know what you think you know.
2. You know more (or other) than what you think (you know).¹³

These lessons are taught in many ways in many contexts and in many forms, but basically they are repeated throughout the early and middle dialogues, and they seem to me to express the essence of Socrates' teaching.¹⁴ What do they mean?

The first lesson is a lesson in self-knowledge and it results in what I am calling "bitter knowledge,"¹⁵ knowledge gained by disillusionment.

13. This particular way of formulating the dual lessons of Socrates' teaching came to me while I prepared for some introductory classes with entering students at the College of Law in the University of Tennessee in the late 1980s. In the secondary literature on Socrates and his teaching, I have not found anyone who formulates the lessons of the early and middle dialogues this way, and I believe that my formulation is original. But, in revising this essay for publication, I came across Gregory Vlastos' recent book on Socrates, which contains certain cryptic comments that I find supportive of my formula.

Socrates' central paradox . . . [is] his profession of ignorance. He asserts that he has no knowledge, none whatever, not a smidgin of it, "no wisdom, great or small" But he speaks and lives, serenely confident that he has a goodly stock of it—sufficient for the quotidian pursuit of virtue. And he implies as much in what he says. To keep faith with Socrates' strangeness some way has to be found to save both the assertion of his ignorance and the implied negation.

. . . .
 . . . [I]rony served as the vehicle of his profession of ignorance, [which is] intelligible only if [it is] understood to disclaim one sort of knowledge, while claiming another in the same breath.

GREGORY VLASTOS, *SOCRATES: IRONIST AND MORAL PHILOSOPHER* 3, 13 (1991) (emphases in original; footnote omitted). See also my earlier article on Socrates' teaching in the *Protagoras*: *supra* note 2, at 496.

14. What follows is a summary statement of some of the implications of Socratic questioning as I understand them. I have worked out more fully the structure of Socratic questioning and the dual lessons that it teaches in my companion essay, *The Poverty of Socratic Questioning* (forthcoming), *supra* note 3.

15. I am led to this label in part by the following remarks of Stanley Cavell on the nature of self-knowledge:

Both [Freud and Wittgenstein] thought of their negative soundings as revolutionary extensions of our knowledge, and both were obsessed by the idea, or fact, that they would be misunderstood—partly, doubtless, because they knew the taste of self-knowledge, that it is bitter. It will be time to blame them for taking misunderstanding by their disciples as personal betrayal when we know that the ignorance of oneself is a refusal to know.

STANLEY CAVELL, *The Availability of Wittgenstein's Later Philosophy*, in *MUST WE MEAN WHAT WE SAY?* 44, 72 (1969).

The disillusionment is a product of a student not knowing himself or herself well enough, and it is a lesson taught by defeating the expectations and hopes of the student. To the extent that a student begins a class or a schooling by thinking that he or she already knows how to deal with the materials or the problems or the questions given him or her, this is arrogance. It needs to be defeated, and it is defeated by the method of Socratic questioning. I want to discuss in particular this facet of law teaching in the next section of my paper.

It is not enough to leave the matter there; that would leave the student crushed or defeated, and I take it that such an attitude is not what we are seeking in education, either in law school or in any other school. Thus, we law teachers need to see that disillusionment in and of itself is not enough, is not sufficient education for our students, and hence it is not all of what we must ask of ourselves and our teaching. Something else is needed. This "something else"—which I am claiming is a necessary part of the Socratic method—is what I discuss in the fourth section of this essay.

III. THE GOOD OF DISILLUSIONMENT: BITTER KNOWLEDGE

In this section, I want to concentrate on what I am calling the right inference to draw from the experience that I tried to describe above: the experience where I stop a student who is trying to answer one of my questions and I indicate to them that they are wrong about something, that they do not know what they think they know. This is, I claim, a failure of self-knowledge.¹⁶

In drawing the right inference from this failure, it is important that we recognize that Socratic questioning takes place in a context where the student volunteers to state the case or to recite some particular problem. I mentioned this fact in passing while generating my description of how I teach, but I did not emphasize it too much, exactly because I wanted to see whether or not it would seem significant to my reader if I did not emphasize it; I suspect that it did not. For, after all, we teachers have the power to call on our students to state cases or recite problems in class; why does it matter whether we exercise that power, or whether instead the students volunteer to state the case?

16. I acknowledge later in this essay that it may turn out that the lack of self-knowledge is mine and not the student's. Then the revelation of one's ignorance will once again have been achieved by means of Socratic questioning. (Sometimes it is the Socratic questioner who refutes himself or herself. This was true of Socrates too. See my earlier essay on the *Apology*: "Never Mind the Manner of My Speech," 14 *LEGAL STUD. F.* 253, 270-74 (1990).)

It matters because if the students are called on—rather than acting as volunteers—then they really have not put themselves in the position of having claimed to know. And that position is the one that I very much want them to be in; rather, it is the position I want them to put themselves in when speaking and acting in my class. If instead I call on a student, then he or she may or may not know the answer to my question. But the mere fact that it turns out that he or she does not know the answer does not teach the lesson that I specifically want to teach; rather, it shows only that the student does not happen to know a particular piece of information that at the moment I seek. But the student's merely not knowing this piece of information does not refute the student at all, because he or she never claimed to know in the first place. I put the burden of answering on that student's shoulders; he or she did not assume or accept it voluntarily.

The situation that I want to create in the classroom is where the student for all the world to see is claiming to know something. In this context, that claim means something (says something) personal about the claimant; it almost functions as a proud boast before his or her peers. It is a claim to expertise, to professional accomplishment, before a jury of peers, all of whom are also trying to achieve professional status. In such a context, I am sure that the claim to know will be both strenuously tested (or contested) and vehemently defended. That is good; I want that commitment of the self to the self's words (just as Socrates wanted it too, in his conversations that turned into elenctic refutations that brought about humiliation).¹⁷

17. About the nature of *elenchus* in Socrates' dialectical method, James Boyd White says:

The one who claims to know knows nothing after all. This is the *elenchus*, or refutation, of which Socrates repeatedly speaks, and it is the heart of dialectic. It results in a mortification or humiliation of a special kind, for one is mortified by the invocation not of new facts or ideas but of what one already knows or claims to know. One part of the self is appealed to against another part, and in the process a previously unknown self-contradiction is revealed.

... [A] dialectical refutation (*elenchos*) requires that one make the other agree with what one says What matters between us is not the other witnesses who can be brought forward to support your view or mine but whether you can make me your witness or I can make you mine. For dialectic to exert its full force upon the individual mind, complete frankness is essential, a kind of shamelessness in saying what one really thinks.

JAMES BOYD WHITE, WHEN WORDS LOSE THEIR MEANING 95, 102 (1984).

I have said more about *elenchus* in my article, "Never Mind the Manner of My Speech," *supra* note 16, at 274-75.

I said that what most often happens in class is that I stop the student who claims to know and ask him or her questions, which he or she cannot answer—as it turns out. But I do not know whether or not he or she can answer them when I ask my questions—that is, they are genuine, good-faith efforts to determine whether the student who has volunteered to speak really knows what he or she is talking about. When a student claims to know, but then discovers in fact that he or she does not know, they are chagrined. They have made a mistake, and a serious one; it can lead to disillusionment. But not just any mistake and its recognition lead to disillusionment; not every error and not every correction have the power to disillusion a person. What is it specifically about this teaching by this kind of questioning that has this power, the power to disillusion a person?

First, as I have been saying, it is the fact that the student volunteered to speak. In this situation, he or she voluntarily put themselves forward as knowing what needs to be known in order to answer the question. They claimed to know in this situation.¹⁸ Theirs is a claim to know both something about the world and something about themselves: “I know that I know something about the world.” It is particularly disillusioning for them to learn that they do not know. “I have mistaken both the world and myself. What else is there?! What else might I more easily or more fully know than my particular chosen professional world (here, the professional legal materials assigned for mastery by today’s session)? Whom else might I more easily or fully know than myself? If

18. In response to my claim that it is important to have law students volunteer to answer in class, I have been told that to characterize them as “volunteers” is false. In most law schools, this critic says, students speak not voluntarily but from a sense of implicit coercion. And, it is further said, even purported volunteers feel coerced into speaking: they know and understand that they are expected to participate in class, and that in fact their final grade can be lowered if they fail to participate in class discussion (this is true in my classes).

This criticism is an important comment on my description of law school teaching, but it also may go too far. On this alternative understanding, I am not certain but that it becomes impossible to ever characterize anyone as “volunteering” (since they always may be acting out of a response to external rewards and punishments). I think such an alternative means that we have lost, or are at risk of losing, our concept of voluntary action in law school teaching. But, in addition, this alternative understanding shows at most that volunteering is a rare phenomenon in law school; it does not show that my claims about the logic or the dynamics of volunteering are wrong. (A more complete response to this objection would explore how comfortable or uncomfortable—how threatened or intimidated [or the reverse]—students feel in any given law school class. But I find it difficult to assess the extent to which student participation in law school discussions is truly voluntary, without also looking at the nature and quality of the teaching going on in a given class.)

I don't know my professional world, then what do I know? If I don't know myself, then whom do I know?"¹⁹

There surely is some pride expressed in such a representation, a placing of the self in front of other people (especially in front of one's peers), and the consequent bursting of that pride—when one discovers that in fact he or she does not know—has the power to make the volunteering student feel embittered and disillusioned. Then, too, there is the peculiar public nature of the humiliation. Having one's errors and mistakes handed back to oneself on a public platter is more difficult to dismiss or deny, and less easy to swallow, than would be the private correction of one's errors and mistakes during a tutorial. Finally, in addition to the lack of self-knowledge that such refutation shows, the lack of professional mastery it displays, and the public nature of the humiliation (in front of one's peers) that it performs, there is this: the student is rejected for all to see by someone most students respect—the teacher. Is this not adequate reason for disillusionment? I think it is.²⁰

Socrates' teaching can be understood to be both empowered by and enjoined by the Delphic maxim, "Know thyself."²¹ This maxim traces

19. The way in which I am formulating these doubts is directly indebted to Stanley Cavell's analysis of the opening moments in traditional philosophical skepticism. While I am not in a position to use this material in any concerted way here, I want to draw attention to the possibilities of pursuing these lines of inquiry elsewhere. Cavell's generating question in his inquiry of skepticism is, specifically, "How does the failure of a particular claim seem to cast doubt on the validity of knowledge as a whole?" STANLEY CAVELL, *THE CLAIM OF REASON: WITTGENSTEIN, SKEPTICISM, MORALITY, AND TRAGEDY* 135 (1979). See also *id.* at 135-40. And see also my remarks in the text, *infra*, at note 32.

20. I am not claiming here that disillusionment occurs each and every time a student is corrected in the classroom. While I do claim that disillusionment is an effect that Socratic teaching produces (intentionally), I am saying that it is the cumulative impact of such teaching that leads naturally, normally, to disillusionment. Given this kind of teaching and sufficient repetitions of its lessons, we can anticipate this kind of result—and this is what we mean to do as teachers. (See also my remarks in the text, *infra*, at note 32.)

21. It is reported that this saying was inscribed over the threshold of the temple at Delphi.

[A]t Delphi the educational power of Greek religion reached its maximum, and spread from there far beyond the frontiers of Hellas. The wise sayings of sages were dedicated to Apollo and inscribed in his temple, since their worldly wisdom was only a reflection of his divine wisdom. And at his door his worshippers saw the command *Know thyself* — the doctrine of *sophrosyné*, by which men learn to remember the limits of human power and ambition, expressed in the legislative form that was characteristic of the age.

WERNER JAEGER, *1 PAIDEIA: THE IDEALS OF GREEK CULTURE* 167 (G. Highet trans. 2d ed. 1945) (emphases in original; footnote omitted).

the source of his success, and its limit, and, in so far as we proceed in the manner of questioning that I have been describing, the maxim also befits law teaching. By means of Socratic questioning, we force students to recognize something about themselves, something unpleasant but undeniably true. It is this fact of combined unpleasantness and undeniable (or unavoidable) truth that makes such self-knowledge bitter.²² It seems to me that this way of teaching law amounts to forcing our students to acknowledge their ignorance in three different ways, all of which lead our students to learn by disillusionment.

First, teaching done this way is teaching based upon forcing the student to see something about himself or herself. If I do not just tell a student that he or she is wrong, but actually show him or her that he or she has said something wrong or has gotten something incorrect, then I am forcing a piece of self-knowledge on that student. They must recognize this about themselves—that this is what they did, or that that is what they said—and they must do this before we can go on with the lesson, before we can continue the conversation or discussion. (This is one reason why I interrupt my students and do not allow them to continue: I want to enact the breakdown in communication that has occurred.) Of course, sometimes they do not recognize this about themselves—that they have gotten something wrong or that they have spoken incorrectly or falsely—either because they cannot manage to recognize it or cannot bear to see it (out of denial) and, as I have said,

In *The Apology*, Socrates justifies his teaching method in part by saying that he was told that the Delphic oracle said that no one was wiser than Socrates. See PLATO, *The Apology*, in EUTHYPHRO, APOLOGY, CRITO 25 [21a] (F.J. Church & Robert D. Cumming trans. 2d rev. ed. 1956). Yet Socrates knew that he did not know. Putting these together—he knew himself well enough to know that he was ignorant, and the oracle said that no one was wiser than he—this seems to mean (and meant to Socrates) that all of his interlocutors failed to know what they thought they knew. So Socrates takes as one of his purposes in life the effort to show others that they do not know what they think they know.

The Delphic saying, "Know thyself," also comes under Socratic scrutiny in the *Charmides* and the *Protagoras*. See PLATO, *Charmides*, in LACHES AND CHARMIDES 76, 80 [165a, 167a] (Rosamond Kent Sprague trans. 1973); and PLATO, PROTAGORAS 46 [343b] (Benjamin Jowett & Martin Ostwald trans. 1956).

22. I have thought about the ways in which this knowledge can be said to be bitter. (1) It is bitter because it is unwanted. It comes to us or our students unbidden, unasked for, unsought. (2) It is bitter also because it is unacceptable. It tells us something about ourselves and our world that we do not like to hear or do not want to know. It also stings our pride or our vanity. So it requires an acknowledgment from us before it can truly become an operative portion of our understanding of ourselves and the world. This acknowledgment, this acceptance, is hard to swallow or to stomach. (3) It also is bitter because it is undeniable; the proof is there, right in front of us, and this makes it a hard truth—but undeniable. So it confronts us, even haunts us, until we relent. Yet, we reject it because it is so bitter.

I am forced then to move on to another student. Still, the force and effect of my teaching are that unless and until the students can recognize something about themselves (what they did or said when asked to recite the case), they cannot go on (in my class). This is frustrating teaching, but also very powerful teaching because it blocks their natural urge to go on with their training. Such teaching tends to foster self-knowledge not because it makes self-knowledge any less bitter or any easier to swallow, but because it makes self-knowledge necessary.

The second way in which this teaching produces self-knowledge is that it forces the student to see that he or she has misread or mistaken something in the world. The materials that we use in the law are primarily written—case reports, statutes, administrative regulations, scholarly journals, and the like—and these are a part of our world, they are objects in the world (as are the actions of the people discussed within these writings). The second lesson in self-knowledge taught Socratically is that these objects in the world may not be what they appear to be (or they may not say what they appear to say), and so we must be careful with them and must proceed cautiously. This is commonly what we teach when we ask students to state the holding of a case because commonly we expect them to be misled by something in the opinion, something that leads them to state the holding incorrectly.

This is a second lesson in self-knowledge, and it is not the same as the first lesson. The first lesson involves the student's need to recognize that he or she is wrong about something as to himself or herself. The student thought that he or she knew something when in fact he or she did not. But the second lesson teaches the student that he or she also is wrong about something in the world other than himself or herself. This second lesson is the different lesson that the world can fool us or that the world can be other than what it appears to be. This is not the same as saying that we are deluding ourselves about the world; that would be another lesson about us, not about the world. Illusions in the world are not delusions we create, but rather are aspects of the world that fool us into thinking that they are something that in fact they are not.²³ (Mirages and other optical illusions are the paradigm instances of this second type of problem.²⁴)

23. If I delude myself about something, I am being foolish; if I am the victim of (or fall prey to) an illusion, I am being fooled.

24. The philosophical "argument from illusion" is thoroughly and helpfully analyzed in ways pertinent to the present discussion in Austin's set of lecture notes: *See J. L. AUSTIN, SENSE AND SENSIBILIA* (G. J. Warnock ed. 1961). For his careful distinction between illusions and delusions, *see id.* at 22-26.

The third and final lesson in self-knowledge taught Socratically is in a sense the most difficult and galling lesson to learn because it is the most threatening for our students at this point in their careers: it forces them to see that their teacher does not accept what they say and does not accept their answer to the question that the teacher has asked. Since the teacher is their representative for the profession to which they want to belong and to which they currently are in the position of aspirant or apprentice, this represents the profession's rejection of them. In addition, it is the simultaneous rejection of them by their teacher, someone whom the students are apt to respect. To have this evidence of rejection, to receive this opinion of one's legal skills, and especially to have or receive it face-to-face in front of one's peers, is devastating. It says to the aspirant: you have failed to act as a professional would act and you have failed to be initiated into the profession. It is the third and final element of self-knowledge in this scene of instruction, and it is perhaps the worst or most difficult to acknowledge. (Did I say something about "bitter" knowledge?)

All of this talk about the Socratic method as a means to self-knowledge can seem—can be—dismayingly, disturbingly smug, as though the method were some sort of antiseptic tool, rather than what it is: the personal assault on one's mind or one's way of thinking, seeing, and speaking. Who are these teachers who think that they have the right to cause such pain, disillusionment, and humiliation to the student?

This series of questions expresses a real discomfort created by this method of teaching, but it places the discomfort in the wrong light. As I understand it, Socratic teaching does not proceed as a matter of right. Rather, it proceeds as a matter of need. The only justification for teaching this way, as well as the sole good of teaching this way, comes from a belief that it is needed: it is a necessary response to certain human constants (constants in human experience, human life, language, and law).

As Stanley Cavell suggests in the motto to this essay, the justification for such teaching "must be . . . based on a true knowledge of what our illusions are."²⁵ And is it? The Socratic method of questioning and answering is directed toward discovering self-ignorance—the fact that a person does not realize that he or she does not know what they claim to know—and toward revealing that fact to that person. In this respect, I think Socrates' method is based upon "true knowledge of what our illusions are." I believe that ignorance of the self is a shared condition of human beings, a firmament in human experience. I would venture to

25. See *supra* text accompanying note 1.

say that our continued susceptibility to a kind of unconscious ignorance, and also our human pride or even arrogance in our powers of knowing, trace a continuity of human nature or human experience. These attributes of human fallibility and frailty have always been with us and will always be with us. They are constants of human life and experience, and in this sense they are necessary parts of the structure of our lives and experience.²⁶ Since we cannot escape them, we must learn to live with them. This includes learning, to the extent that we can, how to deal with them. The Socratic method is one way of dealing with them (I do not say that it is the only way).

All of this may be true, but it leaves pending a concern over the element of humiliation in such teaching. Is it really necessary to humiliate students in order to teach them that they do not know what they think they know? I would say, yes and no. Humiliation is not necessary if it implies (or to the extent that it implies) any kind of ridicule heaped on a student, either by a teacher or by the other students, or any abuse of the imbalance of power between teacher and student. Teaching that countenances ridicule (Socratic or otherwise) is destructive, not productive. But "humiliation" derives its meaning not from a notion of ridicule, but rather from a root in humility. To teach humility in what one claims to know—a training to some caution in what one claims to know and how one expresses it and exactly how one says what one means in claiming to know what one knows—is a noble enterprise; it is a goal that encompasses values that are at the core of Western education and philosophy.

26. Emerson, if I read him correctly, believed that illusions were a necessary part of human life and experience:

Dream delivers us to dream, and there is no end to illusion. Life is a train of moods like a string of beads, and, as we pass through them, they prove to be many-colored lenses which paint the world their own hue, and each shows only what lies in its focus

...
The secret of the illusriness is in the necessity of a succession of moods or objects. Gladly we would anchor, but the anchorage is quicksand. This onward trick of nature is too strong for us: *Pero si muove*. When, at night, I look at the moon and stars, I seem stationary, and they to hurry. Our love of the real draws us to permanence, but health of body consists in circulation, and sanity of mind in variety or facility of association. We need change of objects. Dedication to one thought is quickly odious.

RALPH WALDO EMERSON, *Experience*, in *ESSAYS & LECTURES* 469, 473, 476 (Joel Porte ed. 1983) (originally published in 1844).

IV. ENGENDERING RENEWED EFFORT OUT OF DISILLUSIONMENT

I do not appeal to disillusionment in teaching as though it were unproblematic or an unmixed good; it is in fact a troubling phenomenon. It is troubling in part because the word "disillusionment" is ambiguous without more being given of its context. The dictionary tells us that this term can refer either to a positive experience—namely, the removal of one's misleading illusions; or it can refer to a negative experience—namely, the loss of hope leading to disenchantment.²⁷ So the word "disillusionment" at one and the same time captures both the freedom or release that one can experience in gaining enlightenment by losing one's illusions, and the loss of hope or self-confidence that being disabused of one's illusions can bring in its train. The release from illusions is good, but the pain and despair bred from the disillusioning experience are difficult to accept.²⁸ Has disillusionment always had this dual aspect?

We may find ourselves, in this regard, again learning from Plato. His brief statement of the "myth of the cave" in *The Republic* is perhaps Western culture's paradigmatic image of the duality of the experience of disillusionment.²⁹ The educational effort to drag the captives from the shadows of the cave into the glaring sunlight of the world as it stands, is painful and depressing; it is resisted by those who find the old reality more acceptable, less painful, and more real. Yet, the captives want enlightenment, and, yes, they want release and the freedom that knowledge of reality will give them (or so they would say if they were

27. See 1 THE COMPACT EDITION OF THE OXFORD ENGLISH DICTIONARY 752 (1971).

28. Tom Shaffer has told me with his usual grace and force that what I am calling "disillusionment," others (including himself) might wish to call something else, perhaps "temporary discouragement" or "gentle humiliation." True disillusionment is disenchantment, he claims, a true malaise of the heart or soul, a kind of hopelessness.

I do not deny this negative aspect of disillusionment, and I mean to be trading upon just this potency of meaning in the word throughout this essay. It *can* imply disenchantment and hopelessness. But I do not think that it must mean this, because "disillusionment" carries with it (linguistically or structurally) the other potency of meaning, namely, a lifting of illusions that have held one captive. If I am wrong about this, and if this essay does not help to show this duality to be an essential component of Socratic teaching, then I have failed.

It is my hope that in this essay I show in some small way that teaching by disillusionment can be good, can be productive, and that it need not be destructive or disenchanting. Yet I cannot deny (and do not wish to deny) the continued threat of destructive disenchantment that teaching by disillusionment holds, because I think it is there and because I think it is a continual issue with which teachers using the Socratic method must conjure.

29. See THE REPUBLIC OF PLATO 193-96 [514a-517a] (A. Bloom trans. 1968).

asked). But the shock and pain of this educational effort are almost unendurable. For some, they are unendurable; and what these people most wish for is respite and retreat back into the comfort of the cave and its shadows. (Who is it who said that humans cannot bear too much reality?)³⁰ Something is gained in the educational effort, but something else is just as surely lost, and the gain is bitter comfort for the loss.³¹

The positive side of disillusionment is our realization that we were *mistaken* about something. In this way we come to know through the explicit process of removing the scales from our eyes, ridding ourselves of illusions that, until now, have prevented us from seeing what is true, what is the case. Yet the negative side of this therapy is that we also realize that *we* were mistaken about something. In this way we come to know through the explicit process of admitting that we got something wrong about the world, that the world is something other than what we thought or expected it to be (and in this respect, the world as an object of knowledge very much includes ourselves). This realization disappoints us, and perhaps we even despair of ever getting the world right, of ever knowing or understanding it (including ourselves).

Such disappointment or despair over our ability to know, such disillusionment, seems to lead naturally to skepticism. I said earlier that skepticism is one wrong inference to draw from the experience of disillusionment,³² but it seems almost inevitable that our students will draw it. For who—subjected to the day-after-day criticism of one's claims to know the law in any particular case, or to know what a statute says, or to know how to apply a specific rule (or to know any of a number of other things about law)—would not become skeptical of his or her powers to come to know anything?

The despair and humiliation in law teaching are manifest; but they are both natural and necessary. We humans tend to become infatuated

30. It was T. S. Eliot, in the "Burnt Norton" portion of the *Four Quartets*. See T. S. ELIOT, *Four Quartets*, in THE COMPLETE POEMS AND PLAYS, 1909-1950 117, 118 (1971) ("... human kind/Cannot bear very much reality").

31. This phenomenon is explored by James Boyd White in his book, *The Legal Imagination*. See, e.g., JAMES BOYD WHITE, THE LEGAL IMAGINATION 10-13, 689-94 (1973). See also Thomas D. Eisele, *The Legal Imagination and Language*, 47 U. COLO. L. REV. 363, 410-11 (1976).

32. I am not happy here with calling "skepticism" an "inference" that we draw from our disillusioning experience. I think that, truly speaking, skepticism is more a mood or an attitude than it is an inference; and this change in characterization has implications for how we should respond to skepticism (the threat and the allure of it), for whether we think that skepticism is capable of refutation, and even for whether or not we find it to be a natural human reaction to certain situations and experiences. I cannot go into more details about this now, but I can point the reader to the best book available discussing this matter: STANLEY CAVELL, THE CLAIM OF REASON, *supra* note 19.

or enchanted with what we know (or what we think we know), and we find it disenchanting to learn that we do not know what we think we know. Still, any humiliation a student suffers as the result of such teaching should not be the result of the use of the power of the teacher's position to cause pain to a student by means of ridicule, as though the teacher were pointing out something special about that student or as though he or she were different from the rest of us. Rather, the point of the Socratic method is its offer of an opportunity for the student to catch himself or herself in the act of saying what he or she does not (and cannot, here and now) mean. This dissonance between what we say and what we mean (or mean to imply) happens frequently with all human beings. The point of Socratic questioning is simply to show not where we all differ but rather where we all are the same: we all share the condition of, on occasion, not knowing what we claim to know.

Thus, the humiliation suffered in Socratic questioning, rather than serving to differentiate students or discriminate among them in regard to their knowledge (or lack of it), tends to emphasize what they (and we) share. We who teach Socratically are saying that there is something we all share, call it "human ignorance" or "human vanity," or a combination of the two. The point is: this is a permanent part of our human condition, not something that we can remove once and for all. Consequently, we all had better recognize it about ourselves and others and learn how to deal with it. The way that Socrates developed for dealing with it is his Socratic method of questioning and answering.

The negative side of law teaching is the side that says to the student: you are wrong about something. And this lesson comes to mean that they are wrong about themselves, the world, and their professional competence—merely everything that matters most to them at this particular juncture of their lives. Our teaching cannot and should not end with this lesson, however, for it is a half-truth, only half of the lesson that Socratic teaching, truly understood, teaches. I said before that Socrates taught this same negative lesson in the form, "You don't know what you think you know." But there also is a second lesson taught by the Socratic method, taught simultaneously with the negative lesson, and the positive lesson is: "You know more (or other) than what you think (you know)." How does this second lesson get taught by means of Socratic questioning?

When I stop a student who is trying to recite or respond to one of my questions, what do I encourage that student to do? In the face of my rejection and criticism, what do I expect or ask of the student? It may sound strange, or even perverse, but what I ask from my students in such a situation is this: I ask them to try again. That is all that I ask; but it is enough.

I ask them to look at the case again and to see what it says (or implies), to look at themselves and see what they are doing, or to listen to themselves and hear what they are saying. I ask them to hold themselves in front of the class and in front of their materials and examine what they are doing with these colleagues and with these materials. What they are saying may be wrong, unjust, inapt, outrageous, or untrue; there is no single dimension of impropriety to which the assessment of a person's answers can be limited. What is most important is that the mistake or miscue not be allowed to pass unnoticed; its wrongness or impropriety must be acknowledged. Thus, I am asking the student for a recognition that he or she has done something wrong.

In return for this acknowledgment, I shall reciprocate. If the student will acknowledge his or her mistake, the wrongness or impropriety of what they were just saying or claiming, then I shall listen to them seriously and respond. That is the reciprocal commitment I make. If they will try again, then so shall I. Upon their trying again, we may all learn that the mistake was not the student's but mine; that what they were trying to say was right, but that I mistook what they were trying to say (or mistook its truth or propriety) or misunderstood the materials that we are discussing at the moment. In a teaching method based upon disillusionment and humility, it is not the students alone who are threatened with being humiliated or refuted in front of everyone. This is a risk that any teacher must bear who wishes to engage in the Socratic contract with students; the weight of learning and the promise of revelation require it.

How do I reciprocate, specifically? What does my willingness to reciprocate mean and how does it operate? There are three aspects of positive learning and student encouragement that seem to come to the fore in the process of my reciprocation (my agreeing with my students to stop, look, and listen again). First, in asking them to return to the case or the material and to think again, I am implicitly placing faith in them to do correctly what they failed to do in the first place. How can I do this in the face of their failure? Because no matter how many times my students fail to respond correctly, I trust that eventually the vast majority of them will develop the ability and skill to read and understand legal materials. This means that I trust them eventually to learn how to do so. In fact, rightly understood, they already have much of what they need in order to know how to read and understand the law or how to gain or derive or create answers from the law (as I put it in section II). They do because they have much of the social and intellectual competencies that we expect of young adults, and these competencies are the bases of our powers. Thus, it is right to say, as James Boyd

White does, that in law teaching, “[t]he declarative proposition cannot be the center of this sort of discourse, as it is of conceptual talk, for we know that our words and our thoughts cannot be reduced to the sort of unitary meaning, nor the world be reduced to the sort of fixed and knowable categories, required by that kind of thought.”³³ As White explains, our teaching (which is Socratic) “will assume, what is true of all of our readers [and students], that he or she has a full competence at the social and linguistic practices by which our world is defined. It is thus on our knowledge of language as practice and art or on our shared social and linguistic competence, that we will most rely [in our teaching]; this is not infirmity, but strength, for this is the knowledge we most securely have.”³⁴ Wittgenstein’s emphasis that our knowledge of language, our possession of our words, is measured by whether or not (and to what extent) we know “how to go on” with our words,³⁵ also exemplifies the fact that we rely on the social and intellectual competencies that we all learn and possess and share by learning our native languages.

The positive Socratic message—“You know more (or other) than what you think (you know)” —is based upon just such confidence in our shared abilities to make ourselves and our world understood, to make them known, by means of our shared media (most especially, or most fully, through our language). Otherwise, why do you suppose Socrates would spend his time speaking with others, both old and young, among those Athenians who deign to speak with him? I think Socrates realized that gold is where you find it, and the moral is that you may find it anywhere (or nowhere, of course) and that all you can do in such teaching is to take pains and the trouble to look.

It may be true that a part of what a student learns by way of teaching by disillusionment is that he or she is mistaken about something when they claimed to know. Nonetheless, they also learn, with the help of a teacher’s encouragement, a teacher’s willingness to try them again and to listen again, that they have the tools necessary to get the matter right, or at least that their teacher trusts that, with some more perseverance and work, they can develop the means by which to get this matter right. Why else do we work so hard in law school, class after class, day after day, on the materials, going through them slowly and steadily, always looking to the students to help us understand the

33. JAMES BOYD WHITE, *The Judicial Opinion and the Poem*, in HERACLES’ BOW 107, 127 (1985).

34. *Id.*

35. See LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* §§ 143-151, 179, 323 (G.E.M. Anscombe trans. 3d ed. 1968).

materials? The change in the students, their accretion of "know how," may be imperceptible, but by the end of a month, or surely by the end of the semester, it is there and it is undeniable. Most of the students have learned, have developed, the means and the methods by which to become lawyers. They have learned to do the things that lawyers do.

As to the student's second lesson, that the world has fooled him or her, they also learn that the world is readable: at least on some occasions in some contexts, it does give us an answer. We cannot hope for more, but we should not expect less. This is one reason why skepticism is not the right inference to draw from the students' experience of being refuted. Simply because the world fooled them once, or they got it wrong, does not mean that they can never get it right. What needs to be done, as soon and as often as possible, is to get each student back on track by asking him or her to recite again, or to recognize them the next time they volunteer, with the hope that this time they will be able to display to you and the class what they have learned.

As to the third lesson, that they have been rejected by their teacher and implicitly by their profession, the positive side is that the teacher befriends them again, soliciting or welcoming their renewed effort, and the teacher keeps himself or herself open to the possibility that the teacher—and not the student—is wrong in this instance. The reciprocity implicit in recognizing that mistakes work both ways, or that both of you are capable of making mistakes (and then, too, the reciprocal bearing of the pain and the effort of correcting them), goes a long way toward teaching the right message.

When I stop a student's recitation of a case, I am doing two things at once. First, I am stopping the student's narrative, and that frustrates him or her.³⁶ The student wants to get on with the narrative, because he or she thinks they know what the case is about or why it was decided the way it was (otherwise they would not have volunteered to state the case), and they want to tell me about it. However, I will not let them. I am not prepared to hear their story yet. Instead, I want them—and I am forcing them—to go back over the story, to think about it again, and to tell me (and themselves) once more what the case is about. Second, I also am indicating to them that I think they are mistaken in something they have said or failed to say; either they have misrepresented some fact or proceeding below, or they have neglected something in the opinion that I want them to note. So I am telling them that I think that they are wrong about something, even as I also frustrate them, by preventing them from expressing what they want to say. These are two

36. This frustration is expressed in the complaints I receive in the student evaluations of my teaching, about the fact that I "interrupt" them so often. See *supra* note 11.

things that I am signalling to them, and also two things that I am doing to them.

Then, in order to bring them back to these materials, to help them try again, after dashing their expectations and hopes in such a hurtful fashion, I must reciprocate. If they will try again, I shall try again. If they will listen, I shall listen; if they will look and see, then I too will look again and see again. Everything remains open, remains to be done.

This means that, like Socrates, I must continue to befriend my students;³⁷ I must continue to solicit their opinions and views, to welcome them, and to give them a fair hearing in the forum of the classroom (and outside as well, if they address their questions to me outside the classroom). This must be done not only because it is entailed by the ethics of the situation, but also because we have no other way in which to teach them what we need to teach them and what they need to learn. Without this, there can be no transmission of law from one generation to the next; indeed, there can be no law. Stanley Cavell shows us this:

If my teacher of French will not accept what I say and do as what he says and does, perhaps treating my American accent with tacit contempt, then I will not learn French (from him). But what happens if "my elders", all of them (those bigger people from whom . . . I learn to use words), will not accept what I say and do as what they say and do? Must they? Is it only natural for them to? Is it their responsibility?

I would like to say: If I am to have a native tongue, I have to accept what "my elders" say and do as consequential; and they have to accept, even have to applaud, what I say and do as what they say and do.³⁸

If we are to have laws among us, shareable by us and teachable to us and learnable by us, and if our students are to learn the language of the law (which entails learning the form of life that we call "law"), then at some point our students must take what we law teachers say and do as consequential. But then, too, so must we law teachers take what our students say and do as consequential, as what we say and do. Similarly, each citizen, each member of the polity, must take what other citizens, other members of the polity, say and do, as consequential, as what he or she says and does, if there is to be a citizenry, a polity, a state at all.

37. I have said something about this aspect of Socrates' teaching in my earlier two articles: *See Must Virtue Be Taught?*, *supra* note 2, at 497-98; and *Never Mind the Manner of My Speech*, *supra* note 16, at 267-68.

38. STANLEY CAVELL, *THE CLAIM OF REASON*, *supra* note 19, at 28.

A class driven by questions, questions asked of the students and questions directed back to the teacher, is based upon the assumption that everyone present has read and studied these materials, and is prepared to venture some sort of opinion or response if and when asked to do so. While we may not all have the same experience with these materials or may not all begin with the same skills, the project is one of inducing all of us to enlarge and enhance our skills of law-making and law-construal by doing the actual artistry required of a legal professional.³⁹ We may start from different positions and various approaches vis-a-vis these materials, but our teaching and training are meant to make us more commensurate in regard to how we think about and handle legal material. They are not meant to make us "the same" in how we think about and handle the law but to make us more commensurate, more capable of speaking and thinking and working together, more capable of communicating, than we otherwise would be, or than we otherwise were at the beginning of the class.

V. THE PROMISE AND THE POVERTY OF SOCRATIC QUESTIONING

I say that this is teaching by disillusionment, and I hope that by this point I have made some sense out of my claim. But, at the same time, and perhaps in an odd way, I see this teaching as leading to a kind of renewal, a renewed engagement with the law, and with critical thinking (which here means, Socratic questioning).

If I am right in what I said above, following Socrates and Emerson and Wittgenstein, concerning the necessity of illusion in human life and experience, then teaching Socratically holds an impoverished kind of promise. The promise is that it claims to possess "a true knowledge of what our illusions are," and it locates them in the very structure, the necessities, of human life and language. The poverty of the Socratic method, however, is that all it promises us is that there is work to be done; that we need to persevere in trying to learn and understand ourselves, others, and the world around us; and that all of these tasks begin by knowing ourselves. For Socrates (as for Emerson, and Wittgenstein), the work is never finished. Still, it has a beginning, or a start, and that is in self-knowledge. Self-knowledge is the root, the home, of knowledge.⁴⁰

39. Showing this side of legal education and practice has been a constant theme of James Boyd White's work. See, e.g., JAMES BOYD WHITE, *THE LEGAL IMAGINATION*, *supra* note 31. See also Eisele, *The Activity of Being a Lawyer*, *supra* note 12.

40. I would claim, if I knew how to make it intelligible, that this insight is expressed with a Wittgensteinian twist, given his own kind of translation, in the following maxim: "Knowledge is in the end based on acknowledgement." LUDWIG WITTGENSTEIN, *ON*

If we begin with self-knowledge, do we (need we) always end with disillusionment? I would not claim that self-knowledge always or everywhere leads to disillusionment. But I might be willing to say that the normal curve of this life moves from enchantment to disillusionment. Knowing what all of us know (or think we know) of infancy and childhood, and adding to it what we teachers know of the process of education, this seems so to me. Perhaps I might put my point less pejoratively by saying that our lives lead from innocence to experience. (This is a constant theme of the Romantics, but then this observation merely tells us that human life and experience are in part truthfully depicted by them, however much the cynics and skeptics wish to deny it.) Then what does our experience come to? Perhaps this states the question to which Socratic teaching is one answer.

There are times when we not only can turn from the world (or it turns from us), but even perhaps when we must turn from it, in disenchantment and disillusionment. "The world is too much with us," someone famous once said,⁴¹ and I take this to state the literal truth on many occasions. However, just as surely as day follows night, there are also times when we must pick up the pieces, pick up our tools, and turn again to the world, to begin again (if not anew, then at least afresh). "[I]n a world so perplexingly contrived as this is," as G. M. Young said in honoring Maitland, "a frank and joyous acknowledgement of ignorance is the only way of wisdom."⁴² I have said that Socratic teaching begins in questioning that leads to disillusionment. If this disillusionment is not exactly a "joyous" acknowledgment of our initial ignorance, then perhaps this fact reveals that there remains something else left to be done after we remove our illusions.

CERTAINTY §378 (D. Paul & G.E.M. Anscombe trans. 1969).

41. It was Wordsworth. See WILLIAM WORDSWORTH, [*Sonnet*] XIV, in THE PRELUDE: SELECTED POEMS AND SONNETS 186 (Carlos Baker ed. 1954):

The world is too much with us; late and soon,
 Getting and spending, we lay waste our powers:
 Little we see in Nature that is ours;
 We have given our hearts away, a sordid boon!

....

For this, for everything, we are out of tune;
 It moves us not.

42. G. M. YOUNG, *Maitland*, in VICTORIAN ESSAYS 173, 175 (W. Handcock ed. 1962).