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In-Class Debating in Public Law Classes as a Complement to the Socratic Method

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In an introductory American politics course students customarily learn a modicum of public law by memorizing seminal cases and matching them with concepts relating to larger topics, e.g., "rights and liberties" or "the judiciary." Students in advanced courses in public law, however, are usually required to grapple directly with, and to critically evaluate, appellate court cases and constitutional commentaries. Typically, this objective of teaching students how to "teach themselves the law" is accomplished by the technique known as the Socratic method.

The Socratic method, an approach that dominates legal education in the United States, involves asking students, who have presumably already read the assigned cases, to indicate the facts of the case, the legal questions put before the court, how the court answered each question, the reasoning of the majority opinion, and the reasoning behind dissenting or concurring opinions. Then, often in order to answer a series of hypothetical questions by the instructor, students must "harmonize the outcomes of seemingly inconsistent cases so that they are made to stand together." As Howard Abadinsky noted, "By taking and putting together different cases, the student acquires a way of thinking and working with cases that constitutes the fundamentals of legal reasoning, as well as knowledge of doctrinal rules presented by these cases."[1]

The Socratic method, however, has not been without its critics. First, it is questionable whether or not instructors want to subject undergraduate students to the same rigors as law students. Political science courses in public law are not mini-law-school classes, and it is not the objective of most instructors in undergraduate classes in constitutional law to get their students to "think like lawyers." Second, there are those who argue that the technique itself actually is damaging to students.[2]

I believe there is a way to teach students to critically evaluate cases, and to expose them to case commentaries as well as the basics of legal research, without relying exclusively on the Socratic method. In my classes in public law, I have each student participate in an in-class debate during the quarter, structured much like competitive debates at the interscholastic or intercollegiate level. Although, for the most part, students are re-arguing cases that have already been decided, they function as the "affirmative" and the "negative" terms in traditional academic debating. The cases serve as the resolution. Both sides present constructive speeches and rebuttal speeches, and they answer cross-examination questions. Further, there is a short writing assignment accompanying the project that obliges the students to argue the merits of their case and to anticipate their opponents' arguments. I have successfully used in-class debating in conjunction with lecturing and the Socratic method.

The Approach

When summarizing the syllabus and course requirements, I indicate to students that they will participate in an in-class debate during the quarter/semester. I explain that each student will argue a case in class. If possible, I will set up the debates so that the student works with a partner to prepare a brief of their case (8-10 pages) and to orally argue the case before the class. If the enrollment makes two-person debating problematic, I will set up the debates to follow a "Lincoln-Douglas" format.

During the first week of class, I pass around a sign-up sheet that lists the cases to be debated and that provides the students with an opportunity to pair up and select a side—appellant/affirmative or appellee/negative. The cases I select are not landmark decisions that the students

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will necessarily have to read or brief for regular class assignments. I tend to select consequential cases that branch off from the more prominent decisions. I try to pick cases that (1) are not landmark decisions; (2) are nonetheless important decisions that will engender substantial thought and student interest; and (3) are cases where plenty of materials are available for student research.

The written "briefs" assigned are short papers that include the arguments the students will present in the debate. The briefs should indicate a thorough knowledge of the case and that the students have done some additional research. I also advise students that one cannot argue persuasively without addressing the arguments of one's adversary. Thus, their briefs should anticipate their opponents' position and offer a response.

Depending upon whether the debate is a two-person or four-person format, the sequence is roughly the same. In a four-person debate the order is:

First Affirmative (Appellant)—5-minute opening speech
First Negative (Appellee)—5-minute opening speech
Second Affirmative—5-minute speech
Second Negative—5-minute speech
Cross-Examination Period—5-7 minutes—audience questions directed in order at both teams
First Negative Rebuttal—3 minutes
First Affirmative Rebuttal—3 minutes
Second Negative Rebuttal—3 minutes
Second Affirmative Rebuttal—3 minutes

For a two-person debate the format would be:

Affirmative (Appellant)—6-minute speech
Negative (Appellee)—7-minute speech
Cross-Examination Period—5-7 minutes
First Affirmative Rebuttal—3 minutes
Negative Rebuttal—5 minutes
Second Affirmative Rebuttal—3 minutes

Those familiar with academic debate will realize that the formats will protect the "negative block," or the extended time provided to the negative, since the second negative speech and the first negative rebuttal are back to back, and it protects the advantage the affirmative enjoys of speaking both first and last.[3]

Although this is probably not essential, I have found the quality of the debates improves substantially if the audience renders a decision afterwards. I ask them to select the winner and, after quickly counting the "ballots," we discuss the particulars of that debate and how the case fits into our subject area. I have also discovered that the debates help the students put the assigned topics into some perspective when they see the debaters use relevant cases in their oral arguments.

The classes I teach in public law are structured so that the debates do not conflict with the time I need to lecture. This option might be more difficult, although certainly not impossible, if the course were to meet two days a week for 90 minutes or less. In some of my courses, I am able to give one day of the week over to the in-class debates. In others, I have to situate the debates within the regular lecture format. In either case, I have found it valuable to include them.

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Advantages

Because the debates are, to some degree, competitive, they motivate students to read case texts, evaluate competing judicial opinions, and to consult legal writings. Thus, apart from the Socratic method, in-class debating pushes students to teach themselves the law.

Without requiring a term paper, preparing the briefs gives students an opportunity to write critically about the law. Further, it requires them to write persuasively, since they must anticipate their opponents' arguments.

The debates provide students with an opportunity to stand up in class and present a complex argument orally. This is positive for numerous reasons: First, it develops skills in students that might not otherwise be cultivated—especially in a university atmosphere where it is easy to sit back, take notes, write exams, and leave the course with credit. Second, it provides another means of evaluating students who may learn the law, but who do not perform well on written exams. Third, it gives students bent on attending law school a small taste of what it will be like to argue a case in front of others.

Conclusion

The Socratic method is the conventional means of motivating students to tackle tough texts and complicated ideas in public law classes—even at the undergraduate level. The Socratic method, however, has come under fire. Although in-class debating is not necessarily an alternative to the Socratic method, it enables the instructor to accomplish many of the same goals and has advantages above and beyond the more traditional approach. Thus, I recommend in-class debating to be used as a complement to lecturing and the Socratic method in public law classes.

Notes

1. Howard Abadinsky, *Law and Justice* (Chicago: Nelson-Hall Publishers, 1988), p. 55.

2. See John Bonsignore and others, *Before the Law: An Introduction to the Legal Process* (Boston: Houghton Mifflin Company, 1989); Susan Burgess, "Against the Socratic Method: Fostering Student Self Confidence and Intellectual Independence," *Focus,* 6, 11 (Fall, 1990); Ronald Pipkin, "Legal Education: The Consumers' Perspective," *American Bar Association Journal,* 1976, 1191 (1976); Paul Savoy, "Toward a New Politics of Legal Education," *Yale Law Journal,* 79, 457 (1970); Victoria Steinberg, "Why I Quit Law School," *College Digest,* Spring, 1982; Scott Turow, *One-L* (New York: Farrar, Straus, and Giroux, Inc., 1977); and Andrew Watson, "The Quest for Professional Competence: Psychological Aspects of Legal Education," *Cincinnati Law Review,* 37, 131 (1968). In defense of the Socratic method, see Lief Carter, "An Invitation to the Dance: A Reply to Professor Burgess"; Robert Nagel, "Invisible Teachers: A Comment on Perceptions in the Classroom," *Journal of Legal Education,* 32, 359 (1982); Alan Stone, "Legal Education and the Couch," *Harvard Law*

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Review, 85, 412 (1985); and Turow's more positive comments about his legal education at Harvard Law School.

3. For a brief explanation of the format in academic debate, see Ronald Lee and Karen King Lee, *Arguing Persuasively* (New York: Longman, Inc., 1989), pp. 230-32. One need not be an expert in competitive debate to use this method in class. There are several good texts that summarize the general responsibilities of each speaker in a debate. In addition to the text cited above, one might look at Russell Church and Charles Wilbanks, *Values and Policies in Controversy: An Introduction to Argumentation and Debate* (Scottsdale, AZ: Gorsuch Scarisbrick, 1986); Don Fauls, Richard Rieke, and Jack Rhodes, *Directing Forensics* (Denver: Morton Publishing Company, 1972); George Ziegelmueller and Charles Dause, *Argumentation: Inquiry and Advocacy* (Englewood Cliffs, NJ: Prentice-Hall, 1975); and Douglas Reeves and Sandra Reeves, *The Constructive* (Cheyenne, WY, SPDR, 1980).

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The Original Washington

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George Washington's writings can be of use to the political scientist. I have included Washington in a two-week segment of a 13-week "Intro to American Government" course at Villanova to develop the following themes.

Founding Crisis. Nothing better brings home to students the meaning of the American founding than Washington. One can list the weaknesses of the Articles of Confederation, expanding on each in a precise and clear manner. But students don't really see the problem. Have the class read a handful of Washington's letters describing in elegant detail the whole range of disastrous consequences of these weaknesses, and students grasp immediately.

On another matter, the decisive impact of Shays's rebellion on public thinking and especially on that of a leading segment of the Framers is nowhere more powerfully illustrated than in Washington. More than once, as he witnesses events in Massachusetts, Washington describes himself to be in some horrible dream, so incredible had our fortunes become. He goes on to predict that without action America would become what we today would call "another Lebanon."

Students can study a founding crisis, but their experiences are limited, and they tend to see what is around them as necessary. Washington's eloquent fears persuade them otherwise. Washington shows what a founding means—that a founder faces a real choice, a fork in the road, as it were. There is nothing necessary about one road being taken over the other. Washington sobers students.

Civic Virtue. Washington's concern for citizen morality and his perception of its connection with our political happiness is surely the capstone theme of his role as "Father of his Country." Teddy Roosevelt perceived the presidency as a bully pulpit, but in this as in other things, he had Washington, the great preceptor to the nation, as predecessor. That honesty is the best policy, in private as well as public policy, Washington preached ceaselessly, and he meant it and practiced it. Honest citizens meant public happiness, but on a less lofty plane, it also ensured the security of popular government, especially in an age where it was a novelty. (Washington himself had been offered kingship by some of his officers.)

Washington shows what a founding means—that a founder faces a real choice, a fork in the road, as it were.

Civic virtue was understood differently by Washington than it is today. Voting and participating in campaigns were not deemed to be of its essence. Instead, it encompassed chiefly industry, frugality, and law-abidingness. Its opposite entailed dissipation, luxury, and corruption. It was so bound up with related habits and manners as to constitute a way of life. Again, Washington insisted on its connection with our happiness as a nation. There is something Socratic about Washington's adamant insistence on the connection between virtue and happiness.

Be this as it may, civic virtue in Washington's sense has taken its lumps in modern America, especially in urban America. So, after having my class read excerpts from Washington on civic virtue, I have taken to asking, "Are we happy?" Blank stares. Their instinct is to say, "Of course we're happy. What a question!" After discussing drugs, crime, personality disorders, and offenses against children, and concluding that maybe we're not so happy, Washington begins to hit home to some. Naturally, the issue has not been so simply resolved, for poverty could yet account for certain ills, as some students, or else I myself, observe. Still, the issue is a living one and remains open.

Political Morality. The issue of idealism versus realism in political

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