Socratic Questioning in the Law School Classroom

Most of us were taught by law professors who used some form of the "Socratic method" as their primary teaching methodology. Even today, most of us continue to rely upon what the Carnegie Report calls legal education's "signature pedagogy" for a significant part of our teaching design. But ironically, none of us were ever trained in how to use the method, or ever asked to systematically reflect on its benefits and drawbacks. We here at the IELT Resort and Day Spa™ thought it might be useful to set out some concepts we've found helpful in designing our own Socratic inquiries.

Do You Ask "Authentic" Questions?

In an influential 1997 paper,[i] law professor Peggy Cooper Davis and educational theorist Elizabeth Ehrenfest Steinglass introduced the idea of "authentic" and "inauthentic" questions as distinct categories of Socratic moves. The distinction is fairly simple: an **authentic** question is one that the questioner does not know the answer to, and operates as a genuine request for information or thought from another person. In contrast, an **inauthentic** question is one to which the questioner already has a specific response in mind.

In practice, the bulk of Socratic teaching takes the form of a professor asking a series of direct case comprehension questions to an individual student. Specifically, the student is usually asked to articulate the material facts, holding, and rationale of an appellate case. These questions are often "inauthentic" – the professor usually knows the answer, and is testing an individual student's knowledge and comprehension of the material.

Inauthentic questions can be an important part of foundational learning. Davis & Steinglass point out that Socrates himself would ask a series of these kinds of questions to begin his dialectics. But they have distinct limitations, and become more problematic when professors rely *exclusively* on inauthentic questions to advance student learning. In order to understand why, it's important to remember Bloom's Revised Taxonomy:

Creating
Evaluating
Analyzing
Applying
Understanding
Remembering
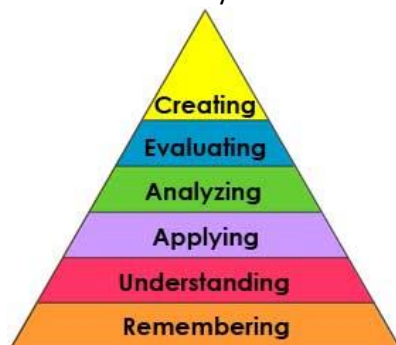
As Michael T. Gibson notes,[ii] "inauthentic" questions – particularly those that focus exclusively on comprehension of assigned reading – keep the students' attention on the two lowest and most superficial cognitive activities: Remembering and Understanding. In the Socratic classroom, these tend to be questions that focus on whether a student can recall certain pieces of information, or whether they can explain certain core ideas and concepts. These are, no doubt, skills that are absolutely essential steps in moving students toward mastery.

But a professor who relies primarily or exclusively on "inauthentic" questions will be unable to achieve the "deep learning" that takes place at the higher levels of the pyramid: Applying, Analyzing, Evaluating, and Creating. It's only through "authentic" questions that we begin to move our students towards the cognitive skills necessary for true mastery – the ability to use rules in novel situations, understand how different rules relate to one another, exercise judgment about the implications of a particular rule, and use that knowledge to generate new and better legal regimes.

Does Your Socratic Questioning Progress from Inauthentic to Authentic Questions?

Socrates used his more grounded – and ultimately answerable – questions at the outset of his inquiry in order to guide his students toward deeper examination of the more genuine, less knowable inquiries underlying them. Working from this pattern of Socrates' dialogues, Davis and Steinglass therefore describe a systematic progression from inauthentic to authentic questions for the classic law professor to follow:

1. "**FARFing" the case**, by engaging students in an analysis of "fact and rule fit." Students do this by pulling from the cases the relevant facts before the court and the rule of law to be applied, then considering the fit between the two so as to deductively justify the court's conclusion.

2. **The closed hypothetical**, where students apply the new rule to similar facts, likely reaching the same conclusion.

3. **The open hypothetical**, which moves toward more "authentic" questioning. Here, students engage in more interpretive examinations of the rule, perhaps considering the meanings of the language in the rule itself, the extent to which the rule may be read broadly or narrowly, consider the rule in cultural context or in relation to other legal rules, or even ask whether the rule is a good one.

4. **Meta-analysis**, where students are asked to consider what their examination of the rule and the case reveal about the processes of lawyering, or the role of judges in interpreting and making law.

We encourage you to track the questions you ask in class. How many are truly authentic questions? Do your questions progress logically from more straightforward to more sophisticated inquiries over the course of a single class? Throughout the entirety of your course? How many of the questions you ask are designed to facilitate the higher order cognitive skills that learning and practicing law require?

Beyond the Socratic Method

The purpose of legal education is to train lawyers. We use Socratic teaching to demonstrate and then prod certain habits of mind. It has some real advantages over straightforward lecture – it focuses on raising questions rather than on just transmitting specific nuggets of information, and it **shows** rather than **tells** what is important. We can use Socratic questioning techniques as Socrates did, by moving

from basic, inauthentic and knowable questions to ensure comprehension and progressing towards more challenging authentic inquiries.

But Socratic Method is only one way of achieving deep learning. And it engages only one student at a time. This is why *Best Practices For Legal Education*, Davis & Steinglass, the Carnegie report, and virtually all other studies of law teaching and learning recommend that we vary our methods to include other techniques in addition to lecture and traditional Socratic questioning. Core class time can also be given to problem-solving, working in role, writing short individual responses to questions that might otherwise have been posed orally to only one student, group projects, small and large scale simulations. Having a variety of teaching methodologies at the ready will help us choose which ones will best fit each of our classroom objectives.

Happy Teaching,

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[i] Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997).

[ii] Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1 (2012).