

The Use of the Socratic Method in Legal Education

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Abstract

This paper examines the debate over the Socratic method in law school education. First, the teaching method its application in law schools is explained and how it is applied in law schools. Next, criticisms and defenses of the Socratic method are reviewed. Finally, the paper concludes with conclude with Stuckey's (2007) recommendations in his seminal work, *Best Practices for Legal Education*. Stuckey concludes that the method has value, but should be used properly to support educational objectives.

One of the defining features of law school education is the Socratic, or case, method of instruction. Popularized by the novel/movie *The Paper Chase* and Scott Turow's *One L*, the aggressive questioning method is a well known rite of passage for all law students. In this method, students, frequently chosen at random, are questioned closely about a particular appellate case and the rule derived from the case. Through a rigorous question and answer format, the class as a whole is expected to learn the legal rules and apply them to similar factual scenarios.

The Socratic method is not without controversy. It has largely remained unchanged since 1870, when Christopher Langdell established this method at Harvard Law School (Davis and Steinglass, 261). The method has continued without significant research into its effectiveness. Many legal educators have criticized the method as unduly harsh, ineffective, unnecessary, and harmful to women and minorities. On the other hand, defenders of the method maintain that it is vital for imparting vital legal skills to new students, so that they learn how to "think like a lawyer."

Before it is possible examine the critique of the Socratic method, it is necessary to examine how the method is utilized. Davis and Steinglass (1997) offer the most comprehensive description of the method. Generally, a student is selected to recite the case, with a view towards developing a "fact-and-rule-fit" (FARF) (Davis and Steinglass, 266). The questioning is designed to elicit the facts before the court and the applicable rule of law that was applied to these facts (265). From there, the questioning will proceed to a series of hypothetical situations to examine the contours of the legal rule and highlight significant aspects of the law (267). Other students in the class are expected to follow and be engaged in the discussion, gleaning the necessary knowledge and skills along the way (Schwartz, 352). The intent of this approach is to

engage in a “cognitive apprenticeship” whereby students learn legal analysis skills, so that they can “think like a lawyer.” (Stuckey, 134).

Criticisms of the method are numerous. Schwartz (2001) calls the model a “vicarious learning/self-teaching” method (351) and compares it to teaching swimming vicariously (354-56). In addition, the method has not kept up with modern educational theory, which emphasizes multiple modes of instruction to account for various learning styles (Schwartz, 363). The method almost exclusively favors the verbal/aural method of learning to the exclusion of other methods (Madison 300-301). Similarly, oftentimes the method is used exclusively without reference to specific educational objectives (Stuckey, 133; Madison, 323). Because of its extensive use, students quickly “get it” and become bored with the legal instruction (Stuckey 134). As a result, little attention is paid to practical lawyering skills and students graduate law school with little practical ability to practice law (Stuckey, 138).

Other criticisms focus on the harmful effects of the method. The method can be harsh and degrading, and is viewed by some as a form of hazing. Some claim that the method is particularly harmful to women and minorities, who are particularly intimidated by the aggressive questioning. Others have complained that the method induces moral relativism into law students, where considerations of justice, fairness or other values are rendered irrelevant (Stuckey, 139-40). Critics charge that these harmful effects are unnecessary due to the fact that other teaching methods can achieve the same educational objectives without these negative side effects (Madison, 323-26).

While many criticisms abound, many defenders continue to argue that the Socratic method is vital and necessary to the legal education process. Vitiello (2005) writes the strongest defense of the method. He argues that the criticisms are overstated and not supported by objective evidence (971-79). Instead, the Socratic method is necessary to prepare law students for the rigors of law practice (Vitiello, 987-90). The intense questioning involved in the method teaches students to think on their feet and learn to express themselves orally, a vital skill no matter the type of law practice (Vitiello, 989-90). He also notes that the practice of law favors aural learners (much like the practice of Art History favors visual learners), and that other types of learners need to adapt to succeed in the practice of law (1009-1011). Similarly, Stropus (1996) argues that the method is necessary to force students to learn to properly “analyze cases,” “think independently” and develop verbal skills (465-468). All advocates for the continued use of the method indicate that criticism is due to the misuse and/or overuse of the method and that the method itself imparts valuable skills.

One of the missing pieces in this back-and-forth between the two camps is objective research into the effectiveness of the method. Teich (1986) conducted a meta-analysis of the nine experimental comparisons of methods and found that no particular method was found to be superior, as assessed by test performance, with the exception of group instruction that was assisted by computer-assisted instruction (185-88). The great majority of the criticisms of the

technique is that they are anecdotal and not empirical (Ogloff *et al.*, 181). As a result, we are left with anecdotal evidence on the effectiveness of the Socratic method.

Despite the criticisms, the method appears to be effective when used properly. The Carnegie Foundation report concludes that the method provides for “rapid socialization into the standards of legal thinking” but also concludes that law schools rely too strongly on the Socratic method. (Sullivan *et al.*, 5). Stuckey’s *Best Practices* monograph reaches a similar conclusion, and prescribes an extensive list of best practices for using the Socratic method. Stuckey’s recommendations are as follows:

1. *“Use the Socratic dialogue and case method for appropriate purposes.”* (211)

Stuckey notes that even critics concede effectiveness of the method in teaching critical skills, particularly the legal analysis, case analysis and the ability to “think on their feet.” (211) However, he recommends that it only be used for those purposes and limit its use to those times that it “achieves clearly articulated educational goals more effectively and efficiently than other methods of instruction could achieve.” (211)

2. *“Be skilled in using Socratic discourse.”*(213)

Relying heavily on the Davis and Steinglass article, Stuckey recommends that teachers be skilled in understanding the progression and use of the method (213). Other critics have highlighted the fact that law professor receive minimal instruction on teaching and are generally chosen based on their success in legal practice and it is assumed that they will excel at teaching (Schwartz, 364-65). As a result, Stuckey details the steps in the progression and the purpose of each step (213-216). New law professors would do well to examine these steps.

3. *“Do not intentionally humiliate or embarrass students.”* (216)

Much of the criticism of the method involves the potential for harm. As a result, Stuckey recommends several practices to avoid this pitfall. Included within this recommendation are admonitions to explain why the Socratic method is used so that students can contextualize their experience (218) and “reassure flustered students and move on” (219). At the end of the day, professors should use the method “to illuminate lessons, not to expose students’ lack of understanding.” (220).

- 4 *“Do not rely exclusively on Socratic dialogue.”*

While the method is effective for achieving some educational goals, Stuckey notes that it is obviously less effective in reaching other goals (221). As a result, the educator should vary his method depending on the particular educational objectives (222-23).

The controversy over the Socratic method is not likely to end. However, when used properly, the method can provide a way to effectively meet the educational objectives. Law

professors should not simply employ the technique mindlessly. Instead, she should think through the educational objectives and apply the method when it allows her to meet those objectives. In addition, legal educators should remain mindful of the potential for harm and enplace mitigation measures to minimize this potential. When these steps are followed, the Socratic method will serve both the teacher and the students well.

References

Peggy Cooper Davis and Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. Rev. L. & Soc. Change 249 (1997).

Benjamin V. Madison III, *The Elephant in the Law School Classrooms: Overuse of The Socratic Method as an Obstacle to teaching Modern Law Students*, 85 Univ. Detroit Mercy L. Rev. 285 (2008).

James R.P. Ogloff et al., *More than "Learning to Think Like a Lawyer": The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73 (2000).

Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 San Diego L. Rev. 347 (2001).

Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449 (1996).

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Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 Hofstra L. Rev. 955 (2005)

Annotated Bibliography

Phillip E. Areeda, *The Socratic Method (SM) (Lecture at Puget Sound, 1/31/90)*, 109 HARV. L. REV. 911 (1996).

This article, which is in a Harvard Law Review volume memorializing the author, contains the author's notes on the Socratic Method which he gave in a speech. It provides a detailed approach to the topic and responses to criticisms from an expert practitioner's perspective. According to Areeda, the method is necessary for students to learn legal reasoning and analysis, and, properly done, many of the harms cited by critics can be avoided. Areeda's notes provide many helpful, practical tips for using the method properly and avoiding these harms.

Peggy Cooper Davis and Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. Rev. L. & Soc. Change 249 (1997).

Davis and Steinglass perform an in-depth review of the development of the case-method in law schools, beginning with a detailed examination of the original Socratic method, the case-method utilized by Langdell and its modern variant. This extensive discussion, combined with examples of the method, is then broken down into its constituent parts and critiqued. The authors conclude that the method does effectively provide a well-rounded legal education, but aspects of the method hinder learning, particularly: the context in which the method is administered, the lack of student control and the over-reliance on questions.

Steven Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1 (1996).

This helpful article conducted a survey of 358 law school professors as to educational objectives, methods of teaching and rationale for their choices. The survey found a strong use of the Socratic method in the first-year courses, with a declining use in upper-level and seminar courses. Similarly, this use of the Socratic method in the first-year corresponded with the goal of teaching legal reasoning skills. The survey indicated a willingness to try new methods. The author concluded that law professors do care about how they teach and are not automatically reverting to the Socratic method.

Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994).

Guinier designed a cohort study of student attending University of Pennsylvania Law School who responded to a voluntary survey on gender in legal education. The narrative responses showed that women showed a much higher degree of alienation and outrage from their law school experience. While many aspects of law school contributed, the Socratic method was also identified as a contributing factor to the alienation. Women almost unanimously described the first year (when the Socratic method is used most heavily) as a "radical, painful, or repressive

experience, one that they will never forget.” The Socratic method was especially difficult for them, and they tended to not speak up in class and were strongly intimidated by the method. As a result, she recommends that the large Socratic classroom method should be reconsidered

Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75 (2002).

Hess surveys the current law school learning environment, noting the high levels of stress and adversarial interaction which are generally not conducive to a positive learning environment. To remedy this problem, he surveys current teaching theory for higher education and endorses several recommendations to improve the law school educational process. To that end, he recommends the following classroom practices: mutual respect, high expectations, supportive attitudes, collaboration, inclusion, engagement, delight, and feedback.

Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 118-22 (1999).

Kerr surveyed a sample of law professors who teach first-year courses at Harvard Law School. He found three general schools of approach—traditional Socratic method, a quasi-Socratic method which also utilizes other teaching styles and no Socratic method (usually adopted by instructors who approach the law from non-traditional perspectives). This article presents helpful viewpoints and perspectives from all three camps and also presents accounts of how the professors’ experiences with the Socratic method impacted their teaching choices.

Benjamin V. Madison III, *The Elephant in the Law School Classrooms: Overuse of The Socratic Method as an Obstacle to teaching Modern Law Students*, 85 Univ. Detroit Mercy L. Rev. 285 (2008).

Building on the Best Practices Report, Madison expounds on the virtues of teaching law through multiple methods, including the Socratic Method. Madison catalogues the objections to the method, particularly the fact that it is not tied to specific educational objectives and it does not address the variety of ways in which students learn. Madison proposes techniques which provide the necessary context and which incorporate diverse teaching techniques. He demonstrates how he utilizes them in his Civil Procedure class, a class commonly taught to first year law students. Through visual demonstrations, slides, in-class scenarios, practical exercises, Madison argues that it is possible to retain a challenging course in which student learn legal concepts through active learning.

Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992).

Moskovitz argues for the adoption of the “problem-solving” method of instruction. By combining assigned cases with an application problem for students to work out, students can better learn legal analysis and method in an atmosphere which mimics that found in law practice. The problem solving method contains many of the features of the Socratic method, but he argues that it avoids the pitfalls of the Socratic method. Moskowitz presents practical guidance for adopting this method in lieu of the Socratic method.

James R.P. Ogloff et al., *More than "Learning to Think Like a Lawyer": The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73 (2000).

This article comprehensively chronicles all significant empirical research on legal education. This survey includes law students, including characteristics and the effect of law school; the law school itself, including characteristics of professors and administrators, curriculum and methods of instruction; and post-law school performance. The article concludes that, despite the large number of studies, “little is known, overall, about legal education.” Ogloff notes that the methodological designs of studies conducted on legal education are “flawed” and that is very difficult to draw sound conclusions regarding legal education. He recommends the assistance of social scientists to craft and analyze further studies.

Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 San Diego L. Rev. 347 (2001).

Schwartz is a strong critic of the case method, which he claims is in fact a Vicarious Learning/Self-Teaching Model of instruction. This is so because the instruction is composed entirely of one-on-one interactions with a student in a classroom setting, with the remainder of class expected to learn from the dialogue. As a result, students are expected to “figure out on their own what the students need to know.” This is further exacerbated by the large classroom size (generally 50-120 students) where instructor interaction is inherently limited. He memorably likens this method to teaching swimming vicariously. This method, Schwartz asserts, has failed to keep up with modern educational theory and does not account for the variety of learning styles of the students.

Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449 (1996).

Stropus catalogues the criticisms of the Socratic/Langdellian method of law instruction, but argues that it is critical in order to properly prepare students for the practice of law. Specifically, the method forces student to “analyze cases,” to “think independently,” to develop verbal skills. In addition, these skills are expected of newly-licensed practicing attorneys when they are hired. Instead of abandoning the method, Stropus argues that the method should be modified to address

the criticisms. In particular, context should be provided in which teachers explain the method and why it is being utilized; additional methodologies are utilized as students advance and learn the basic skills imparted by the Langdellian method; and focused academic support programs are instituted to assist at-risk populations in mastering the skills necessary to succeed.

Roy Stuckey *et al*, *Best Practices for Legal Education, A Vision and A Road Map*, (2007).

The report chronicles two main objections to the Socratic method. First, that, while it does have some value in teaching legal methodology, it is incomplete and limited as a teaching tool standing alone. Second, and more importantly, the technique is frequently abused and inflicts unnecessary damage on students. This damage is frequently in the form of de-moralization where law students learn that values such as fairness and justice are not longer relevant. The Best Practices report recommends that the Socratic method be utilized only when it supports the stated educational objectives. When the method is used, professors should use it properly and not in a way to demean or humiliate students.

William M. Sullivan *et al.*, *Educating Lawyers: Preparation for the Profession of Law*, (2007).

In this monograph published by The Carnegie Foundation for the Advance of Teaching, Sullivan and his team extensively survey the legal education practices across the U.S. and Canada. They find that the case method successfully provides for “rapid socialization into the standards of legal thinking.” This method successfully results in students being able to sift through complicated facts, frame arguments from both sides of an issue, focus on legal precedents and use precise language. This method, however, has several downsides. First, it does not transfer this thought process to actual legal practice, leaving students lacking the skills necessary for legal practice. Second, it does not allow for development of “legal professionalism”—consideration of moral, ethical and social aspects of resolution of legal problems. As a result, they recommend a more holistic approach, particularly in the second and third years of law school, after students have been effectively socialized into the mental processes of thinking like a lawyer.

Paul F. Teich, *Research on American Law Teaching: Is There a Case Against the Case System?* 36 J. LEGAL EDUC. 167 (1986).

Teich conducted a meta-analysis of empirical assessments of group teaching techniques of law. He found that no particular method was found to be superior, as assessed by performance on examinations. This finding was similar to studies in other post-secondary educational fields, most of which yielded similar findings. The only significant method that increased test scores was group instruction supplemented by computer-assisted instruction.

Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 Hofstra L. Rev. 955 (2005)

Vitiello offers a vigorous defense of the traditional case-method. He attempts to refute the criticisms that the method is discriminatory (when outcomes are controlled against LSAT results, the method is not discriminatory); that it is ineffective (the data is inconclusive); that it makes students cynical, anxiety-prone, and amoral (it necessarily prepares students for the rigors of law practice and oral advocacy); and that it does not take into account different learning styles (successful law practice tends to favor an aural learning style, students of less-favorable learning styles must adapt in order to practice law). Ultimately, he argues for a properly-administered, rigorous use of the Socratic method, which challenges students and prepares them for the challenges of practicing law.