

Taking Socrates' Pulse

Does the Socratic method have continuing vitality in 2002?

"What do we care whether Meyers agrees with the case, or what Fessenden thinks of the dissenting opinion. What we want to know is: what is the law?"¹

Although this criticism of the Socratic method was made at its 1870 inauguration at Harvard Law School,² some law professors, law students, and practitioners have uttered it consistently since then. Despite its detractors, the Socratic method became the predominant teaching method for law schools in the United States. This article will assess the status of the Socratic method as a teaching method in today's law schools.

The State of Socrates' Health

In its purest form, the Socratic method is a teaching style in which a student is selected at random and then questioned about a case previously prepared for class discussion. The interrogation of the student proceeds beyond the facts of the case to a series of hypotheticals designed by the professor to force the student to apply reasoning to each successive "new" situation. Ostensibly, the professors' questions are supposed to illuminate the relative strengths and weaknesses of arguments that might be used to support or attack any number of legal arguments raised in the case. The questions also have the effect of demonstrating the weaknesses of the student's responses.

In many ways, the Socratic method is a metaphor for the academy's perceived failure to prepare law students for the modern practice of law—a banner flying from the ivory tower of law schools and the source of the divide between the goals of legal education and the needs of the practicing bar. The problem for law schools is that this is no longer the reality of how law professors teach.

The Socratic method has its benefits. Through it, the student learns how to dispassionately assess even the most personal of subject matter, as would a judge. Used correctly, it also broadens the student's understanding of disparate views by forcing the student to view a case from the position of one of the parties.³ It develops in the student the ability to do the type of sophisticated legal reasoning needed in a fast-paced practice environment.⁴

Law schools have practical reasons for keeping Socrates in the classroom. With first-year class sizes ranging from 60 students to more than 100 students, the Socratic method remains the most economical and effective way to impart the sophisticated legal reasoning skills necessary for the practice. It is a good way to teach both the doctrinal and legal-policy problem solving needed for the competent practice of law.⁵

Its failings are no less compelling. The Socratic method can engender alienation

and foster a lack of self-confidence in those students subjected to its perceived bullying.⁶ Criticism of the method gained momentum as women and minorities entered law schools in larger numbers and found the Socratic method environment hostile to learning. The Socratic method and its supposed abuses were cited as being partly responsible for the underperformance of women law students.⁷

The bar complained that students graduating from law school did not know how to do problem solving in lawyering, such as which arguments are likely to work best with which audiences. These lessons are ill suited for Socratic method classrooms and are most effectively learned in small group settings.⁸ The message was simple in the late twentieth century: legal education would be better served if Socrates were to be belatedly informed of his demise and his techniques

left to oblivion. By the 1990s, even its most staunch supporters recognized that the method was dying⁹ and that those who pursued it in its pure form were the self-described "relics of a dying group."¹⁰

The critics won the battle.¹¹ Today's Socratic method is far less robust in terms of frequency of use and severity of method than was its predecessor of 20 or 30 years ago. According to one survey, only 30 percent of the first-year professor respondents used the Socratic method the majority of the



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time. In upper classes, 94 percent of the respondents lectured at least some of the time.¹² Even at Harvard, the institution that started it all, the self-identifying Socratic method professors do not use the method in its pure form.¹³ A very informal poll of Michigan law professors confirms this shift in methodology. Of those that do follow Socrates' path, almost no one used the pure form at any time.

Conclusion

Law schools are adapting their teaching methods to better serve their constituent groups, the practicing bar, and law students. If these changes in teaching method are to have any lasting effect, then law faculties and

practitioners must develop a way to actively share mutual concerns. ♦

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FOOTNOTES

1. The Centennial History of Harvard Law School, 1817–1917 (Harvard Law School Assoc. ed. 1918), p 35.
2. See generally, Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 Nebraska Law Review 113 (1999), Karl N. Llewellyn, *The Current Crisis in Legal Education*, 1 J Legal Educ 211, 212–13 (1948).
3. See generally, Kronman, Anthony T., *The Socratic method and the development of the moral imagination*, 31 U of Tol L Rev 647–654 (Summer 2000).

4. See Phillip Areeda, *The Socratic Method* (Lecture at Puget Sound, 1/31/90) 109 Harv L Rev 911 (1990); Kerr, *supra*, n 2.
5. Gary Blasi, *Mental Models In Law From the Inside Out*, Presentation at the 2002 Annual Meeting of the Association of American Law Schools (AALS AM). See the Association website, www.aals.org.
6. Michael G. Levine, *Socratic Method* 1982.
7. See, Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 Stan L Rev 1547 (1993) and Lani Guenier, et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U Pa L Rev 1 (1994).
8. See American Bar Association, section on Legal Education and admissions to the bar, task force on law schools and the profession: Narrowing the gap—statement of fundamental lawyering skills and professional values, also known as the MacCrate Report, 1992.
9. Burnele V. Powell, *A Defense of the Socratic Method: An Interview with Martin B. Lewis* (1934–1994), 73 NC L Rev 957, 967 (1995).
10. Areeda, *supra*, n 4.
11. AALS Annual Meeting, *supra*, n 5. *Do You Know Where Your Students Are? Langdell Logs on to the 21st Century*.
12. See Steven Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 Seattle U L Rev 1(1996).
13. Kerr, *supra*, n 4 at 122.