

THE SOCRATIC METHOD, CLINICAL LEGAL EDUCATION AND
MEDIATION SERVING THE PROMOTION OF THE RULE OF LAW IN
SERBIA: A FORMER LL.M. STUDENT PERSPECTIVE

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Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope.

Robert F. Kennedy

I. INTRODUCTION

The only thing that I have wanted to do for as long as I can remember was to teach. My father was a professor for 40 years and by looking at him I developed my love for pedagogy. When I became a law student at the University of Belgrade Faculty of Law, I finally found my area of interest in teaching and was ready for all the hard work in order to become a legal scholar.

When you study law in Serbia, you immediately become aware of at least two problems. The first one relates to methods of teaching, used by most Serbian professors, which are mainly theoretical with little or no space for the development of constructive and critical legal thinking and legal practice skills. The other one is simply the fact that you live in the country where laws change very frequently. It is easy to confirm in everyday life that such a legal system cannot constitute a stable basis for economic and social development. Realizing this made my motivation for becoming a law professor even stronger and I started looking for ways to make my own contribution to improving the legal system in general and legal education specifically. I graduated from the University of Belgrade, travelled to United States to gain my master's in law (LL.M.), and returned to my home country to start achieving my long-term goals. I wanted to do that by combining my experiences in Serbia with those that I gained while in the U.S.

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Currently, I work as an assistant lecturer at the first private law school in Belgrade and as staff attorney with the American Bar Association Rule of Law Project in Serbia, better known as ABA/CEELI.¹ This is where I found my opportunity to become more directly involved in the legal reforms in Serbia and to contribute to the development of the rule of law that would benefit the society as a whole. Fortunately, the timing was simply right.

During the last several years, Serbia has been facing comprehensive social and legal reforms. Just six years ago, Serbia would be often described as a country with a socialist political and legal system. Today, however, drastic reforms are occurring in all areas with rapid changes and high expectations. Citizens and legal professionals alike are overwhelmed by the flood of new laws reflecting the new, democratic values of the society. The Serbian legal education system itself is a subject of some of the reforms which aim to bring our law schools in line with the European Union standards set up in the Bologna Declaration.² All of this effort should provide future lawyers and lawmakers with the necessary foundation in the rule of law.

There are different fields of my work influenced by the education that I gained in the United States. The most important ones are closely related to my teaching at the law school and the rule of law projects within the ABA/CEELI. In the law school, I use interactive methods of teaching in order to enable my students to develop critical thinking skills so that later they can find their own ways through the problems they face as practicing lawyers. Within the ABA/CEELI, I have the opportunity to work with judges and bar associations in order to secure the continuing education of legal professionals. In addition, I often have the opportunity to teach at the Faculty of Political Sciences and

1. American Bar Association/Central European and Euroasian Law Initiative (ABA/CEELI), funded by the US/AID, has been a key supporter in the field of legal reforms in Serbia since 1997. Throughout the years ABA/CEELI has been able to develop close working relationships with Serbian legal professionals. By supporting different rule of law projects and mainly working with judges, prosecutors, magistrates, bar associations and law schools, the ABA/CEELI is giving considerable contribution for the development of the rule of law in Serbia. More on the ABA/CEELI projects in Serbia, at <http://www.abanet.org/ceeli/>.

2. At this moment, the Bologna Process, based on the Bologna Declaration signed in 1999 by 29 European countries, is the most important process of higher education reform in Europe. The main goal is to establish the European Higher Education Area in which there would be no obstacles to the mobility of students, trainees and graduates as well as for teachers, researchers and higher education administrators. Serbia has officially joined the Bologna Process by signing the Bologna Declaration in September 2003 although the Bologna Process was followed since 2000 when activities for the reform of higher education system began. See *The Bologna Declaration: On the European Space for Higher Education—An Explanation*, at <http://ec.europa.eu/education/policies/educ/bologna/bologna.pdf>. Also see The Ministry of Education and Sport, *Higher Education in Serbia and Bologna Process*, at www.bologna-berlin2003.de/pdf/Serbia.pdf.

Centers for Social Work. Through all these activities I try to make my own contribution to the promotion of the rule of law in Serbia. However, in the end my biggest efforts go towards the creation of more practical ways of teaching law as well as for the development of mediation in Serbia.

II. INTRODUCING SERBIAN LAW STUDENTS TO THE SOCRATIC METHOD

One of the benefits of using the Socratic method is that it gives the students a chance to experience the attendant joy and excitement of discovering ideas on their own.

Rick Garlikov

Upon return from the United States, I started working as an assistant lecturer in the field of contracts and torts.³ My wish was to offer my students a space in which they would consider different legal problems by using their knowledge with rationality and creativity. This, of course, required more interactive teaching methods which were not that familiar to me while I was a law student in Serbia. Most of my professors used teaching techniques that emphasized rote memorization and therefore only small numbers of law students were able to develop critical legal thinking skills while at the law school.⁴ While I was a student, there were no required readings or assignments and students would often graduate from the law school without ever being called up in class or challenged to express their opinion on any legal matter. When I became an LL.M. student, I was introduced to a more effective method of teaching law. I learned that this technique was well known in American law schools as the Socratic Method.

When I work with students I use methods that are interactive in nature and represent my own variation of the Socratic Method in combination with traditional *ex cathedra* teaching style often used in Serbian law schools. I assign cases and other readings to my students for every class.⁵ These readings are very important since law, as everything else, is more easily learned if the student has some previous understanding of the subject matter. In class, I

3. In Serbian law schools Contracts and Torts are taught as a single course that is called the Law on Obligations.

4. The Ministry of Education and Sport emphasizes this problem, stating that the Serbian higher education system is characterized by “outdated and highly repetitive curricula, outdated teaching methodology together with the outdated and internationally not relevant literature.” See Ministry of Education and Sport, *supra* note 3.

5. My students receive a course syllabus in our first class and they are familiar with the required readings in advance.

encourage them to discuss assigned topics, to freely express their opinion about legal issues that we are working on, instead of me talking all the time and them listening all the time. I try to avoid traditional ex cathedra lecturing. Only when students are having difficulty with understanding certain legal principles will I give them explanations they need. Other than that, most of the class time is reserved for our dialogue. I simply prefer “teaching by asking” instead of “teaching by telling.”⁶ While doing this, I have to be patient and supportive as students in Serbia are not used to being questioned often in their classes or challenged to express what they think. Knowing that, I always tell them that even though I have graduated from the law school, I still learn every day. I remind them that there are no right or wrong questions or answers. This leads to a greater willingness on the part of students to express their opinion.

When there are cases assigned, we discuss these cases together, trying to connect legal theory with life. The Serbian legal system is a part of the European continental legal tradition and therefore opinions of courts expressed in the court decisions do not represent sources of law, nor do they have the value of legal precedent like cases in the United States. However, by reading the court decisions, students become familiar with the reasoning of judges in implementing legal rules onto sometimes complex concrete life situations. This is very helpful, since students are then able to more easily remember often abstract legal rules and legal theory. In addition, I find that students very much like reading about real life events and their possible legal consequences. They become more aware of how important it is to become a good lawyer and to gain significant knowledge on the rule of law.

All of these experiences and lessons I almost missed as a student and I am happy to now see my students enjoying classes, eager to express their thoughts and ideas. They realize, as I did before them, how important it is not only to have an excellent theoretical background but also to develop skills to foresee specific legal problems and to find suitable answers to them. When choosing a teaching method, an educator must keep in mind the point of teaching and of any teaching method in order to make a good choice. Generally, just giving students more information than they can absorb or assimilate does not help them learn what you want them to know.⁷ Law students have to be supported in exploring hypothetical or real-life cases, in expressing their own views, and in developing critical legal thinking skills. Only law students trained in such

6. See Rick Garlikov, *The Socratic Method: Teaching by Asking Instead of by Telling*, at http://www.garlikov.com/Soc_Meth.html.

7. Rick Garlikov, *Teaching Effectively: Helping Students Absorb or Assimilate Material*, at <http://www.garlikov.com/teaching/absorb.html>.

a way will be able to become confident and independent in everything that they do as young law graduates and, ultimately, as they contribute to the development and protection of the rule of law in their country.

III. DEVELOPING CLINICAL LEGAL EDUCATION IN SERBIA

You are about to begin an educational adventure unlike anything you have previously encountered in the law school. In your clinic work you are about to try the identity of lawyer.

David F. Chavkin

Related to my work in the law school is my occupation with improving clinical legal education in Serbia. Until now, the Serbian law schools have had the kind of basic clinical education where students provide free legal aid services to indigent citizens. These services were limited to providing simple legal opinions and drafting legal documents for clients, but student involvement in the clinic did not include any kind of legal representation in courts.

While I was an LL.M. student in Pittsburgh I realized that as a law student there is so much more that one can do within the clinic and that is why I became involved in the University of Pittsburgh School of Law Family Law Clinic. I had the opportunity to provide a wide range of legal services, from drafting legal documents to representing clients before the Allegheny County Court of Common Pleas. The Pitt Family Law Clinic was like a small law firm and, as such, a real challenge for any law student. What I learned there was probably the most valuable knowledge that a law student can get. Keeping that in mind, I am now looking forward to the beginning of the next semester when I am hoping to establish the first legal clinic in my law school comparable to the Family Law Clinic at Pitt Law. In this clinic, students will have the opportunity to work with real people and to learn from experience. They will have the opportunity to apply legal rules in real cases and to become aware of their own responsibility towards clients, courts and the legal profession. And I have no doubts that students will enjoy working in that clinic while learning and developing their legal practice skills and helping indigent citizens with their legal problems. In fact, I truly believe that after being given an opportunity to experience clinical legal education students will graduate from the law school with greater knowledge and satisfaction.

The rule of law is applied in specific real life situations and not in a vacuum. Therefore, legal education should match reality and offer students

both theoretical knowledge and practical legal skills.⁸ Every part of society would benefit from this style of legal education. Students will receive comprehensive legal knowledge. Everything that they have learned in class will become real. Through clinical activities students will increase their lawyering skills and develop professional values. They will gain confidence in their own ability to be practicing lawyers and will be better prepared to participate effectively and responsibly in the legal profession.

As clinical legal education expands, the benefits to the rest of society will increase. The citizens that cannot currently afford legal professionals will benefit because they now have trained students to represent them. The legal profession will benefit since the education of future advocates will have improved and society will benefit because equal access to justice guarantees a more stable and healthy society.⁹

IV. MEDIATION

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.

Abraham Lincoln

The last but not the least aspect of my work relates to mediation. The courses that I chose as an LL.M. student were oriented towards alternative dispute resolution (ADR), since I was mainly interested in improving my then basic knowledge on mediation. This was a great opportunity to learn about mediation in the country where modern mediation was born. I researched a lot, tried to read as much as I could, and had the opportunity to work with Pittsburgh mediators and judges and to learn from them.¹⁰

I came back to Serbia soon after the first Law on Mediation was enacted. This Law provides for both court-annexed and private mediation that can be

8. In its Report, the Serbian Ministry of Education and Sport also recognizes that among the weaknesses of the existing system of education is “highly structured mono-disciplinary programs that cannot answer the market needs. Focus is placed on theory with practical skills and knowledge being neglected.” See Ministry of Education and Sport, *supra* note 3.

9. DRAGO RADULOVIC ET AL., A SPECTRUM OF VIEWS ON LEGAL CLINICS 31 (2004).

10. Upon graduation I did my internship in the Allegheny County Court of Common Pleas in Pittsburgh.

used in wide range of disputes.¹¹ The National Judicial Reform Strategy proposed by the Ministry of Justice of Serbia and adopted by the Serbian National Assembly states that “systematic and well-publicized alternative dispute resolution programs will ensure new, more efficient and less expensive avenues for dispute resolution and considerably reduce the burden on courts and judges, which will, in return increase the efficiency of the judicial system.”¹² However, the main challenge that mediation faces in Serbia is true acceptance by the judicial branch and other branches of government, by attorneys, and by the public. Therefore, I knew that the education of judges and attorneys on the benefits of mediation would be a significant support to promote mediation, since judges and lawyers are in contact on a regular basis with potential mediation clients.

For that reason, these days I mostly work with judges and attorneys on different mediation related projects. I run mediation seminars where I speak on the theory and practice of mediation and the American experience in this field. When I talk to judges, I always emphasize the role of the presiding judge in the process of referring cases to mediation. I try to educate them on the appropriate practices and techniques to encourage settlements. I try to support their willingness to do so by including mediation role-plays in the seminar and quite often the participants would tell me that this part of the seminar was the most effective.¹³ In my mediation seminars for attorneys, in addition to topics covered with judges, I also talk about the role of an attorney in the mediation process, as this role is quite specific and unique compared to the one that attorneys have in the traditional court setting.

To date, I have had the opportunity to conduct these kinds of seminars throughout Serbia and I am pleased to confirm that most Serbian judges and attorneys welcome mediation as a new dispute resolution mechanism in the Serbian legal system. In fact, many of them are interested in being trained as mediators. And I can only consider this kind of interest as a positive one. Finally, I often lecture in the centers for social work where I train professionals with different backgrounds, such as psychologists, lawyers, and social workers to become family mediators. This is what I enjoy the most out of all my mediation trainings, because I find these people very enthusiastic and ready to learn as much as is needed so that they can provide a full range of quality services to citizens that approach them asking for help. I talk to

11. See The Law on Mediation, Official Gazette of the Republic of Serbia, no. 18/1005.

12. See The Decision on Adopting the National Judicial Reform Strategy, Official Gazette of the Republic of Serbia, no. 44/2006.

13. My interactive teaching methods work well even when I communicate with legal professionals.

them about my experiences in the United States, I share my mediation books and other materials, and I am very glad to hear from them that they are improving in their mediation practice and that the number of cases they have solved through mediation is increasing.

V. CONCLUSION

The experience that I gained as an LL.M. student was valuable and still is for me in so many ways. It confirmed my beliefs that there are better, more effective ways of teaching law. It helped me to improve my knowledge about mediation and enabled me to share what I have learned with our judges, attorneys and my students. With any kind of education, no matter if you teach students or train legal professionals, the point is to lead or take them from the knowledge and skills they already have to the greater and higher levels of knowledge and skills you want them to have and do it in a way that inspires and enables them to continue to learn and become better in what they do. I learned a lot from my American professors and practitioners I had the opportunity to meet. At some times their methods seemed fairly difficult to me, but this only inspired me to learn more and therefore became a challenge instead of an obstacle.

All these good pieces of my overall law student experience, I offer now to my own students. I truly hope that when they graduate from law school, this will enable them to approach law as intellectuals and be ready for all professional challenges they will have as future rule of law leaders.

As far as the legal professionals are concerned, I hope that their new-found knowledge of mediation will enable them to become even better judges and attorneys; to become true peacemakers. One of the judges who attended my seminar said: "These skills of a mediator should be something that we know by heart so that we can become not only better in what we do as judges but also as human beings." And I agree. The rule of law is not based on some abstract values. It comes from a human need to secure humanity in relationships between people. In my opinion, each member of society is given an opportunity to contribute to the development of the rule of law in their own way. What I do in my everyday work is what I consider my contribution to, and one which I hope will serve, the welfare of the society that I belong to.