

## ***The Socratic Method in the 21<sup>st</sup> Century***

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The modern Socratic method which has come to define legal education for nearly 150 years, remains a potent influence on the method of instruction found in most modern American law schools. This influence, however, has been waning for the past thirty to forty years. This article will examine the benefits and critics of the Socratic Method, and the reasons fueling its decline in popularity.

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### **Introduction and History**

For many non-lawyers (and a good many lawyers), law school conjures up images of large lecture halls packed with students being instructed by an overbearing, authoritarian professor relentlessly posing a series of questions to the hapless students caught in the line of fire. As vividly perfected by the fictitious Professor Kingsfield in *The Paper Chase*, the pedagogy is commonly known as the “Socratic Method.”

In a loose sense, the term “Socratic method” has its foundations in Plato’s dialogue the *Meno*. In the classical sense, both Platonic and Socratic dialogues were dialectic – that is, the truth of the point of discussion was unknown to either the questioner or questioned. However, the modern understanding of the term “Socratic method” bears little resemblance to these classical dialogues. Jeffrey D. Jackson defines it as such: “the heart of the Socratic method lies in professor-student interaction. In the most traditional sense, the professor calls upon a student and engages that student in a colloquy, either about a case or about some other problem. As the student answers, the professor poses other questions in an attempt to get the student to delve into the problem in more detail.”

The introduction of the Socratic method in U.S. law schools came in 1870 when Christopher Columbus Landell became Dean of Harvard Law School and immediately set about reworking the nature of legal education. Before Langdell, legal instruction was conducted through the lecture and textbook models – memorizing texts and having professors lecture on the material – and, apprenticeships. Langdell sought to make the whole process more “scientific”.

Langdell’s influence on legal education cannot be overemphasized. A search on LexisNexis reveals more than 700 law review articles that mention his name. As Bruce Kimball has noted, Langdell’s innovations include “the admission requirement of a bachelor’s degree, the graded and sequential curriculum, the hurdle of annual examinations for continuation and graduation, the independent career track for professional faculty, the transformation of the professional library from a textbook repository into a scholarly resource, and the inductive pedagogy of teaching from cases.” Langdell’s greatest contribution was two-fold: the introduction of the case method and the Socratic method. These are two distinct, but related methods. According to Boyle and Dunn, “[i]n the case method, students are asked to dissect a case to understand the

law.” The Socratic method on the other hand, is a method of conducting classes. As Jackson notes, “the Socratic method was the ‘engine’ Langdell chose to power his case method.”

### **Benefits of the Method**

Reviewing the literature on the educational goals of the Socratic method, Paul Bateman notes the following goals that the method seeks to develop:

- (1) “Attitudes of inquiry that involve an ability to recognize the existence of problems and an acceptance of the general need for evidence in support of what is asserted to be true
- (2) Knowledge of the nature of valid inferences, abstractions, and generalizations in which the weight or accuracy of different kinds of evidence are logically determined,
- (3) Skills in employing and applying the above attitude and knowledge.
- (4) The ability to recognize stated and unstated assumptions, and
- (5) The ability to draw conclusions validly and to judge the validity of inferences”

One of the principal benefits of the Socratic method is that it is an effective tool to teach complex legal philosophies to large groups of students. Quoting Professor Philip Areeda, Orin Kerr describes this strength of the method. “By posing questions to students that force them to confront the weaknesses of each position, the Socratic professor ultimately trains students to assess the strength of legal arguments on their own.” This in turn helps develop analytic strengths, forcing students to logically articulate their answers. Furthermore, the public aspect of this interchange encourages two additional benefits. The technique forces students to prepare for class; lest they be publically shamed for not having prepared. Secondly, the public exchange assists students in developing their rhetorical skills.

### **Critiques of the Method**

The Socratic method has been roundly criticized for a number of reasons. These critiques can be roughly classified into three categories: (1) the method discriminates against women; (2) the method is ineffective; (3) the method creates unnecessary psychological pressures.

**Bias Against Women:** A number of recent studies appear to demonstrate some bias against women in law schools. The reasons for this are hotly debated, but a leading school of thought finds its basis in the works of Professor Carol Gilligan. This school of thought holds that, in the words of Orin Kerr, “Socratic classrooms are male-oriented, competitive environments that ‘stack the deck’ against women and their more cooperative and communal styles of learning. Because women feel threatened and alienated in patriarchal and hierarchical Socratic classrooms, women often feel they have nothing to contribute and their voices are excluded from the debate. This fosters a sense of

inadequacy among women students, which may cause them to underperform on the examinations that later determine career prospects.”

**Ineffective:** Most obviously, the very essence of the technique demands that professors tease answers out of students rather than just telling them – a time consuming process. As Professor Agreeda notes: “Critics correctly point out that questioning students is a very inefficient way to communicate information which the instructor possesses but does not reveal...after all, the Physics [Department] does not ask you to deduce the existence or nature of gravity by sitting under a tree until an apple falls on your head. They tell you straight out about gravity.” Others point out that it does not provide practical experience or hands on training – experience that historically would have been gained through an apprenticeship. Still others note that the effectiveness is largely dependant on the skill of the practitioner. Michael Richmond takes another tact, arguing that “[s]tudents who learn from teachers who teach passively become accustomed to receiving their information passively. When thrust into an active learning environment, they suffer significant culture shock.”

**Psychological Abusive:** As Orin Kerr notes, “[t]he most common complaint against the Socratic method is that it is cruel and psychologically abusive.” The Socratic method is unique in that it is both invasive and evasive – invasive in that student’s knowledge/intelligence is publically examined, and evasive in that the professor “hides the ball” from the students. The intense public questioning can cause overwhelming anxiety, particularly when the professor is intellectually assaulting deeply-held beliefs. According to Ruta Stropus, the invasive and evasive nature of the method causes students to adopt coping mechanisms needed to protect their self-esteem. The problem, Stropus notes, is that “[i]n the short term, students' psychological distress poses a barrier to their learning. In the long term, students who choose to fight the method might find their very personalities transformed into a more aggressive and cynical version of themselves.”

### **Decline of the Method**

As Orin Kerr notes, “the traditional Socratic method is today more myth than reality.” This has been replaced, he argues, with “an eclectic mixture of newer approaches, including toned-down Socratic questioning, student panels, group discussions, and lectures.” As Kerr and others have noted, these changes have all occurred over the last 30-40 years. Kerr tributes the change to the societal change of the 1960s and 1970s. He explains, “[t]his era of unrest forced elements of traditional law school hierarchy to crumble, forcing out the harsher forms of classroom pedagogy.”

Others, such as Professor Carl Bogus and Amy Colton attribute the decline with the rise of clinical education. Still others attribute the method’s decline in popularity to purely pragmatic concerns. Citing to Clark Byse, Michael Vitiello argues that institutional pressures have influenced the popularity of the method. He notes, “[a]s law schools become more expensive to run and more dependent on alumni giving, deans and other responsible for fundraising may have little enthusiasm for professors who are seen as ‘infantilizing, demeaning, dehumanizing, sadistic,’ and ‘destructive of positive ideological values.’”

Whatever the reason, the Socratic method of Professor Kingsfield and his contemporaries is infrequently used in modern American Law Schools. Replacing the traditional Socratic method is a combination of hybrid methods which combine lecture, clinical work, and “Socratic-lite” questioning.

### **Annotated Readings:**

Areeda, Phillip E., *The Socratic Method* (Lecture at Puget Sound, 1/31/90), Vol. 109, No. 911, Harvard Law Review, 1990.

In this lecture, Professor Areeda provides a defense of the Socratic Method. While short, this speech succinctly summarizes both the criticisms and benefits of the Socratic Method. He argues that the method is an effective teaching technique because it forces students to learn the material, and learn “lawyerly analysis by actually doing it before his peers and the instructor.”

Boyle, Robin A. and Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, Vol. 62 No. 213, Albany Law Review, 1998.

In this article, the authors use The Productivity Environmental Preference Study to examine the learning preferences of students in law school. Through this study, the authors found that, as with undergraduate education, law students have a variety of learning-style preferences. They found that when students were matched with their learning-style preferences, the students “performed significantly better than when there were not matched.”

Jackson, Jeffrey D., *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?* Vol. 43, No. 267, California Western Law Review, Spring 2007.

Though this article is written in the context of the Socratic method and legal writing, it provides a good overview of the historical development of the method as well as a comprehensive summary of the pros and cons of the method.

Kerr, Orin S., *The Decline of the Socratic Method at Harvard*, Vol. 78, No. 113, Nebraska Law Review, 1999.

Kerr’s article examines the decline of the Socratic method at Harvard. He selected Harvard as it is seen as the bastion of the Socratic method, having originated there in 1870. This article provides a particularly excellent examination of the critiques of the Socratic method. This article is extraordinarily lucid and comprehensive, providing perhaps the best overview of the issue.

Kimball, Bruce A., *The Langdell Problem: Historicizing the Century of Historiography, 1906-2000s*, Vol. 22, No. 277, University of Illinois Law and History Review, Summer 2004.

This article presents a comprehensive literature review of all materials on Christopher Columbus Langdell. The article is comprehensive and extensive, and provides a deep understanding of Langdell. Presented chronologically, this article demonstrates the

development of Langdell's theories and how they were received by the legal community as he introduced them.

Neufeld, Adam, *Costs of an Outdated Pedagogy? Study on Gender at Harvard Law School*. Vol. 13, No. 511, *American University Journal of Gender, Social Policy & the Law*, 2005.

This article recounts an empirical study conducted by the author which sought to explain the gender difference in a number of law school related functions: grades, classroom participation, confidence, judicial clerkships, etc. The study was conducted through a variety of methods, including class observations, student questionnaires, and grades. In conclusion he finds that "the problems with the current legal education that cause gender differences are . . . nuanced – part curricular, part pedagogical, part cultural, and part social – and their effect on gender is only one of many harmful manifestations."

Roach, Cathaleen A., *A River Runs Through It: Tapping Into the Informational Stream to Move Students From Isolation to Autonomy*, Vol. 36, No. 667 *Arizona Law Review*, Fall, 1994.

As Roach herself explains, "[t]his article explores the problem of isolation in law school, particularly as it affects minority and other non-traditional students." The article argues that these individuals are especially susceptible to feelings of isolation engendered by the Socratic method. The article further provides an extensive review of different methods of pedagogy. After surveying these methodologies, she concludes that the law profession should abandon its "unwavering devotion to the Langdellian Case Method" and adopt a "hybrid approach for first year instruction."

Quigley, William P., *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from The First Floor*, Vol. 28, No. 463, *Akron Law Review*, Spring 1995.

This examines teaching and learning in law school clinics courses rather than standard law courses. The article notes that clinical courses are a relatively modern phenomenon, appearing in U.S. law schools only in the 1960s. However, the Quigley notes, the clinical class style of learning has its roots in a much older – but now largely defunct – tradition: apprenticeship. He notes that the practice of apprenticeship fell off with the increase in number of law schools in the 1860s. Quigley argues the importance of clinical programs comes from their "hands on" aspects; or as he refers to it, "learning by doing."

Taber, Janet, et. al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, Vol. 40, No. 1209, *Stanford Law Review*, May 1988.

This article recounts a comprehensive empirical study of women and law school. Among other findings, Taber found that a greater percentage of female students (76.9%) than male students (66.3%) admired professors "who demonstrated an openness to questions outside of class." She also found that a greater percentage of male students (43.7%) than female students (28.5%) "favored professors adept at Socratic dialogue."

Vitiello, Michael, *Professor Kingsfield: The Most Misunderstood Character in Literature*. Vol. 33, No., 955, Hofstra Law Review, Spring 2005.

This piece presents an impassioned defense of the Socratic method. Vitiello examines in some depth those scholars who claim the method discriminates against women. He singles out the pioneering study by Professor Guinier, dismissing it because of statistical errors.

#### **Additional Resources:**

Bateman, Paul, *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, Vol. 17, No. 397, Quinnipiac Law Review, Fall 1997.

Bogus, Carl T., *The Death of an Honorable Profession*, Vol. 71, No. 911, Indiana Law Journal, Fall, 1996.

Byse, Clark, *Fifty Years of Legal Education*, Vol. 71, No. 1063 Iowa Law Review, May 1986.

Cicchino, Peter M., *Love and the Socratic Method*, Vol. 50, No. 533, American University Law Review, Feb. 2001.

Colton, Amy M., *Eyes to the Future Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education*, Vol. 27, No. 963, University of Michigan Journal of Law Reform, Spring/Summer, 1994.

Hawkins-Leon, Cynthia G., *The Socratic Method-Problem Dichotomy: The Debate Over Teaching Method Continues*, Brigham Young University Education and Law Journal, Spring 1998.

Osborn, John J., Jr., *The Paper Chase*, Albany, NY: Whitston Publishing

Richmond, Michael L., *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, Vol. 26, No. 943 Cumberland Law Review, 1995-1996.

Stropus, Ruta K., *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21<sup>st</sup> Century*, Vol. 27, No. 449, Loyola University Chicago Law Journal, Spring, 1996.

Torrey, Morrison, *You Call that Education?*, Vol. 19, No. 93, Wisconsin Women's Law Journal, Spring 2004.

Turow, Scott (1997) *One L: The Turbulent True Story of a First Year at Harvard Law School*, New York, NY: Grand Central Publishing.