

Is it Possible to Develop a New Teaching Method Derived from the Socratic Dialogue for Turkish Legal Education?

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Introduction

As the number of both law schools and law students increases dramatically in Turkey the teaching method used currently is becoming the nub of the legal education problems recently. There is a large consensus between law academics in Turkey that the classical teaching method used in Turkish law school classes cannot meet the requirements of modern rigorous legal education.¹ Law students sit passively in large classes and listen to lectures delivered by law professors or they simply attend classes to take exhaustive notes to avoid reading law textbooks. Lectures traditionally focus on explanation of the legal rules embraced by statutes rather than case studies or problem solving. At the end of the semester law students take written exams and have little chance to speak and to learn how to argue by using legal reasoning. The reliance on lecture as the principal mode of teaching in Turkish law schools leads law students to concentrate on reading student notes taken in classes so as to pass their exams. This method commonly used in Turkish legal education cannot provide law students with analytical and verbal skills and with the ability necessary to work in the legal profession in a more globalised world. It seems that the law students' passivity flowing from the reliance on lecture method is partly attributed to Turkey's civil law culture.

In accepting that the classical lecture method in Turkish legal education cannot provide active learning environment for law students resulting in inadequacy in Turkish legal education, this paper attempts to develop a new teaching method which enables students to participate actively in the learning process. The new teaching method should encourage law students to read materials, together with law textbooks, think analytically about the material and talk about legal issues. The new method should provide law students not only with learning primary and secondary sources of law but also with the ability to use legal reasoning and argument when they justify their point of view. This paper therefore discusses that while the Socratic dialogue in its pure sense may not be used in Turkish law school classes since the teaching method in legal education is closely related to the country's legal system, a new teaching method derived from the Socratic method can be developed in response to the problem of students' passivity in Turkish legal education. The paper, hence, first, clarifies the basic elements of Socratic Method and then suggests a new teaching method for Turkish legal education by using features of the Socratic Method.

The Existing Teaching Method in Turkish Legal Education

As explained briefly in the introduction students are passive in Turkish legal education. Since Turkey has historically adopted Continental legal system, the primary source of law is statutes which include general rules and abstract concepts. The courts in making their decisions apply statutory rules and abstract concepts to a particular case. The deductive reasoning is used by courts when they make their decisions. Depending on this deductive reasoning process stemming from Turkey's legal system which is closely tied to the main teaching method, the lecture method of teaching is primarily used in Turkish legal education. In the process of Turkish legal education students, are, first, taught the primary and secondary sources of law, such as general rules and abstract concepts in statutes, and legal doctrine. The professor explains general rules, abstract concepts, the legal doctrine and

¹ See for example, Sait Guran, *Ogretim Yontemi, Ogrenciler, Ders Programi Ogretimi Verenler, Yonetim, in Hukuk Ogretimi ve Hukukcunun Egitimi*, Turkiye Barolar Birligi, Uluslararası Toplantı, 9, 10, 11 Ocak 2003, Ankara, 86- 105.

mentions court decisions, by the use of lecture method in theoretical classes. Students sit, listening to their professors and take notes in large classes. They are in a state of receiving information given by the professor by the use of lecture method and they do not have an opportunity to speak or to argue about the subject matter. Only when students do not understand explained issues by the professor, do they ask for additional explanation. That is, the use of the lecture method of teaching in theoretical classes cannot create an active learning environment for students.

Following theoretical classes, students are shown how to distinguish material facts of a particular case and how to apply relevant legal rules to the present case through using examples of previous high court decisions (cases) in practical classes. Examples of cases are given to students so as to give them an opportunity to read and analyze cases before students come into the class. Students are expected to read the case, to find which legal rule applicable depending on the facts of the particular case and to argue whether the decision in the case under the relevant statutory rules together with the legal doctrine. The aim of these practical classes is to provide for students to learn how to apply general rules to a particular case and to gain verbal skills. Indeed, traditionally Turkish legal education concentrates on providing students with learning how to solve legal problems when they face in the future. However, there are two main reasons for the failure of practical classes to achieve this goal. The first reason is that the number of practical classes is very limited due to the content of the subject which the professor feels to complete by the end of semester. The second reason for the practical classes being inadequate for achieving its aim is that there is no effective tool which compels students to attend the practical classes as the attendance at the practical classes is generally voluntary. Even if the attendance of practical classes is compulsory, this is not enforced because the professor feels that law students should decide for themselves to attend the practical classes. The students' passivity in the learning process results that the legal education falls short to achieve its purposes.

Basic Elements of the Socratic Method

Since cases constitute a primary source of law in the Anglo-American legal system, courts, when they make their decisions, follow the legal principles extracted from cases which can be relied upon as precedent². The courts then apply the legal principles derived from previous cases to the present case. Put simply, the courts use inductive reasoning when they reach the decision for a particular case. The features of a legal system affect the teaching method in legal education. The common teaching method in the Anglo-American legal system which relies primarily on cases is the Socratic Method³.

While the Socratic Method has attracted many criticisms, it is still the predominant teaching method in the law schools of the United States of America⁴ where the Anglo-American legal system is applied. In using the Socratic Method as a teaching model one should discover the basic features of the Socratic Method. The heart of the Socratic Method lies in the professor and student interaction.⁵ In the most traditional use of the Socratic Method the professor asks students a series of questions and leads them to extract legal principles from cases.⁶ The professor's questions are designed to help students to argue about legal reasoning behind cases. The use of the Socratic Method encourages law students to read and analyze cases and think critically before students come into class because

² See Jo Boylan-Kemp, *English Legal System the Fundamentals*, 10, 32 (2008).

³ See Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method A Proper Tool for Legal Writing Courses*, 43 Cal. W. L. Rev. 267, 270- 271 (2006-2007).

⁴ See 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, 450 (1995-1996); Jackson, *supra* note 3, at 270-271.

⁵ See Jackson, *supra* note 3, at 272. For philosophical explanation of the Socratic method see Richard K. Neumann, *A Preliminary Inquiry into the Art of Critique* 40 Hastings L. J., 725, 730-739 (1988-1989).

⁶ See William C. Heffernan, *Not Socrates, but Protagoras: The Sophistic Basis of Legal Education*, 29 Buff. L. Rev. 399, 401 (1980).

students may be called upon by the professor during the Socratic questioning and answering⁷. During the question and answer process students synthesize cases, discovering the facts of the case and apply legal principles, extracted from cases by the students, to a particular case. Further, since students do not know at what point in the Socratic questioning and answering dialogue they will be called on they are encouraged to actively follow the dialogue between the professor and the answering student, and be ready to respond if she or he is called upon. Therefore, the rest of the class is also engaged in active learning.⁸ Moreover, the questioning used in the Socratic Method induces students to talk in the classroom and then promotes their verbal skills.⁹

A New Teaching Method Derived from the Socratic Method

Given that Turkish legal system mainly relies on legal rules stated in statutes rather than principles laid down in cases, it is difficult, if not impossible, to departure from the lecture method entirely and to adopt the Socratic method in its pure sense in the legal education in Turkey. However, a method of teaching can be developed by using features of the Socratic Method which provide for active involvement in the learning process to respond to the problem of students' passivity in Turkish legal education. Since, Turkish legal system, as the Continental legal system, depends mainly on statutory rules rather than cases; the main source for students to study is textbooks which explain statutory rules, reasoning behind statutory rules and legal doctrine. Students, before come into the classroom, can be asked to read textbooks on the subject under consideration and relevant other materials which help students to understand legal rules with their economic, social, political and historical developments. This, in turn, will enable students to think critically about legal rules and to argue whether legal rules are adequate and satisfactory. When students come into the class the professor do not need to go through all what is already said in the textbook as students are assumed to have read the subject matter that has been assigned for class. The professor, after pointing out the main issues by the use of the lecture method, can ask a series of questions designed to examine the subject matter, encouraging students to think critically and to speak about the subject. The professor' interrogation can force students to read materials before come into the class and can compel students to participate in the classroom discussion.

Since the form of the practical classes is more suitable for the creation of the question and answer dialogue the professor will be able to formulate the questions to create the environment where students can argue, not only with the professor but also with each other, about the application of the statutory rules to the particular case. To increase the number of practical classes where students can learn how to express their point of view and put forward their arguments depending on their legal knowledge which they have acquired in theoretical classes seems also necessary for the effectiveness of the teaching method aiming at students' active involvement in the learning process. Moreover, the attendance of the practical classes should be compulsory.

However, one should also bear in mind that to achieve students' participation in legal education also rely on both the number of students in the classroom, and students' primary, secondary and high school education. A classroom with 500 hundred students, for example, does not allow using the teaching method aiming at active participation in the classroom. The ideal number of students in the classroom providing for students' active involvement in the learning process would be between 30 and 100. Further, students should be given reading habits during their education before they arrive at Universities so that they would have no difficulty in reading a large amount of textbooks as well as other relevant materials.

⁷ See Jackson, *supra* note 3, at 274.

⁸ See Jackson, *supra* note 3, at 274-275.

⁹ See Jackson, *supra* note 3, at 280.

Conclusion

The existing teaching method in Turkish legal education resulting in students' passivity in the learning process has been repeatedly criticized for its failure to meet the requisites of modern legal education by Turkish law academics. In developing a new teaching method, elements of the Socratic Method enabling students to take an active role in the legal education can be adopted. Nevertheless, it should be recognized that the implementation of a new teaching method in legal education is closely linked with other factors such as the number of law students in classes and students' education before their university education.